

U. S. Department of Labor



FY 2011 Annual Report on Improper Payment Recapture Activities

November 1, 2011

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1.0 Overview

The *Improper Payments Information Act of 2002* (IPIA), the *Improper Payments Elimination and Recovery Act of 2010* (IPERA), and related regulations require Federal agencies to review their programs and activities periodically to identify those that may be susceptible to significant improper payments. The IPERA amended the IPIA and generally succeeded the *Recovery Auditing Act of 2002* (RAA), placing a greater obligation on the Federal government to detect, reduce, and recover improper payments. IPERA expanded the types of payments to be reviewed and lowered the threshold of annual outlays that requires agencies to conduct payment recapture audit programs. Specifically, the scope of recovery reviews now covers all programs and activities, including grants, benefits, loans, and contract payments, with annual program outlays of \$1 million or more – a significant change from the previous thresholds of \$500 million and contractor payments only.

On April 14, 2011, the Office of Management and Budget (OMB) issued a revised Circular A-123, Appendix C, providing guidance on effective implementation of the IPERA. Part I.B of the revised Appendix C specifically addresses the manner in which agencies will recapture overpayments. According to Appendix C, Part I.B, Section 1.d, “A *Cost-Effective Payment Recapture Audit Program* is one in which the benefits (i.e., recaptured amounts) exceed the costs (e.g., staff time and resources, or payments for the payment recapture audit contractor) associated with implementing and overseeing the program.”

Appendix C, Part I.B also requires the submission of an annual report to OMB and Congress that describes any recommendations identified by payment recapture auditors on how to mitigate conditions giving rise to improper payments, and any corrective actions the agency took during the preceding fiscal year to address the auditors’ recommendations.

This report provides an overview of DOL’s FY 2011 improper payments recapture program, including a detailed description of its payment recapture activities.

2.0 Background for Payment Recapture Activities

As part of its overall internal control and improper payments programs, the DOL has established and implemented strong preventative controls, in order to reduce overpayments to the minimum. In the event that an overpayment is made, DOL recognizes that it needs to be detected and recaptured in as short a time as possible. To the extent that it is possible to do so, the DOL works diligently to recover overpayments as soon as they are detected. To accomplish this, activities are conducted in three distinct phases of internal control operation:

- Phase 1: Overpayment Prevention and Detection
- Phase 2: Overpayment Recapture
- Phase 3: Reducing Improper Payments (design improvements)

2.1 Prior Years' Activity

Prior to Fiscal Year (FY) 2008, the DOL performed sampling of costs consisting of contract expenses related to the operation and administration of program and headquarters activities. The testing found no improper payments.

In FY 2008, the DOL performed a recovery audit of the contract payments made during FY 2007. The work was performed by an independent contractor under the oversight of DOL personnel. The review consisted of an analysis of the payment database and review of supporting documentation for selected payments. Over 80,000 payments were included in the data base, covering approximately \$1.751 billion. The audit did not identify any improper payments, but the contractor provided a number of recommendations regarding future recovery audits. One of these recommendations was to reduce costs by only conducting these audits once every two years.

Following that recommendation, in FY 2010 DOL performed a recovery audit of the contract payments made in FY 2008, FY 2009 and the first quarter of FY 2010, which covered a data base of \$4.087 billion in payments. The work was performed by contractor and DOL staff. Procedures included analysis of the payment database and review of supporting documentation for various selected payments. The audit did not identify any significant improper payments, consistent with the results of the previous recovery audit. In FY 2010 based on other post payment review processes, improper payments of approximately \$5.9 million were identified for recovery, of which \$5.6 million was actually recovered. Underlying causes of the improper payments were:

- Insufficient system controls over automated payments to certain vendors. During the implementation of the new financial management system payments to certain vendors (such as FedEx and Citibank) were made without adequate prior invoice review, and the accounts payable system was not capable of detecting large and unusual payments in advance.
- Duplicate payments of certain invoices.
- Overcharges of late-payment interest on certain invoices.

DOL has addressed the weaknesses identified and the new system will enhance DOL's ability to refine system and internal controls and conduct frequent management reviews to identify and reduce the incidence of improper payments moving forward.

2.2 Unemployment Insurance (UI)

The single largest program at the DOL is the UI program, which represents over \$150 billion in expenditures in FY 2010. Of this, the amount of estimated overpayments was \$16.5 billion, with an estimated overpayment rate of 10.6 percent. Because the improper payments for UI are estimated to be over 10 percent, the UI program is classified as a high-priority program; the only program with this designation within the DOL.

Goals for the UI program this year included:

- Working with the states to develop and implement processes to identify and recapture improper payments;
- Defining audit procedures to be performed on selected items;
- Developing a framework for identifying improper payments and providing guidance to implement that framework;
- Establishing appropriate payment recapture targets; and
- Utilizing statutory and regulatory authorities to recapture improper payments.

Within each of the three distinct phases of internal control operations supporting payment recapture activity for UI, the efforts were focused on three key areas that offer the greatest opportunity for improvement:

- Benefit Year Earnings Cutoff Issues – These issues arise when a claimant continues to claim and receive UI funds after returning to work.
- Separation Issues – These occur because the claimant files for benefits when they are ineligible to do so, and the state has not received documentation to that effect from the former employer before the claim is processed.
- Employment Service (ES) Registration Issues – These happen when the claimant has not registered in the state's ES system (or job bank) when required to do so, and is therefore ineligible.

In the discussion of the activities performed for each of the three phases of payment recapture activity for UI, only overpayment prevention and detection has been reported in sufficient detail to show which of these three areas is supported by the programs and processes described. Details of results of the activities performed in accordance with these goals are discussed in Section 3 below.

2.3 DOL-Wide Activities

In addition to the activities taken to reduce and recapture overpayments for the UI program, the DOL also conducted a series of activities aimed at recapturing overpayments in its other benefit and grant programs, and DOL-wide activities that managed non-payroll administrative and other costs (contract payments).

During FY 2011, the DOL established a new baseline, performing IPIA risk assessments on all its major programs and activities. Only two programs, UI and the Workforce Investment Act (WIA) grant program, were found to be risk-susceptible (high-risk). The UI program was identified as both high priority and high risk, with estimated improper payments of more than \$100 million per year. While the results of the IPIA risk assessments have never supported the high risk designation for the WIA program, the program continues to be designated high risk by OMB. As a result, a risk assessment is conducted annually on the WIA program.

In compliance with IPERA, the DOL also conducted an analysis to determine the cost-effectiveness of performing payment recapture audits for all significant programs and activities. For this analysis, a “significant” program or activity is one that accounts for \$1 million or more in annual outlays. Initial screening of over 50 DOL programs and activities revealed that 39 of the programs and activities were significant, and consisted of:

- 6 Benefit Programs (UI plus 5 others),
- 32 Grant Programs, and
- 1 DOL-wide activity - Non-Payroll Administrative and Other Costs (contract payments)

The DOL developed a methodology to support its analysis and worked collaboratively with the agencies and offices that managed the programs and activities to conduct the assessments. Final determinations were based on the data captured. A report on all the programs and activities found NOT to be cost-effective was submitted to the DOL OIG and OMB on September 15, 2011.

3.0 Payment Recapture Activities in the Unemployment Insurance Program

DOL's first priority has been to target resources to its high risk programs. The UI program is the only DOL program deemed both high priority and high risk, so enhancing Federal and state efforts to reduce improper payments in the UI program is a top priority at DOL. Additionally, the UI program is continuing to emphasize the recovery of overpayments by performing payment recapture activities and providing states with tools to aid their recovery efforts.

Each state's UI program has a Benefit Payment Control (BPC) unit that is responsible for promoting and maintaining program integrity through prevention, detection, investigations, establishment, and recovery of improper payments. The BPC units also prepare cases for prosecution. This work is performed at the state level by state staff to meet the following requirements:

- Section 303(a)(1) of the Social Security Act (SSA) requires that a state's UI law include a provision for: "Such methods of administration...as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due." DOL has interpreted "when due" to mean that states shall ensure that improper UI payments are not made.
- Section 303(a)(5) of the SSA also requires that a state law includes provision for: "Expenditure of all money withdrawn from an unemployment fund of such state, in the payment of unemployment compensation...". DOL has interpreted this "withdrawal standard" to mean that withdrawals from the states' unemployment fund be limited to the lawful payment of UI.

The Secretary of Labor has interpreted these Federal law provisions and the Secretary's Standard for Fraud and Overpayment, to require that a state's law includes provisions for such methods of administration as are, within reason, calculated:

- To deter claimants from obtaining benefits through willful misrepresentation;
- To detect benefits paid through error by the agency, or through willful misrepresentation or error by the claimant or others; and
- To recover benefits overpaid under certain circumstances.

Phase I: Overpayment Prevention and Detection

Every state conducts post award audits for the prevention and detection of UI improper payments on benefit payments to determine whether error or willful misrepresentation has occurred in the payment of UI benefits. All states audit all benefits payments by means of a cross-match against new hire directories (National and State), and state wage files. However, under certain circumstances, states may exclude payments from these matches if the wages are being reported, or if the payment was made to a claimant with a return-to-work date.

These activities are conducted through the use of automated tools and procedures that confirm the identity and legal status of the claimants, search for unreported earnings, and detect other forms of fraud or errors contributing to improper payments in the UI program.

States agencies also maintain the integrity of unemployment insurance and reduce the amount of improper payments by ensuring that employers contribute their fair share of tax and facilitate the return to work of UI claimants.

Some of the most useful tools and practices include:

Benefit Year Earnings (BYE) Issues (claimants continuing to claim UI benefits after returning to work)

- National Directory of New Hires (NDNH) – This database is managed by the Department of Health and Human Services, Office of Child Support Enforcement. The NDNH has claims information as well as wage and new hire information from employers all over the country including the Federal government and military. States use this database to cross-match between the wage record data to detect unreported earnings and new hire data to identify individuals who continue to claim benefits after returning to work.
- State Directory of New Hires (SDNH) – This tool provides information similar to the NDNH, but only contains data reports from employers within the state.
- State Quarterly Wage Cross-Match – Paid claims are matched against the quarterly UI tax reporting to states by employers. (The lag in reporting requirements for UI tax can prevent identification of overpayments in a timely manner.)

Separation Issues (claimants ineligible to receive benefits due to voluntary quit or discharge for cause)

- State Information Data Exchange System (SIDES) – This automated data exchange promotes the receipt of timely information from employers regarding the claimants' separation from employment and verification of earnings upon returning to work. Timely and adequate information from employers provides the state agency with the necessary information to make a determination on the claimants' eligibility and thus prevent improper payments.

Verification of Claimant Identity and Other Fraud Prevention Activities

- State Department of Motor Vehicles – Helps verify the identity of the claimant.
- Social Security Administration (SSA) – Helps confirm identity and benefits from SSA.
- Systematic Alien Verification for Entitlement – Maintained by Department of Homeland Security; it confirms the legal status of non-citizens. The wages used to establish a claim must be earned legally, and after filing a UI claim, non-citizens must be legally authorized to seek and accept employment.
- State and Local Prison Records – Some states match claimant data against these records to prevent fraud in the program.

- Internal State Databases record multiple claimants using the same contact information (phone numbers, addresses, bank accounts, or IP addresses). These tools can prevent fraud schemes.

Tax Fraud Detection

- SUTA Dumping Detection System (SDDS) – Use of SDDS software helps detect employers who manipulate their tax rates by, for example, shifting employees from accounts with higher tax rates to accounts with lower tax rates.
- Worker Misclassification Programs – Includes audits and investigations to prevent worker misclassification by employers. Worker misclassification occurs when an employee is erroneously classified by an employer as a non-employee, which reduces UI tax revenue, as well as the worker's ability to receive UI benefits, worker's compensation, Social Security benefits, health insurance coverage, retirement coverage, and protection under the Fair Labor Standards Act.

Reemployment and Continuing Eligibility

- Worker Profiling and Reemployment Services – A system designed to identify claimants who are likely to exhaust benefits and refer them to services designed to assist them in returning to work quickly.
- Reemployment and Eligibility Assessments – In-person claimant interviews conducted at the One-Stop Career Centers to review continuing UI eligibility and assess reemployment needs, including providing labor market information, assisting with the development of a work-search plan, and referral to reemployment services and/or training when appropriate.

Phase II: Overpayment Recapture

The states must hold the claimants liable to repay benefits that were received improperly and take an active role to recover improper payments (payment recapture audits). States may waive repayments for non-fraud overpayments when it would be against equity and good conscience pursuant to their state's law.

Some of the recovery activities and tools include:

- Offsets from benefits;
- Offsets from state and Federal income tax refunds;
- Offsets from lottery winnings, homestead exemptions, and other benefits, including the Alaska Mineral Refund;
- Interstate recovery agreements;
- Repayment plans;
- Civil Actions, including wage garnishments and property liens;
- Skip tracing, collection agencies, and credit bureaus;
- Probate and Bankruptcy;

- Referral to Office of Inspector General and other Law Enforcement Agencies;
- State and Federal Prosecution; and
- Establishment of interest and penalties on overpayments, which adds an incentive to repay quickly.

These recovery activities are not targeted toward improper payments by cause, but toward all improper payments. Overpayments of less than five weeks with no eligibility disqualification are generally recoverable by benefit offsets. Larger overpayments and those with eligibility disqualifications often require more active and aggressive recovery methods since the benefit offset is not available. Additionally, state laws place limitations on the types of recovery and the length of time an overpayment is recoverable. The recoveries are reported on the ETA 227 by the method of recovery. The processes or tools used for recovery of overpayments do not depend on the cause for the overpayments.

A five-year summary of overpayments established and recovered as a result of the activities described above is displayed in **Exhibit 1**, which includes overpayments established minus recoveries. Separate rates are shown for State UI, Unemployment Compensation for Federal Employees (UCFE), Unemployment Compensation for Ex-Service Members (UCX), and Extended Benefits (EB) claims only and for State UI, UCFE, UCX, and EB plus Emergency Unemployment Compensation (EUC) claims. Recovered overpayments for State UI claims are returned to the UI account from which the benefits were originally paid. EUC and EB overpayments that are recovered by the states are returned to the EUCA account within the UI Trust Fund.

**Exhibit 1: UI Overpayments Established and Recovered By Fiscal Year
(Excluding Waivers)**

FY	Overpayments Established UI/UCFE/UCX/EB	Overpayments Recovered UI/UCFE/UCX/EB	Recovered (%)	Overpayments Established (UI/UCFE/UCX/EB + EUC)	Overpayments Recovered (UI/UCFE/UCX/EB + EUC)	Recovered (%)
2006	\$979,836,264	\$511,524,977	52.21%			
2007	\$952,889,616	\$531,718,388	55.80%			
2008	\$1,002,131,148	\$571,160,044	56.99%	\$1,010,170,720	\$572,970,666	56.72%
2009	\$1,456,383,810	\$850,978,618	58.43%	\$1,732,370,866	\$913,418,622	52.73%
2010	\$1,906,893,984	\$966,820,770	50.70%	\$2,804,109,432	\$1,174,113,250	41.87%

The states are required to report quarterly on overpayment detection and recovery activities on the Employment and Training Administration (ETA) 227 report. The amounts established and recovered are based on reports submitted during the indicated fiscal year. However, the actual payment of benefits may have occurred in a prior fiscal year.

The information reported on the ETA 227 report is based on actual counts of UI overpayments identified and recovered by the state agencies. This is in contrast to the estimates of UI overpayment rates and amounts that are reported for the Improper Payments Information Act, which are based on the results of Benefit Accuracy Measurement (BAM). BAM is a statistical survey of paid and denied UI claims. The results of the BAM audits are projected to the

population of benefit payments for all unemployment compensation programs: State UI, UCFE, UCX, Extended Benefits (EB), and EUC. These BAM estimates will be significantly higher than actual overpayments identified for recovery because 1) the BAM audits detect eligibility issues that usual BPC detection methods will not identify, because it is very workload intensive and/or not cost effective to detect (for example, verification of all claimant work search activity or that all claimants were able and available for work); or 2) the overpayment is not recoverable because the responsibility for the improper payment is the agency’s and/or the employer’s, rather than the claimant’s, or due to state finality rules.

“Overpayment Establishments” have been adjusted to subtract waivers, which are overpayments that the state agency has determined are not recoverable. The Unemployment Insurance Report Handbook (ET Handbook 401, 4th edition, Section IV, Chapter 3, p. 10) defines a waiver as:

“A non-fraud overpayment for which the state agency, in accordance with state law, officially relinquishes the obligation of the claimant to repay.” Usually, this is authorized when the overpayment was not the fault of the claimant and requiring repayment would be against equity and good conscience or would otherwise defeat the purpose of the UI law.

The DOL believes that this definition is consistent with the criteria established by OMB for evaluating the cost-effectiveness of a payment recapture program in the revised Appendix C, part I.B, Section 5.

The inclusion of EUC overpayments reduces the recovery rate. **Exhibit 2** compares the overpayment establishment and recovery rates for UI/UCFE/UCX/EB claims versus EUC claims.

Exhibit 2: Comparison of UI/UCFE/UCX/EB and EUC Overpayments Established and Recovered

FY	UI/UCFE/UCX/EB Outlays	Overpayments Established*	Established As a Percent of Outlays	Overpayments Recovered	Recovered As a Percent of Established
2008	\$38.88	\$1.002	2.58%	\$0.571	56.99%
2009	\$86.90	\$1.456	1.68%	\$0.851	58.45%
2010	\$84.07	\$1.907	2.27%	\$0.967	50.71%
FY	EUC Outlays	Overpayments Established*	Established As a Percent of Outlays	Overpayments Recovered	Recovered As a Percent of Established
2008	\$3.55	\$0.008	0.23%	\$0.002	22.50%
2009	\$32.66	\$0.276	0.85%	\$0.062	22.46%
2010	\$72.09	\$0.897	1.24%	\$0.207	23.08%

* Excluding waivers.

Note: All amounts are in billions of dollars.

The recovery rate for EUC overpayments is significantly less than the recovery rate for state UI and EB overpayments due to several factors:

- Many of these claimants have exhausted benefits, and therefore, states are unable to offset overpayments against their unemployment compensation payments.
- The legislation establishing the EUC program limits offsets to 50 percent of the amount payable to the claimant for the compensated week.
- Claimants who have been unemployed for long durations have few resources available for the repayment of overpayments.
- The severe decline in the housing market removed the option that states have used to recover overpayments by attaching liens to an individual's property and recovering the overpayments when the property is sold.
- Many states reassigned BPC staff to process claims when workloads increased sharply during the recession, thereby leaving fewer staff to identify and recover overpayments.

The ETA 227 report captures data on the causes of overpayments, the method of detection, recovery and reconciliation, criminal and civil actions, and the aging of benefit accounts. After eight quarters, the overpayments are removed from the total outstanding balance on this report. This does not affect the state's accounting practices. When overpayments are recovered that have been removed from the reported outstanding balance, the amount will be added back to report the recovery in the quarterly report, regardless of when the overpayment originally occurred. States are now able to attempt recovery of these older unemployment compensation debts through the U.S. Department of Treasury's Tax Offset Program by offsetting the claimant's Federal income tax returns. When improper payments are recovered, they are returned to the states' UI trust fund account from which they were paid.

A cost-benefit analysis conducted in 2001 indicated that increasing BPC activity has a high payoff -- about \$5 recovered for every \$1 invested in BPC without adjustments, and at least \$4 for every \$1 invested after allowing for diminishing returns in states with higher established rates. The study found that the most cost-effective approach would add resources in states with low penetration of the established overpayment rates into the BAM estimate of overpayments. The DOL plans to conduct a cost-benefit study in the near future based on more recent data, including the lower establishment and recovery rates of EUC claims. A copy of the 2001 cost-benefit study is available at http://www.ows.doleta.gov/unemploy/integrity/cb_ada.asp.

Phase III: Reducing Improper Payments

Several factors contribute to improper UI payments. Efforts to reduce costs of taking claims and improve customer service prompted the states to design remote claims processing. The transition from in-person claims to remote claims processing (phone and internet) has depersonalized the process, making it easier for claimants to make false statements, and has had the additional side effect of precluding valuable prevention activities (such as agency messaging to reinforce eligibility requirements with claimants and questioning claimants with respect to their active work search efforts and benefit year employment issues) and contributed to the rise of improper payments. Additionally, the states are required to meet benefit payment timeliness performance standards, which may result in some eligibility decisions that are based on incomplete or untimely information.

The DOL is actively working with the states to reduce improper payments. All state administrators have been called to action to ensure that UI integrity is a top priority and to develop state specific strategies to bring down the overpayment rate. Specific attention and assistance has been given to those states with the largest impact on the improper payment rate. This work is continuing with all the states, particularly those with unacceptably high overpayment rates.

Additionally, the DOL has provided states with supplemental funding to implement strategies and technology-based infrastructure investments that will help the states in preventing, detecting and recovering UI overpayments. These grants demonstrate the DOL's commitment to the development of integrity-related systems focused on the proper payment of UI benefits. These systems can result in significant savings of staff costs for integrity-related activities, increased dollar amounts of overpayments recovered, and prevention of future overpayments.

Between FY 2005 and FY 2010, the DOL has provided approximately \$46.5 million to states in supplemental funding for integrity related projects. In FY 2011, a total of \$191.5 million in supplemental funding, was awarded to 42 states - \$63.5 million to support integrity-related activities such as prevention, detection, and recovery of improper UI benefit payments; and \$128 million to address outdated Information Technology (IT) system infrastructures, all of which are necessary to improve UI integrity.

The goal of the FY 2011 funding opportunity was to accelerate state actions to reduce the UI improper payment rate. The funding opportunity was structured to require, as a condition of receiving any funds, that states implement a range of priority integrity activities focused on key root causes that are designed to prevent improper payments and to quickly reduce the UI improper payment rate. This core supplemental funding also provided for state flexibility in designing state specific strategies with a focus on return on investment (ROI) and clear state targets for reducing the states' improper payment rates.

States are required to include all seven DOL-identified core integrity activities in their individual strategic plans to reduce improper payments attributed to the key root causes of overpayments. These core integrity activities are:

- Strategies designed to achieve the new BYE performance measure used to measure and track the largest root cause of UI improper payments - claimants continuing to claim and receive benefits after returning to work;
- Establishment of a Cross-Functional Integrity Task Force to develop strategies to reduce improper payments;
- Activities listed in the Recommended Operating Procedures (ROP) for conducting cross matching with the NDNH and the SDNH to identify claimants who are continuing to claim benefits after returning to work;
- Use of the SIDES to ensure timely and accurate information regarding a claimant's separation from work by the employer;
- Claimant/Employer messaging about UI program requirements;
- Employment Service Registration as required under state UI law if the state's improper payment rate is above three percent; and

- State-Specific Solution(s) to address overpayments, including technology-based prevention, detection, and collection activities.

Furthermore, states that committed to implement DOL-identified priority integrity activities were also awarded additional incentive funds in the amount of \$1 million per state to enable implementation of these UI high-priority activities, including additional integrity projects and other automation efforts designed to improve overall state program performance. These priority integrity activities include:

- Activities to address Worker Misclassification;
- Implementation of other integrity-related projects, including technology-based prevention, detection, and collection activities;
- Implementing the SIDES earnings/wage verification and monetary and potential employer charges data exchanges;
- Subscription fees for maintenance and operations of SIDES;
- Contract staff support for BPC activities (activities that do not require use of state merit staff);
- Implementation of the federal Treasury Offset Program (TOP); and
- Automation efforts that result in overall performance and system improvements.

Exhibit 3 shows the distribution of the FY 2010 supplemental funding by the root causes of overpayments.

Exhibit 3: Distribution of FY 2010 Supplemental Funding by Root Cause of Overpayments

Root Causes	IPIA 2010 Rate*	Percentage of Overpayments	Amount Overpaid (in billions)	Supplemental Funding Amount (in millions)++
Benefit Year Earnings	2.92%	27.54%	\$4.55	\$25.1
Separation	2.05%	19.36%	\$3.20	\$13.3
Work Search	1.91%	17.99%	\$2.97	\$1.6
ES Registration	1.43%	13.49%	\$2.23	\$0.5
Base Period Wages	0.57%	5.34%	\$0.88	\$1.2
Able & Available	0.56%	5.26%	\$0.87	\$1.2
Other Eligibility**	0.45%	4.22%	\$0.70	\$7.9
Other Issues***	0.72%	6.80%	\$1.12	\$4.9
Total Funding				\$55.7
Annual Report Rate	10.60%		\$16.54	
Total Benefits Paid+			\$156.00	

* Period for Improper Payment Information Act (IPIA) reporting is July 1, 2009 – June 30, 2010

** Other Eligibility Issues include refusal of work, self-employment, failure to report for agency review or report requested information, citizenship status, and claiming benefits using a false identity.

*** Other issues include adjustments to dependents' allowance, adjustments to benefits due to claimant receipt of income from severance pay, vacation pay, Social Security, or employer

- pension, back pay awards, payment during a period of disqualification, or agency redetermination of eligibility.
- + Includes the permanent State and Federal UI programs as well as Extended Benefits, Emergency Unemployment Compensation, and Federal Additional Compensation.
- ++ Funding for projects includes activities which may target several of the root causes.

Of the \$63.5 million in total funding provided to states for integrity-related activities, \$55.7 million was targeted for projects to prevention, detection and reduction of improper payments and \$7.7 million for activities related to the recovery of overpayments, specifically, the implementation of TOP. By reducing the overall overpayment rate, states will have a smaller population of overpayments to target for recovery, so recovery resources may be able to be deployed more efficiently.

DOL has also proposed Unemployment Compensation (UC) integrity legislation, which, if enacted by the Congress, will help states reduce improper benefit payments. This will ensure that benefits are available for eligible UI claimants, thus contributing to DOL strategic goal to “Ensure income support when work is impossible or unavailable.”

In October, 2011, three key integrity provisions were enacted as part of the Trade Adjustment Assistance Extension Act:

- States are required to assess a penalty of not less than 15 percent of the amount overpaid on any claim for benefits that is determined to be due to the claimant’s fraud.
- States are prohibited from relieving an employer of benefit charges if the employer’s (or its agent’s) fault has caused an inappropriate payment and if the employer (or agent) has established a pattern of failing to respond timely or adequately to requests for information.
- Employers are required to report employees re-hired within 60 days of their last employment to the NDNH. This change will significantly expand the number of employee records available for matching and can be expected to increase the number of detections, and potential prevention, of overpayments due to claimant who continue to claim benefits after they return to work.

Other proposed provisions that are pending action are:

- Permitting states to use up to 5 percent of UC overpayments recovered to augment administrative funding to deter, detect, and recover benefit overpayments.
- Permitting states to use up to 5 percent of contributions collected due to employer fraud or tax evasion, including misclassification of employees, to augment administrative funding for activities related to these purposes.

4.0 Payment Recapture Activities for Grant Programs

As noted in the summary above, OMB continues to classify the WIA program as high risk due to its high-level annual outlays. The DOL has established processes that help to prevent, detect and/or recapture overpayments for WIA and for all DOL-funded grants.

Phase I: Overpayment Prevention and Detection

DOL agencies perform grant monitoring activities on direct grants on a periodic basis¹. Similarly, for most formula grants, the States monitor their sub-recipients (pass-through grantees), which in turn monitor their sub-recipient grantees. DOL Regional monitoring teams also make on-site visits to select direct grantees and sub-recipients each year. This cascading monitoring structure results in all grantees and sub-grantees being monitored on a regular basis.

DOL agencies also manage grant closeouts, reviewing final grantee reports, the grant closeout package, related recommendations, and other documents, to determine whether the objectives of the grants were accomplished and that all funds were expended as authorized. Questioned costs are resolved through the normal determination process, as described in the next phase.

In addition to these monitoring activities, DOL grant programs and their grantees and sub-grantees are subjected to numerous GAO audits, DOL OIG audits, and annual audits by CPA firms who perform Single Audit Act audits of Federal grantees. These audits address a wide range of issues, including program effectiveness, management and operational issues, financial statements, internal controls, and identification of unallowable costs (questioned costs/improper payments). Grants are also covered in the annual DOL internal control assessment, per OMB Circular A-123, Appendix A, which evaluates controls that could impact improper payments. All these monitoring activities and related audits and assessments serve as a basis for identifying and correcting issues that could potentially lead to improper payments.

All non-Federal entities that are subject to a Single Audit Act audit are required to submit summary level results from their audits and a copy of the audit report (A-133 report) to the Federal Audit Clearinghouse (FAC), which is administered by the Census Bureau and operates on the behalf of the OMB. The FAC is a central repository of information on all Single Audits conducted each fiscal year. For findings noted in A-133 reports, OMB guidelines require a corrective action plan to be included in the report, and, in subsequent reports, the status of prior year findings is to be reported.

Exhibit 4 shows the amount of DOL funds expended during FY 2009 by grant group and in total.

¹ Depending on the grant agreement, grant expenditures may be monitored either on a monthly or quarterly basis, in addition to annual reviews.

Exhibit 4: DOL Grant Program Expenditures for FY 2009

Grant Program Groups	Grantees Reporting Expenditures in This Group	Direct Expenditures (Grantees)	Pass-Through Expenditures (Sub-Recipients)	Total Expenditures
WIA	3,153	\$ 3,635,721,220	\$ 4,276,191,065	\$ 7,911,912,285
SUIESO + UI ²	526	\$ 100,355,031,204	\$ 146,225,819	\$ 100,501,257,023
Other	1,062	\$ 1,372,414,981	\$ 392,899,516	\$ 1,765,314,497
Total DOL		\$ 105,363,167,405	\$ 4,815,316,400	\$ 110,178,483,805

Within DOL, there is an established periodic review cycle to leverage the work done by auditors performing work under the Single Audit Act. By using the FAC's data, reviewers are able to quickly identify any A-133 report that contains data for a DOL program, as well as identifying whether these funds were received directly from the DOL or were passed-through from a DOL direct grantee. Reviewers obtain copies of all reports that show grant expenditures for direct grantees. Reviewers then identify whether or not any of these reports contain any questioned costs for any DOL grant funds.

Phase II: Overpayment Recapture

For grantees with A-133 reports identifying funding received directly from DOL and that also identify material weaknesses or significant deficiencies, the DOL OIG forwards the reports and finding details to the appropriate DOL agency for issue resolution. The responsible agency(s) then determines how to most appropriately resolve the questioned costs noted in the report. All findings for direct grantees are considered important to resolve, especially those deficiencies that are related to sub-recipient monitoring, and all findings are tracked through to resolution.

- The report itself may describe corrective actions that have already been taken, and the A-133 auditor has accepted the actions taken as appropriate to resolve the finding. In this case, the agency simply verifies that the actions described in the report were taken.
- With some questioned costs, a review must be conducted to determine the exact amount of questioned costs that are actually improper overpayments and therefore subject to recapture. These reviews may involve on-site visits to, or email exchanges and discussions with, the grantee to establish the facts related to the questioned costs. At the conclusion of this review, the grantee will be informed of the agency's final determination decision, and be required to take whatever corrective actions that may be required to resolve the questioned costs. The agency then verifies that the required actions were performed.
- With most questioned costs, the amount of improper overpayments is clearly identified in the report, and the grantee is already engaged in the process of either reimbursing DOL

²The amount audited under the Single Audit Act for the State Unemployment Insurance and Employment Service Operations (SUIESO) program covered both SUIESO expenditures and expenditures for the Unemployment Insurance (UI) program (benefits payments). Total outlays for SUIESO are only \$4.4 billion of the total \$100.5 billion for FY 2009.

for the overpayment or adjusting their drawdown for a subsequent period to reflect the fact that they have already received the funds to reimburse their subsequent grant expenditures. When refunds are collected, they are returned to the original year and appropriation from which the obligation was established. For cancelled appropriations, the refunds are returned to the Treasury.

Exhibit 5 reflects grant expenditures with questioned costs discovered through A-133 audits, and the results from the Issue Resolution Process for questioned costs, for FY 2009 (most recent year data is available).

Exhibit 5: Analysis of Direct Grantee Potential Overpayments

Grant Program Groups	Direct Grantees with Questioned Costs for FY 2009	Direct Grantee Questioned Costs from Potential Overpayments for FY 2009 ³	Direct Grantee Questioned Costs Resolved as Not an Overpayment	Direct Grantee Overpayments Repaid or Draws Adjusted	Direct Grantee Overpayments with Repayment in Process	Direct Grantee Unresolved Questioned Costs Still Under Review	Overpayments Resolved, Recovered or in Recovery Process %
WIA	17	\$ 2,091,332	\$ 391,735	\$ 43,839	\$ 152,028	\$ 1,503,730 ⁴	28 %
SUIESO (only)	9	\$ 1,393,110	\$ 664,137	\$ 644,458	\$ 84,514	\$ -	100 %
Other	6	\$ 51,075	\$ 10,631	\$ 1,045	\$ 39,399	\$ -	100 %
Total DOL		\$ 3,535,516	\$ 1,066,503	\$ 689,342	\$ 275,941	\$ 1,503,730	57 %

For subgrantees with A-133 reports identifying funding received from direct grantees (e.g. States), monitoring of issue resolutions is the responsibility of the direct grantees that passed the funds through, although the appropriate DOL agency may also track resolution through their own grant monitoring and close-out processes. For example, within ETA, once determinations are final, they are referred to ETA’s accounting office to establish the debt. The ETA accounting office will perform standard collection activities to collect the debt, and if unable to do so, will refer the debt to Treasury for further collection efforts.

Phase III: Reducing Improper Payments

As noted in Exhibit 5, over 98 percent of the potential overpayments from grant funds are in the WIA or SUIESO grant programs, both of which are administered by the DOL’s ETA. The FY 2011 improper payment rate estimate work indicated that the major types of errors found in both the WIA and SUIESO programs are primarily administrative in nature, including cash management, sub-recipient monitoring, unallowable costs, and insufficient documentation for

³ Underpayments and administrative questioned costs, which are used in calculating the rate of improper payments, have already been removed from Initial Questioned costs to arrive at the totals in this column. Even so, as the next column demonstrates, 30 percent of these “potential overpayments” are not overpayments at all.

⁴ More than \$1.3 million of the WIA unresolved Questioned Costs relate to a single finding in the FY 2009 A-133 Report filed in the FAC by the State of Indiana on 3/29/2011, and which is still in the resolution process. It is anticipated that this questioned cost will resolve as “not an overpayment”, which would bring the “not an overpayment” total to \$2.4 million, or approximately 70% of the potential overpayments.

participant payments. The grant management and monitoring processes focus on these items to reduce and prevent improper payments.

ETA currently uses a multi-step approach to ensure proper administration and effective program performance of its grants. First, ETA starts its review/oversight process by conducting a structured initial risk assessment of all new grants and grantees at the time of the award. Second, ETA Federal Project Officers (FPOs) conduct quarterly desk reviews of the financial and program performance of each grant. The results of these activities are recorded in the Grants e-Management System (GEMS), an electronic tracking and grant management system. This serves as an early warning system to detect potential financial management and/or programmatic performance issues and allows ETA to target technical assistance more effectively. Finally, ETA staff (FPOs, financial management and others) conduct periodic on-site reviews of grantees. ETA attempts to conduct an on-site review of each grantee at least once every three years, but actual review schedules are based on the results of the risk assessments and desk reviews.

On-site reviews are conducted using ETA's Core Monitoring Guide as well as program specific and technical guide supplements designed to provide a more detailed review of program requirements and financial activities. Results of the on-site monitoring activities are also cataloged in the GEMS system. For grantees with large numbers of sub-recipients (e.g., WIA formula grantees), the on-site review conducted includes an assessment of the grantee's sub-recipient monitoring activities. In addition, ETA conducts on-site reviews of local area sub-recipients as part of its review of the state grantee. The results of the on-site monitoring are also catalogued in the GEMS system.

ETA now has the capability to review trends or issues that arise in a more comprehensive and consistent manner. Whenever deficiencies or problems are identified as a result of a desk review, on-site review, or an independent audit, ETA immediately begins working with the grantee to obtain appropriate corrective actions. Corrective actions undertaken by the grantee are tracked by ETA and follow-up technical assistance and reviews are scheduled as needed.

5.0 Other Payment Recapture-Related Activities

In addition to the UI and Grants programs, DOL also manages other benefit programs, and its own internal operations through a variety of activities that cover all non-payroll, administrative and other costs.

In accordance with OMB Circular A-123, Appendix A, DOL conducts a management assessment of internal controls over financial reporting annually. These assessments help DOL identify and correct weaknesses in the overall control environment. While DOL has achieved a “clean audit opinion” for each of the last fourteen years, this is viewed as a baseline for internal controls and not a goal in itself.

Within the programs and activities that are directly administered by the DOL, the results of DOL’s annual internal control testing indicate that the controls are generally operating efficiently and effectively, and can be relied on to provide reasonable assurance that the DOL has:

- Efficient and effective operations;,
- Reliable reporting of financial information; and
- Compliance with applicable laws and regulations.

The principal non-UI, non-grant programs and activities that are directly administered by the DOL include:

- Federal Employees’ Compensation Act (FECA);
- Black Lung Benefits Act (Black Lung);
- Energy Employees Occupational Illness Compensation (Energy);
- Longshore and Harbor Workers’ Compensation Program Act (Longshore); and
- Contract Administration.

Each of these programs has been the subject of audits and reviews over the last several years, with few improper payments identified, except for cases of fraud, that were not also detected by the proper and timely functioning of internal controls.

6.0 Planned Activities

In addition to the many activities described above, DOL will pursue new or enhanced activities to help prevent, detect, and reduce improper payments and to recapture identified overpayments. Actions plans will be developed at the Department, agency, and program levels, requiring more coordination between financial and program offices, and focusing on strong internal controls.

Activities include:

- Conducting a review of financial management staff skills and training.
- Reviewing material weaknesses and deficiencies, management letter action items from auditors, and weaknesses noted in A-123 and A-127 reviews and sharing data across programs.
- Striving for consistency in the review, monitoring, and tracking of improper payments across all program offices.
- Reviewing data collection and report production – better data for more informed decisions.
- Continuing to develop ways to work more closely with states and other recipients, especially for the UI program. For UI the DOL will assist states in developing practical practices to reduce overpayments in four key areas:
 - Benefit Year Earnings Cutoff Issues,
 - Separation Issues,
 - Employment Service Registration Issues, and
 - Technical Assistance/Resource Targeting.
- Acquiring the services of an independent recapture audit firm on a contingency fee basis to examine contract payments to further help identify and recapture overpayments in the contracts arena.
- Conducting a pilot program at the grant level for the WIA grant program to review internal control processes at selected states.