
Clinton Presidential Records Digital Records Marker

This is not a presidential record. This is used as an administrative marker by the William J. Clinton Presidential Library Staff.

This marker identifies the place of a tabbed divider. Given our digitization capabilities, we are sometimes unable to adequately scan such dividers. The title from the original document is indicated below.

JUSTICE

Divider Title: _____

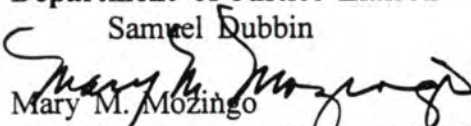
**DEPARTMENT OF JUSTICE
AGENCY TEAM REPORT**

NATIONAL PERFORMANCE REVIEW

INTERNAL WORKING DOCUMENT--NOT FOR DISTRIBUTION
August 8, 1993

August 9, 1993

MEMORANDUM

TO: **NPR Policy Group:**
 Phil Lader, Chair
 Leon Fuerth
 Elaine Kamarck
 Roy Neel
 Jack Quinn
 Bruce Reed
 Marla Romash
 Margaret Yao
 NPR Management Team
 Department of Justice Liaison
 Samuel Dubbin

FROM:: Mary M. Mozingo
 Coordinator, Justice/Treasury/RTC Team

SUBJECT: Draft NPR Chapter on the Department of Justice

Attached is a draft of the Department of Justice for the NPR final report. Please note that the fiscal impact figures are incomplete.

This chapter is to be completed by August 18, 1993. Therefore, we would appreciate receiving your comments by August 17 so that we can incorporate them into the final report. Please send your comments to:

Justice/Treasury/RTC Team
Suite 200
750 17th Street, NW
Washington, D.C. 20006

Please feel free to call me at 632-0150 extension 116 if you have any questions.

Attachment

Section I

Introduction

TABLE OF CONTENTS

	<u>Page</u>
I. Introduction	1
II. Issue Papers and Recommendations	6
A. Shifting from Red Tape to Results	7
<i>Overlapping Jurisdictions:</i>	
Issue 01: Improve Coordination and Structure of Federal Law Enforcement Agencies	8
Issue 02: Create an Independent Border Management Agency	17
Issue 03: Increase Resources for "Reasonable" Control of Illegal Entry	27
Issue 04: Redirect and Better Coordinate Resources Dedicated to Air Interdiction of Drugs	35
<i>Internal Department of Justice Issues:</i>	
None in this category	
B. Introducing Market Dynamics	41
<i>Overlapping Jurisdictions:</i>	
Issue 05: Support the Costs of Border Operations with User Fees	42
<i>Internal Department of Justice Issues:</i>	
Issue 06: Improve Department of Justice Debt Collection Efforts	53
Issue 07: Improve the Bureau of Prisons Education, Job Training and Financial Responsibilities Program	58
C. Creating a Quality Management Culture	67
<i>Overlapping Jurisdictions:</i>	
Issue 08: Improve Management of Federal Assets Targeted for Disposition	68
Issue 09: Reduce Duplication of Drug Intelligence Systems and Improve Computer Security	74

THE DEPARTMENT OF JUSTICE

INTRODUCTION AND EXECUTIVE SUMMARY

Although the Judiciary Act of 1789 established the Attorney General as a member of the President's Cabinet, the Attorney General did not become the head of a department until the establishment of the Department of Justice (Justice) in 1870. When the first Attorney General took office, the United States had three federal crimes - treason, counterfeiting, and piracy. Today there are over 3,000 federal crimes. Justice has seen its budget quadruple and its payroll almost double since 1980. Its resources have grown at 4 1/2 times faster than the rest of the civilian workforce. Justice's budget has increased from \$2.4 billion in 1980 to \$10.4 billion today, and its payroll has swelled from 54,600 to nearly 98,000 during the same period. Justice's primary focus during this period has been on law enforcement. Not surprisingly, the two largest organizations within Justice are the Federal Bureau of Investigation and the Bureau of Prisons. Despite Justice's expenditure of significant resources in fighting the war on drugs during the past thirteen years, drugs and drug use remain a problem in the United States. Additionally, while ninety-four percent of all criminal prosecutions are handled by state and local governments, federal financial support to local jurisdictions decreased from twenty-six percent of federal justice spending in 1980 to seven percent today.

Justice is divided into 32 components and serves as the Nation's law firm and counsel to its citizens. The major components of Justice are:

- o the Bureau of Prisons (BOP) with a budget of \$2.4 billion and 23,654 employees (these figures include the Federal Prison Building fund);
- o the Federal Bureau of Investigations (FBI) with a budget of \$2.0 billion and 21,474 employees;
- o the Immigration and Naturalization Service (INS) with a budget of \$0.99 billion and 9,824 employees;
- o the U.S. Attorneys with a budget of \$0.8 billion and 7,779 employees; and
- o the Drug Enforcement Administration (DEA) with a budget of \$0.7 and 5,676 employees.

The other major components are U.S. Marshals, the Office of Justice Programs, the Litigative Divisions (Antitrust, Civil, Civil Rights, Criminal, Environment and Natural Resources, and Tax), the Justice Management Division, and Community Relations Service.

The primary issues facing the Department are:

- o overlapping enforcement issues;
- o ever-increasing impact of the drug-related crimes -- U.S. Attorney caseload and Federal prison population;
- o need to develop an effective crime prevention program; and
- o border management and illegal aliens.

Since mid-April 1993, the five-member Justice Team of the National Performance Review (NPR) examined Justice issues. The NPR team reviewed General Accounting Office (GAO) reports, Justice Inspector General (IG) reports, Justice Management Division (JMD) reports, and studies conducted by various associations and think tanks. The NPR team also studied transition materials from the Clinton Administration Transition Team, GAO, the Office of Management and Budget (OMB) and Justice. The NPR Team also conducted numerous personal and telephone interviews and visited a few critical field sites--time did not permit extensive visits to field organizations. The team also participated in focus and working groups which surfaced new issues and multiple points of views. Since the middle of May, the NPR Team has been meeting on a weekly basis with the internal Justice Reinvention Team.

The NPR team focused on 21 major issues which fall into four reinvention themes. The four reinvention themes are:

- o Shifting from Red Tape to Results
- o Introducing Market Dynamics
- o Creating a Quality Management Culture
- o Now is the Time.

Shifting from Red Tape to Results

This theme includes all the NPR recommendations about stripping away control systems to empower Justice managers and employees to meet the needs and expectations of

their internal and external customers. It emphasizes the importance of a clearly defined mission for an organization and an organization's ability and flexibility to meet the challenges of an ever-changing workplace. Several of the Justice issues fell in this category. Many of the functions of Justice overlap with those of other federal agencies. This is particularly true of the overlap in law enforcement between Justice and the Department of the Treasury (Treasury). This has resulted in duplicative effort, inefficient operations, confusing missions, wasted resources and less than satisfactory customer service.

These problems are particularly apparent in the federal law enforcement community, which includes more than 140 organizations charged with enforcing more than 3,000 criminal laws. The NPR recommends establishing a Director of Law Enforcement who will be responsible for establishing and implementing a national law enforcement strategy. The NPR further recommends that the Director chair an Executive Enforcement Council which will be responsible for clarifying jurisdictional responsibility among agencies. The NPR further recommends combining agencies whose jurisdictions are so tied that their separation causes severe duplication of efforts.

Currently, Justice and Department of the Treasury manage separate programs that are aimed at controlling the movement of people and goods across the U.S. borders. As the market place has become global and migration has increased, these two functions have become inextricably linked. The NPR recommends creating a single agency for managing border operations. This new agency will provide the opportunity for meeting the challenges of the future facilitating the movement of people and goods across our borders.

The NPR believes that increased resources are needed for "reasonable" control of illegal entry. One resource source would be to reduce and coordinate resources dedicated to air interdiction.

Introducing Market Dynamics

This theme involves making government operate more like a business. One of the ways of doing this is to allow the government to charge fees to those who benefit from government services. Currently, increased staffing is needed to quickly move people and

goods across our borders. International air travelers pay \$12 per person to travel across the border, but travelers across the land border pay virtually no fees. The NPR recommends lifting this exemption and recommends several other user fee increases to generate funds to be used to facilitate international transportation. In addition, the NPR believes that the Attorney General and the Secretary of the Treasury should expand the pilot Dedicated Commuter Lane program, as planned to selected northern border sites and to at least one southern border location.

The NPR believes that to improve federal debt collection Congress should authorize each U.S. Attorney to retain a small percentage of all amounts collected to pay for specified administrative cost.

Creating a Quality Management Culture

The primary thrust of the recommendations in this category is related to changing the way Justice manages its organization. It encompasses empowerment of employees, decentralization of authority, business process re-engineering, and information technology.

The NPR believes several management changes would be effective improvements. First, the Immigration and Naturalization Service organizations, management, processes and systems need to be reinvented. The first step in the process would be for the INS Commissioner to develop the best possible vision statement. The NPR has recommendations on the steps to be taken to implement the vision. Second, the effectiveness of Justice Department Legal Divisions operations would improve if they operated as if they were a Law Firm. The NPR has recommended specific administrative and systemic improvements that can achieve the recommended change. Third, the U.S. Attorneys' white collar fraud civil enforcement efforts should be enhanced.

In addition, now that Congress has created a new Department of Treasury Asset Forfeiture Fund, sustained oversight is needed by both Justice and Treasury to see that the memorandums of understanding on cooperations are followed. And the duplication of drug intelligence systems needs to be reduced and computer security improved

Now is the Time

Recommendations under this theme involve cutting spending, increasing revenues, and eliminating functions. The NPR team is recommending the reducing of duplication in law enforcement training and streamlining background investigations of Federal employees. The majority of the recommendations in this category are focussed on revenue production. An eexamples is adjusting civil monetary penalties to the inflation index.

All the Justice recommendations are discussed in detail in "Section II: Issue Papers and Recommendations." The internal Justice Reinvention Team's many activities are discussed in "Section III: Agency Reinvention Activities." "Section IV: Fiscal Impact Summary" will be completed once the fiscal estimates are received from the appropriate offices.

Section II
Issue Papers and Recommendations

Shifting from Red Tape to Results

IMPROVE COORDINATION AND STRUCTURE OF FEDERAL LAW ENFORCEMENT AGENCIES

Background

There are over 140 different Federal organizations with some law enforcement functions.¹ These organizations consist of over 40,000 employees who are responsible for various police and/or criminal investigative functions.² Their responsibilities pertain to more than 4,100 federal criminal laws. Most federal crimes involve violations of a number of these laws, many of which come under the jurisdiction of multiple federal agencies. For example, a drug investigation may involve violations of financial, firearms, immigration or customs laws, in addition to drug statutes.

Fragmentation and jurisdictional overlap have hindered a comprehensive national and international approach to law enforcement. They have led to a lack of coordination and information sharing, as well as duplication of efforts and inefficient use of resources. Although competition among law enforcement agencies might be expected to result in a more dynamic law enforcement, competition for funding and performance credit has led to counterproductive rivalry among law enforcement agencies. This is especially true in the areas of drugs and violent crimes.

The turf battles have been highlighted in the media and have served to undermine citizen confidence in federal law enforcement. According to current and former law enforcement officials, the rivalry appears to exist more often in the upper level management than in the field. One news article found: "Sometime agents themselves would be willing to cooperate, but their managers were in a turf struggle....It was like watching kids fight in a playground. Here are the agents trying to get the work done, and they have to watch the supervisors fight."³ Although law enforcement agencies try to avoid parallel investigations, they still occur. It is not uncommon for agents from one federal law enforcement agency to unknowingly conduct an investigation of agents from another, believing the other to be criminals. This is inefficient and could put officers in life threatening situations.

To compound the problem, the inspectors general (IGs) in various agencies are now involved in law enforcement. The Inspector General Act of 1978 established the inspector

general positions within agencies to ensure employee and program integrity through prevention and detection of criminal activity, unethical conduct, and program fraud and abuse. Since then, due to identified needs, some IG personnel have gained law enforcement authority from the Attorney General's Office allowing them to make arrests and carry firearms. Opinions in the law enforcement community have been mixed and the Department of Justice (DOJ) has conducted studies in this regard.

Of the top ten organizations with law enforcement responsibilities, the majority of the overlap and duplication appears to be between and within agencies of the DOJ and the Department of Treasury (Treasury).⁴ Some of the Treasury agencies involved in law enforcement were originally created for regulatory and revenue purposes. Over the years, they have gradually added investigative and law enforcement responsibilities which exceed their original purpose and duplicate the DOJ functions.

For example, in 1972, the Internal Revenue Service's (IRS) Bureau of Alcohol, Tobacco and Firearms Division was designated as a separate agency within the Treasury Department and was named the Bureau of Alcohol, Tobacco and Firearms (BATF).⁵ Hence, BATF is an outgrowth of federal legislation concerning taxation and regulatory functions related to alcohol, tobacco and firearms. Today, BATF's mission has expanded to include investigation and enforcement of laws related to drugs, gangs, explosives, arson and violent crimes. BATF's work in the alcohol and tobacco areas is limited compared to its activities in the firearms and explosives areas. In 1992, BATF initiated only 10 alcohol cases which resulted in recommending 10 suspects for prosecution, and 13 tobacco cases, which resulted in recommending eight suspects for prosecution. In comparison, BATF initiated 12,314 firearms and explosives cases, which resulted in recommending 11,406 suspects for prosecution.⁶ Thus, the majority of BATF's effort have involved cases which are duplicative of DOJ efforts, particularly in the areas of firearms, explosives and drugs.

To achieve its goals, BATF is divided into two basic functions: law enforcement and compliance (e.g., regulatory and revenue) operations.⁷ BATF's law enforcement and compliance functions are performed separately. Law enforcement activities are performed by special agents and compliance operations (i.e., regulatory and revenue) are performed by regulatory inspectors and revenue collectors. Regulatory and revenue matters that raise the

possibility of criminal activity are generally passed to the BATF law enforcement component for criminal investigation, rather than to another federal agency, such as the Federal Bureau of Investigation (FBI) or Drug Enforcement Administration, (DEA) which has the same law enforcement authorities. Two recent examples of this jurisdictional overlap between BATF and FBI are the 1993 Branch Davidian standoff in Waco, Texas and the World Trade Center bombing in New York City. To resolve the problem, the House, in April 1993, introduced a bill to transfer all functions of BATF related to the firearms regulation from Treasury to Justice, then into the FBI.⁸ The bill was referred jointly to the Committees on Ways and Means and the Judiciary.

Like BATF, the U.S. Customs Service (Customs) was not created for traditional law enforcement purposes. Customs was created to guard the nation's borders and enforce trade laws. However, Customs is now involved in drug enforcement and duplicates the efforts of DOJ agencies. Customs receives significant funding in the drug control area. For example, Customs fiscal year 1992 budget for drug control was about \$785 million, equal to about 50 percent of its budget. In contrast, DOJ's DEA fiscal year 1992 budgets for drug control was approximately \$710 million, the FBI's budget was \$205 million, and Immigration and Naturalization Service's (INS) budget was \$141 million. In addition to drugs, Customs duplicates the investigative and law enforcement efforts of the FBI, DEA, and INS in the illegal alien area.

The Departments of Treasury (i.e., Customs, BATF and IRS) and Justice (i.e., DEA, FBI, U.S. Attorneys, and the Criminal and Tax Divisions) also overlap in the area of money laundering. Treasury manages and maintains the Financial Crimes Enforcement Network (FINCEN) and is involved in investigating financial crimes matters, particularly those related to tax crimes. The DEA and FBI are also involved in investigating financial crimes, particularly those which are tied to major illegal drug enterprises. Both departments are required to investigate money laundering operations to accomplish their missions. Therefore, well-defined jurisdictional lines and adequate coordination are necessary to avoid unnecessary duplication.

In addition, within DOJ there is considerable overlap and a need for greater coordination between the FBI and DEA in the areas of drugs, firearms, gangs, money

laundering and wiretaps. According to a 1990 General Accounting Office report, DEA and the FBI carry out their drug law enforcement responsibilities independent of each other. They independently develop investigative strategies and priorities, operate separate intelligence systems, and have developed different systems for reporting and measuring their performance.⁹ Over the years, several initiatives and agreements have been implemented to encourage cooperation, coordination and information sharing between the FBI and DEA.¹⁰ Such efforts have not resolved the problem.¹¹ As an alternative solution, several Attorneys General have considered merging DEA into the FBI; however, no action has ever been taken. In the past, the different strategies of the DEA and the FBI in fighting the drug war was a major concern when considering a merger. Today, the DEA now has a "Kingpin" strategy, which is consistent with the FBI strategy to identify the drug organizations through intelligence efforts and dismantle these organizations through prosecution. Still, the DEA and the FBI have significantly different view points on consolidation.

The FBI, which is a multi-mission agency, contends that the expansive management and investigative resources of a multi-mission agency provides superior capabilities to investigate drug trafficking organizations that perpetrate a wide range of crimes. In a white paper to the Attorney General, the FBI stated: "The problem of illegal drug trafficking cannot be segregated from the other criminal programs, and even some of the non-criminal programs, for which the FBI is responsible."¹² The DEA which is a single mission agency, contends that they give top priority to a focused U.S. Government response to the drug problem. In response to the FBI white paper, DEA argued: "The loss of a single-mission drug enforcement agency would diminish the current effectiveness of the United States Government's domestic and international counter-narcotics efforts. As just one of the FBI's ten divisions, the FBI drug program will always compete for priority and resources with the FBI's other programs."¹³

Law enforcement responsibilities and jurisdiction are often ambiguous and involve many different organizations. To address the problems, federal officials have generally tried coordination efforts, as opposed to consolidation or clarification of jurisdictional lines. This has resulted in a variety of task forces, committees and other efforts designed to

promote interagency coordination. Some have attained varying degrees of success, but still fail to address structural impediments to coordination, particularly in the area of drug enforcement. Notable examples include the Organized Crime Drug Enforcement Task Force (OCDETF), Committee for the Coordination of FBI/DEA Activities (Link-Up Committee), the Six-City Joint Drug Plan, and efforts of the Office of National Drug Control Policy (ONDCP). OCDETF, which is managed by DOJ, uses a combined appropriation for federal drug enforcement investigations. While the objectives of these task forces are laudable, they require considerable staff-hours and funding to coordinate and do not represent a single solution to the difficulties.

The objective for federal law enforcement should be a unified, comprehensive, cooperative and mission-driven effort with the flexibility to respond to changes in national priorities. This direction was supported in testimony before the U.S. Senate Committee on Governmental Affairs, in which the Comptroller General of the United States stated: "Strengthened central management systems would permit the Attorney General to establish, communicate, coordinate, and oversee national goals and priorities....Despite increased resources for investigating white collar crime, the effectiveness of this effort is not yet adequate, in part because of the decentralized Department and diffusion of responsibility, authority and resources between Justice and other agencies."¹⁴

While consolidation of most law enforcement agencies which have the same or similar jurisdiction is one solution, other alternatives include the identification of a single leader of the law enforcement community, a modified restructuring of agencies which clearly have significant overlap, coupled with clarification of missions, jurisdiction and authority among organizations. The most immediate and critical need is the establishment of central leadership. There is currently no single leader of the federal law enforcement community to articulate and oversee a national law enforcement strategy, manage resources, coordinate efforts, and resolve conflicts among law enforcement entities in accordance with Administration priorities. Although the Attorney General is the nation's chief law enforcement officer, she does not have authority over law enforcement activities outside of DOJ.

Many of the problems that currently exist in the law enforcement community mirror

those which plagued the intelligence community. The Director of Central Intelligence (DCI) position was created to establish a single leader of the intelligence community and acts as the primary advisor to the President and National Security Council on foreign intelligence. The Director of Central Intelligence Agency serves as the DCI.

Recommendations

1. **The President should establish a Director of Law Enforcement (DLE) modeled after the Director of Central Intelligence (DCI).** The Attorney General should serve a dual role as the DLE and head of the Department of Justice. The DLE should be the chief law enforcement officer of the federal government and the primary adviser to the President on national law enforcement matters. The DLE should also be the central policy and priority setting authority with respect to all federal law enforcement activities, and be responsible for establishing and implementing a national strategy on law enforcement. In addition, the DLE should review and approve all federal law enforcement resource allocations and program funds in accordance with the Administration's priorities.
2. **The President should establish an Executive Law Enforcement Council (ELEC), chaired by the DLE.** The ELEC should include representatives of the Departments of Justice, Treasury, State, Transportation, Defense, and the Central Intelligence Agency, the Border Agency (see Issue 2: Create an Independent Border Management Agency) and the Office of National Drug Control Policy. The ELEC should advise the DLE on all federal law enforcement matters. Such matters should include clarification of jurisdictional responsibilities among agencies, resolution of interagency conflicts, development of policies to ensure coordination and information sharing among agencies, development of a uniform statistical reporting system to ensure accurate law enforcement data, recommendations on the structure and alignment of law enforcement agencies, development of a performance measurement system which rewards interagency team efforts, development of programs to enhance federal support to state and local law enforcement, and development of standards to evaluate each agency's contribution to the DLE's priorities.
3. **The Administration should initiate a realignment of federal law enforcement, as**

follows:

(a) Transfer the law enforcement functions, authorities and related resources of the Bureau of Alcohol, Tobacco and Firearms (BATF) from the Department of Treasury to the Department of Justice and merge them into the Federal Bureau of Investigation (FBI);

(b) Transfer the compliance (e.g., regulatory and revenue) functions, authorities and related resources of BATF to the Internal Revenue Service (IRS); and

(c) Merge the Drug Enforcement Administration (DEA) into the Federal Bureau of Investigation (FBI).

Implications

The establishment of a DLE will result in greater accountability for federal law enforcement efforts and ensure that budgets are effectively spent on national law enforcement objectives. The creation of the ELEC will assist the DLE in addressing turf battles, reducing duplication of effort and fostering cooperation among agencies. The DLE assisted by the ELEC will serve to clarify the missions of the major federal law enforcement entities.

The transfer and realignment of agencies and responsibilities will require Presidential and congressional approval. Most DEA and BATF personnel currently come under Civil Service status, while FBI personnel possess Excepted Service status. The appeals processes, in connection with personnel issues, vary with the two systems. Any consolidation of the two agencies must address this issue.

The mix of BATF and DEA agents with FBI agents will afford multi-mission agency-type cross-training opportunities to both BATF and DEA agents, and will result in a more diverse personnel base within the FBI. The mix will also afford FBI agents enhanced training in the drugs and firearm areas. The multi-mission approach to criminal conduct which attends drugs, firearms, gangs and explosives will offer an expansive investigative jurisdiction to address all these crimes. This will result in a more unified, comprehensive and coordinated attack on criminal enterprises through the consolidated jurisdiction and resources made available to the FBI. This will send a strong message that all the resources

of the FBI and other agencies will now be coordinated to fight the war on drugs and violence.

The personnel in administrative and support positions will be affected. The most effective and efficient distribution of such personnel should be considered in the merger. Redundancies in management, intelligence data bases, physical facilities, communications equipment, training, and research and development will be reduced by reducing the number of different systems for measuring drug investigation performance and accomplishments and provide a clearer picture of national efforts.

The efficiency of service delivery to citizens would improve by defining and moving law enforcement resources closer together. This approach would provide more uniformity of policy, guidelines, and programs and create more a centralized national crime fighting strategy.

Fiscal Impact

The recommendations should result in a substantial increase in efficiency, effectiveness and economy, especially in the administrative and support functions (for example, Public and Congressional Affairs, Administrative Services, Laboratory, Internal Affairs, Procurement, Personnel, Equal Employment Opportunity, Legal Counsel, and Training) if federal law enforcement agencies performing similar functions are efficiently realigned to meet current needs.

Significant economies of scale would be realized through reduction and consolidation of headquarter and field office facilities, air-fleets, vehicle resources, information management systems, etc. Consolidation will also result in a more comprehensive and coordinated approach to law enforcement. This will eliminate wasteful duplication of resources and counterproductive competition.

By merging three agencies (BATF and DEA into FBI), the management structure can be merged into one, requiring fewer personnel and other duplicative resources. Every effort could be made to allow this to occur through attrition rather than reduction in force. The issue of excepted service versus career service will have fiscal impact which must be addressed.

The preliminary projected cost to merge DEA into the FBI is about \$110 million. The projected savings in the first year are about \$83 million and \$63 million per year thereafter. The projected savings resulting from a merger of BATF into FBI is pending.

CREATE AN INDEPENDENT BORDER MANAGEMENT AGENCY

Background

The Department of Justice's Immigration and Naturalization Service (INS) and the Department of the Treasury's U.S. Customs Service (Customs) share responsibility for controlling and regulating the flow of people and goods into the U.S. Although they are both responsible for border security and even perform what may appear to the public to be identical functions at some locations, their separate and distinct missions have led to dysfunctional operations. In carrying out their separate missions, the agencies' operations often overlap, creating duplication and conflict. The result is confusion in the management of the U.S. borders which resists solution by the best of managers while the current system continues.

INS' mission is to determine the eligibility of persons to enter and remain in the U.S.; prevent and deter smuggling of people and narcotics into the U.S.; and protect the American public against the results of illegal entry of aliens. Customs' mission is to regulate people, carriers and goods that cross U.S. borders; assess and collect duties, taxes and fees on imports; prevent and deter smuggling of goods and narcotics; and to protect the American public against the entry of contraband and prohibited goods.

INS and Customs perform these duties through inspectors, examiners, other staff and law enforcement personnel both at the border and in interior locations. Both have inspectors at nearly 300 land, air, and sea international arrival Ports of Entry (POEs) into the U.S. In addition to its inspectors, INS also has Border Patrol agents who deter entry along the land border between POEs and adjudicators in interior locations who perform quasi-judicial functions related to the status of non-citizens.¹⁵ INS' law enforcement functions include investigators who apprehend criminal aliens and enforce laws against illegal alien employment. INS' detention and deportation officers detain and remove aliens from the U.S.

In addition to its inspectors at POEs, Customs' Office of Air and Marine Interdiction patrols the border and deters the illegal entry of drugs via general aviation. Other Customs

personnel perform regulatory, audit and quasi-judicial functions away from the border that relate to interpretation of trade and revenue laws.¹⁶ Customs' law enforcement functions include investigators who enforce laws against illegal entry of contraband, prohibited goods and trade fraud.

Both Customs and INS have missions fundamentally tied to the U.S. border. The standard for the management of the entry of both people and goods should be the enforcement of U.S. laws with a minimum of delay and disruption to legitimate traffic. The current approach to border management has resulted in a patchwork division of labor which has led to operational inefficiencies and diminished mission performance.

For example, at air POEs, INS is responsible for primary inspection (initial screening) while both INS and Customs maintain individual responsibility for secondary inspection. At most land border POEs, INS and Customs share responsibility for primary inspection, while each maintains individual responsibility for secondary inspections. For illegal air traffic over the border, Customs is responsible; for illegal traffic at ground level, INS exercises responsibility.

These problems are compounded by the involvement of other federal agencies in border issues. Nearly 20 other agencies as well as state and local governments have some border security functions.¹⁷ Several of these have missions which require inspections at the border. With the exception of the U.S. Department of Agriculture, which maintains an inspection staff at many POEs, Customs, and INS where Customs and INS are cross-designated to perform primary inspections, serves as the surrogate inspector for these agencies.

For nearly a century, relationships between INS and Customs have been marked by fragmented authority, overlap and duplication of jurisdiction, and interagency rivalry deeply ingrained in their management cultures. Each agency has different law enforcement authorities, statutory responsibilities, operational guidelines and organizational structures. Each has personnel components which promote independence and autonomy. Turf battles, competing priorities, poor customer service and ineffective operations are the inevitable result.¹⁸ These problems are exacerbated by separate employee unions and separate congressional oversight and appropriations committees.

Ineffective operations at Southwest border POEs illustrate the often counterproductive nature of the current arrangement. Individuals and vehicles arriving at land POEs go through primary inspection (initial screening to determine their admissibility) and are referred for secondary inspection if necessary. Although both agencies' inspectors are cross-designated to perform each others' primary inspections, and have formal agreements providing for a fifty/fifty split in responsibility for staffing traffic lanes, there is no coordinated approach for addressing staffing imbalances and traffic backups. In interviews with the General Accounting Office (GAO), each agency charges the other has taken unilateral uncoordinated action to facilitate traffic flow and each charges the others' action has adversely affected its mission.¹⁹ Because INS has less than half of Customs' staffing along the southern border (fiscal 1993 staffing: Customs--1903; INS--925), INS is frequently unable to open as many lanes as Customs' staffing would allow. Until recently, if INS' staffing permitted it to open only eight lanes of traffic, Customs would adhere to the strict letter of the agreement and also open only eight.²⁰

In October 1992, INS undertook a one-day test, using overtime funds, to determine the effect on traffic backups from opening additional lanes at San Ysidro, California. The result was smooth traffic movement all day. Customs alleged that because this action was not coordinated in advance between both agencies it adversely affected narcotics seizures. Yet in November, three weeks after INS' San Ysidro test, Customs--without advising INS--permanently increased staffing during peak traffic periods, alleging after the fact that it had planned the increases for some time.²¹

Both Customs and INS maintain canine units which are trained at different facilities using different systems. Customs' dogs are trained to detect drugs; INS' to detect both drugs and concealed people. The two agencies have been unable to agree on how and where the dogs should be used. Customs alleges INS' dogs are inadequately trained. INS alleges Customs uses its dogs in a manner which subjects the U.S. Government to potential liability. Therefore, when Customs deploys its canines at pedestrian border crossing points, INS closes its lanes thereby impeding pedestrian traffic movement.

Problems such as those concerning lane staffing and canine deployment are aggravated because no one is in charge of and responsible for overall port operations.

Although each agency is cross-designated to perform the primary inspections of the other, Customs has not established performance standards addressing INS' mission. There are also no performance measures to judge the overall effectiveness of their joint personnel or programs.²² The agencies have separate musters at the beginning of inspectors' shifts. As a result, problems both agencies inspectors might expect to encounter during the work day are not jointly aired, and potential solutions go unidentified. There is no formal mechanism for a unified approach to dealing with mutual problems.

Problems with operations are not limited to land POEs. In the early 1980s, faced with increasing workload, Customs prevailed upon INS to perform the initial screening of all passengers for both INS and Customs purposes. This allowed Customs to develop a "selectivity" system which targets high risk passengers and cargo, and allows the expeditious entry of low risk travelers. Customs' selectivity system uses combinations of automated data analysis and "roving" inspectors skilled in observational and behavioral analysis to direct its enforcement efforts at suspect violators.²³

Customs' selectivity system is fundamentally grounded on INS performing Customs' initial screening. Yet in interviews, Customs now contends INS clings unjustifiably to a requirement to examine every passenger, thereby providing poor customer service by unwarranted delays to low risk travelers. Various Customs officials also speculated that INS continues to examine every airline passenger in order to justify its authority to charge a \$5 dollar user fee.

Both agencies use the automated Interagency Border Inspection System (IBIS) to process low risk travelers quickly, while alerting them to potential problem travelers. Although "owned" and managed by Treasury, the IBIS enforcement system allows several Federal agencies shared access to suspect lookout records.²⁴ Customs also uses the system to "prove" INS' deficiencies. In papers presented to the National Performance Review, Customs pointed to the fact that less than 15 percent of referrals using the IBIS system were as a result of information obtained from INS sources.²⁵ In interviews, Customs officials presented statistics stressing Customs "versus" INS performance in speeding traffic.

The land and air space between POEs also involve overlapping responsibilities between Customs and INS. Both are responsible for illegal traffic across the borders. The

Customs operation is aimed primarily at air traffic; INS' Border Patrol focuses primarily on ground traffic. However, because the agencies' appropriations are controlled by separate Congressional committees, there is no means to balance resource requirements and allocations between the two agencies. The Border Patrol lacks resources needed to have a "reasonable" opportunity to accomplish its mission (see elsewhere in this report), while Customs' air interdiction program is generously funded (see elsewhere also).

Myriad studies have addressed border management and the rivalry between Customs and INS and have recommended solutions from the broad to the band-aid. A 1988 report by the Senate Committee on Governmental Affairs cited more than 25 such studies, beginning with President Taft's April 4, 1912, proposal to abolish the Revenue Cutter Service, which was "established as a coast patrol to prevent smuggling and assist in the enforcement of the customs laws...."²⁶ As a result, its responsibilities were divided among other services and agencies.²⁷ Over this long history of review, the studies have focused on one or more of three overriding solutions: (1) transferring jurisdiction, authority, resources and personnel between or among affected agencies and departments; (2) unifying parts of border control agencies, identifying one as the "lead" but not "single" agency; or (3) merging entire agencies and creating a new organization.²⁸ All solutions stress the potential for improved interdiction and enforcement, especially in the areas of drug trafficking and illegal immigration, enhanced economy and efficiency, curtailment of interagency rivalry and conflict, and end to duplication and overlap.

No broad-scale reorganization has ever been approved by Congress, although many have had persistent and sometimes intense high level support.²⁹ Opposition from affected agencies, Cabinet departments, congressional committees, labor unions or private sector organizations has always prevailed.³⁰

Customs and INS have attempted to address the underlying problems identified in the studies by promising to improve cooperation and coordination. The GAO has reported that cooperation agreements signed since 1977 have not been adhered to or updated.³¹ As recently as May 1993, the newly appointed Customs Commissioner reiterated his commitment to resolving interagency disputes. Customs and INS, in the presence of their Cabinet secretaries, have met to discuss improved cooperation.³² The two agencies recently

held a joint meeting to address border interdiction issues and renewed promises to improve cooperation and coordination. Yet, during NPR review, Customs repeatedly submitted draft papers proposing that it assume INS' duties at land POEs (but not those between land POEs or at airports), alleging its performance is more effective than INS'.³³ And in Customs' response to the then draft GAO report on border management (cited elsewhere in this report), the Acting Commissioner recommended that certain functions of INS be transferred to Customs.³⁴ Even if Customs' most recent recommendation were adopted, the problem of a disjointed approach to border management would remain unresolved. Solutions based either on Customs' proposal to assume portions of INS' duties or on renewed cooperation agreements, rely heavily on the personalities of agency management, rather than on a unified strategy for border management.

The challenges posed by changing global business competition and increasing international migration make a unified border management approach imperative. At least one and one-half million persons entered the U.S. illegally in 1991.³⁵ Put more graphically, one illegal alien entered every twenty-one seconds. The resulting costs for all public services, education, criminal justice and correction programs are estimated at \$7.8 billion in 1992.³⁶ Customs reported collections of \$16 billion dollars in fiscal year 1991 and is responsible for nearly 10 million entries per year.³⁷ As global trade increases, Customs faces challenges from managing the changing character of these entries, particularly those involving complex electronic products.

A single, independent border management and control agency would ensure a unified and coordinated approach to the entry of people and goods into the U.S. It would provide the flexibility needed to realign resources to improve enforcement and customer service by speeding legal and decreasing illegal traffic flow. It would improve coordination and sharing of intelligence; eliminate interagency rivalry and ineffective cooperation; and eliminate dual management structures, ineffective strategic planning and poor accountability.

The two other potential solutions offered in previous studies involved (1) transferring jurisdiction, authority, resources and personnel between or among affected agencies and departments, or (2) unifying parts of border control agencies, identifying one

as the "lead" but not "single" agency. Neither of these options addresses current or future operational conditions. Few could argue persuasively that all of INS' current functions fit logically into the Department of the Treasury, or that all of Customs' fit logically into the Department of Justice. Neither agency proposes that option; both would prefer not to assume responsibility for one or more parts of the others' duties. And placing responsibility for all functions into a subordinate part of an existing agency would not create the independence necessary to develop, advocate at the highest levels of the U.S. Government and implement a single border management mission.

In effect, Customs' proposed alternative described above--in which it would assume responsibility for land POEs while INS retains responsibility for air POEs and the land border between POEs--is a version of previous studies' second potential solution of unifying parts of border control agencies. This option would not solve the problem of a disjointed approach to border management or allow the U.S. to prepare for the future in which the movement of goods, people and services will be inextricably linked. It would inhibit the development of integrated policies and strategies and would have to rely heavily on the personalities of agency management.

A single border management agency should provide a one-stop shop for all movement across the border. Decisions affecting border management issues could be made without the problems currently created by the need to consult with separate management hierarchies. It would permit the empowerment of employees to concentrate on a unified mission rather than finger pointing. Finally, it should result in resources savings by eliminating duplication and overlap, particularly in management structures.

INS and Customs resources combined exceed \$3 billion dollars and nearly 37,000 full-time equivalent work years (FTEs) (see Table 1). The ratio between Customs and INS resources devoted to inspection and control activities is more than two to one. INS' fiscal year 1994 budget includes 3,795 FTEs and \$262.3 million dollars in authorized and user fee accounts for inspection activities.³⁸ Customs' 1994 budget provides for 8,262 FTEs and \$507 million dollars in authorized and user fee accounts for inspection and control activities.³⁹

Recommendation:

Congress should enact legislation consolidating all Immigration and Naturalization Service (INS) and U.S. Customs Service (Customs) functions into a single, independent border management agency effective no later than the beginning of fiscal year 1995. This would allow the U.S. to prepare for the future in which the movement of goods, people and services will be inextricably linked. The new single agency should be responsible for all aspects of the movement of people and goods into and out of the U.S., and for proposing integrated policies and strategies. The head of the new organization should be nominated by the President with the advice and consent of the Senate.

The Attorney General and the Secretary of the Treasury should direct the current INS and Customs Commissioners respectively to develop a proposed implementation plan no later than January 31, 1994 for joint INS/Customs operations during the transition to the new agency. The President should identify his nominee for the head of the new agency as soon as possible, so that he or she may work with INS and Customs on the transitional action plan and timetable. This transitional organizational structure should be in place no later than April 30, 1994. Additional recommendations concerning future operations between POEs are addressed in a separate portion of this report.

Implications:

Creation of an independent agency to manage all border operations would afford an opportunity to develop a more strategic and integrated vision within the government for addressing the problems of facilitating the entry and assimilation of people, services and goods, and long term world migration pressures. Independence would establish accountability, allow focus on agency mission identification and pursuit, and encourage development of coherent administrative systems. It might tend to defuse the seemingly intractable cultural rivalry between the two principal organizations. Resource considerations would be addressed by one agency and one set of congressional committees. It would face serious opposition from virtually every quarter, but could resolve the significant problems no other solution has addressed.

While some advocate separation of Customs and INS law enforcement and service, others argue "only the appearance of duplication" would end, because of the functions' "close relationship to and logical outgrowth from the primary duties and responsibilities of their parent agencies, and the resultant damage to "continuity and unity of operations."⁴⁰ The General Accounting Office attributes Customs' advantage in inspector resources to favorable congressional support, lacking for INS.⁴¹ Customs' inspection function is a central component of its workforce and is experienced in enforcing numerous laws for other agencies. INS' inspectors are a smaller proportion of its overall workforce, but more experience in enforcing immigration laws and enforcement operations between ports.⁴² A single agency organization would maximize the use of resources and potentially identify savings.

Fiscal Impact:

Creation of a new agency inevitably involves initial start-up costs which we have asked the Office of Management and Budget to estimate. The current combined resources of Customs and INS exceed \$3 billion per year. At that level of funding, the new agency should be able to fund its start-up costs without additional funding.

Treasury has estimated that a direct savings in the \$12 to \$15 million dollar per year range could be anticipated by the reduction of logistical requirements, such as radios, vehicles, other equipment, office space, and management and administration support.⁴³ In terms of savings related to management and administrative staff for a consolidation of land border inspections alone, Treasury estimated a reduction of up to 150 FTEs. Based upon an average of \$42,000 per employee for salaries and benefits, this would translate into potential savings of \$6.3 million. Other associated overhead costs would be reduced over time. Salaries savings would be dependent upon when employment reductions took place and whether or not they were achieved through attrition.⁴⁴

Available cost data on savings were provided by the Treasury Internal Reinvention Team. Additional details have been requested but not yet received from the Department of Justice and the Office of Management and Budget.

Table 1: Fiscal 1993 Resources for Customs and INS⁴⁵

	FISCAL 1993 INS	FISCAL 1993 Customs	TOTAL
Full Time Equivalents	18,537.00	18,419.00	36,956.00
Salaries and Expenses	\$977,927,000	\$1,315,917,000	\$2,293,844,000
Immigration Exam. Fee Acct.	\$337,415,000		\$337,415,000
Immigration User Fee Acct.	\$240,948,000		\$240,948,000
Enforcement Fines	\$12,660,000		\$12,660,000
Immigration Legalization	\$8,281,000		\$8,281,000
Breached Bond/Detention Fund	\$5,000,000		\$5,000,000
Land Border Inspection Fee	\$4,000,000		\$4,000,000
O&M, Air & Marine Interdiction Programs.		\$83,242,000	\$83,242,000
O&M, P-3 Drug Interdiction Programs.		\$28,000,000	\$28,000,000
Procurement, Air & Marine Interdiction Programs.		\$21,174,000	\$21,174,000
Facilities, Construction, Improvements, Related Expenses		\$4,600,000	\$4,600,000
Forfeiture Fund		\$15,000,000	\$15,000,000
Service at Small Airports		\$1,500,000	\$1,500,000
Total	\$1,586,231,000	\$1,469,433,000	\$3,055,664,000

INCREASE RESOURCES FOR "REASONABLE" CONTROL OF ILLEGAL ENTRY

Background:

The Border Patrol critically needs increased resources--both personnel and infrastructure support--to permit it a "reasonable opportunity" to confront and deter illegal entry. As President Clinton said on July 27, 1993:

"..it's certainly plain to anyone with eyes to see that the border patrol is drastically understaffed--breathtakingly understaffed...our borders leak like a sieve. The simple fact is that we must not...surrender our borders...the solution [to the problem of illegal immigration] is to welcome legal immigrants...and turn away those who do not obey the laws. We must say no to illegal immigration so we can continue to say yes to legal immigration."⁴⁶

Operations between ports of entry--along the 8,000 miles of land and coastal borders of the U.S.--are not easily "reinvented" absent a revised national policy on illegal immigration which effectively closes the border. An estimated one and one-half million people enter the U.S. illegally every year.⁴⁷ Put more graphically, one illegal alien enters every twenty-one seconds. Estimated illegal immigration costs for all public services, education, criminal justice and correction programs were \$7.8 billion in 1992.⁴⁸

The U.S. land border, particularly its southern flank, is the greatest challenge. An estimated one million illegal aliens cross there each year.⁴⁹ Border control has long been an integral component of U.S. efforts to stem the influx of illicit drugs. Terrain and the amount and type of smuggling, particularly of narcotics, differentiate the northern from southern border.⁵⁰

The Immigration Reform and Control Act (IRCA) of 1986 was intended to "solve" the problem of illegal entry by providing for "legalization" of about three million aliens, increased Border Patrol staffing, and penalties against employment of illegal aliens.⁵¹ Only its legalization component was effective because, although IRCA and subsequent legislation authorized increases in INS' Border Patrol resources, Congress did not appropriate funds.⁵²

A three-pronged approach is needed to reduce illegal immigration across the land

border: (1) increased personnel and infrastructure funding for Border Patrol operations; (2) increased employer sanctions education and enforcement including efforts to develop a tamper-resistant employment authorization document and/or electronic verification system; and (3) increases both in the Government of Mexico's interdiction program as well as the U.S. Government's interior repatriation of Mexican illegal aliens. All require increased resources. During the course of this study, potential reductions in the Customs air interdiction program have been identified which would be sufficient to fund portions of the recommended increases (see elsewhere in this report).

The Border Patrol's 4,000 agents are hard pressed to provide more than a minimal patrol of the land border. The Border Patrol is charged with detecting and interdicting all crossings of U.S. borders between ports of entry. While its primary mission is the interdiction of illegal aliens, it has collateral authority to interdict drug traffic.⁵³ It arrested more than 1.2 million aliens and seized over \$1.4 billion in narcotics in 1992.⁵⁴ More than a million to five million⁵⁵ more aliens are estimated to have entered undeterred. A 1993 study prepared for INS by Sandia National Laboratories disproved the theory that significant improvements in border control could be achieved by new or improved technologies. It concluded "the Southwest Border is being overrun, and the use of more [technology] will only identify more targets that can be neither apprehended using current [staff] nor accommodated within existing facilities."⁵⁶

Border Patrol resources are inadequate to its current mission. For example, 49 percent of all illegal alien apprehensions (and presumably entries without apprehension) occur across 66 miles of the U.S. border with Mexico covered by the San Diego Border Patrol Station in California. Its approximately 1,200 agents apprehended over one-half million aliens and nearly \$155 million dollars worth of narcotics.⁵⁷ The Border Patrol is on duty in San Diego Sector 24 hours per day, in three shifts. As members of the National Performance Review observed during a June 1993 visit to that sector, illegal entrants stream across the border. Despite their best efforts, agents can apprehend only a small number.

Interior checkpoints are critical to effective operations. Border Patrol personnel at checkpoints detect and apprehend deportable aliens, and alien and narcotics smugglers, who attempt to travel into the interior after evading border detection. In May 1993 alone, the

San Diego Sector apprehended 2,710 illegal entrants during checkpoint operations.⁵⁸ The Border Trade Alliance supports a far greater presence at inland check points, recommending they should be open 100 percent of the time, rather than the current 75 to 80 percent.⁵⁹

The Border Patrol recently undertook a Staffing Requirements Survey intended to calculate the base level of staffing necessary before any apprehension or processing occurs. Previous to this study, apprehension statistics were the sole measure of workload. In undertaking this study, the Border Patrol "realized that it may never be fully staffed, but wanted to end the fiction that it was possible to deliver an acceptable level of border control with limited resources." The results indicate a total of approximately 5,750 personnel were needed: about 4,900 agents and 850 support (including headquarters staffing).⁶⁰ At the end of 1992, the Border Patrol had a total of 4,769 personnel (4,060 agents, 698 support).⁶¹

The Border Patrol's calculations appear conservative. The Sandia study's recommendations would add 1,432 personnel to the southwestern border alone.⁶² Sandia believes the Border Patrol has "...insufficient personnel to perform the already assigned tasks; inadequate office space, maintenance facilities, and detention facilities; and the lack of adequate vehicles to conduct present operations. We believe there are critical lower limits, which, if violated, would severely limit the Border Patrol's present level of effectiveness."⁶³ The National Performance Review team's visit to the San Diego Sector confirmed the urgent need for infrastructure funding. For example, we observed new vehicles sitting in the lot unable to be used because resources to purchase radios or paint them were unavailable, and single agents in vehicles confronting hundreds of attempted violators. Increased use of sensors, low light level television systems, stadium style lighting and mobile night vision will also serve as a Border Patrol force multiplier.⁶⁴

On July 27, 1993, President Clinton announced a \$175.5 million proposed initiative in fiscal 1994 to "strengthen current enforcement programs to combat illegal immigration."⁶⁵ That initiative would include \$45.1 million for Border Patrol personnel and technology to allow hiring, training and equipping up to 600 more agents.⁶⁶

The second prong of a three-pronged approach to reducing illegal immigration involves increased efforts to cut off the job supply through an effective employer sanctions

program. One aspect of that program must include increased employer education. Another is development of a tamper and fraud proof work document issued to all aliens authorized to work in the U.S. who are not permanent residents. Employers and U.S. law enforcement entities need to be able to distinguish fairly and accurately between those who are, and those who are, not eligible to live and work in the U.S.

The lack of resources to educate employers about the sanction provisions of IRCA, the lack of standard documentation and the use of fraudulent documentation all impact negatively on deterrence. Thus an aspect of an improved employer sanctions program involves increased resources for employer education. In April 1991, INS shifted resources from employer education programs to rigorous enforcement, reducing education efforts to a bare minimum.⁶⁷ In fiscal year 1987, over 300,000 education contacts were made with 72 full-time equivalents (FTEs); in fiscal 1992, only some 58,000 were recorded, with 18 FTEs.⁶⁸ Because immigration law implementation policies and procedures change frequently, and because new employers continuously enter the market place, employer education programs are a constant requirement.

Legally resident aliens over the age of 14 are already required to have proof of registration in their possession. Non-resident aliens authorized to work would present the new Employment Authorization Document (EAD). Thus, a requirement that all who identify themselves to employers as non-citizens produce an INS-issued document would not constitute an additional burden, nor cause discrimination against U.S. citizens. Employers would remain precluded from specifying which document is acceptable except for those who have already identified themselves as non-citizens.⁶⁹

INS argues the dramatic increase in the use of counterfeit documents for employment is a strong indicator that employer sanctions are working.⁷⁰ But their widespread availability severely impacts INS' ability to establish that an employer "knowingly hired" (the legal standard) an alien ineligible to work.⁷¹

The Border Trade Alliance agrees with increases in education and enforcement. It argues increases in education would assist businesses to comply with laws, resulting in a partnership rather than adversarial relationship between the community and law enforcement.⁷²

In 1992, INS instituted a one-year automated Telephone Verification System (TVS) pilot, which allowed prospective employers to call to determine whether individuals who identified themselves as aliens were in fact eligible to work, and had not presented counterfeit documents. Approximately nine percent of persons about whom queries were made were found ineligible for employment.⁷³ One employer is quoted as having said the TVS "is incredible, it's keeping your company safe." Pilot employers expressed willingness to pay for such a service, as insurance against disruptions caused by enforcement actions.⁷⁴ Plans for Phase II of the pilot contemplate use of a "900" number.⁷⁵ Others have proposed an alternative, automated verification system to replace the current paper document process, such as a social security number based system.

The third and final prong of the three-pronged effort to deter illegal immigration across the southern border involves increases in Mexico's interdiction program, and in the Border Patrol's interior repatriation program. Some argue the North American Free Trade Agreement (NAFTA) is an opportunity for the U.S. to pursue with the Government of Mexico its willingness to assist in the control of illegal immigration, by disrupting staging areas and undertaking additional screening. In fiscal 1993, \$350,000 has been allocated to the Department of State to provide funding for the Government of Mexico's Project 057. In this program, the Mexican Government apprehends third country nationals identified as being in Mexico illegally and intending to enter the U.S. illegally. The money provides for their repatriation or removal to a third country.⁷⁶

In previous years, Mexicans apprehended entering the U.S. illegally and agreeing to departure were repatriated at U.S. expense to the interior. This is no longer done. As a result, many aliens merely wait for another opportunity to enter illegally.⁷⁷

Recommendations:

- 1. The President should seek Congressional approval to redirect resources to increase funding for operations to deter illegal immigration across the southern border of the U.S.** Reductions in the Customs air interdiction program would be portions of this recommendations (see elsewhere in this report).
- 2. The Office of Management and Budget should allocate the redirected resources**

from the Customs air interdiction program to the Department of Justice, U.S. Immigration and Naturalization Service, U.S. Border Patrol to: (1) increase personnel and infrastructure to permit a reasonable opportunity to confront and deter illegal entry, including full staffing of all interior checkpoints, additional personnel, and additional support staff and equipment; and (2) increase funding of the Border Patrol's interior repatriation program.

3. The Office of Management and Budget should allocate the redirected resources from the Customs air interdiction program to the Department of Justice for the Immigration and Naturalization Service to: (1) increase education of U.S. employers about the employer sanctions provisions of the Immigration Reform and Control Act of 1986; (2) increase enforcement of employer sanctions by INS enforcement officers, including the U.S. Border Patrol; and (3) pursue the development of a tamper-resistant employment authorization document.

4. The Office of Management and Budget should allocate additional funding to the Department of State to increase funding for the Government of Mexico's program to deport third-country nationals intending to enter the United States illegally.

Implication:

Reprogramming resources from the Customs air interdiction program would be vigorously opposed by the Department of the Treasury and concerned Members of Congress. See elsewhere in this report for full analysis.

Increased funding for the Border Patrol may give it a reasonable opportunity to perform assigned functions. Without increased resources, the current one and one half to five million illegal entrants per year are likely to continue for the foreseeable future, impacting most heavily on states with large immigrant populations (California, New York, Texas, New Jersey, Florida, and Illinois). The U.S.--both at the state and federal level--can no longer afford this level of illegal entry. Funds should first be applied to ensure that the Border Patrol has adequately equipped and trained each agent.

Increased public education about employer sanctions could increase deterrence as well as make enforcement efforts more palatable. State and local communities, whose

budgets are adversely affected by illegal immigrants, could be instrumental in public education efforts effort. Increased enforcement of employer sanctions would likely result--albeit perhaps indirectly--in increased detention and deportation of illegal aliens, which could in turn produce a major deterrent to increased illegal immigration. A more secure Employment Authorization Document (EAD) would alleviate employers' burdens and reduce illegal employment. Increased funding for employer education and enforcement would reduce the "pull" factor into the U.S.

Increased funding of the program to prevent illegal entry of third country nationals from Mexico will increase deterrence.

Fiscal Impact

The President's initiative announced July 27, 1993 would provide for 600 new Border Patrol agents and support training and technology at a cost of \$45.1 million. Estimated cost of the recommended additions of a minimum 1,000 additional Border Patrol agents, support personnel and technology is \$145.5 million in the first year, \$100.5 million in subsequent years.⁷⁸ Justice and OMB have been asked to provide estimates on: (1) differences between the President's initiative and (2) estimates on the remaining recommendations, including an FTE estimate for the additional administrative personnel requirements.

Table 1: Estimated Resource Requirements*

	First Year	Subsequent Years
Additional Border Patrol Agents	\$103,000,000	\$80,000,000
Sensors	\$6,000,000	\$6,000,000
Encrypted Radios	\$4,500,000	\$4,500,000
Fleet Replacements	\$8,000,000	\$8,000,000
Administrative Personnel	\$2,000,000	\$2,000,000
Construction of New Facilities	\$22,000,000	\$0
Subtotal	\$145,500,000	\$100,500,000
Increased Employer Sanctions Education		
Increased Employer Sanctions Enforcement		
Expanded Electronic Verification		
Tamper Resistant EAD		
Increased Interior Repatriation		
Increased Project 057		
Grand Total	\$145,500,000	\$100,500,000

*Estimates are based upon a minimum of 1,000 new Border Patrol Agents.

President Clinton's July 27, 1993 proposed initiatives to curb illegal immigration requests \$45.1 million for "up to 600" more agents.

Data above provided by Justice Internal Reinvention Team to the National

Performance Review, July 20, 1993. Justice and OMB have been asked to

provide estimates on: (1) differences between the President's initiative and

(2) estimates on the remaining recommendations, including an FTE estimate, for the additional administrative personnel requirements.

REDIRECT AND BETTER COORDINATE RESOURCES DEDICATED TO AIR INTERDICTION OF DRUGS

Background

Numerous federal agencies are involved in preventing illegal drugs from entering the U.S. This year, almost \$7.75 billion have been allocated for this effort.⁷⁹ The functions of responsible agencies overlap and they have duplicative resources. There is no effective mechanism to evaluate where resources should be directed or to coordinate resource acquisition. Most importantly, the drug interdiction programs have not fulfilled their objective of reducing drug supplies in the U.S. Despite the number of resources dedicated to interdiction, more cocaine and more heroin enters the country than before the first drug strategy was released in 1989.⁸⁰ Estimates are that interdiction efforts result in seizures of thirty percent of the drugs being brought into the U.S.⁸¹

The standard for drug interdiction efforts should be to reduce the available drug supply in the U.S. at the minimum level of expense. This requires coordination of resources and the flexibility to shift strategy and resources to counter the changing methods used by drug smugglers.

The Department of Defense (DOD) is the lead agency for detecting and monitoring (tracking by fixed or mobile radar) drug traffic into the U.S. The Department of Treasury's U.S. Customs Service (Customs) has primary responsibility for enforcing laws against drug smugglers. The Department of Justice's Immigration and Naturalization Service (INS) supports land border drug interdiction through its inspection and Border Patrol functions. The Department of Transportation's U.S. Coast Guard has a primary role when the possible entry is over the water they patrol (12 miles outside the U.S. border.) The efforts of the INS and Customs at the land border ports of entry are discussed in detail separately in this report. The U.S. Coast Guard's drug enforcement efforts will not be addressed herein because nearly all the resources they devote to drug interdiction also support their maritime missions.⁸²

The fiscal year 1989 National Defense Authorization Act gave DOD increased responsibilities in the war on drugs. DOD is now the lead federal agency for the detecting

and monitoring of aerial and maritime transit of illegal drugs from their foreign source to the U.S. border. Since DOD cannot arrest, detain or seize, it "hands off" the information on smugglers to law enforcement agencies.

DOD's 1993 budget for detection and monitoring is \$843.6 million. Some of these funds are used for: (1) operating detection and monitoring platforms (i.e., aircraft, ships and vehicles) in support of counter-drug operations (\$293.1 million); (2) programs that address the flow of illegal drugs at or near the source of production (\$137.3 million); (3) the operation of land and sea based aerostats, which are helium-filled radar balloons (\$59 million); (4) deploying mobile radar systems (\$16.1 million); (5) operating and developing radar facilities (\$43.2 million); (6) enhancing shipboard and aircraft sensors (\$24.2 million); (7) purchasing aircraft (\$35 million); and (8) various other activities of command, control, communications and intelligence (C3I) programs (\$42.3 million). DOD's 1994 budget request includes \$890 million in support of their detection and monitoring mission.⁸³ Customs has authority to detain, arrest and seize, and is the lead enforcement agency for drugs at the border. The objective of Customs' Office of Air and Marine Interdiction (OAMI) is to interdict and apprehend smugglers using aircraft and vessels, and to provide assistance to other enforcement efforts of Customs and other agencies.

OAMI's 1993 budget was approximately \$126 million, not including salaries and expenses. These funds support OAMI assets which include jet interceptors and long-range trackers equipped with radar and infrared detection sensors; high performance helicopters; single and multi-engine support aircraft; airborne detection platforms; and fast utility and blue water type vessels equipped with sophisticated marine radar systems, radios and other electronic support equipment. OAMI runs an Aviation Operations Division; two Aviation Operations Centers, a Surveillance Support Center and Aviation Branches to support their operations.⁸⁴

Customs' budget also funds considerable resources used for detection and monitoring. Customs operates two C3I centers, which, like DOD's C3I facility, locate, identify and track suspect aircraft. Customs also operates a National Aviation Center to administratively support its C3Is.

In addition, Customs owns mobile radar platforms: four P-3 aircraft which cost \$2,356 per

hour to operate and four P-3 Slick aircraft which cost \$2,211 per hour to operate. Customs' 1994 estimate for Operation and Maintenance for the P-3 program alone is estimated at \$26.6 million.⁸⁵ DOD owned radar platform assets include E-2 Hawkeyes, E-3 AWACS, and numerous aerostats which cost \$2,700, \$8,338 and \$500 an hour respectively to operate.⁸⁶

Clearly, DOD and Customs duplicate each other's resources. Some of the duplication in facilities is due to the fact that DOD became involved in the war on drugs in 1989. Customs first C3I became fully operational in 1988 and the other in 1989. The National Aviation Center became operational in 1990. When DOD entered the war on drugs, their authority to control resources and direct operations of civilian agencies was not clear. This led to separate military and civilian planning, coordinated only to the extent necessary to avoid conflicting operations.⁸⁷ Additionally, turf battles and oversight by separate Congressional committees resulted in Customs and DOD overlapping each others' functions and resources.⁸⁸ As resources were acquired, there was little coordination among the responsible agencies to ensure that resources were not spent unnecessarily. Without any type of clearinghouse, Customs and DOD unilaterally developed their own acquisition plans, providing little assurance that the requirements used to justify acquisitions were valid.⁸⁹

In the early 1990s, OAMI extended its operations from the border to drug source and transit areas such as Mexico, Central and South America. Customs' strategy has been to use mobile and fixed radar to detect drugs at their source and in transit countries. They then pass the information on to host nations and Drug Enforcement Administration (DEA) agents operating abroad.

In fiscal year 1992, Customs P-3 aircraft flew a total of 5,432 hours with an operating cost of about \$20 million. These led to a total of 23 seizures overseas made by host government officials. Thirteen were stops of aircraft carrying drugs and ten were the result of suspect aircraft either making a drop and returning to the point of departure or off-loading and fleeing the scene.⁹⁰

In addition to Customs' airborne efforts, DOD also uses air and ground-based detecting and monitoring assets to assist host nation air interdiction forces to disrupt the

flow of cocaine from major growing areas.

DEA maintains that the government's interdiction program has been over-funded in relation to the programs' benefit in interdicting drugs overseas since nearly all cocaine seized overseas is the result of investigation, not interdiction. DEA maintains that the "patrolling" done by Customs' aircraft is a waste of resources. They believe that the interdiction program would be better served if Customs flew only based on prior information indicating a need to monitor a certain area. DEA points out that Customs' aircraft may patrol randomly in order to increase flight hours to justify their expensive detection and monitoring equipment.⁹¹

Customs credits its air interdiction program with successfully eliminating smuggling by general aviation aircraft. During the first eight months of fiscal year 1993, Customs tracked 50 suspected aircraft out of Columbia. None of the aircraft were tracked into the U.S.⁹² In the last year and a half, Customs has made only one drug seizure from an aircraft which crossed into the U.S. over the southwest border.⁹³

As the air threat on the border has decreased, Customs has been redeploying its air resources to support investigations rather than to detect smuggling. As Customs shifts its focus, it is important that resource allocations for investigative support be coordinated between and among agencies in light of the overall national law enforcement objectives.

Whether or not an interdiction program can be effective in reducing cocaine consumption in this country is debatable. A well quoted Rand Corporation study found that it is extremely difficult to reduce the cocaine consumption in the U.S. by even five percent through more stringent drug interdiction. It identified the adaptability of smugglers, the variety of methods by which cocaine can be brought into the U.S., and the low price of both drugs and labor for smugglers as the obstacles to reducing drug supplies. The total consumption was reduced by more than five percent only when the risk for almost every mode of bringing in the drug was raised. The study found that as more routes became riskier, more total shipments were imported. The study identified the U.S.-Mexico border as an area that presents major problems because it is difficult to control against the entry of individuals, including illegal aliens, who can carry high value shipments of cocaine.⁹⁴

Customs recognizes that drug smugglers are currently smuggling in any conveyance

available via the ports of entry and over land between the ports of entry.⁹⁵ Although drug smugglers adapt to changing interdiction strategies, there is no effective mechanism to shift and balance resources between the various agencies responsible for drug interdiction.

For example, the areas between the ports of entry are the responsibility of the Border Patrol. It patrols the land border and operates highway checkpoints aimed at minimizing the number of illegal aliens and drugs leaving the border region if they get into the country. For years, the Border Patrol has been under-funded. The Immigration Reform and Control Act of 1986 included provisions to increase the number of Border Patrol agents. Since then, Congress has twice ordered increases in Border Patrol personnel, but has failed to provide any additional funding.⁹⁶ President Clinton recently said it is "certainly plain to anybody with eyes to see that the border patrol is drastically understaffed - - breathtakingly understaffed."⁹⁷

The challenge for the future of the drug interdiction program is to effectively and efficiently use available resources in accordance with an overall national drug control strategy, to eliminate duplication of effort and resources, and to coordinate future operations and acquisitions to avoid duplication.

Recommendations:

- 1. Appropriations for drug interdiction operations should come under the aegis of the newly created position of Director of Law Enforcement (DLE). (Establishing the DLE is addressed elsewhere in this report.)**
- 2. The newly created Executive Law Enforcement Council (ELEC) should review existing interdiction programs, activities and assets to determine their overall benefit to the national drug enforcement strategy. The ELEC should provide the DLE recommendations for any changes in deployment of resources which are necessary to respond to the national drug enforcement strategy. (Establishing the ELEC is addressed elsewhere in this report.)**
- 3. The ELEC should, at a minimum, eliminate Customs P-3 program.**
- 4. Appropriations for Customs' Office of Air and Marine Interdiction (OAMI) should come under the aegis of the DLE.**

Implications

Assigning allocation authority for drug interdiction appropriation to the DLE will ensure that the resources dedicated to this effort are consistent with overall national counter-narcotics objectives and priorities. It will allow for allocation of funds based upon the program's relative contribution to reducing drug supplies and provide a mechanism for deploying and allocating resources in response to changing smuggling threats. It will also ensure that future acquisitions reflect valid requirements and collectively support an efficient mix of resources to carry out the interdiction mission.

Giving allocation authority for OAMI to the DLE will ensure that the changes Customs makes in its enforcement support operations are in the overall best interest of the law enforcement community.

Fiscal Impact

Eliminating Custom's P-3 program will save \$26.6 annually.⁹⁸

Introducing Market Dynamics

SUPPORT THE COSTS OF LAND BORDER OPERATIONS WITH USER FEES

Background

The federal government is losing millions of dollars annually because of inconsistent user fee statutes and policies applied to travelers depending upon whether they enter at land or air Ports of Entry (POEs). Differing statutes and policies apply depending upon whether the Immigration and Naturalization Service (INS) or the Department of State (State) provides the service. Those user fees which are assessed do not cover the full cost. Disagreements between agencies inhibit the institution of programs which could improve customer service and for which user fees could be charged. Current legislation does not permit the use of the funds in the INS Examination Fee or INS User Fee accounts for Border Patrol expenses. The National Performance Review has identified resource requirements for the Border Patrol (see elsewhere in this report) which could be partially offset by some of the fees identified here.

The general policies covering user charges are set out in 31 U.S.C. 9701 which provides that any service rendered by a Federal agency, to or for any person, except those engaged in the transaction of official business of the Government, shall be self-sustaining to the fullest extent possible. The Office of Management and Budget (OMB) Circular A-25, User Charges, September 25, 1959, as amended, provides that a charge be imposed to recover the full cost to the government of rendering a service which provides special benefits to an identifiable recipient above and beyond those which accrue to the public at large.⁹⁹

Taxpayers currently bear the much of the burden of INS operations. While most international air travelers pay \$12 per person (\$5 dollars each for INS¹⁰⁰ and Customs inspections; \$2 for Agriculture inspections), with few exceptions, no charges are assessed against land border travelers traveling in either direction across the border. Increased staffing is needed to facilitate the more rapid movement of persons and goods transiting the border without compromising law enforcement. More of the burden should be borne by users of those services, whether occasional or frequent. Applicants applying with INS or

State should be charged the same fee.

The Federation for American Immigration Reform (FAIR) would support a "modest" border crossing fee, similar to that paid by air travelers. It agrees there are costs associated with doing an adequate job in a time of deficit-cutting austerity. It believes control of borders is not only essential to national physical security, but to fiscal security as well.¹⁰¹

State currently has no authority to retain fees. The Land Border Inspection Fee Project and Account, established by the 1991 Appropriations Act for the Department of Justice, authorizes the establishment of pilot projects under which a fee may be charged and collected by INS for inspection services at one or more land border points of entry to study the feasibility of charging fees to enhance services. Such projects may include commuter lanes.¹⁰² This authority expires at the end of fiscal 1993, unless extended. The fiscal 1994 budget, if enacted, would provide for extension of this authority to September 30, 1996.

Both State and INS issue documents to Mexicans and some Canadian citizens or lawful permanent residents who have common nationality who may desire them for entry into the U.S. Applications for INS issued documents are accepted at land border POEs and adjudicated by Immigration Inspectors. Most POEs have insufficient staff to handle the workload on a timely basis. Multiple steps are involved, including a personal interview and a record check. Imposition of fees for these services would provide additional staffing and improve customer service without sacrificing enforcement.¹⁰³ Although interviews occur daily, because of insufficient staffing, waits of several months are common for INS issued documents.

How the Government of Mexico would respond to a formal proposal for the institution of an application fee for the issuance of Border Crossing Cards (BCCs) is not certain. Earlier informal consultations received a favorable response.¹⁰⁴ State now expresses "considerable" doubt the proposal would be favorable received; it also believes charging for BCCs would conflict with efforts to promote the North American Free Trade Agreement (NAFTA).¹⁰⁵

Sections 101 and 222 of the Immigration and Nationality Act of 1952 (INA) provide for the issuance of BCCs.¹⁰⁶ The Agreement on Passport Visas (Treaty) of 1953 with Mexico would require amendment to allow for the collection of fees.¹⁰⁷ The existing

Agreement currently prohibits charging a fee for the initial issuance of a BCC. The Treaty does not specifically preclude charging a fee for replacement cards¹⁰⁸ and is silent as to whether a fee may be charged for the replacement of lost, stolen or mutilated BCCs.¹⁰⁹

Under the authority provided in P.L. 101-515, INS began testing the feasibility of a "commuter lane" concept in June 1991, with the Peace Arch Crossing Entry (PACE) program in Blaine, Washington, scheduled to end in September, 1993.¹¹⁰ The Blaine location was chosen because of increasing traffic flow and severe congestion.¹¹¹

PACE provides for a Dedicated Commuter Lane (DCL), through which only pre-screened, pre-authorized, low-risk individuals traveling in vehicles displaying INS issued \$25 windshield decals can travel. Vehicles need only slow for visual inspection rather than stopping for full INS and U.S. Customs Service (Customs) inspections. Both agencies conduct periodic spot checks of DCL vehicles for identities and customs declarations.¹¹²

The pilot is also being used to: (1) test alternative approaches to customs and duty collection and immigration enforcement; (2) measure the impact of express lanes on overall border congestion; and (3) determine the degree of public acceptance of a DCL and the fees attached to the concept.¹¹³

INS and Customs officials agree the Blaine pilot is a "complete success," with less than one tenth percent violations.¹¹⁴ INS sees PACE as a successful law enforcement tool.¹¹⁵ Because Inspectors can concentrate on non-screened travelers, Blaine's refusal rate has risen 15 percent.¹¹⁶ One INS official described the program as the most successful innovation ever undertaken by INS.¹¹⁷ Fees collected by INS from PACE from June 15, 1991 to February 17, 1993 totalled over \$773,000.¹¹⁸ DCL has also resulted in a decline in the waiting time for all travelers entering the U.S. INS reports traffic is averaging over 1,000 cars per day, and that the hours were extended in response to PACE users demand.¹¹⁹ Since the DCL opened, there have been no written or telephone complaints regarding delays or traffic backups, and average waiting time in non-DCL's had been reduced from 29 to 12 minutes.¹²⁰ PACE lane users state the DCL saves an average of 45 minutes waiting time.¹²¹

INS would like to test the DCL concept on the southern border.¹²² Customs opposes this. In a November 25, 1991, letter to the INS Commissioner, the Customs Commissioner

announced she would "direct the Customs designating officers in [affected districts] to revoke all current [cross] designations...adjust regular primary staffing to ensure the security of the DCL lane...treat [those lanes] as any other including using [stop] procedures."¹²³

Customs is concerned about: lack of sophistication in Mexican law enforcement capabilities; drug smugglers' use of the DCL as a more secure means to transport narcotics; and the disparity between Mexican and Canadian government support for the concept.¹²⁴

INS sees primary users of a DCL as the working community, including employees of companies who work in one country and reside in the other, owners of these companies, and health care workers who cross the border on a regular basis. All applicants would be subject to El Paso Intelligence Center (EPIC) and National Crime Information Center (NCIC) data checks. INS believes DCL target users--business and professional community--inherently present a low risk profile.¹²⁵

Customs agrees the pilot at Blaine has been a success, but believes that does not guarantee success at other locations, particularly the southern border. It believes the Blaine situation was unique in terms of: low risk travelers; better facility layout and expansion potential; excellent Canadian local government and law enforcement support; and the willingness of the affected population to pay the fees.¹²⁶

Customs would prefer (1) High Occupancy Vehicle (HOV) lanes and (2) increased staffing. Customs believes HOV lane advantages to travelers include: reduced vehicle volume, no cost (no fee), and no administrative burden (no application process).¹²⁷ INS sees no increased facilitation in HOV lanes because vehicles would still require inspection stops.¹²⁸ It also (1) fears Mexican children would be paid to "fill space" in HOV lane vehicles, and (2) questions Customs' ability to add sufficient staff to implement the concept on a regular basis.¹²⁹

Southern border federal and state law enforcement officials believe a properly monitored DCL would be appropriate, and that the DCL decal could become a status symbol. They advise INS' random compliance check strategy would discourage illegal purpose use of DCLs.¹³⁰ They agree with INS' position that users of a DCL who show a legitimate need to cross the border frequently do not meet the profile of a contraband smuggler.¹³¹ It is these officials' belief that INS and Customs are engaged in a "turf battle

about who controls the southern border...effective programs such as DCL often fall victim...."¹³² A Customs headquarters internal memorandum dated November 13, 1992, supports the comments of southern border law enforcement officials that the concept of the DCL along the southern border is a battle among agencies over responsibilities, not a philosophical difference about the potential of drug smuggling. It implies INS' efforts would remove authority and responsibility from Customs.¹³³

The INS Acting Commissioner has informed Customs that INS intends to go forward with the implementation of additional DCLs in Point Roberts, Washington; Detroit, Michigan; and Buffalo, New York before the end of the fiscal year.¹³⁴

Form I-94, Arrival/Departure Record, and Form I-94W, Nonimmigrant Visa Waiver Arrival/Departure Form are required registration documents for most nonimmigrant aliens, whether arriving by land or air. Fees for inspections of persons arriving aboard a commercial vessel or aircraft are authorized by the INA. No comparable fees exists for land border entries.¹³⁵ INS estimates the yearly volume of land border Forms I-94 and I-94W as 900,000, and the estimated cost per issuance as \$6.29 dollars.¹³⁶

Form I-68, Canadian Border Boat Landing Permit, allows previously inspected eligible U.S. and Canadian citizens and residents to enter by small boat without reporting for inspection.¹³⁷ INS estimates the yearly volume of Forms I-68 as 66,000, and the estimated cost per issuance as \$15.67 dollars.¹³⁸

Form I-185, Nonresident Alien Canadian Border Crossing Card, is issued to Canadian citizens, or lawful permanent residents who have common nationality, as evidence of long-term waiver of their inadmissibility pursuant to Section 212(d)(3)(b), INA.¹³⁹

Form I-175 is the application for this card.¹⁴⁰ INS estimates the yearly volume of Forms I-185 as 2,000, and the estimated cost per issuance as \$30.00 dollars.¹⁴¹

State also issues Canadian Border Crossing Cards as well as nonimmigrant visitors' visas for business or pleasure (B-1/B-2) stamped in passports by U.S. diplomatic and consular posts. In fiscal year 1992, State issued a combined total of 3,297 Border Crossing Cards, B-1s, and B-2s to persons eligible Canadian citizens.¹⁴² Data are not readily available on the number of these documents issued to lawful permanent residents of Canada who have common nationality. Nor are data currently available on the cost to State for the

issuance of these documents.

Form I-586, Nonresident Alien Mexican Border Crossing Card (BCC), offers the same privileges as a business or pleasure visa (B-1/B-2) stamped in passports and issued by U.S. diplomatic and consular posts. Mexican citizens, in contrast to Canadian citizens, require visas to enter the U.S. Current BCCs issued to Mexicans are valid for ten years and allow bearers to visit within 25 miles of the border for up to 72 hours without further documentation. The prior BCCs issued to Mexicans had indefinite validity. The old cards need not be replaced as long as they are not lost, stolen or mutilated. If INS holds to the expiration date in current BCCs, a tremendous volume of work will be generated for southern border POEs.¹⁴³ INS views the BCC as an extremely desirable benefit available to Mexicans.¹⁴⁴ Form I-190 is the application for this card.¹⁴⁵

INS estimates the yearly volume of Forms I-586 as 200,000. Approximately twenty percent of these are replacement applications which require identical adjudicative processes. INS estimates cost per issuance as \$25.91 dollars. Incentives to ensure safeguarding of these important documents are needed.

INS would prefer to charge fees for all BCCs, whether initial, renewal or replacement, to preclude efforts of applicants to elude payment through fraudulent or other means.¹⁴⁶

State issues Border Crossing Cards as well as B-1/B-2 visas to Mexicans. In fiscal year 1992, State issued a combined total of 794,367 Border Crossing Cards, B-1s, and B-2s to eligible Mexican citizens.¹⁴⁷ Data are not currently available on the cost to State for the issuance of these documents.

Form I-444, Mexican Border Visitors Permit, is issued in conjunction with presentation of Form I-186, Nonresident Alien Mexican Border Crossing Card, or nonimmigrant visitors' visas (B-1/B-2). Issued in lieu of Form I-94, Form I-444 permits travel of Mexican nationals to travel to the five border state area of Arizona, California, Nevada, New Mexico, or Texas for a period not to exceed 30 days.¹⁴⁸ INS estimates the yearly volume of Forms I-444 as 4,980,000, and the estimated cost per issuance as \$3.78 dollars.¹⁴⁹

Recommendations:

The National Performance Review has recommended the creation of a single, independent border management and control agency (see elsewhere in this report). The following recommendations are applicable whether or not such an agency is created, but would require revision to specify which agency head would take the recommended action.

- 1. Congress should enact legislation to permanently authorize the Land Border Inspection Fee Account for the Department of Justice.**
- 2. Congress should enact legislation to permanently authorize the Department of State to collect and retain fees which correspond to those collected for land border transit documents issued by the Department of Justice.**
- 3. Congress should enact legislation to authorize the use of all user fee accounts to fund Border Patrol requirements.**
- 4. The President should authorize the Department of State to undertake discussions with the Government of Mexico to amend the Agreement on Passport Visas (Treaty) of 1953 with Mexico to allow for the collection of fees.**
- 5. The Attorney General should direct the Commissioner of the Immigration and Naturalization Service (INS) to take all necessary action to establish and collect fees for: (1) Form I-94, Arrival/Departure Record; (2) Form I-94W, Nonimmigrant Visa Waiver Arrival/Departure Form; (3) Form I-68, Canadian Border Boat Landing Permit; (4) Form I-185, Nonresident Alien Canadian Border Crossing Card; (5) Form I-586, Nonresident Alien Mexican Border Crossing Card; and (6) Form I-444, Mexican Border Visitors Permit. The fees charged should fully recover the total cost of providing these services. Those fees should be directed first and foremost to field, not headquarters, operations.**
- 6. The Attorney General should direct the Commissioner of the Immigration and Naturalization Service (INS) to take all necessary action to establish and collect exponentially larger fees for the third and subsequent replacement of Form I-586, Nonresident Alien Mexican Border Crossing Card.**
- 7. The President should direct the Attorney General and the Secretary of the Treasury to expand the pilot Dedicated Commuter Lane (DCL) program, as planned,**

to selected northern border sites and to at least one southern border location. A fee which fully recovers the cost of its operations should be charged to users of the DCL.

Implications

Permanent authorization of the Land Border Inspection Fee Account would give INS authority to establish and collect appropriate fees for land border inspection services, and would therefore allow appropriate increases in staff to improve customer service, increase travel facilitation, and improve enforcement.

Unless State is authorized to collect fees comparable to those charged by INS for these land border transit documents, a large number of eligible applicants will seek fee-free documents from State, increasing State's workload while decreasing INS'. State would oppose collecting fees for another agency--with attendant workload and administrative concerns--for work it performs.

Offsets for border patrol resource requirements could be achieved if legislation permitted the use of funds for this purpose.

Amendment of the Agreement on Passport Visas (Treaty) of 1953 with Mexico would allow for the collection of fees.

Establishment and collection of appropriate fees for land border inspection services would allow appropriate increases in staff to improve customer service, increase travel facilitation, and improve enforcement. See estimates at Table 1. Collection of fees at sites which do not currently do so may result in cash management problems which the INS Commissioner must address.

Exponentially larger fees for the third and subsequent replacement of Form I-586, Nonresident Alien Mexican Border Crossing Card would act as an incentive to aliens to safeguard these important documents.

Expansion of the pilot Dedicated Commuter Lane (DCL) program, as planned, to selected northern border sites and to at least one southern border location would further test the validity of the concept, and might diffuse Customs' concerns about increased narcotics smuggling. An appropriate fee would defray the costs.

Fiscal Impact:

The initial cost estimates for additional revenues are about \$900,000. Justice and OMB have been asked to develop more firm estimates and to complete the fiscal impact worksheet.

Table 1: User Fees

ACTION ITEM	ESTIMATED VOLUME	ESTIMATED COST	PROPOSED FEE	ESTIMATED GROSS RECEIPTS	ESTIMATED NET RECEIPTS
I-94, I-94W, Arrival/Departure	900,000	\$6.29	\$6.00	\$5,400,000	(\$261,000)
I-68, Canadian Boats	66,000	\$15.67	\$16.00	\$1,056,000	\$21,780
I-175, I-185 Canadian BCCs	2,000	\$30.00	\$30.00	\$60,000	\$0
State BCCs	562	\$30.00	\$30.00	\$16,860	\$0
State B1s	16	\$30.00	\$30.00	\$480	\$0
State B2s	263	\$30.00	\$30.00	\$7,890	\$0
State B1/B2s	450	\$30.00	\$30.00	\$13,500	\$0
State B1/B2s/BCCs	6	\$30.00	\$30.00	\$180	
Subtotal State	1,297			\$38,910	
State and INS	3,297			\$98,910	
I-190, I-586 Mexican BCC orig.	156,000	\$25.91	\$26.00	\$4,056,000	\$14,040
I-190, I-586 Mexican BCC repl.	44,000	\$25.91	\$26.00	\$1,144,000	\$3,960
Subtotal, INS	200,000			\$5,200,000	\$18,000
State BCCs	76,296	\$25.91	\$26.00	\$1,983,696	\$6,867
State B1s	11,660	\$25.91	\$26.00	\$303,160	\$1,049
State B2s	62,115	\$25.91	\$26.00	\$1,614,990	\$5,590
State B1/B2s	237,587	\$25.91	\$26.00	\$6,177,262	\$21,383
State B1/B2s/BCCs	206,709	\$25.91	\$26.00	\$5,374,434	\$18,604
Subtotal State	594,367			\$15,453,542	\$53,493
State and INS	794,367			\$20,653,542	\$71,493
I-444, Mexican vice I-94s	4,980,000	\$3.78	\$4.00	\$19,920,000	\$1,095,600
SUBTOTALS/TOTALS					
Grand Total, INS replacements	5,992,000			\$27,580,000	\$860,340
Grand Total, INS, all actions	6,148,000			\$31,636,000	\$874,380
Grand Total, State w/o Mex.	1,297			\$38,910	\$0
Grand Total, State, All	595,664			\$15,492,452	\$53,493
Grand Total, Replacements	5,993,297			\$27,618,910	\$860,340

GRAND TOTAL, ALL

6,743,664

\$47,128,452

\$927,873

IMPROVE DEPARTMENT OF JUSTICE DEBT COLLECTION EFFORTS

Background

Each year, thousands of borrowers from the federal government default on loans administered by the Department of Education (DOE), Farmer's Home Administration (FmHA), Department of Veterans Affairs (VA), Department of Housing and Urban Development (HUD), Small Business Administration (SBA), and other federal agencies. After employing their own collection techniques, including telephone calls, demand letters, efforts to offset and, in some instances, hiring of private collection agencies, federal agencies refer debt collection claims to the Department of Justice (DOJ) for litigation.¹⁵⁰

Claims valued at \$500,000 or less are referred through Deduce National Central Intake Facility (NCIF) to the U.S. Attorneys office in the jurisdiction where the debtor resides, while those in excess of \$500,000 are referred to DEDUCE headquarters divisions.¹⁵¹ The primary challenges in improving DEDUCE debt collection efforts involve maximizing collection of the funds owed to the federal government and improving Deduce ability to service its agency clients through development of a central management information system to provide reliable tracking and monitoring of federal debt collection activity.

Ninety percent of all debt collection claims are processed by the U.S. Attorneys' Financial Litigation Units (FLUs), which are the primary debt collectors within DEDUCE.¹⁵² Debt collection claims referred to FLUs are processed through the NCIF, which tracks both the number and dollar value of debts referred.¹⁵³ Critics of DEDUCE debt collection techniques contend that U.S. Attorneys' offices generally accord low priority to debt collection compared with other aspects of their criminal and civil caseload. In an attempt to improve collections, Congress enacted the Federal Debt Recovery Act of 1986, authorizing the Attorney General to contract with at least four law firms in five to ten judicial districts as a pilot project to test the effectiveness of contracting with private debt collection counsel to augment the resources of the FLUs.¹⁵⁴

While advocates of the private counsel debt collection counsel pilot contend that

private counsel offers a cost-effective debt collection tool and that DEDUCE should continue to avail itself of the option to retain private counsel, many U.S. Attorneys contend that private counsel are less effective in maximizing debt collections than FLUs while the cost to collect with private counsel is higher. Critics further contend that because private counsel earns a fee of approximately 33 percent of amounts collected, they frequently "skim" the least difficult collection cases while returning the difficult collections to DEDUCE. Unlike private counsel FLU personnel are salaried personnel, and have less of a direct financial incentive to maximize collections.

As the debt collectors of last resort, FLUs have the difficult task of collecting on judgments in cases in which all other efforts to collect have failed. In May 1992, the U.S. Marshals Service (USMS) began a Judgment Enforcement Team (JET) pilot program whereby Deputy U.S. Marshals in six judicial districts volunteered to assist the FLUs by searching for absconded debtors and hidden assets that could be used to satisfy judgment debt.¹⁵⁵ In addition to the USMS, private "net worth determination" contractors can provide a useful service in locating debtors and their assets.

A primary criticism of Deduce debt collection efforts is that DEDUCE lacks the capability to provide its federal agency clients with readily obtainable information on the status of their debt collection claims referrals. The agencies contend that the general unavailability of such information impedes their ability to manage their bad debt inventory. In order to better manage its debt collection caseload and to respond to agency concerns, DEDUCE created the NCIF to receive debt collection claims referrals for all U.S. Attorneys' offices and to provide tracking for these cases. While the NCIF has improved Deduce ability to track debt collection claims referred to U.S. Attorneys' offices, it does not yet offer the fully automated debt collection/litigation capabilities that are available to the U.S. Attorneys' offices in the private counsel pilot districts.¹⁵⁶

Recognizing the apparent limitations in its ability to process and track debt collection claims, DEDUCE has proposed an item in its fiscal year 1994 budget that would authorize DEDUCE to retain up to three percent of amounts collected pursuant to civil debt collection litigation activities to be used for paying the costs of processing and tracking such activities.¹⁵⁷ In particular, DEDUCE proposes to expand its central debt collection

intake facility to create a departmentwide debt collection system that would include information on the status of agency debt collection claims. An enhanced system would automate payment processing, accounting and reporting functions, resulting in more timely data and eliminating FLU data entry functions. This would free FLU personnel from these administrative burdens and allow them to pursue collection activities that result in the recovery of more debt.¹⁵⁸ In some states, automation could also allow for consolidation of debt collection in a single office, eliminating the need to have a FLU in every U.S. Attorney's office.¹⁵⁹

Recommendations

1. Congress should authorize each U.S. Attorney to retain up to one percent of all amounts collected by his or her office pursuant to annual civil debt collection litigation activities involving only those debt collection claims of \$500,000 or less that are referred to the U.S. Attorney's office through Deduce central intake facility. Retained proceeds should be used, in the U.S. Attorney's discretion, for staffing of FLU units, for paying the case-related costs of conducting debt collection litigation and investigation, and for payment of expenses necessary to improve collection of federal debts such as training and the payment of bonuses to FLU and USMS debt collection personnel whose collection activities exceed annual collection benchmarks.

Authorizing U.S. Attorneys' offices to retain a percentage of annual debt collections to be used for payment of the costs of debt collection activities would improve incentives for individual U.S. Attorneys' offices to maximize collection amounts. In particular, providing U.S. Attorneys with the discretion to reward debt collection personnel for their success in maximizing debt collection amounts should provide a powerful incentive for debt collection personnel to engage in aggressive debt collection efforts. U.S. Attorneys could compensate participating USMS personnel on a reimbursable basis. Limiting amounts retained by U.S. Attorneys' offices to a percentage of those claims under \$500,000 will avoid the prospect of windfall claims and assure that the enhanced debt collection muscle will be directed at the volume of FLU unit collection cases.

The debt collection fund created by this recommendation differs from Deduce

previous Debt Collection Activity Fund in that it gives wide discretion to U.S. Attorneys in the field to employ, train and reward employees engaged in debt collection activities. While OMB should be directed not to impose any FTE limitations upon U.S. Attorneys' use of these funds, U.S. Attorneys should emphasize that these funds are primarily to be used to provide collection incentives to existing FLU personnel.

2. To promote development of a centralized federal debt collection information and tracking system, Congress should authorize Section 108 of the General Provisions of the DEDUCE budget request as set forth in the President's Budget for Fiscal Year 1994, providing for the Attorney General to credit to the DEDUCE Working Capital Fund for fiscal year 1994 and thereafter, up to three percent of all amounts collected pursuant to civil debt collection litigation activities, net of U.S. Attorneys' offices collection retainers, to be used only for paying the costs of processing and tracking such litigation.

Amounts collected pursuant to this fund would be used to pay for development of the NCIF and related debt collection automation initiatives.

3. Although DEDUCE should continue to use private debt collection counsel to the extent it deems appropriate, DEDUCE should require private counsel to accept debt collection claims referred by DEDUCE as a package and offset private counsel recoveries by a percentage of the value of debt collection claims returned to DEDUCE.

DEDUCE should conduct its own analysis of the feasibility of hiring private collection counsel. The requirement that private counsel be required to accept debt collections claims referrals in packages would deter the practice of skimming easily collectable claims by assuring that counsel are paid based upon their net collection efforts.

Implications

Authorizing U.S. Attorneys to retain one percent of their office's annual debt collection amounts to pay the costs of conducting debt collection litigation, including the payment of bonuses to FLU and USMS judgment enforcement personnel, would create additional incentives to maximize amounts collected.

Development of DEDUCE debt collection claims processing and tracking

information will enable Deduce federal agency clients to better manage their own bad debt inventory by measuring the progress of DEDUCE litigation of their debt collection claims.

Providing DEDUCE with the option of employing private collection counsel will give DEDUCE flexibility to manage its debt collection claims inventory. Paying private counsel according to their net collection efforts will reduce skimming of easily collectible claims.

Fiscal Impact

These recommendations contain cost avoidance measures.

EXPAND THE BUREAU OF PRISONS EDUCATION, JOB TRAINING AND FINANCIAL RESPONSIBILITY PROGRAMS

Background

A major challenge facing the Bureau of Prisons (BOP) is managing its growing population at a time of increased prison overcrowding, longer sentences and fewer incentives for good behavior or personal development by inmates while in prison. As a result of sentencing guidelines, the "war on drugs" and other factors, the prison population has exploded in recent years. Moreover, the Sentencing Reform Act of 1984,¹⁶⁰ which has led to generally longer sentences, restricted "good time" to a maximum of 54 days per year and eliminated parole, downplayed the role of rehabilitation in the incarceration process as opposed to probation, and removed incentives for inmates to engage in good behavior and self-improvement while incarcerated. Nevertheless, BOP generally attempts to encourage inmates to participate in educational, vocational training and financial responsibility programs.

At present, a large number of inmates are functionally illiterate, and approximately one-half lack a high school diploma.¹⁶¹ BOP established a literacy program in 1982 designed to increase literacy standards of the population, and the required achievement levels under the program have steadily risen since its inception. In 1990, as required by the Crime Control Act of that year, a mandatory functional literacy program for all mentally-capable inmates was established. Under the program, inmates who are functionally illiterate must complete 120 days of participation in the program, and the program currently requires inmates to achieve a 12th grade level of literacy in order to "graduate". As of March 1992, twenty-three percent of the 30,000 inmates without a high school diploma were enrolled in the literacy program. BOP also encourages inmates to earn a General Equivalency Diploma (GED) while in prison, though inmates are not exempted from work requirements in order to pursue the degree. Finally, BOP requires that certain inmates receive English as a Second Language (ESL) schooling as required by the Crime Control Act of 1990.¹⁶²

Despite the availability of programs, there are few incentives for inmates to successfully complete or continue their educational efforts, and, significantly, BOP does not

measure what percentage of the inmate population ultimately earns a GED while in prison. BOP offers inmates small financial awards, pens, dictionaries and other prizes for individuals to complete the GED, but these have not been particularly effective in coaxing inmates to earn the diploma. Inmates who have or earn a GED are also eligible to apply for Pell grants for college study, and many inmates pursue advanced degrees through that program. Inmates who were surveyed indicated that they would participate in more of the educational programs if they would increase the likelihood of their post-release success or result in sentence reductions, but the current sentencing structure does not encourage educational activity.¹⁶³ In the past, educational achievement while in prison was considered during parole hearings, but parole has been eliminated and "good time", which is currently limited to 54 days per years, has not been granted for education for at least 20 years. Other incentives that were cited by inmates included reductions in security classification, preferred housing, and extended visitation rights, and BOP is considering testing some of these options.¹⁶⁴

BOP offers a number of other educational and vocational programs to inmates, including speed reading and classes in approximately 40 vocational areas. The most popular of the vocational areas are landscaping, building trades and food service. Inmates are generally allowed to tutor one another while in prison, but BOP limits the ability of inmates to instruct one another academically or in trades in order to avoid the development of hierarchies in its facilities. There are few performance measure in place to evaluate the effectiveness of these programs.

A potentially useful device for encouraging inmates to receive a diploma is the federal work program (discussed below). While inmates generally prefer to participate in the federal prison industries program since it pays relatively high wages, and while many facilities have waiting lists of inmates who seek to participate in the program, BOP does not require inmates to have a GED or equivalent before they can join the prison industries, though the degree is required in order for an inmate to receive pay raises under the work program. According to one study, some inmates cited the lure of prison industries, and its relatively high wages, as a reason for not pursuing a high school degree.¹⁶⁵

The Federal Prison Industries, Inc. (FPI), also known as UNICOR, is a federal

government-owned corporation whose board of directors is appointed by the President. UNICOR was created by Congress in 1934 and employs approximately 16,000 inmates (24 percent of the prison population) in 87 factories. The entity sells goods and services to the federal government, primarily the Department of Defense, General Services Administration, the Post Office and the Veterans Administration. Products made by UNICOR include furniture, clothing, electronic cable, metals, textiles, and similar items. The program is financially self-sustaining and does not require taxpayer funding. Through the program, many inmates receive job training skills and work experience, often for the first time in their lives. The pay is also significantly higher than that available in regular prison work programs, with wages starting at \$.44 per hour (and a four-level scale culminating in \$1.10 per hour) compared with the \$.12 per hour starting wage for regular prison work.

UNICOR strives to keep one-quarter of the federal prison population usefully occupied and is viewed by prison officials as extremely helpful in reducing inmate idleness. UNICOR is currently faced with enormous challenges in its attempts to expand its range of goods and services to keep up with the booming federal prison population. Moreover, the entity is handicapped not only by a shrinking federal market for its goods but also by limitations on market share and other restrictions imposed on it by various non-prison groups. A 1990 Deloitte and Touche study identified several areas for UNICOR expansion, including expanding its share of the federal procurement market, subcontracting with private entities, or moving to new areas such as jobs that are currently being performed offshore or labor intensive jobs in the area of recycling.

A 1992 BOP study concluded that inmates who received prison vocational training and work experience were less likely to engage in misconduct while incarcerated and less likely to recidivate in the first year after release than inmates who did not participate in such programs during their terms in prison.¹⁶⁶ While the report did not contain any discussion or evaluation of the type of jobs obtained by former inmates and the role of programs such as UNICOR in serving as an effective out-placement program for these individuals, the report did note that most inmates were on their own to find jobs after release. Nevertheless, over half of the inmates surveyed felt that vocational training they received in prison would be useful in their post-release job search, and one-third felt that

UNICOR would help them get a position after prison.

Under present UNICOR policy, most factories are located in high, medium and low security facilities, rather than in minimum and administrative facilities. UNICOR tends to employ inmates with longer sentences and higher security levels, both to recoup its cost of training and because those inmates tend to be greater security risks (and are presumably more dangerous if idle).

Since inmates at the minimum security level are generally allowed to work under supervision off prison grounds at federal government facilities, such as military bases, fewer of these individuals are employed in UNICOR. Unfortunately, most of these prison camp jobs are low-skill in nature, such as cleaning facilities, cutting grass or collecting recyclable materials, and the law limits the ability of BOP to provide these services outside of the federal government, even to non-profit organizations. BOP has developed other structured work programs for minimum security inmates, such as urban work camps and labor agreements with other federal agencies such as the U.S. Park Service.

While the current work programs makes some sense from a security perspective, it has the odd result of focusing valuable work training efforts on inmates who are least likely to be released into society in the near term. Moreover, due to restrictions on the ability of federal minimum security inmates to work in the community, federal prisoners serving shorter sentences often perform lower-skill jobs and receive less training.

BOP has successfully undertaken efforts in recent years to encourage financial responsibility by inmates. Since many inmates owe fines or restitution while in prison, BOP has encouraged inmates to work to pay off these debts under the Inmate Financial Responsibility Program. Inmates work with prison officials to develop financial plans, and when inmates do not participate certain privileges are withheld. Examples include removal from community program participation and pay reductions to the lowest level available. Last year, approximately \$14 million was collected under the program and used to finance a fund for victims of crime. Still, some estimate that millions of dollars remain "hidden" by inmates who claim an inability to pay.

Inmates in the federal prison system receive several services during their incarceration. BOP runs commissaries at its facilities, where inmates are permitted to

purchase items such as ice cream and cigarettes, and inmates have accounts consisting of money earned or sent to them by friends or family members, through which they are allowed to spend up to \$150 per month. Health care services are provided to inmates free of charge (although they must pay for elective procedures), and in some facilities inmates average 20 visits to the health care services per year, compared with four or five times per year average in the country. Pharmaceuticals are also provided to inmates at no cost. In some cases, wardens have complained that inmates use health care as a way to avoid work responsibilities, and at least one warden noted the high use of dental and other services by inmates immediately prior to their release.

One of the more difficult aspects of the federal criminal justice process is the number of agencies that participate in the process and the lack of coordination between the players. Typically, an offender will interact with several federal agencies throughout the process, including several law enforcement organizations, marshals, probation officers, prosecutors, judges, prison officials and post-release monitors. In general, each of the players has its own information system and techniques, and information on an individual is usually entered into a computer a number of times. More importantly, the diffuse nature of the system and the lack of standardization have made it difficult to assemble information and statistics that would assist the players in understanding how to do their respective tasks better.

Recommendations

- 1. Congress should direct the U.S. Sentencing Commission to develop a performance-based sentencing structure that would increase or decrease an inmate's sentence based on clear performance measures.**

Some states have developed a concept of "gain time" that allows inmates to reduce their sentences based on performance, and BOP officials currently have some limited ability to take away or reinstate the 54 days of "good time" currently built into the structure. One alternative that might be considered would be to give inmates a "second look" under the sentencing guidelines if their behavior during prison indicates that they should be reclassified under the sentencing grid. The sentencing guidelines are in part based on

classifications about individuals that may be inaccurate or change over time, and allowing inmates to earn credits will help BOP better manage the population.

2. BOP should make a GED mandatory for participation in UNICOR and should measure the number of inmates who receive diplomas while in prison.

Alternatively, BOP should require inmates who do not have a GED to pursue the degree on at least a half time basis while in prison and to work no more than a half day in UNICOR until the degree is obtained.

3. Congress should support UNICOR expansion efforts in areas that do not compete with the private sector and eliminate restrictions that prevent UNICOR from becoming more market-oriented.

UNICOR is currently limited in its ability to develop economies of scale due to restrictions that mandate that it must not compete with private industry, but it has been working with labor and small business to find areas for cooperation. By expanding its ability to subcontract with the private sector and to expand into other areas, more inmates can be used without negatively impacting the workforce or the private sector.

4. BOP should examine ways to use UNICOR to provide more opportunities to lower security inmates who are nearing release.

Currently, UNICOR focuses its efforts on inmates who are generally serving longer sentences. By using UNICOR to help give inmates nearing release some high skill experiences, such as in sales or customer service, the reintegration of former inmates can be improved.

5. Congress should permit BOP to expand its use of appropriate minimum security prison labor under 18 U.S.C. 4125 to allow local BOP community relations officials to develop and be accountable for innovative work programs at the local level.

Currently, BOP can provide inmate volunteers to the community, but paid inmate workers are only allowed to work at federal facilities. Expanding work opportunities in the local communities providing they do not take away local jobs will allow prisons to help the community in more innovative ways.

6. BOP should restrict commissary privileges to inmates who have not paid all fines and restitution.

For example, BOP could insist that for each \$1 in commissary purchases above \$75 per month the inmate would contribute at least \$2 under the Inmate Financial Responsibility Program.

7. BOP should charge a nominal user fee for prison health care.

Currently, BOP provides free health care and pharmaceutical for inmates, and some prisoners use the mechanism as a way to avoid work or other responsibilities. To overcome administrative problems, BOP might charge the user fees through its commissary or other existing accounts mechanisms. Implementation may be phased in overtime and by location to allow evaluation of one or more systems and reduce the likelihood of adverse effects. Congress should consider requiring eligible inmates to pay for their own health care through private insurance and mandate that such companies provide coverage.

8. The Department of Justice should Improve coordination and standardization among the players in the criminal justice process.

There are a variety of problems in this area, with each agency having its own information system, criminal coding and other features. Because information about an offender must be entered into the system by several entities, it is difficult to plan prison space or other needs. Moreover, performance measures and recidivism statistics are hard to compile.

Implications

Developing performance-based sentencing guidelines will encourage inmates to engage in self-improvement and assist BOP officials in managing the prison population. Unlike parole, which critics viewed as discretionary and inconsistent, performance-based guidelines would reinforce the "truth-in-sentencing" objectives of sentencing reform while providing incentives and sanctions based on inmate behavior and achievements. Since the sentencing guidelines place offenders into categories based on behavioral and other characteristics, inmates who have acted well or poorly should have the opportunity to move up or down the categories through a "second look." While BOP currently has the ability to take away or reinstate good time during a year, the good time vests at the end of a year, making it difficult to control inmate behavior, especially for inmates with longer sentences.

While BOP views UNICOR as a valuable way to keep the inmate population busy, in cases where waiting lists exist educational programs would similarly keep inmates occupied while giving inmates an incentive to earn the degree. Measuring the rate of inmates receiving GEDs will ensure that BOP measures results rather than process.

UNICOR is effective in keeping inmates busy and giving some inmates solid job skills. Allowing it to continue in its efforts to expand will ensure that federal inmates can be used for productive purposes while gaining job skills for after their release.

Despite its effectiveness in curbing idleness and its ability to remain a financially self-sustaining program, UNICOR does not focus on giving relevant job skills to inmates who are near their release. Reviewing UNICOR's mission to find ways that it can help in assisting inmates who are near release should help increase the likelihood that inmates find jobs after leaving prison.

While there are several concerns regarding the use of prison camp labor in the community, such as security issues and concerns from local labor groups, the current regulations do not encourage the development of federal inmate programs that could provide valuable service to local communities on projects that will not be accomplished otherwise. There are a number of innovative training programs, especially in the area of non-profit organizations, and removing this restriction will empower local prison officials.

Many of the items in the BOP commissaries are discretionary expenses. Since many of the inmates receive significant resources from the outside, using those resources to help victims' families has an element of symmetry and would ensure that fines and restitution are paid before inmates can consume more goods.

Aside from generating some additional resources, a nominal user fee will limit the use of health care services by inmates as a way to avoid work. It will also limit wasteful use of the service. Of course, some limits on the fee will be needed to ensure that those inmates needing service receive it.

Bringing the various players together will help make the criminal justice a more seamless process, with a greater opportunity to develop management tools and measures to help assess the impact of actions on the entire process. It will also reduce wasteful duplication in entering and accessing information about offenders. Some of the

law enforcement organizations are working on a pilot program in the area of automatic booking systems, and several states have moved ahead with efforts to develop and "Offender Based Tracking System". The Department of Justice should look for ways to standardize its information so it can be shared across the organization.

Fiscal Impact

Reexamining inmate sentences may reduce costs by allowing inmates to leave prison sooner. Aside from that, providing incentives to improve behavior may reduce some costs, but it is unclear by how much.

Encouraging inmates to receive their GED should not cost any more money since the classes are already being offered. Since many of the inmates who would have been paid by UNICOR will be kept busy, the wages that would have been paid to these individuals will be saved.

In 1992, UNICOR showed earnings of \$20 million, which was used to build new factories to keep up with the growing inmate population. By increasing the size and efficiency of the organization, additional profits might be achieved. Moreover, by subcontracting with the private sector, it is possible that greater opportunities for revenues might be realized. It is difficult to estimate what cost, if any, this recommendation will have.

While commissary surcharges will have little fiscal impact, they may provide an incentive for inmates to keep up with their financial obligations.

In the area of health care, one of BOP's fastest growing expenses, the government should save a substantial amount of money by cutting down on the wasteful use of health care resources.

Creating a Quality Management Culture

IMPROVE MANAGEMENT OF FEDERAL ASSETS TARGETED FOR DISPOSITION

Background

The Federal Government acquires assets for disposition as a consequence of regulatory or programmatic actions. These assets can be categorized into three primary groups: financial assets, real property and personal property.¹⁶⁷ As of September 30, 1992, 22 agencies maintained their own programs for disposing of \$193 billion in assets targeted for disposition. The largest nine agencies each had assets valued at more than \$600 million. Together, these nine agencies were responsible for more than 99 percent of the total inventory.

Nine Largest Agencies Holding Federal Assets

Name	Percentage Held
Resolution Trust Corporation (RTC)	73.8
Federal Deposit Insurance Corporation (FDIC)	16.8
General Services Administration (GSA)	3.3
Defense Logistics Agency (DLA)	2.1
Department of Veterans Affairs (VA)	1.2
Department of Housing and Urban Affairs (HUD)	0.9
Department of Justice (DOJ)	0.7
U.S. Customs Service	0.6
Other Agencies ¹⁶⁸	0.6
Total	100.0

Financial assets include items such as loans, cash, stocks, partnership shares and bonds which account for 72.3 percent of the total federal assets. Real property includes residential and commercial real estate, farmland, and vacant land which account for 15.4 percent and personal property accounts for 12.3 percent of the total.¹⁶⁹ Assets ready for disposition are normally those acquired through forfeiture, seizure or foreclosure.

Forfeiture and Seizure. The Federal Government has had the authority to take

property through forfeiture for more than 200 years. It was not until about 1980, however, that it began to apply the asset forfeiture laws as powerful weapons against organized crime figures. The number and value of seizures grew dramatically. In 1979, the total value of seized property inventories at the Department of Justice and the U. S. Customs Services was \$33 million. By 1992, the inventories were valued at \$1.9 billion. Assets seized now include 16,000 cars; 5,200 real properties; other property (such as planes, boats, jewelry, and antiques) valued at about \$360 million and \$550 million in cash.¹⁷⁰

On June 28, 1993, the Supreme Court ruled unanimously that the Constitution limits the Government's authority to seize the homes, businesses and other property of criminals and suspects. The Court found that the Eighth Amendment clause that bars "excessive fines" requires that there must be some relationship between the gravity of an offense and the property that is seized.¹⁷¹

The Federal Government has a fragmented approach to managing and disposing of assets targeted for disposition. Over time, authority for managing and disposing of federal assets has been given to many agencies and congressional oversight has been spread among numerous committees.¹⁷²

The Department of Justice and Customs Service initially focused more on seizing criminals' holdings than managing seized assets. Due to the mismanagement of assets, the federal government lost revenue. By the late 1980s, both agencies had developed better ways to inventory these assets. Despite serious management problems, the asset forfeiture process has been improving and the use of asset forfeiture as a law enforcement tool has been quite successful. However, a number of problems have emerged.

The federal government currently has two separate Asset Forfeiture Funds. In DOJ, the Executive Office of Asset Forfeiture was created to coordinate the asset forfeiture process from cases arising out of law enforcement activity, as well as the forfeiture process of certain Department of Treasury agencies who were part of the Justice program. Treasury also had its own asset forfeiture program and fund for forfeitures arising out of the Customs law enforcement activities.

Both the DOJ and the Treasury programs have been criticized by the General Accounting Office (GAO) for mismanagement of seized assets. In the late 1980s, DOJ

began work on the Consolidated Asset Tracking System (CATS), a computerized system of monitoring seized assets. In the DOJ program, the U.S.M.S. assists in the seizures of assets, and on management and disposition of them. Under the Treasury system, a private contractor developed software and other systems which will be turned over to the federal government when the contract expires. Although the agency has made significant progress to resolve these problems there is one new one remaining problem.

A new Department of Treasury Asset Forfeiture Fund, which has been established to handle the new and transferred authority for Treasury Agencies, will become effective in October 1993. It will be the depository of cash and the proceeds of sale of the assets seized by Internal Revenue Service (IRS), Bureau of Alcohol, Tobacco and Firearm (AFT), U. S. Secret Service and the U. S. Customs Service.¹⁷³

Uniformity and consistency of legal administration procedure and interagency cooperation have been cited as the keys to the success and integrity of the asset forfeiture program in Federal Law enforcement.¹⁷⁴ The proposed duplication of administrative functions is a potentially new problem which could create added administrative cost, duplication and procedural differences, possible disparity in due process, and create unneeded competition between agencies.

Another problem is the lack of sufficient USMS personnel to administer the Asset Forfeiture Program effectively, the "custodian" of all DOJ seized assets. . The program has grown exponentially since 1984.¹⁷⁵ Since 1986, properties in the custody by the U.S. Marshal have grown from 3,664 to 31,698 in 1992¹⁷⁶ In spite of the increase in assets and management and disposition responsibility, the U.S. Marshals have not received any increase in staffing for this activity. Although most of the fund's administrative costs attendant to seizure, management and disposition are paid from the proceeds of asset sales, the DOJ policy will not use the Fund to pay government employee salaries. This hampers the US Marshal's in their efforts to effectively manage and control the Fund assets. Personnel and related expenses for the USMS Seized Assets Division, not funded by the Assets Forfeiture Fund are approximately \$28.5 million.¹⁷⁷ The overall operating program costs for the fund a for fiscal 1990 was \$328 million.¹⁷⁸ This is potentially a problem for the new Treasury fund.

While it is important to maintain a check on the asset forfeiture process, especially in the area of due process, there appear to be some areas in which the technique can be expanded. In particular, U.S. Attorneys have suggested that the seizure of assets from illegal aliens engaged in smuggling or any crime for profit would be warranted.

Foreclosure. Because of debtor defaults, the government has become one of the largest holders of housing, farm, and commercial real estate. The acquisition, management, and disposition of foreclosed real property has a significant impact on agencies' administrative workload. Presently, it is extremely difficult to assess the magnitude and value of the total holdings and the effectiveness of procedures, strategies, and systems for managing and disposition of real property cross agencies and government-wide. Inefficiencies in the management and disposition of real property can result in higher inventories and associated carrying costs, and a failure to realize the fair value of property sold by the government.¹⁷⁹

A study of how four government agencies' (FmHA, HUD, SBA, and VA) property management programs operate reported that the following conditions existed in all of the agencies. They are organized to support loan programs, not property management. All four agencies have traditional hierarchial structures, extensive service-oriented field office networks, and detailed procedures for property disposition. The federal budget process constrains the agencies ability to change staffing levels in time to respond to rapid fluctuations in inventory volume. Private sector property management firms typically require fewer employees than the Federal agencies because the private sector asset management employees are not responsible for administering program benefits as well as managing and disposing of properties. All agencies use private contractors to perform specific tasks related to the management and disposition of real property.¹⁸⁰

Program and legislative constraints slow disposition in some cases. Agency and congressional concerns over the supply of low-income rental housing and family-sized property create unique obstacles to rapid disposition of HUD multi-family properties. FmHA must make properties available to program-eligible applicants before offering the properties to other buyers. Former owners and/or tenants may exercise leaseback/buy-back options on FmHA-acquired farm properties for a period of 180 days. FmHA farm

properties may also be deemed suitable for wildlife programs by the Fish and Wildlife Service. HUD must lease 10 percent of its single family properties to non-profit or state governments for housing for the homeless. VA must sell at least 35 percent of its properties for cash. SBA is required to evaluate the effect of its commercial property sales on local economies.¹⁸¹

The federal government has a fragmented approach to managing and disposing of assets targeted for disposition. Over time, authority for managing and disposing of these assets has been given to many agencies, and congressional oversight has been spread among numerous committees.¹⁸²

Significant change is needed government-wide in the acquisition, management and disposition of real estate assets. Too little attention has been paid to developing clear-cut policies and cohesive strategies or to the sharing of innovations and creative solutions.

While numerous reports, studies and draft legislative packages addressing some of these issues may be found throughout Government, many of these documents focus upon individual agency programs and do not address the totality of the asset management and disposition issues Government-wide.

Using Real Property for the Affordable Housing Disposition Programs. Each of the following agencies with housing stock have an affordable housing mandate: HUD, Veterans Administration, Resolution Trust Corporation, General Services Administration and the Federal Deposit Insurance Corporation. Affordable housing is not the primary interest or focus of any of these agencies. Other agencies also have acquired housing stock. Another issue paper recommends how the affordable housing program could be strengthened by consolidating the effort in one organization and/or use of a common reference system of available housing stock.¹⁸³ Another National Performance Review issue paper has been written on this subject.

Owned and Leased Space by the Federal Government. Instead of disposing real property it could be used by the Federal Government. A real property fund would be established for GSA to promote sound real property management. GSA would compete with private industry in leasing space to the Federal Government and could lease space to private industry. Another National Performance Review issue paper has been written on

this subject.

Recommendations

1. Now that Congress has created a new Department of Treasury Asset Forfeiture Fund and the DOJ and Treasury have memorandums of understanding on cooperation,¹⁸⁴ sustained oversight is needed by both agencies to see these problems through to resolution.
2. Eliminate the DOJ restriction against paying the federal employee personnel costs from their asset forfeiture fund.
3. Follow-up on the results of OMB's recently initiated study on the magnitude of the Government-wide problem. OMB's management side is currently conducting a management study on the magnitude of the problem and modeling potential solutions. Both the General Services Administration and Treasury's Financial Management Services have written papers that should be considered by OMB before final resolution.

Implications

The result of the fragmented asset management approach has been the absence of a government-wide asset inventory policy and the lack of any central control over asset disposition activities as illustrated by the absence of a government-wide inventory of these assets.¹⁸⁵ For forfeiture and seizure: consolidating aspects of the two property management operations should lead to tremendous economies of scale, particularly in the administrative area; and for ensuring that assets would be sold at a fair market value. It also could resolve some of the turf problems between Justice and Treasury.

Fiscal Impact

GAO estimates that consolidation of the seized asset funds would save about \$2.5 million annually in administrative costs by reducing duplication of effort and would lead to additional savings in contractor costs as a result of economies of scale.¹⁸⁶ The fiscal impact worksheets are being developed by Treasury, Justice, and OMB.

REDUCE DUPLICATION OF FEDERAL DRUG INTELLIGENCE SYSTEMS AND IMPROVE COMPUTER SECURITY

Background

In the Intelligence Authorization Act For Fiscal Year 1994, the Permanent Select Committee of Intelligence submitted a report which reads "...the Committee expressed concern over the number of individual, uncoordinated counter-narcotics initiatives within the intelligence community... A principal reason for the lack of coordination is that no single person or organization has a clear mandate to oversee intelligence collection, analysis and reporting on the counter-narcotics effort... Intelligence centers have proliferated in the intelligence community, defense department and law enforcement agencies, with little attempt to ensure that the analytic efforts of these centers are coordinated and responsive to the customers they support."¹⁸⁷

In a recent General Accounting Office (GAO) report "Federal organizations reported operating 19 counter-narcotics intelligence centers with another, a national center planned for the summer of 1993."¹⁸⁸ Fifteen of the 19 centers are producing time-sensitive intelligence information that law enforcement agencies use primarily to arrest drug traffickers quickly and seize illegal drugs. The other four centers, for example the Drug Enforcement Administration's (DEA's) Intelligence Division, generally produce intelligence about long-term trends in illegal drug trafficking. In addition, 12 of the 19 centers have missions that encompass more than intelligence gathering, processing, and analysis. The seven remaining centers have intelligence gathering, processing and analysis as their sole mission.

The reports reflects that significant duplication exist in the analysis and reporting of drug intelligence data. The primary function of 15 of these centers is to gather and analyze time-sensitive information such as current location and movement of specific drug smuggling activities, and the remaining four centers generally produce information on long-term trends and patterns.

This data is used to determine where to concentrate future drug interdiction resources. Intelligence is very important to successful interdiction. The Office of National

Drug Control Policy (ONDCP) reports that in fiscal 1991 more than 75 percent of the cocaine seized by the U.S. Customs Service (Customs) and 70 percent of cocaine seized by the U.S. Coast Guard resulted from prior intelligence. The types of intelligence collected generally fall into three categories: Tactical intelligence - time-sensitive information for immediate use (e.g., information on the present or imminent location of a drug smuggling aircraft); Operational intelligence - information used to support investigations and prosecutions (e.g., information on specific persons or organizations that are targets of investigations); or Strategic intelligence - information used to support policy and planning decisions (usually at the national level) and generally providing a longer-term focus on patterns and trends.

Vast amounts of varied drug intelligence information are being collected by a wide array of agencies and used to support their differing needs and missions. For example, four intelligence centers analyze air traffic activity along the southwest U.S. border. Each reports on aircraft type, routes, and suspected drugs being transported. Each agency analyzes various types of drug intelligence to support their individual operations. According to a GAO report, as a result of a random sampling of organizations, only one of eight had coordinated with, or notified, other organizations of its efforts during the data gathering and analysis phase. The law enforcement organizations with the primary responsibility for drug intelligence are the Drug Enforcement Administration (DEA), Federal Bureau of Investigation (FBI), Immigration and Naturalization Service (INS), Customs, and the U.S. Coast Guard. In addition, the DOD and the Central Intelligence Agency (CIA) also provide drug intelligence support to law enforcement.

The El Paso Intelligence Center (EPIC), managed by the Drug Enforcement Administration (DEA), was established in 1974. EPIC is a multi-agency center which provides complete and accurate intelligence on drug movement by land, sea and air throughout the world. It gathers and analyzes primarily time-sensitive information used in effecting investigations and interdiction of drugs. EPIC's primary mission is tactical intelligence, however, according to officials at EPIC, to varying degrees, EPIC accomplishes operational and strategic intelligence objectives.

The Financial Crimes Information Network (FINCEN), managed by the Department

of Treasury, was established in 1990. FINCEN provides both tactical and strategic intelligence on all financial crimes and is not limited to just those that are drug related.

The Counter-narcotics Center (CNC), managed by the Central Intelligence Agency (CIA), was established in 1989. The CNC provides overall guidance and support to the intelligence community (IC) counter-narcotics efforts. It provides the interface between the IC intelligence producers and the consumers, including law enforcement.

The National Drug Intelligence Center (NDIC), managed by the Federal Bureau of Investigation (FBI), is scheduled to become operational in the summer of 1993. The NDIC is a multi-agency organization which will produce strategic (i.e., long-term trends) and organizational studies encompassing domestic, foreign, and international issues and organizations affecting the nations drug control problem.¹⁸⁹ The establishment of NDIC was intended to develop a central entity to consolidate drug intelligence beyond the capability of any single agency. The mission of the NDIC is to collect and consolidate multi-source drug information to produce organizational and strategic intelligence analyses for use by national policymakers, diverse law enforcement entities, to promote information sharing among these entities; and to promote compatibility standards for drug intelligence information collection systems.¹⁹⁰

The idea of NDIC is to both complement and utilize other intelligence centers, as appropriate. For example, as the NDIC sets priorities it may ask one or more of the centers to contribute relevant intelligence and/or to conduct portions of the analysis. The NDIC will work extensively with EPIC, FINCEN and CNC. These centers will continue to operate separate and apart from the NDIC in pursuit of their individual missions.

Some drug intelligence experts and budget officials have expressed concerns about NDIC. The concerns are: 1) Does NDIC duplicate EPIC 2) What is the added value of NDIC, is the cost justified and could EPIC have been enhanced to meet the same objectives at less cost; 3) Since NDIC's construction was funded under a DOD appropriation bill, how will its future operations be funded; 5) Why was NDIC constructed in Johnstown, Pennsylvania, with a satellite office in McLean, Virginia. Why not the Washington, D.C. area; and 6) Does NDIC's have a clear mission. It is the opinion of some drug intelligence experts that the current proposed mission of NDIC duplicates to EPIC to large

degree and other intelligence collection and analytical centers, and to a lesser degree those of the FINCEN.

At the time NDIC was envisioned there was a need to be proactive in the "war on drugs" and the military had acquired an enhanced role in the counter-drug effort. This resulted in its funding being attached to a Department of Defense (DOD) appropriation bill. The President's 1990 National Drug Strategy directed the creation of the NDIC and Congress provided \$10 million funding for the establishment of NDIC in the Fiscal Year 1991 DOD Appropriations Act. Forty million dollars was appropriated in fiscal year 1992, and the budgeted expenditures through fiscal year 1994 is \$50 million. As of the second quarter of fiscal year 1993 about \$18 million had been expended and about \$ 38 million obligated. As of July 1993, there were 92 employees, and it is projected that by end of fiscal year 1993 and 1994, there will be 148 and 211 employees respectively. ¹⁹¹

It is the opinion of some drug intelligence and budget experts that EPIC could have been upgraded at less cost and have satisfied the same objectives as NDIC. These officials argue that an effective interagency infrastructure is already in place at EPIC. That EPIC has an approved charter, memoranda of understanding with participating agencies, a system for timely collection, analysis, and dissemination of intelligence. Also in place is a management structure for both administrative and intelligence support.

The NDIC officials argue that there is a difference between EPIC and NDIC. There does not appear to be any federal guidance or leadership to facilitate and ensure the coordination, compatibility and sharing of drug-related intelligence, and to identify and eliminate potential duplication. The Director of ONDCP establishes priorities for intelligence functions and encourages agency cooperation in coordinating and sharing intelligence activities, however, he does not have the authority to direct agency intelligence activities. He has only indirect leverage to influence coordination through his budget review and certification responsibilities. The Attorney General, and Secretaries of Treasury and Defense have no direct control over drug intelligence systems outside their respective Departments.

In a General Accounting Office (GAO) report, dated February 1992, it was reported that DEA is not complying with federal requirements to ensure that sensitive and national security information processed on computer equipment is protected from unauthorized access and disclosure. Computer systems which includes criminal and intelligence data, could possibly endanger lives, undermine ongoing law enforcement investigations, and ultimately, jeopardize the national war on crime and drugs. Such systems should be enhanced to meet applicable computer security requirements.

Recommendations

- 1. The President should give the Director of Law Enforcement (DLE) the authority to manage a national comprehensive consolidated counter-narcotic program.**
- 2. The DLE should eliminate the National Drug Intelligence Center (NDIC) and enhance the El Paso Intelligence Center's (EPIC's) to meet current strategic mission. Another use of the NDIC should be considered.**
- 3. The DLE should evaluate and reduce the number of drug intelligence centers and systems to minimize unnecessary duplication. The DLE should ensure compatibility and integration of all drug intelligence centers and systems, as practical.**
- 4. The DLE should ensure that drug intelligence information is shared among federal, state and local law enforcement agencies, as applicable.**
- 5. The DLE should evaluate and improve, as applicable, the security and privacy of drug intelligence systems and information management systems. The DLE should ensure that such systems are being operated in compliance with national computer security requirements for safeguarding sensitive and classified data.**
- 6. Develop incentives which ensures and encourages all source data sharing among agencies.**

Implications

1. This will serve to enhance systems which are integrated, compatible and uniform.
2. This will reduce duplication and cost, and increase efficiency.
3. This will promote cooperation, coordination and information sharing.
4. Although efficiency will be increased, some agencies will still prefer to have their own system. They may not trust others "having access to their data."

Fiscal Impact

Fiscal impact is being finalized.

REINVENT THE IMMIGRATION AND NATURALIZATION SERVICE'S MANAGEMENT PROCESSES AND ORGANIZATIONAL STRUCTURE

Background

The employees of the Immigration and Naturalization Service (INS) cannot articulate a clear sense of mission. INS has not had a strong voice in articulating the U.S.' immigration policies. INS' organizational structure and management policies highly centralize authority and responsibility in headquarters offices rather than delegate them to the field. INS employees are faced with the requirement to cope with and accurately explain to customers complex and frequently contradictory laws, regulation, policies and procedures with poor or no informational information handouts. INS program budgets are compartmentalized and fenced. INS' internal and external customers express dissatisfaction.

The National Performance Review has recommended the creation of a single Border Management Agency (see elsewhere in this report). Whether or not such an agency is created, the issues outlined in this section must be addressed, either by INS or by the new agency.

The new INS Commissioner is faced with a daunting challenge: to articulate a vision and forge an organization structure and management systems capable of coping with ever mounting workloads, the lack of national consensus, and steady if not decreasing resources. INS employees' belief in and fundamental support for that vision will determine the energy and innovation they bring to the task. Their empowerment will be critical to success.¹⁹²

The lack of national consensus about immigration policy and the powerful interests groups with diametrically opposite views result in unclear statutory direction and frequently put the agency's personnel into "no-win" positions.¹⁹³ Legislation has been introduced and enacted with little input from INS, despite its expertise. Those inside INS and outside believe that INS' organizational placement within the Department of Justice (DOJ) in previous administrations, caused INS' views on immigration legislation to be inaccurately or incompletely transmitted to the Congress.¹⁹⁴

Legislation is frequently enacted without adequate consideration of its impact upon INS' effectiveness.¹⁹⁵ Many INS employees expressed frustration that neither the Congress nor appropriate federal agencies commission impact studies before immigration legislation is passed.¹⁹⁶ And once enacted, resources to carry out the legislation, and lead time, are almost always inadequate.¹⁹⁷ As a result, discrepancies between the laws on the books and the way INS can enforce them cause innumerable problems.¹⁹⁸ While most accept that the political arena changes the policy, such changes affect workload; the bureaucratic system can rarely adjust quickly enough.¹⁹⁹

Immigration consequences flow from almost all federal government actions but are infrequently considered. For example, decisions to embargo Haiti or pursue the North American Free Trade Association (NAFTA) have and will continue to impact upon the flow of people into the U.S.²⁰⁰

The costs of changes in immigration policy, or the U.S. government's inability to carry out the stated policy, impact heavily upon state and local governments, and the taxpayers, but they have little direct input into those decisions.²⁰¹

Some have suggested the solution lies in the removal of INS from the Department of Justice, and its elevation in the federal government.²⁰² For these and other reasons, the National Performance Review has recommended the creation of a single, independent border management agency (see elsewhere in this report).

Other suggestions are more systematic, arguing inefficiencies or ineffectiveness could be prevented by: (1) requiring resource impact studies before any administrative or legislative immigration policy changes are made; and (2) ensuring required increases in, or reprogramming of, resources, are in place simultaneously with the effective date of the new policy.²⁰³

INS employees are prevented from "selling" the agency's successes by the current organizational structure and management policies, by their lack of clear understanding the immigration mission and by poorly articulated and conflicting policies.²⁰⁴ We found employees at every level in INS anxious to get that story out, but unable to do so. One employee told of the difficulty in securing multiple levels of management approval for a simple news release. Another described being chastised for an accurate (but uncleared)

statement to the media.

Surveys have indicated the majority of U.S. citizens and residents, when asked, are opposed to illegal immigration.²⁰⁵ But these same individuals are likely to deplore the deportation of a specific single illegal immigrant.²⁰⁶ INS does not appear to initiate the positive stories. Negative coverage about "harmless" deportations leaves INS in the defensive--explaining the enforcement of the law or responding to charges and allegations.²⁰⁷

INS' lack of accurate, up-to-date informational pamphlets is a source of customer frustration. One of the reasons the Internal Revenue Service, one concerned employee contends, turned around its reputation was its excellent brochures and handouts responding to a myriad of taxpayer questions.²⁰⁸

It is no surprise that INS has a reputation as hostile and unresponsive to the public's needs.²⁰⁹ Some attribute that reputation to fact that the traditional career path inside INS has favored law enforcement.²¹⁰ The Border Trade Alliance (BTA), for example, believes the U.S. Customs Service (Customs) is more receptive to BTA's needs than INS is. It alleges that INS employees are trained to treat everyone as suspicious, while Customs is more professional.²¹¹ Others attribute it to the strain INS employees undoubtedly face in keeping up with the complexities of immigration laws and policies, which "have become as complicated as our tax code."²¹²

The public's perception of INS and the constraints it must face in carrying out its very difficult mission is a critical factor in its success or failure.²¹³ Customs has done an excellent job in making its case to the Congress and in involving community based organizations to resolve mutual problems.²¹⁴ INS' could use its field offices to do the same.²¹⁵

Many inside and outside INS, and indeed the U.S. government, have strong views about whether INS' "twin missions" are inherently incompatible.²¹⁶ Clearly INS' leadership faces a challenge in balancing enforcement with service.²¹⁷ Some describe it as a "fundamental tension" between "competing objectives,"²¹⁸ others as an "awkward dynamic."²¹⁹

Since immigration is restricted, some argue, INS has but one function: "to ensure

that only those persons may enter who are legally entitled to do so; and to screen out the majority of the world's population who is not. Expediting lawful traffic is merely a bi-product of the main mission."²²⁰ They stress all INS functions are part of a whole (two sides of same coin²²¹), with one impacting the other.²²²

"If alien entrants are not effectively controlled, then processing for both illegal entrants (detention and deportation) and legal entrants (inspections, examinations, and naturalizations) become impossible to manage. If border controls and refugee/asylum law are applied poorly, then the number of aliens entering the United States soar, and the system is overloaded. If the processing function is not prompt and fair, the system backs up, frustrating legal immigrants and establishing incentives for more and more people to evade the law. It is an error to focus on inspection and examination delays and costs only; this diverts attention from the importance of effective departure and entry controls and related border security."²²³

Several argue enforcement--most particularly the Border Patrol--should be separated from service functions,²²⁴ because mission accomplishment is hampered by their "institutional dichotomy."²²⁵ One former INS Commissioner believes the Border Patrol should be an independent entity within the Department of Justice, to enable more easy linkage with other "law enforcement" units.²²⁶ A corollary benefit would be the change, over time, to a service orientation in INS' top management positions.²²⁷

There is a querulous quality to many of the complaints. One interlocutor stated: "No one understands the mission of enforcement. Congress favors the service side." Nevertheless, valid concerns about duplication, confusion and overlap among programs exist.²²⁸ Both sides of the house suffer from lack of resources and poor management systems.²²⁹

Some customers allege INS has an "undue interest in promoting its enforcement function," citing the "Green Card" Replacement Program which was intended to replace easily counterfeitable green cards with a new, harder to forge version.²³⁰ As they see it, controversy concerning the program's cost to customers versus existing backlogs in other service areas resulted in successful litigation staying the program on the basis of INS' failure to observe the Administrative Procedure Act and the Immigration statute.²³¹ They

argue the program was the result of "myopic management" and "insufficient planning," resulting in disregard for how service delivery might be affected.²³²

Selected Office of the Inspector General (OIG) personnel, when polled, gave the unanimous opinion that INS has an "institutional inferiority complex" and a morale problem. Examples of employees' perceptions include: "everyone" has new vehicles while theirs are battered clunkers; INS' positions are lower graded; and INS is under-funded.²³³

INS does not need to be studied. The National Performance Review confirmed that INS has been studied sufficiently, even if there is no "right" answer. Decisions are now necessary to revise an organizational structure which defies logic and to revitalize a demoralized staff.

INS's current organizational structure is both overly decentralized and overly centralized; cumbersome and top heavy; and ineffective and unresponsive. It results in ineffective coordination, lack of communication, and program stovepiping. Most particularly, it creates significant span of control problems.

INS' field operations currently consist of 103 separate reporting elements: four Regional Offices (Eastern, Northern, Southern, and Western); four Regional Service Centers; seven Asylum Offices; 36 District Offices (33 domestic, 3 overseas); and 21 Border Patrol Sectors. Each Regional Office is split into a single administrative and eight operational components: the Special Assistants for Field Operations (SAFO -- a single individual and his/her secretarial support), and the seven individual program components: Border Patrol, Detention and Deportation, Investigations, Intelligence, Asset Forfeiture, Adjudications and Inspections.

UNIT	NUMBER/TYPE	COMMENTS
Regional Offices	4	Administrative
	32	Operational: 4 SAFO, 28 Program
Regional Service Centers	4	
Asylum Offices	7	
District Offices	36	33 Domestic, 3 Overseas
Border Patrol Sectors	21	
	84	

The Executive Associate Commissioner for Operations is the first line supervisor over 58 field units: the 4 SAFOs, the 33 domestic District Offices and the 21 Border Patrol Sectors. The Executive Associate Commissioner for Management is the first line supervisor over the four Regional administrative staffs. The Director, Office of International Affairs and Outreach, is responsible for ten offices: the seven Asylum Offices and the three overseas District Offices. The Director, Office of Service Center Operations, is responsible for the four Regional Service Centers. And the seven program Assistant Commissioners are each responsible for the four program components in each of the Regional Offices (28 in total), effectively "stovepiping" these operations.

INS does not have systematized policies, procedures and processes, exacerbating problems relating to span of control and lack of functional interface between and among these offices who need to interact effectively to accomplish the mission.²³⁴

INS was reorganized into its current structure in order to correct real or perceived problems with the power structures created by former political appointee Regional Commissioners whom the INS Commissioner felt unable to direct or control. It was intended to ensure all agency field elements followed the same national policies. Some have pointed out the problems "resulted from issues not related to the organizational structure. Rather, it was a leadership and accountability problem."²³⁵

The reorganization has created more problems than it solved. The effects are institutional conflict, layering, turf battles and span of control concerns.

There is currently no efficient way to resolve routine conflicts. Field managers can either to go to a headquarters program manager--whose interests are parochial--or ask the one executive responsible for 58 field elements to intervene. The resultant span of control has created both excessive field autonomy and debilitating workload for that executive.²³⁶

Field elements have made it clear both in writing and in interviews with the National Performance Review that they feel the lack of direction and control, and the resultant isolation; do not feel like participants in the process; do not know how to influence agency action; do not know what is expected of them; and do not know to whom to turn with

concerns or to resolve conflicts.²³⁷

Management is perceived as having become a bunker, with policy managers inappropriately involved in the "priority of the day" daily operations and ad hoc decision making in very complex and varied areas.

The span of control is enormous. And it results in "rowing" rather than "steering." It would be virtually impossible for one individual responsible for 58 elements to visit every office during the year, let alone become familiar with each operation. INS is too vast an organization with too many complex missions and responsibilities for it to be managed by ad hoc decision making or by any one individual or group of individuals.²³⁸

While they are unlikely to agree with this view, the organizational structure is widely perceived to have created isolation among and between headquarters program managers. Each is seen to develop and issue program specific policies, often without consultation with other headquarters programs.

INS' external customers are aware of the organizational disarray. One testified: "The Headquarters Office continues to struggle to regain control over the field, many district directors cut paths of their own, and the regional officers are protective of the autonomy that has evolved. The end result is an agency that lacks unified policy, standards, and procedures...The diffusion of power undermines the effectiveness of service delivery."²³⁹

There is a wide consensus in the field, at both the regional and district levels, that a return to a regional structure is essential. This consensus is not shared by headquarters personnel.

Some regions, perceiving a void in direction from Washington, try to fill it, despite their official lack of supervisory or operational authority. When such efforts work, they are only the result of cooperation among elements. One officer cited the Western Region's efforts to coordinate submissions for a "Management Controls Information" report, which was subsequently cited by Headquarters: "It is worth noting that during a recent exercise to identify and describe the current management controls in place within INS, the Western Region assumed the role of coordinator for the submissions from Districts and Sectors within its geographical boundaries. As a result of this regional involvement, the Western

Region's submissions were far more complete and more timely than those of INS field locations elsewhere."²⁴⁰

Programs, regulations and Washington guidance are interrelated, but not coordinated. One officer cited the example of implementing the Chinese student protection provisions. These individuals could adjust from temporary protected status to permanent residents by submitting applications to Service Centers, which in turn must decide which individuals might require interviews. The interviews are conducted by District Offices. Sophisticated liaison between service centers and districts is needed.²⁴¹

Washington managers, and some field elements, argue just the opposite. They view the former regional operations as obstructionist, either not transmitting headquarters' instructions, delaying them in order to add a "cover sheet" or sufficiently changing the "spin" so as to adversely affect the intended outcome.²⁴² Others argue for elimination of the vestigial staffs who only serve as a conduit for the information flow from Headquarters to the field and vice versa, and imperfectly filter and slow down the information.²⁴³

One executive has proposed reconstitution of regional operations with the managers physically located in Washington.²⁴⁴ A former INS senior manager, now with the Air Transport Association, cites the private sector's success with such an alternative structure.²⁴⁵ Others argue that field commanders with line authority who are familiar with the politics at the local level and are able to react quickly are needed.²⁴⁶

In keeping with the themes of "Reinventing Government," decision-making and resource allocation need to be decentralized and delegated to the lowest possible organizational level. As one officer stated: "High-level officials in Washington, no matter how well meaning, are not in a position to make realistic decisions regarding field operational needs."²⁴⁷

On the other hand, delegation of all policy and operational decisions to 103 entities with no mechanism for coordination is equally ineffective.

INS management also needs to reintroduce effective strategic planning, one that is based upon the fullest possible participation of its field operations personnel. An effective system encourages a wide variety of input to ensure the wisest course of action and participants' understanding and buy in.²⁴⁸

For example, among the challenges INS must face in the next year will be the over one million aliens in the Los Angeles area alone who were legalized under the Immigration Reform and Control Act of 1986 (IRCA) and will become eligible for naturalization in 1994. If they choose to avail themselves of that benefit, they will then be eligible to apply for immigrant visas for their immediate relatives. How headquarters and the field work together to address this potentially overwhelming workload will be critical.²⁴⁹

Strategic planning is rarely effective without adequate financial management and information systems. INS has been cited in congressional testimony (quoting a General Accounting Office (GAO) report) for maintaining: "automated records on over 23 million aliens plus 30 million non-immigrant students and visitors" which, along with "management and programs data, are kept in over 120 information systems, ranging from large, complex, centrally-developed and maintained systems to small computer applications used in field offices. In addition there are many individually developed manual information systems." Despite this repository of data, it is alleged that INS has virtually no accurate data available to it in any category.²⁵⁰

The Justice Inspector General, also quoting a GAO report, testified, because of a lack of resources and planning for information systems, INS' managers and field officials did not have information which was adequate, reliable, and timely enough to carry out the Service's mission effectively.²⁵¹

Recommendations

The National Performance Review has recommended the creation of a single Border Management Agency (see elsewhere in this report). The new head of that agency, if created, should take the actions directed to the Commissioner of the Immigration and Naturalization Service in the following recommendations.

- 1. Immediately after assuming office, or immediately after issuance of this report, whichever comes first, the Commissioner of the Immigration and Naturalization Service (INS) should take the steps necessary to develop the best possible (given the realistic constraints of lack of national consensus) vision statement for the INS for the next five years. The fully vetted proposed vision statement should be submitted to the**

Attorney General for approval within sixty days after swearing in or issuance of this report. The development should first and foremost involve personnel at all levels of INS. Input and comment should be sought from other U.S. government executive branch entities (including but not limited to the Department of the Treasury, particularly the U.S. Customs Service; the Department of State; the Department of Labor; other elements of the Department of Justice; the National Security Council, the Domestic Policy Council, and the Economic Policy Council); members of congress and their staffs; and concerned interest groups. The views of state and local governments should also be sought.

2. After approval, the Attorney General should present the proposed vision statement to the President for his endorsement.

3. Within thirty days after the completion of the proposed vision statement, and building upon the communication and coordination systems established during its development, the INS Commissioner should propose to the Attorney General for submission to the President an interagency process for ensuring all future federal actions which could impact upon immigration are appropriately vetted with INS. This proposed process should also be developed initially by personnel at all levels of INS, and vetted with other U.S. government executive branch entities. Input should also be sought from concerned congressional committees, to encourage their cooperation in commissioning impact studies prior to enacting changes to immigration legislation.

4. The President should issue the proposed interagency process as an executive order or national security directive, whichever is more appropriate.

5. Immediately upon the President's approval of proposed vision statement, and building upon the communication and coordination systems established during its development, the INS Commissioner should direct each regional office, in close coordination and cooperation with all field units in that geographical area (including but not limited to District Offices, Border Patrol Sectors, Asylum Offices, and Regional Service Centers) to propose within thirty days coordinated public outreach and information campaign strategic plans for the coming six month period. These campaigns should include, inter alia, meetings with concerned interest groups, private sector representatives, the media, state and local governments, and other community organizations.

The regional plans should include proposals for regular feedback of the full range of views from concerned parties to Washington. The plans should be submitted to the Commissioner for approval within thirty days. In approving the overall INS strategic plan for public outreach and information, the Commissioner should set overall guidance and ground rules to be followed by all offices. Once approved, each regional office should be delegated full authority and responsibility for carrying out both the campaigns and regular contacts with the media and the public within established guidance. Regional offices should in turn delegate as much of that responsibility as is possible to all field units. The Commissioner should update ground rules and guidance as frequently as is necessary, taking particularly into account the regular feedback from regional offices. Guidance or approval from Washington for public statements should be required only in the most unusual instances.

6. Simultaneously with the development of the public outreach and information campaign, the INS Commissioner should establish a task force composed of INS personnel at all levels with substantive knowledge and/or drafting skills to develop a comprehensive set of informational pamphlets, brochures or other written materials covering as many of INS' functions and missions as is possible. The task force should be charged to design simple but informative materials which can be used to answer the multitude of questions INS' customers might ask. The task force should also be directed to propose regular update schedules for each document, as well as a strategic plan for its dissemination to the widest possible audience. The task force should complete its work within ninety days. The documents should be printed using the most expeditious means available.

7. Immediately after assuming office, or immediately after issuance of this report, whichever comes first, the Commissioner of the Immigration and Naturalization Service (INS) should propose, and the Attorney General should approved, reinstitution of an INS regional structure. The heads of the regional offices should be career U.S. government employees with substantial and proven knowledge of immigration issues and demonstrated management skills. They should be located in the geographic region which they manage. The titles given the heads of these regional operations should be left to the discretion of the Commissioner. All field entities, including District Offices

(domestic and overseas), Border Patrol Sectors, Regional Service Centers, program components currently located in regional offices and Asylum Offices should report to the head of a regional office. The heads of the regional offices should in turn report directly to the INS Deputy Commissioner. The program heads in Washington should assist in the "steering" of the Immigration Service; they should not "row." Therefore, they should retain program and policy development responsibility which is (1) coordinated by the Deputy Commissioner and (2) communicated formally to the field solely through the regional offices. Day to day operations at the field level should be left solely to the heads of the regional offices who should be delegated full authority and responsibility.

8. Immediately after issuance of the INS vision statement and the reorganization of INS into a regional structure, the Commissioner of INS should issue strategic planning guidance, including financial and personnel planning targets, for a five year planning period to the heads of the regional offices. The heads of those offices, in turn, should establish mechanism to coordinate with all subordinate elements to develop and submit proposed regional plans, with appropriate performance measures, to Washington within sixty days. Regional offices should ensure the widest possible input into the development both of the strategic plan and the design of performance measures. Once the five year strategic plan is approved by the INS Commissioner, regional offices should be delegated full authority and responsibility, and financial and personnel resources, to carry it out. The regional offices should in turn delegate maximum financial and operational authority to the subordinate field elements. Revisions to financial and personnel levels provided to regional offices, and in turn to subordinate field elements, should be subject to revision only in the most unusual circumstances. Field elements should submit financial and personnel resource utilization and requirements reports to regional offices, and regional offices to the Deputy Commissioner, on a quarterly basis. Progress against the strategic plan should be reported semi-annually. Strategic plans should be revised and updated annually.

Implications:

Creating a "clear sense of mission" is the first and most critical step in "reinventing"

the Immigration and Naturalization Service (INS). The mere process of including INS personnel at all levels in the development of a vision statement would go a long way toward "empowering" them and debunking the belief that INS has no input to articulating what immigration policies should be. It will also improve morale and communications between and among INS personnel. The National Performance Review readily acknowledges that it will be extremely difficult to develop one statement which adequately encompasses the views of all those outside the agency--both in public and private concerns--who believe they have something critical to contribute. The process, however, will begin the two way communication essential to revising the public's perception of INS, and educating the latter on the constraints under which the agency is forced to operate. State and local governments, who are heavily impacted by U.S. immigration policies, will have a forum for voicing their concerns. It will also forge the beginnings of a coordinated process so critical to future changes in policy direction.

The President's endorsement of the proposed vision statement will send a clear message to personnel both inside and outside the government that INS can not be viewed as a "stepchild" but has the support and commitment of the administration in its extremely difficult task.

An agreed process for vetting the future government actions for immigration consequences will allow INS to operate in a more proactive rather than reactive mode. It will also allow INS to identify the resource requirements of proposed changes, and put those in place, or describe the consequences of its inability to do so, prior to approval of the changes.

Issuance of the proposed interagency vetting process as an executive order or national security directive, whichever is more appropriate, will ensure (as much as that is possible) that future changes are appropriately coordinated.

The Immigration and Naturalization Service has a story to tell and a need both to improve its service to customers as well as to change its customers' perceptions about the service it already provides to the best of its ability. And the people to carry out its functions on a day to day basis--usually in the best position to tell that story persuasively and with conviction--should be empowered to do so. The communities in which INS

offices reside have strong views on immigration issues, as well as frequently legitimate proposals for resolving problems, that need a regular forum for vetting. Although it is critical that the Administration's position on potentially sensitive issues remain consistent and coordinated, the "muzzling" of local offices which occurs with over centralization is counterproductive. This recommendation provides a regular channel for two-way communication.

INS needs updated material to answer its customers questions correctly and quickly. And it needs a regular system to maintain those materials current. Employees who perform functions on a daily basis in the field are frequently in the best position to draft materials which answer the customers' most common questions, and to propose effective plans for getting that message out. Since it is likely these informational materials will require frequent changes, regular update schedules and the fastest means of reproduction are critical to future effectiveness.

Reinstitution of a regional structure in INS will: (a) eliminate span of control problems; (b) improve coordination and communication; (c) eliminate program stovepiping; (d) reduce layering; (e) delegate authority and responsibility to the lowest level possible; and (f) empower managers. Location of the heads of regional offices in the field will ensure they have the knowledge of local conditions necessary to provide quick reactions whenever required. Selection of career managers with substantive knowledge and operational skills will reduce concerns about their ability to operate independently.

Institution of a strategic planning system with planning guidance from the top but input from the field will ensure the widest possible participation to help identify the "best" course of action and the participants' understanding of and buy in for the decisions. Delegation of financial and personnel management authority to the lowest possible level and development of performance measures are key "reinvention" principles. The National Performance Review recognizes that INS' current management information systems make coordinated strategic planning and effective financial management difficult, but is aware that INS has well developed plans underway to address those concerns.

Fiscal Impact

The cost of developing a mission statement will include per diem for a task force of approximately sixty people detailed to Washington for sixty days.

The cost of developing an interagency vetting process will include per diem for a task force of approximately sixty people detailed to Washington for thirty days.

A regular program of public outreach will require diversion of some full-time equivalents (FTEs) from other duties on a regular basis.

The cost of developing a comprehensive set of informational materials will include per diem for a task force of approximately thirty people detailed to Washington for ninety days, plus the recurring cost of reproduction and dissemination of materials.

A regional office structure may result in elimination of duplication and excessive layering which could free some resources for reprogramming to line functions.

Effective strategic planning will ensure the most effective and efficient utilization of resources.

MAKE THE DEPARTMENT OF JUSTICE OPERATE MORE EFFECTIVELY AS THE NATION'S LAW FIRM

Background

The Department of Justice (DOJ) describes itself as the nation's largest law firm. Seventy-five hundred DOJ attorneys in six legal divisions and 94 United States Attorneys offices represent the federal government in a multitude of matters. Within DOJ, five legal divisions -- the Antitrust Division, Civil Division, Civil Rights Division, Environment and Natural Resources Division, and Tax Division -- report to the Attorney General through the Associate Attorney General, while the Criminal Division and the U.S. Attorneys report to the Attorney General through the Deputy Attorney General. The legal divisions and the U.S. Attorneys conduct criminal prosecutions and represent federal agencies in civil judicial proceedings. Each of the legal divisions also play a specialized role in the development of national legal policy. Each U.S. Attorney, as the chief law enforcement officer in his or her district, is responsible for establishing law enforcement priorities in the district.

Like any large law firm, DOJ faces a number of management challenges, particularly in view of its highly decentralized operations.²⁵² At present, each legal division uses its own case tracking system, while each U.S. Attorneys office operates one of four such systems. The absence of uniform case tracking makes litigation workload and performance measurements difficult, impedes efficient resource allocation, and creates informational barriers among the litigative organizations.²⁵³

DOJ is currently developing a consolidated office network capable of functioning as a departmentwide case reporting system. Although DOJ's litigative organizations have reached a consensus on standardizing previously non-comparable case information, there remains some doubt whether the system will identify the number of staff working on individual cases and other workload information with which resource allocation and budgetary decisions can be made.²⁵⁴ Furthermore, as with any database, the proposed DOJ case management system will only be as useful as the information it contains. With thousands of matters referred to individual U.S. Attorneys offices and the legal divisions annually, the motivation for DOJ attorneys and other line personnel to maintain the

accuracy of the system will be directly proportional to the system's helpfulness to them in their work.

Like any large law firm, DOJ has to provide support services to its attorney personnel. At present, each litigative organization maintains its own administrative, personnel, legislative affairs, and litigation support staffs.²⁵⁵ DOJ's Justice Management Division (JMD) also performs administrative and non-litigation support functions on a departmentwide basis, compounding the duplication of effort. Ironically, JMD was created to consolidate DOJ support functions, including those of the litigative organizations. Each litigative organization developed its own administrative component, however, after becoming dissatisfied with the level of service being provided by JMD. Moreover, attorneys within the litigative organizations appear to appreciate the service provided by their internal administrative staffs.

DOJ should resist consolidation of support functions within the litigative organizations. The function appears to be working in its current composition. To improve the overall quality of their support, however, as well as to promote development of support and information functions through idea sharing, it would behoove the litigative organizations to share support functions among themselves. In particular, sharing expertise in technical areas such as computer analysis and litigation support should also produce cost savings. Sharing of computer rooms, for example, which DOJ is currently beginning to undertake in new office space, saves money in construction, rent and maintenance. One internal customer relationship that DOJ should examine is the one between the headquarters legal divisions and U.S. Attorneys in the field. Structurally, the vesting of the lion's share of federal litigating authority in U.S. Attorneys tailors national justice priorities to local demands. At the same time, DOJ headquarters legal divisions are charged with coordinating national litigation policy. While the headquarters legal divisions often serve U.S. Attorneys as a repository of federal practice information and policy guidance, U.S. Attorneys often resent what they perceive to be headquarters' alleged micro-management of their offices and second-guessing of their decisionmaking, particularly by lower-level headquarters' attorneys.

As the General Accounting Office recently observed concerning DOJ generally, "[a]

balance must be struck between the need for strong leadership in important areas and the benefits of a decentralized law enforcement mechanism in the hands of U.S. Attorneys."²⁵⁶ To strike an appropriate balance, DOJ should work to improve communication between headquarters and the field. One way to do so may be to provide for experienced Assistant U.S. Attorneys to rotate through the legal divisions on a regular basis, where they could advise the Assistant Attorneys General on field issues while serving as a liaison between the field and the headquarters division in particular cases. Similarly, providing for headquarters legal division attorneys to serve temporary details with U.S. Attorneys would enhance headquarters attorneys' trial experience and their appreciation of challenges faced on a daily basis by their counterparts in the field. DOJ should also encourage the Assistant Attorneys General of the legal divisions to continue to work with the Attorney General's Advisory Committee of U.S. Attorneys, and should also encourage the development of litigation working groups consisting of both headquarters and field attorneys. At present, for example, the U.S. Attorneys' White Collar Affirmative Civil Enforcement litigation working group has no members from DOJ's headquarters legal divisions. In addition to facilitating relationships between the two groups, working groups can further professional development in substantive DOJ practice areas.

Finally, the most important relationship in any law firm is the one between the firm and its clients. The relationship between DOJ and its federal agency clients becomes strained in individual cases when a client agency either disagrees with DOJ over a litigation position or perceives that DOJ is not placing a high enough priority on litigation affecting that agency's programs. The first problem occurs in non-criminal cases in particular, when DOJ is frequently challenged to determine whether it represents the client agency, the U.S. Government generally or the "law" itself.²⁵⁷ Though this arrangement facilitates a coordinated approach to federal legal policy, it periodically leads to client agency dissatisfaction when the agency feels it is being under-represented. The second problem typically occurs when an agency referring matters to a U.S. Attorneys office for litigation believes its cases are either being accorded insufficient priority or that delay attributable to the U.S. Attorney's own case inventory is compromising the value of its the agency's claim. Both problems result in agency calls for expanded authority to use their own in-

house counsel. DOJ contends that decentralizing federal litigation authority promotes inconsistent application of the law to the extent that agencies take self-interested positions in program litigation.

To become better attuned to the needs of its agency clients, DOJ should develop an annual client satisfaction survey to apprise the Attorney General of problem areas in the federal litigation relationship. On a more substantive level, DOJ should encourage agency clients to avail themselves of Special Assistant U.S. Attorney (SAUSA) status, which enables agency attorneys to be deputized as Assistant U.S. Attorneys to litigate federal cases on behalf of DOJ. SAUSAs can be particularly useful to agencies facing a large volume of program litigation, including debt collection matters, in a particular federal district. Consistent with the foregoing the Attorney General should instruct U.S. Attorneys to make liberal use of agency SAUSAs where circumstances warrant.

Recommendations

1. To provide the Attorney General with the information she needs to make litigative organization resource allocation and budgetary decisions in accordance with national litigation priorities, DOJ should develop a departmentwide case management system capable of tracking cases being litigated and the total number of staff in the litigative organizations working on them.

To the extent that DOJ's consolidated office network currently under development will become such a system, it should contain workload information with which resource allocation decisions can be made. Because DOJ's legal divisions have attempted to implement attorney time records in the past with little success, the department should accord priority to developing design specifications that induce litigative organization personnel to use and maintain the system.

2. To promote innovation and development in support functions and to facilitate cost savings through sharing of support services resources, DOJ's litigative organizations should conduct labs to bring together the best ideas and processes of support personnel from several components in the context of particular cases.

Attorneys within one component division, for example, could avail themselves of

litigation support or information technology functions successfully developed within another component division. Establishment of support function labs bringing together personnel from several component litigative organizations in the context of particular cases would foster support sharing on an expedited basis.

3. To improve communication between DOJ headquarters attorneys and their counterparts in the field, DOJ's litigative organizations should provide for experienced Assistant U.S. Attorneys to serve temporary 12-month details with the headquarters legal division Assistant Attorneys General on a rotating basis. Likewise, experienced headquarters attorneys should be provided a similar opportunity to serve temporary 12-month details with U.S. Attorneys.

4. To improve communication between headquarters and the field, as well as to promote departmentwide development of substantive legal policy, DOJ litigation working groups should, to the extent practicable, include representatives from both headquarters legal divisions and U.S. Attorneys' offices.

5. To better respond to the concerns of its federal agency clients, DOJ should develop an annual client satisfaction survey.

An annual survey will enable DOJ to measure its agency clients' satisfaction with DOJ legal representation and inform the Attorney General of problems that may exist in the relationship.

6. To enable its federal agency clients to better respond to litigation demands, DOJ should encourage its federal agency clients to avail themselves of SAUSA status.

At present, some U.S. Attorneys offices resist deputizing SAUSAs, leading to client agency dissatisfaction with DOJ representation and calls for independent litigating authority. The Attorney General should instruct all U.S. Attorneys to deputize agency SAUSAs, particularly in districts in which an agency faces a large volume of program litigation that may otherwise strain the litigation capacity of the local U.S. Attorney's office.

Implications

In addition to improving the Attorney General's ability to allocate DOJ resources, a functional consolidated case management system would enable DOJ and its federal agency

clients to assess the legal costs associated with federal program litigation.

With shrinking budgets, authorizing DOJ litigative organizations to share administrative and support expertise on an experimental basis will better assist attorneys in meeting their primary mission goals.

Authorizing headquarters and field personnel to be temporarily detailed to each other's component organizations on a regular basis will improve intra-agency communications and enhance working relationships between headquarters and the field.

Instituting a DOJ customer satisfaction survey will enable the department to better serve its federal agency clients. Instructing the U.S. Attorneys to appoint SAUSAs will encourage use of SAUSAs.

ENHANCE THE U.S. ATTORNEYS' WHITE COLLAR FRAUD CIVIL ENFORCEMENT EFFORT

Background

Each year, the U.S. Government loses billions of dollars to fraud on federal programs.²⁵⁸ Unscrupulous health care providers bill the Medicare and Medicaid programs for services that are either unnecessary or have not actually been provided. Drug companies invent false drug labels and billing codes to obtain excess reimbursement for generic drugs, resulting in excessive charges to the Medicaid program. Small Business Administration financial assistance programs are vulnerable to loan fraud in cases in which false loan applications are detected prior to funding. Illegal trafficking in food stamps occurs on a significant scale. The federal government spends hundreds of millions of dollars in Federal Employee's Compensation Act programs with little actual monitoring of professional "enablers" who assist in the filing of false claims. The U.S. Attorneys' white collar affirmative civil enforcement effort investigates and prosecutes these and other violations, identifying defrauders of federal programs and recovering millions of dollars annually for U.S. taxpayers.²⁵⁹

Because the burden of proof required in a civil case is less than "beyond a reasonable doubt," and further, because criminal and civil fraud investigations often develop in parallel in the field, civil fraud actions can effectively complement criminal prosecutions when the objective is to recover monies owed to the taxpayers and disqualify the perpetrator from further participation in the federal program. While there has been a 300 percent growth in the number of criminal prosecutions initiated by the Department of Justice (DOJ) in the past five years, there has been little growth in resources dedicated to civil fraud investigations and prosecutors.

An unavailability of investigative resources impedes the investigation and pursuit of civil fraud violations. The majority of federal law enforcement agencies do not credit investigative personnel for developing civil cases. As a result, agents typically decline to conduct civil fraud investigations in favor of criminal investigations, regardless of the size of the potential fraud recovery.²⁶⁰ Even worse, investigative agency performance

measurement systems discourage support or assistance to civil investigations which arise out of the same conduct as a criminal investigation.²⁶¹ The U.S. General Accounting Office has concluded that lack of investigative resources has constrained DOJ and the Office of the Inspector General in the Department of Health and Human Services (HHS) from investigating health care fraud.²⁶² Although DOJ has formed a health care fraud working group within its Criminal Division, the group includes no private, non-profit, or state or local participants, and has little role in policymaking.

Fraud enforcement through civil penalty investigations and prosecutions undertaken to date have produced impressive results. During fiscal year 1992, the Executive Office for United States Attorneys implemented a pilot program in three U.S. Attorneys offices to enforce civil penalties and collect funds for the U.S. Government using the Federal False Claims Act, which enables the government to recover three times its damages and a civil penalty of up to \$10,000 for each violation.²⁶³ Examples of successful health care-related recoveries included over \$3 million in cash and free care from a physician who overcharged the Medicare program for in-hospital dialysis, \$1.5 million from an auditing company that falsely claimed that it had reviewed 50,000 Medicare cases, and \$1 million from operators of medical equipment companies who supplied unnecessary equipment and then sought to avoid responsibility through a series of corporate transformations. Non-health care civil fraud recoveries included \$6.9 million from a defense contractor and its plant manager for supplying substandard orange juice to the military and more than \$1 million in settlements from retail stores that illegally redeemed food stamps, together with removal of the stores from the food stamp program and the promise of cooperation against wholesalers involved in food stamp fraud. In many of these cases, the case was resolved prior to a court filing because the investigation resulted in evidence which persuaded defendants that trial success was highly unlikely.²⁶⁴ The U.S. Attorneys have also established a white collar fraud civil enforcement working group that provides training and support to investigative personnel and prosecutors involved in civil fraud cases. The working group also produces a "how to" manual for civil fraud prosecutions.

U.S. Attorneys involved in affirmative civil enforcement pilots emphasize the importance of empowering local communities in weeding out fraud. While civil fraud

prosecutors rely upon investigative support from the FBI, federal agency inspectors general and other federal law enforcement personnel, they also obtain invaluable leads and information from local program providers and recipients, most of whom resent attempts to defraud programs in which they participate, as well as professional associations, citizens groups and the media.

In this connection, U.S. Attorneys contend that the current \$500,000 limitation on their affirmative civil litigation settlement authority is anachronistically low and slows the disposition of cases as settlement approvals work their way through DOJ headquarters bureaucracy.²⁶⁵ Underlying these contentions is the U.S. Attorneys' objection to the perceived practice of DOJ's headquarters Civil Division using its approval authority in civil fraud cases to obtain credit for fraud recoveries obtained largely through the work of Assistant U.S. Attorneys in the field. The Civil Division responds that headquarters review of settlements in larger cases provides quality control and furthers the development of national litigation policy.²⁶⁶ Specifically, the Civil Division contends that headquarters review promotes the uniform application of justice throughout the nation by preventing against different DOJ responses to the same conduct depending upon where in the nation the conduct occurs. The Civil Division further contends that U.S. Attorneys' offices tend to view headquarters review as cumbersome when headquarters indicates to an office that its theories need to be refined or that proposed settlement amounts do not accurately reflect the loss to the government. The Civil Division also notes that some U.S. Attorneys offices authorized to prosecute larger civil cases have ignored smaller cases, forcing the Civil Division to send lawyers from Washington to handle the small cases with resulting inefficiencies.²⁶⁷

Similarly, U.S. Attorneys contend that DOJ headquarters frequently asserts jurisdiction over the civil component of cases declined by their office's criminal prosecutors, even though the criminal case and civil case have been developed simultaneously. U.S. Attorney civil prosecutors assert that giving them primary responsibility for civil cases initially reviewed by their offices as criminal matters would encourage the investigation, prosecution and speedy disposition of civil fraud cases at the local level where fraud occurs. DOJ's Civil Division responds that while it supports the

need for all criminal fraud matters to be referred simultaneously to the civil side of U.S. Attorneys' offices, requiring the U.S. Attorneys' offices to make the Civil Division aware of such cases does not detract from the effort to enhance coordination between headquarters and the field.

Finally, notwithstanding the success of affirmative civil enforcement in recovering taxpayer funds and deterring fraud, U.S. Attorneys caseload demands require that civil prosecution resources be devoted to defending suits against the U.S. Government before affirmative civil enforcement cases can be undertaken. Enforcing civil fraud judgments frequently involves support from the United States Marshals Service (USMS) as well.²⁶⁸ Because of current federal hiring limitations, however, U.S. Attorneys have to pursue those who defraud the government while continuing to satisfy the demands of their non-discretionary caseload. One way to do so is to authorize DOJ to retain a portion of civil fraud recoveries to pay for the costs of U.S. Attorneys' affirmative civil litigation, thereby enabling civil fraud recovery activities to be carried out on a self-supporting basis.

Recommendations

- 1. The President should emphasize civil fraud recovery as a priority.** Vigorous investigation and prosecution of civil fraud would recover millions of dollars defrauded from the government annually and enhance the integrity of federal programs. Because of the magnitude of fraud in the health care sector, an emphasis on civil fraud recoveries would be consistent with national health care reform. A presidential commitment to civil fraud recoveries would also result in federal investigative agencies crediting their investigative personnel for conducting civil fraud investigations. Because many civil fraud investigations can be developed simultaneously with ongoing criminal fraud investigations, giving federal investigative personnel performance credit for working civil cases would not result in a significant increase in their workload to the extent that they are currently conducting criminal fraud investigations.
- 2. Consistent with the objectives of national health care reform, the DOJ should lead an interagency health care fraud prevention team to promote a comprehensive solution to health insurance fraud.**

The working group, which should consist of both headquarters and field members of DOJ's white collar fraud civil enforcement working group, DOJ's Criminal Division, FBI investigators, HHS Inspector General audit personnel, and Health Care Financing Administration personnel, should coordinate the government's investigation and prosecution of health care fraud and direct health care anti-fraud enforcement activities.

The General Accounting Office has previously recommended that Congress establish a national health care fraud commission composed of private and public payers, providers, and law enforcement agencies.²⁶⁹ Ideally, the two recommendations would be combined in support of one executive branch health care fraud working group chaired by the Attorney General.

3. To provide for the effective investigation and pursuit of civil fraud without the appropriation of additional resources, Congress should authorize DOJ to retain up to three percent of U.S. Attorneys' offices civil fraud recoveries annually to pay for the cost of creating civil fraud recovery teams within U.S. Attorneys offices.

Based on the results of the U.S. Attorneys' civil fraud pilot program, which incurred expenses of about nine percent of recoveries, authorizing DOJ to retain three percent of civil fraud recoveries appears to be a conservative approach. Concerns about the development of a bounty mentality among federal prosecutors would be ameliorated by DOJ-imposed limits on the allocation of civil fraud resources to individual U.S. Attorneys' offices.

Civil fraud recovery teams should consist of a prosecuting Assistant U.S. Attorney, an investigator, a paralegal, clerical support and a part-time Deputy U.S. Marshal. The Office of Management and Budget should establish a fund to be capitalized in advance to allow U.S. Attorneys' offices to begin implementation of affirmative civil fraud projects, with a two to three year phase-in period. Specific performance standards should be addressed, and individual U.S. Attorneys offices should be required to meet those standards to continue to participate in the program. The DOJ affirmative civil fraud fund should not be covered by any agency FTE limitations that will limit the U.S. Attorneys from full participation in the program in cases in which they are able to demonstrate performance. The USMS should be reimbursed from the fund for participation of Deputy U.S. Marshals

on U.S. Attorneys' affirmative civil enforcement teams.

4. To improve the DOJ's development of policy and practice relating to civil fraud recoveries, the U.S. Attorney's White Collar Fraud Civil Enforcement Working Group should include attorneys from DOJ's Civil Division.

While both DOJ's Civil Division and U.S. Attorneys' offices pursue civil fraud recoveries, the Civil Division is currently not represented in the U.S. Attorneys civil fraud working group. Because the working group produces a civil fraud manual, holds training sessions, and functions as an important vehicle for DOJ prosecutors to exchange information about civil fraud prosecution efforts, participation by one or more DOJ headquarters prosecutors would facilitate communications and policy development between U.S. Attorneys in the field and their Washington-based counterparts.

5. To promote community-based civil fraud recovery efforts, the Attorney General should raise the dollar amount of U.S. Attorneys settlement authority in affirmative civil cases.

The Attorney General should request the white collar fraud civil enforcement working group to recommend specific dollar increases above \$500,000. U.S. Attorneys' offices charged with independently deciding whether to charge a person with criminal wrongdoing and making recommendations involving imprisonment and capital punishment are capable of similar discretion in the conduct of affirmative civil litigation. The working group should also review and make recommendations with respect to related collateral issues, such as the alleged tendency of particular U.S. Attorneys' offices to neglect smaller dollar cases that may ultimately require the attention of headquarters Civil Division personnel, as well as concerns about the uniform application of justice throughout the nation.

The Attorney General should also request the working group to study the relationship between the Civil Division and U.S. Attorneys' offices in the area of civil litigation and to recommend ways to delayer headquarters review processes and to improve coordination of affirmative civil fraud efforts.

Implications

Establishing civil fraud recovery as a national priority would promote the investigation and prosecution of civil fraud, including health care fraud. Enabling federal investigative personnel to receive performance credit for conducting civil fraud investigations would result in the development of civil fraud investigations building upon previously declined criminal fraud matters.

A health care fraud working group headed by the DOJ would further the objective of comprehensive national health care reform by coordinating the use of existing anti-fraud resources in the pursuit of cost-effective health care program operations.

Allowing individual U.S. Attorneys offices to retain a percentage of their civil fraud recoveries to pay for the costs civil fraud litigation activities would provide for such activities to be self-funding, enabling U.S. Attorneys to undertake affirmative civil litigation without the appropriation of additional resources.

Expanding membership in the white collar fraud civil enforcement working group to include DOJ Civil Division attorneys would promote a coordinated DOJ approach to civil fraud investigations by improving communications between headquarters and field personnel.

Raising U.S. Attorneys affirmative litigation settlement authority would promote community-based civil fraud investigations and prosecutions. Delaying of DOJ headquarters approval processes should expedite the disposition of cases while continuing to address headquarters quality control concerns.

FISCAL IMPACT WORKSHEET

Issue Title: Enhance the U.S. Attorneys' White Collar Fraud Civil Enforcement Effort

Recommendations:

1. The President should emphasize civil fraud recovery as a national priority.
2. Consistent with the objectives of national health care reform, the DOJ should lead an interagency health care fraud prevention team to promote a comprehensive solution to

health insurance fraud.

3. To provide for the effective investigation and pursuit of civil fraud without the appropriation of additional resources, Congress should authorize DOJ to retain up to three percent of U.S. Attorneys' offices civil fraud recoveries annually to pay for the cost of creating civil fraud recovery teams within U.S. Attorneys offices.
4. To improve the DOJ's development of policy and practice relating to civil fraud recoveries, the U.S. Attorney's White Collar Fraud Civil Enforcement Working Group should include attorneys from DOJ's Civil Division.
5. To promote community-based civil fraud recovery efforts, the Attorney General should raise the dollar amount of U.S. Attorneys settlement authority in affirmative civil cases.

Methodology: This information will be forthcoming.

Implementation Approach: This information will be forthcoming.

Fiscal Impact Table:

	In Millions of Dollars					
	1994	1995	1996	1997	1998	1999
Budget						
Authority	\$26.54	\$37.43	\$38.70	\$40.02	\$41.40	\$42.80
Outlay	\$23.36	\$35.33	\$38.22	\$39.83	\$41.19	\$42.56
Revenue*	\$128.5	\$388.6	\$420.5	\$438.1	\$453.1	\$468.5
Change						
in FTEs	186	372	372	372	372	372

Classification Information:

Function: Federal Litigative and Judicial Activities

Agency: Department of Justice

Bureau: Legal Activities

Account: Salaries and expenses, United States Attorneys

EXAMINE THE EFFECTIVENESS OF THE OFFICE OF JUSTICE PROGRAMS

Background

The Omnibus Crime Control and Safe Streets Act of 1968 created the first comprehensive Federal grant program to help States and localities strengthen and improve their criminal justice systems. Today this program is administered by the Office of Justice Programs (OJP).

From 1968 to the most recent re-authorization, debate between several Administrations and Congress over program priorities and approaches has been ongoing. Re-authorizing legislation has mandated major changes in leadership positions, authorities, and organizational structure.

Today OJP manages grant and other assistance programs totalling \$845 million annually. Yet it is plagued by serious problems rooted in its turbulent history. These include: a complex and conflict-prone management environment; fragmented and unclear lines of authority; and uncoordinated program activities.

The OJP mission encompasses the entire range of criminal justice activity. The stated OJP mission is, "...to provide national direction, assistance, and leadership to state and local units of government; to carry out specific programs of proven effectiveness or which offer a high probability of improving the criminal justice system; and to provide staff support and coordinate the activities of the National Institute of Justice (NIJ), Bureau of Justice Statistics (BJS), Office of Juvenile Justice and Delinquency Prevention (OJJDP), Bureau of Justice Assistance (BJA) and Office for Victims of Crime (OVC).

OJP has six offices that provide professional, technical, and administrative services to the Office of the Assistant Attorney General and to the five OJP bureaus. These are the Office of Congressional and Public Affairs, Office of the General Counsel, Office of Civil Rights, Office of the Comptroller, Office of Personnel and the Office of Planning, Management and Budget.

The Assistant Attorney General (AAG) of OJP and the five OJP bureau heads are Presidential appointees, subject to the advice and consent of the Senate. The bureaus are

under the general authority of the Attorney General, while the heads of the program offices report to the Attorney General through the AAG. The law invests the bureau heads with final authority over all grants awarded by their respective organizations.

The AAG is charged with a number of information dissemination and liaison duties and is provided personnel authority like the bureau directors. The only specific, statutorily assigned duty of the AAG related to the OJP bureaus is concerned with providing staff support to coordinate the activities of those offices.

In addition to these statutory authorities, the AAG was delegated certain additional functions and authorities over the bureaus by a previous Attorney General. This highly controversial order basically allowed the AAG to establish binding policies and priorities for the bureaus with respect to grants, coordinate program plans, grant solicitations, publications and other program activities. In addition, the order gave the AAG the authority to make final determinations on whether grants comply with policies, and to modify or direct their compliance.

In 1991, the GAO issued a report that concluded that the Attorney General has exceeded his general authority over the bureau heads by assigning these additional authorities to the AAG. The GAO goes on to say that, "the entire statutory structure reflects Congress' unequivocal intent to vest policy control over the OJP grant and contract programs in the bureau heads."

The present organizational structure is clearly in need of fixing. The current structure does not lend itself to strong and consistent leadership, effective coordination, and clear priority setting.

Recommendations

1. This option would streamline and reduce the number of current OJP bureaus and offices. It would combine three of the existing OJP bureaus (OVC, OJJDP, BJA) and transfer into OJP assistance functions now being carried out by other DOJ components; i.e., Weed and Seed, National Institute of Corrections (NIC) and include new assistance programs such as, Community Policing, Police Corps etc.

It would create a new program structure under a single BJA. In addition, it would combine

all research and statistics functions except general counsel and congressional/public affairs would be established under a single Office of Administrative Services.

This option would eliminate distinct legislatively created program categories in existence today requiring new and broader legislation that would combine a whole range of programs into one.

2. This option would build a whole new organization to provide assistance to state and local governments. A new Office of State and Local Partnerships would replace OJP on the DOJ organization chart and signal the "partnership" of service being sought in new initiatives now under consideration. This option would envision one Presidentially appointed head (AAG, Director?) and cover all the mandates of the prior construct and any new ones the President or Attorney General might want to add.

This "revamping" approach would permit the Department, Congress and interest groups to: revisit and eliminate the weakest elements of past programs; determine current and anticipated future needs; and to then reallocate the resources where needs are greatest and benefits most likely to result in the criminal justice system.

In addition, to the new "partnership" office, this option would also recognize the important role of statistics. The model envisioned here would build on BJS and establish in the Department a new "Office of Justice Statistics" similar to the Labor Department's Bureau of Labor Statistics (BLS) model. The new OJS would be the national center for criminal justice statistical data, incorporating appropriate statistical functions from other Justice components; e.g., FBI's Uniform Crime Report.

Implications

The change in Administration as well as efforts to implement new Federal/State Partnership initiatives (e.g., Community Policing, Police Corps, and Criminal Records Upgrades) present an opportunity to revisit OJP organization and management issues from a fresh perspective. The possibility of achieving effective, long-term change seems real and could result in better program management efficiencies and cost savings.

The National Performance Review offers an ideal vehicle by which to accomplish

some real change at the Office of Justice Programs. In the past Congress has been resistant to changing the structure of OJP. It has encouraged much of the organizational tension that exists between and within bureaus. The bureaus each have their own active and vocal constituencies that will work against any change from the status quo or any effort to make the bureaus more accountable to any one other than congress or interest groups.

A newly restructured OJP would embody many of the NPR principles espoused by the Vice President. The new OJP would:

- o Improve its service to its customer, the state and local communities.
- o It would empower its employees by creating a clear sense of mission, give it organizational unity and help create an organization culture.
- o With a clear mission, spoken with one voice, OJP would thereby empower the communities it serves to solve their problems with the assistance, not necessarily the direction, of a responsive Federal agency.

Fiscal Impact

To be determined.

Now is the Time

REDUCE DUPLICATION OF LAW ENFORCEMENT TRAINING FACILITIES

Background

In recent years, there have been some progress in efforts to economize use of existing federal law enforcement training programs and facilities through consolidated training, but some concerns remain. Several agencies have established their own separate training facilities in addition to those larger and more comprehensive facilities which currently exist. Since there are no legal restrictions on these initiatives, the agencies are free to pursue their goals unchecked.

The Office of National Drug Control Policy (ONDCP) and the Office of Management and Budget (OMB) have raised concerns since 1990 regarding the best means to meet the training needs of all federal drug enforcement officers. A 1978 President's Reorganization Project study suggested that "The law enforcement training programs and facilities of FBI, DEA and FLETC could be combined (BATF [Bureau of Alcohol, Tobacco & Firearms] is currently trained at FLETC) into a coordinated program to ensure that all federal law enforcement personnel received quality professional training that is coordinated with and responsive to national enforcement and prosecutive priorities; to continue, increase and improve the coordination of the training assistance being provided to state and local law enforcement; and to provide for more efficient and effective utilization and development of federal facilities."

The House Appropriations Committee Report (102-618, dated June 25, 1992) on H.R. 5488, the Treasury, Postal Service, and General Government Appropriations Bill, 1993: "directs the Office of Management and Budget to (1) within 30 days of enactment of this legislation submit a report to the House and Senate Appropriations Committees on how many agencies have left or plan to leave FLETC for their law enforcement training since enactment of Public Law 102-141, and (2) determine whether or not it is in the best interest of the government to allow the proliferation of federal law enforcement training facilities. When the proliferation of training facilities is not in the best interests of the government, the Committee directs the Office of Management and Budget not to include funding for them in the President's budget request."

The largest and most consolidated federal training facility is the Federal Law Enforcement Training Center (FLETC) at Glynnco, Georgia, which is operated by the Department of Treasury. FLETC has three primary facilities which provides instructions to 70 agencies with law enforcement responsibilities. The Federal Bureau of Investigations (FBI), the Drug Enforcement Agency (DEA), the U.S. Postal Service, the Department of Veterans Affairs (i.e., security guards), the Army Criminal Investigative Division, and the Air Force Office of Special Investigation are the only entities in the Federal law enforcement community that do not routinely use FLETC facilities to train their personnel in some aspects of their training program.

The FBI Academy at Quantico, Virginia, which is operated by the FBI, falls under the Department of Justice (DOJ). DEA agents currently receive some of their training at the Academy. In 1992, a Justice Training Center contiguous to the FBI Academy was approved for specialized drug enforcement training, under the management and control of DEA. Concerns have been raised regarding the advisability of constructing the DEA facility, particularly if less costly facilities are available or could be modified at less cost. Several studies have been conducted to assess the feasibility of having a separate DEA facility, relocating DEA training programs to an alternate site (e.g., FLETC, Georgia, Fort McClellan, Alabama, etc.) or expanding the FBI Academy to meet DEA's needs.

Some other highly developed facilities provide task-specific, specialized training for certain agencies. The U.S. Secret Service, for instance, has a facility in Laurel, Maryland, where protection related training is conducted. It would not be economical to duplicate those facilities at the FLETC or to prevent further enhancements to those centers in line with the type of training they presently provide. Further, consolidation is not the best approach in every instance due to operational considerations. Some duplication in training resources is necessary due to the vast number of law enforcement officers/agents requiring varied and specialized training and this arrangement fosters development of new concepts and training techniques, and it encourages excellence. But most importantly, when training is required to support an agency specific operation or event, timeliness of training and availability of resources and facilities become significant issues.

However, too much duplication results in inefficiency in the use of federal resources.

When too many agencies build their own training facilities and programs, they tend to over-duplicate what is already available. This undermines the economic goals of a consolidated federal approach to training since there are financial savings which are achieved through economies of scale. When training resources are pooled, a higher level of training can be offered particularly benefitting those who are assigned to smaller agencies that do not have the resources to independently support a comprehensive training program. The interface between federal, state, and local law enforcement officers training at the same facility helps develop bonds and teamwork which they carry through their professional careers. Consolidated training is already occurring to a large degree. For example, there are numerous instances of Treasury agents attending Quantico facilities for highly specialized courses regarding behavioral science, hostage negotiations, bank failure seminars, etc. Continued "cross" utilization of federal facilities in this manner is highly beneficial to the student and is encouraged.

A national cooperative federal training program would allow law enforcement personnel, who have a justifiable need, to train at any federal facility which is equipped to provide that training. Lastly, new training facilities should not be built if a facility already exist or can be easily modified to accommodate the requirement. All agencies should share their training personnel and other resources.

Recommendations

- 1. The Director of Law Enforcement (DLE) should establish, under the Executive Law Enforcement Council (ELEC), a senior interagency training advisory committee which represents the law enforcement community to specifically address law enforcement training programs, to include the efficient use of federal training facilities, training priorities and the development of future training curriculum.**
- 2. The ELEC should draft for the Director of Law Enforcement (DLE) a Federal Law Enforcement Facility Training Act for submission to Congress, which would address various aspects of law enforcement training to include defining when the development of a new training facility or the expansion of a facility would be appropriate and establish an approval process.**
- 3. Prior to the establishment of the DLE and the ELEC, the Office of**

Management and Budget (OMB) should control the funding for new training facilities or expansion of a facility in keeping with the spirit of the House Report on H.R. 5488.

4. FLETC and the FBI Academy should be further developed, as practical to accommodate multi-agency national training needs in lieu of construction of new training facilities.

Implications

1. This will result in a more efficient use of training program, facilities, instructors, and other resources. It would be more efficient and cost effective to add buildings and other training facilities to existing FLETC and FBI training centers than to create new independent training centers.
2. This will afford federal, state and local officers the opportunity to bond (cross-fertilization of ideas) with one another and foster closer working relationships in joint federal, state and local investigations.
3. This will reduce the duplication of federal facilities and other training resources.

Fiscal Impact

Fiscal impact figures are being finalized.

STREAMLINE BACKGROUND INVESTIGATIONS FOR FEDERAL EMPLOYEES

Background

The Federal government is the largest employer in the United States, with a workforce of 2.9 million full-time civilian employees, 2.1 million military personnel. At a minimum, each tentative selectee for a Federal position is subject to some sort of background investigation (BI) prior to or shortly after entering on duty. In addition, employees already on-board may require more extensive BIs, based on new duties, or may require a periodic reinvestigation (PRI) due to the age of their initial background investigation (BI).

Through regulation, and as a result of various executive orders, the Office of Personnel Management (OPM) has the primary authority to: (1) establish personnel suitability requirements and (2) conduct investigations and authorize appointments "subject to investigations" to the competitive service. Agencies reimburse OPM for conducting BIs. OPM may also delegate authority to agencies to contract out investigations for competitive positions. During the last few years, agencies have become increasingly dependent on using contractors or in-house investigators to conduct investigations because OPM could not meet timeliness standards for either routine or expedited cases, and OPM charges are prohibitive. However, to respond to timeliness concerns, OPM has staffed to higher levels to conduct investigations for agencies, and has indicated that it will revoke some existing delegations of authority for agencies to conduct investigations. Agencies provided written estimates to OPM that they would need 133,281 investigations conducted during Fiscal Year 1993 and 131,006 in Fiscal Year 1994.

Conducting investigations for excepted service positions and contractor personnel in an agency is the responsibility of the agency, but an agency may enter into an agreement with OPM to obtain reimbursable investigative services for these investigations. In DOJ, investigations for excepted service positions are generally conducted by the FBI's in-house investigators, or through the FBI's Background Investigation Contract Services (BICS) pilot project. This program contracts out BIs to former federal investigators with demonstrated

expertise in the conduct of BIs. BICS has proven itself efficient and effective in all measurable dimensions, as substantiated by audits by FBI's Inspection Division.

There are a number of issues involving initial BIs and PRIs in the Department of Justice. To summarize, the basic issues are as follows:

1. Lack of timeliness of OPM-conducted initial BIs: Clients have historically complained of significant backlogs in OPM processing of initial BIs and PRIs. Delays in completion of initial BIs have various negative effects on Departmental operations. For components that require completion and adjudication of initial BIs prior to employment, these delays may cause qualified candidates to find jobs elsewhere. A number of weaknesses surrounding the BI process were identified in a report prepared by the Department's Office of the Inspector General (OIG).
2. Costs for OPM- and FBI-conducted initial BIs and PRIs, versus. in-house and private sector contract investigations: An additional problem is the cost of initial BIs and PRIs. OPM full-field initial BIs cost \$2,400 each in Fiscal Year 1992, and FBI PRIs cost up to \$4,500 depending on scope. There are additional charges for expedited OPM investigations. In order to bypass delays and to cut costs, the Drug Enforcement Administration (DEA) and the U.S. Marshals Service (USMS) have obtained from OPM delegations of authority to conduct their own initial BIs. USMS reports that it can conduct an equivalent investigation to OPM's for \$1,800. DEA utilizes a contractual service which conducts the BI for \$1,500. In addition to cost savings, DEA reports that it also receives under its contract a guaranteed turnaround of 30 days. OPM charges an additional \$450 for the expedited service, which is reportedly not consistently within the 30 day requirement. However, despite this successful "empowerment" of DEA, OPM has indicated that it may revoke DEA's authority to conduct initial BIs at the end of Fiscal Year 1993. If these efforts have been successful, DOJ should be looking at expansion of them, possibly to other DOJ components. DOJ has asked OPM for a delegation of authority to use the DEA contractor to conduct INS and EOUSA investigations, but OPM has repeatedly denied this authority.
3. Lack of Competition, Objective Quality Measurement and Customization of Requirements: OPM controls authority for other agencies to conduct investigations (using

staff or contractors). OPM also competes with the other agencies to provide that service, but does not offer competitive prices. This conflict of interest gives OPM a virtual monopoly on conducting BIs. OPM's investigative organization operates on a revolving fund, and therefore must justify its existence and cover all costs. Having staffed up to improve responsiveness, as mentioned above, there are strong disincentives for OPM to permit other agencies to provide a competitive, less expensive, and sometimes more responsive product.

For example, DEA's authority to conduct BIs through contract services is being revoked by OPM based on a quality assurance issue. However, DEA maintains that the quality of its contract deliverables is very high. In this case, DEA states that the portion of the BI in question was in fact prepared by DEA itself, not the by the contractor, and that the majority of the problems cited by OPM were procedural and not substantive. DEA has corrected the problems. Assistance from OPM in proper procedures would be more productive than revocation of authority. Objectively defined performance measurement for delegated investigations is needed, to encourage competitive alternatives to OPM that maintain quality standards.

OPM itself has had a history of quality problems, partly stemming from the need to supplement reports and investigations prepared by OPM, in order to meet agencies' unique personnel security requirements. Various agencies have developed a myriad of personnel investigation forms, which supplement the Standard Forms used by OPM in its investigations, but which are not used by OPM investigators. The Standard Forms may or may not contain sufficient information to support agency mission requirements.

4. Further potential cost savings may result from additional changes in DOJ policy on scope of PRIs: Cost issues of PRIs were discussed in detail in the above-cited OIG report. Briefly, OIG indicated that DOJ could save money if OPM reinvestigations were conducted for certain employees rather than using FBI reinvestigations, and that PRIs of more limited scope would be less expensive. DOJ has taken steps to implement these recommendations (including negotiations with the FBI to reduce costs), but further limitations on the scope of the investigation could be implemented, with commensurate cost savings.

On a Government-wide basis, cost savings might be achievable if reinvestigation

requirements for less sensitive positions were relaxed.

5. Agencies are not sufficiently utilizing previously performed initial BIs and PRIs: Agencies should be strongly encouraged to share BI and PRI information; DOJ utilizes Department of Defense, CIA, and Treasury BI/PRI information wherever possible, to minimize the amount of reinvestigation required if the employee has an adjudicated BI/PRI from another agency. Through no fault of their own, personnel security offices rarely have consistent or dependable information on previously completed initial BIs or PRIs on a given employee. Employees rarely know with certainty what initial BIs or PRIs have been completed, and the central Government-wide database (SII), operated by OPM) has user capacity problems. To use the system, OPM requires information that is not always available (City of Birth) in order to respond to a simple query from outside agencies on previously completed initial BIs, and the system has limited query capacity. Also, although the database is intended to be Government-wide in scope, and has interfaces with DCII, some BI information is not provided by agencies that conduct the BIs. Other agencies also do not consistently respond to direct inquiries on whether initial BIs have been completed.

Generally stated, the entire process of initial BIs and PRIs should be more timely and less costly, and agencies should have more flexibility in meeting personnel security requirements.

Recommendations

1. **The Departments of Justice and the Treasury should, on behalf of all their components, pursue a flexible delegation of authority, using experienced investigators (e.g., retired Federal law enforcement officers) to conduct initial BIs and PRIs. The delegation should be tailored to meet each Department's unique mission and requirements. DOJ plans to conduct a Reinvention Lab to measure cost and quality of initial BIs and PRIs conducted by in-house staff and contractors, which will apply the "reinvention" principles of cross-servicing and competition between two DOJ components that can provide the service. Agency components such as DEA and USMS should be permitted, through this delegation, to cross service other organizations, such as INS and U.S. Attorneys.**

2. OPM should ensure that quality standards for agency-conducted or contractor-conducted BIs are assessed by an objective party with no vested interest in returning BI "business" back to OPM.
3. OPM should consider the use of contractual and temporarily hired employees to conduct BIs, to permit more flexibility in meeting rising and falling demands for BIs.
4. Congress should enact legislation that authorizes agencies to conduct initial BIs and PRIs, and to obtain contractual services for initial BIs and PRIs pursuant to quality standards to be set and published by OPM.
5. OPM should develop a standard form encompassing the core of required questions to be asked of each applicant/employee, and allow the agency the option of attaching additional forms and/or questions for the investigators that are specific to agency mission.
6. DOJ internal policy should be revised to provide for the minimum investigation required (such as credit checks, name checks with the FBI) combined with employee certification on a new SF-86. If discrepancies are found between the SF-86 and other investigations, adverse action can be taken, which will act as a deterrent for employees in not reporting derogatory information on themselves.
7. The OPM regulation requiring a periodic reinvestigation should be relaxed so that agencies can perform the updates within a 5-10 year window, depending on agency mandates and priorities. OPM should also permit (and DOJ consider any internal policy changes required for) the use of contract investigators for certain excepted service personnel (e.g, non-political U.S. Attorneys' Office personnel). An executive order is needed to override the current regulation.
8. OPM should increase the capacity of its automated BI status system, to increase the number of simultaneous users possible.
9. Through interagency working groups, or through a legislative mandate, agencies should be required to make BI and PRI information available to authorized, cleared personnel security offices throughout the Government. OPM's automated database should be enhanced to only require reasonable requirements for search parameters (i.e., to not require City of Birth).

Implications

The above recommendations will result in less costly and more timely initial BIs and PRIs. Agencies will have more flexibility and control over the ways in which they meet personnel security requirements. Formal authorization of agencies to conduct or contract for initial BIs and PRIs will encourage competition. Components within DOJ that wish to administer contracts can do so, and can potentially cross-service other components in DOJ or other Federal agencies. Use of this competitive model should keep service (e.g., responsiveness) high and keep costs low.

Fiscal Impact

Based on DOJ experience with in-house staff conducting BIs, and with contract support conducting BIs, we conservatively estimate a \$750 - \$1,000 savings on each background investigation conducted under agency authority rather than by OPM. The previously provided estimates on BIs required should be revised in light of the anticipated hiring freezes across the Federal workforce. However, even if only 10% of the originally estimated 131,006 BIs are diverted from OPM to agency authority, savings could amount to approximately \$10 - \$13 million in Fiscal Year 1994.

ADJUST CIVIL MONETARY PENALTIES TO THE INFLATION INDEX

Background

The Federal Government fails to collect millions of dollars each year because Civil Monetary Penalties (CMPs) assessed by Federal agencies are not regularly adjusted for inflation to maintain their deterrent value for preventing violations of Federal law. CMPs are non-criminal penalties set by law with a fixed or maximum value (e.g., "\$2,500 per day," "\$10,000 per violation," or "10% of gross value, but no more than \$5,000"). Federal agencies assess and collect CMPs to enforce a wide variety of laws in areas such as health and safety, transportation safety, environmental hazards, import and export restrictions, land and resource management, tax law enforcement, and lobbying. A search of the U.S. Code indicates that there are about 500 statute sections containing language on civil penalties.²⁷⁰

Each year, Federal agencies make billions of dollars in assessments for violations of Federal law. During Fiscal Year 1992 alone, agencies assessed almost \$2.3 billion in CMPs against individuals and businesses.²⁷¹ Yet, because the dollar value of CMPs is set by law and CMPs are rarely updated to reflect the effect inflation, the value of CMPs as a deterrence for violations of Federal law often declines over time.

A recent report published by OMB includes an inventory of CMPs that exist in Federal statute.²⁷² The report identifies many CMPs that have been on the books for years without being adjusted for inflation, including some that have been unadjusted since as early as 1870.²⁷³ In fact, many older penalties are not currently in use and should be removed from Federal statute. While most CMPs that are actually assessed by agencies have been either defined or adjusted by law since the 1970s, inflation has still robbed many penalties of their deterrent value. For example, a violation of the Clean Air Act that was defined in law in 1977 as a fine of \$25,000 per violation would be worth at least \$55,000 per violation today if it were adjusted for inflation.²⁷⁴

Not only does failure to inflation adjust CMPs reduce the deterrence value of penalties, it also robs the Federal Government of an important source of revenue. During FY 1992, collections of CMPs were \$416 million.²⁷⁵ If all CMPs assessed during 1992 had

been adjusted for inflation before assessment, larger penalties would have been assessed. As a result, the amount collected by the Federal Government likely would have been much greater. Inflation adjusting CMPs could provide for a source of increased revenue for the Federal Government.

~ Congress passed the Federal Civil Penalties Inflation Adjustment Act (FCPIAA) of 1990, P.L. 101-410, because of its interest in knowing the extent of the problem of CMPs that have not been adjusted to keep pace with inflation. FCPIAA established two reporting requirements for CMPs: ²⁷⁶

- (1) An annual report detailing CMP assessments and collections during the previous fiscal year, and
- (2) An inventory every five years of all CMPs and the amount that they would have to be adjusted by if they were revised to take into consideration inflation.

However, while FCPIAA established a reporting requirement detailing proposed inflation adjustments, it did not provide for the actual inflation adjustment of CMPs.

Recommendations

- 1. Institute a one-time "catch-up" inflation adjustment for all CMPs by submitting legislation to Congress to adjust for the affect of inflation since the time that each CMP was last set or adjusted in the law.**
- 2. Begin submitting inflation adjustment legislation to Congress on an annual basis to revise all CMPs to reflect any inflationary changes over the previous year.**

Implications

1. A one-time "catch-up" inflation adjustment for CMPs would bring penalty values into accord with today's value of money and renew the deterrent effect that the penalties were originally intended to have. Collections would be higher because assessed amounts would increase.
2. By simply beginning annual adjustments of CMPs to take into consideration the previous year's inflation, the Federal Government would ensure for the future that CMPs at least maintain the deterrent value that they have today.

Fiscal Impact

Because information is not available on use of individual penalties, it would not be possible to calculate the fiscal impact of increased collections associated a one time "catch-up" inflation adjustment that would revise each penalty based on the year in which it was last set by law. However, under the assumption that annual inflation adjustments would be carried out to compensate for inflation during any given year, and assuming that the number and type of assessments holds steady over time, then it would be possible to collect an additional \$193 million in revenue over a five year period (as shown in the table below). Since this option would not go so far as to attempt to adjust for inflation since CMPs were passed into law, it would have a more limited effect in terms of improved deterrence and increased revenues.

Inflation Adjusted Collections of Civil Monetary Penalties

(Dollars in Millions)

	FY 1992	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	Cumulative FY '94-98
Steady-State Collections (See Note)	\$416	\$416	\$416	\$416	\$416	\$416	\$2,080
GDP Deflator	N/A	2.9%	3.0%	3.0%	3.0%	3.0%	N/A
Increased Collections From Inflation Adjustment	N/A	\$12	\$25	\$38	\$52	\$66	\$193
Total Collections After Inflation Adjustment	\$416	\$428	\$441	\$454	\$468	\$482	\$2,273

Note: Projections assume that out-year collections remain at least at the level of FY 1992 collections. Evidence from prior annual reporting suggests collections may increase over time due in part to increased CMP assessments.

ADDRESS THE U.S. MARSHALS SERVICE CONCERNS REGARDING FEDERAL COURTHOUSE SECURITY

Background

Protection of the federal judicial process, and particularly the members of the federal judiciary, is the U.S. Marshals Service's (USMS) highest priority. As such, the USMS plays an integral role in security design for both new and renovated and expansion courthouse facilities.

Generally, the coordination and planning for security in new federal courthouse facilities is working extremely well. However, funding for security for new federal court facilities is not a part of the cost of the facility, and must be requested separately by the federal judiciary.

Coordination and planning for security for other than new courthouse projects can not always be done on as well organized a basis with appropriate consideration for security concerns, and can result in severe fiscal and personnel problems for the USMS.

Currently, judicial officials occupy leased space at approximately 115 locations outside of the U.S. courthouses in commercial office space, state government buildings, or other non-GSA facilities. The federal judiciary is in midst of one of the largest facilities expansions efforts in its history. The rate of expansion will continue to increase, and the Administrative Office of U.S. Courts (AOUSC) estimates that 220 additional projects will be completed over the next 10 years.

USMS records indicate that threats to judges and prosecutors have increased dramatically. As a result, security at federal courthouses has greatly increased in recent years. Any facility used by the federal judiciary to conduct trials that has inadequate security exposes the judiciary, officers of the court, court employees, and the general public to extreme danger. It has always been the mission of the USMS to provide a safe and secure environment for the judicial process, which affirms the nation's confidence in the judicial system.

Whenever there is insufficient space within existing courthouses for chambers and courtrooms for newly appointed judges or senior judges, facilities must be quickly located.

Frequently, this expansion space is found in commercial office buildings without existing security protocols. Deputy U.S. Marshal (DUSM) and Court Security Officer (CSO) resources must be reallocated from the main courthouse facility to provide security.

As the budget is projected approximately 18 months in advance, it is not possible to meet the real-time needs for security personnel and equipment. The immediate need for additional space, frustrates the best attempts to achieve a secure environment without detriment to security at other locations.

Problem: It is very difficult to budget for USMS security personnel (DUSMs or CSOs) in a timely manner to provide security at these satellite facilities. The real-time associated with these satellite projects can be as little as two months. There is no opportunity for the budget process to work in this short period of time.

The budgeting process is part of the problem. The Judicial Conference of the United States Committee on Court and Judicial Security is responsible for making recommendations regarding the security budget for the federal judiciary. This is funding to provide for CSOs, who provide perimeter security, building entrance screening, and security for judicial space, and also funds for security equipment at federal courthouses.

As the budget goes through internal review, the requests may be reduced because of competing priorities within the judiciary before it goes to Congress. In the past several years, Congress has failed to fully appropriate even these reduced requests.

Congress appropriates court security funds to the judiciary who in turn gives the funds and operational responsibilities to the USMS. The USMS budget, which is part of the Executive Branch request and separate and from the judiciary, contains requests for DUSMs and resources to support the judiciary's court security program. The USMS is ultimately responsible for protecting the judiciary and suffers the consequences of insufficient funding for the security of federal court facilities. The USMS suffers directly when DUSM resources are required to produce prisoners in courtrooms in commercial space without adequate cellblock holding facilities. The CSO can be spread too thinly resulting in security posts in courthouses not being staffed appropriately.

Currently, there are over **130 vacancies** to be filled on the federal bench. It is anticipated that the vacancies will start to be filled shortly and that a significant number of

these new judges will be on the bench by the beginning of FY 1995. According to the AOUSC estimates, up to five additional vacancies occur per month due to retirements, resignations, or death.

Recommendations

Continued close coordination between GSA, Justice and the Judiciary is necessary to ensure adequate judicial security and to avoid the program deficits within USMS. Requirements and annual budget estimates should continue to be developed in consultation among three components. The various budget requests related to judicial security would remain under the jurisdiction of the cognizant appropriations subcommittees. The Office of Management and Budget would continue to review the Executive Branch requests.

The need for some amount of "expansion" space for the judiciary can be anticipated each year. Therefore, it is recommended that additional monies over and above that provided for existing courthouse facilities and newly constructed courthouse be provided within the existing Court Security appropriation of the Judiciary and earmarked for CSOs and security equipment for "expansion" space. These monies should be no-year funds to meet "expansion" space security needs. Unused earmarked funds would be carried over and replenished through the annual appropriations process.

Implications

The Judiciary's court security appropriation does not keep pace with court expansion. The lack of funding for security (i.e. CSOs and equipment) for expansion facilities results in great difficulty in providing adequate security.

Fiscal Impact

The USMS FY 1995 budget request to the Department includes a request for 47 DUSM positions to complete the number of additional DUSMs necessary to provide security for the additional 85 Article III judges added by the Federal Judgeship Act of 1990. Although the Judiciary has been authorized security resources to support the 85 new

judges, Congress did not appropriate sufficient funds to full staff the CSOs authorized in 1993.

The USMS has great difficulty in providing proper security service to the federal judiciary without causing disruptions in its other program areas. As a service organization, the USMS's workload is totally determined by outside events (e.g., the number prisoners held in custody, the number of trials and other court proceedings held, the number of assets seized by investigative agencies, the number of fugitives wanted by federal authorities). unfunded security needs impact virtually every other USMS program area.

PROFESSIONALIZE THE U.S. MARSHALS SERVICE

Background

The U.S. Marshals Service (USMS) is a law enforcement agency with 4,000 employees assigned throughout the United States and its territories. Its primary mission is to serve the federal judicial system including: 1) protection of judges, prosecutors, juries and witnesses, 2) service of judicial process, 3) maintaining custody and providing for the transportation and production of prisoners, 4) carrying out warrants of arrest for fugitives from justice, and 5) maintaining the civil peace. In addition, the USMS maintains custody of property seized by order of the court.

The USMS is headed by a Director who supervises a headquarters staff and a field structure organized around judicial districts headed by a U. S. Marshal. Pursuant to 28 U.S.C. 561(c), the President appoints U.S. Marshals with the advice and consent of the Senate. This selection process was created in 1789, at a time when the U.S. Marshal was the administrative representative of the President with the sole authority to disburse funds from the Treasury in the field.

There are 94 Marshals -- one for each of 93 Federal judicial districts and the Superior Court. The U.S. Marshals typically are selected by the senior Senator of the President's party. They are appointed at the GS-15 level, (\$66,609 - \$86,589), except in the 19 largest districts where the Marshal is appointed to a Senior Level Position earning \$104,800.

The USMS has recommended criteria for selection of new U.S. Marshals. However, little if any regard is given to these criteria, and most appointments are made based upon political considerations. Many U.S. Marshals have no law enforcement experience at all (e.g. phone company foreman, coroner, food company president, etc.), and many do not have any management experience either. U.S. Marshals rarely have any background in federal law enforcement.

Unlike the presidentially-appointed United States Attorneys, who serve as the chief federal law enforcement officer in their district, the U.S. Marshal has a supporting role and

exercises little if any policy discretion regarding his or her work load. The United States Attorneys' exercise in prosecutorial discretion is in fact a policy-making function.

There are a few ancillary benefits for the USMS from the current system. By virtue of their political ties, U.S. Marshals have useful congressional contacts which affect the acquisition of resources. They may also have nurtured working relationships at the State and local level which are advantageous to the USMS. In addition, their political connections may be helpful in their relationship with the judiciary and the United States Attorneys, who are themselves, political appointees.

However, for over 75 years, the Executive Branch has sought to place the Marshals into the Civil Service, but has not successfully obtained support for the proposal in the Senate. The proposal was recommended by President Taft's Commission on Economy and Efficiency in 1912, President Roosevelt's Commission on Administrative Management in 1937, the first Hoover Commission under President Truman in 1947, and the second Hoover Commission under President Eisenhower in 1955. Legislative proposals were introduced in several different versions in the 1970's and early 1980's, but they all failed in the Senate.

Problem: The present method of appointment of U.S. Marshals has no relevance to the needs of modern law enforcement or the requirement of efficient and effective management. The system is a relic of a by-gone area when these posts were among the principal ones in the federal family. Today, the existence of separate fiefdoms in the 94 judicial districts is a severe impediment to a well managed law enforcement agency.

The current political appointment system, cannot ensure that U.S. Marshals have the necessary experience and expertise to be a high caliber front-line managers in a critical law enforcement position.

A U.S. Marshal has the broadest law enforcement powers of any federal officer and the broadest array of law enforcement responsibilities. Even a routine activity such as serving a court order can become a violent confrontation when it occurs in a volatile situation such as a coal mine strike or a confrontation with an armed and dangerous felon. When critical law enforcement situations occur, the U.S. Marshal should have a high level of law enforcement expertise to carry out his or her duties.

As the head of their district office, the U.S. Marshals' role is complex and requires a composite of law enforcement expertise; including: 1) sophisticated personal security, like that of the Secret Service, 2) prisoner handling, like that of the Bureau of Prisons, 3) apprehension of fugitives and financial investigations, like any investigative agency, 4) management and disposition of real and personal property, like a business manager, 5) financial management of dispersing authority for the federal government, and 6) management and administration of the office.

To accomplish his or her mission, the U.S. Marshal should have knowledge of federal and local laws, court rules and procedures, department and agency regulations and policies, Civil Service Commission regulations, budget formulation and execution requirements, procurement laws and procedures and a host of other federal government requirements.

Because the presidentially-appointed U.S. Marshal frequently does not have this composite experience and the requisite knowledge, the task falls to the Chief Deputy U.S. Marshal (CDUSM) to provide the leadership and management expertise to carry out the USMS mission in the district. CDUSMs are senior career federal law enforcement employees who have spent many years in the USMS developing their skills. They undergo a comprehensive and highly competitive assessment process, in-service retraining, and are responsible for the operation and administration of their district offices. These CDUSMs provide the management continuity of the USMS field operations. The lack of expertise and experience of the U.S. Marshals necessitates the role of the CDUSM.

In addition, the presidentially appointed U.S. Marshal is not subject to disciplinary actions and may only be removed the President or upon the appointment of a successor. The Director, USMS, has little authority to deal with a U.S. Marshal's incompetence or misconduct.

A letter of censure from the Director is the most severe disciplinary action that can take against a U.S. Marshal. By contrast, a Deputy U.S. Marshal can be suspended or even removed for similar infractions.

Recommendations

The best way to ensure professionalism is through merit employment. Open competition and equal opportunity for appointment and advancement are the basis tenets of the Civil Service system. During the last 30 years, the USMS has improved its performance through the professionalization of its career federal work force. Every major commission appointed to reform the federal government in the 20th century has recommended placing position of U. S. Marshal into the Civil Service.

Legislation should be enacted to eliminate the requirement for presidential appointment of U.S. Marshals from 28 U.S.C. 561. These appointments should be made by the Director, USMS for its field offices, in the manner of all other federal law enforcement agency heads. Concomitantly, the USMS could restructure its management in mid-size and smaller USMS district offices to eliminate unnecessary supervisors and reduce costs.

Implications

The present system for the appointment of U.S. Marshals has resulted in a law enforcement agency that can not be effectively managed. The lack of even minimal law enforcement qualifications has resulted in weak leadership and management in the field and unnecessary layering to compensate for it.

The lack of good law enforcement credentials results in the lack of parity within local the law enforcement community, for many U.S. Marshals. The USMS generally suffers from this image and while the USMS serves a critical support function of the entire law enforcement and judicial communities, they are frequently the forgotten member in the resource allocation process.

Short of illegal or gross misconduct, U.S. Marshals cannot be held accountable. The disparity in discipline between political U.S. Marshals and career employees has a devastating impact on morale. The double standard breeds strong resentment. When there is a disagreement between the U.S. Marshal and the CDUSM who actually runs it, the CDUSM is frequently reassigned. U.S. Marshals cannot be.

Flagrant disregard for fiscal discipline is a serious problem within the field offices. A U.S. Marshal who has routinely exceeded his budget by hundreds of thousands of dollars

remains in office.

Fiscal Impact

The presidential appointment of U.S. Marshals creates an extra layer of bureaucracy in the field offices. Appointment of two middle-management level officers (U.S. Marshal and the CDUSM) results in unnecessary expense for salary, benefits and overhead (e.g. rent, vehicles and other equipment). The total cost of salary and benefits alone for the U.S. Marshals is approximately \$10 million.

The USMS could save most of those expenses by eliminating the presidentially-appointed U.S. Marshals and replacing them with the existing career CDUSMs. A position equivalent to the current Chief Deputy would still be necessary to run the USMS 20 largest district offices. These 10 offices handle approximately 80% of the national work load. However, in the 74 mid-size and small offices, a replacement for the position of CDUSM would be unnecessary. The existing CDUSMs could assume the position of U.S. Marshal and the CDUSM position could be eliminated. The net savings would be approximately \$4-6 million per year.

DEVELOP LOWER-COST SOLUTIONS TO SOLVING FEDERAL PRISON SPACE PROBLEMS

Background

The Federal Bureau of Prisons (BOP) currently operates 72 facilities housing approximately 79,000 prisoners, with another 8,500 people contracted out to various non-BOP facilities such as halfway houses. BOP has several types of institutions, including four levels of security -- high, medium, low and minimum (i.e., prison camps) -- and administrative facilities, such as prison hospitals.²⁷⁷ In general, prisoners "graduate" from higher to lower levels of security as they move toward the end of their sentences, although inmates who misbehave or are deemed to be security risks may be moved to a higher level facility. In addition, BOP tries to move inmates closer to home as their sentence ends, in the belief that inmates have a higher success rate following release if they serve the latter part of their prison terms near their homes and families.

The federal prison population has grown dramatically in the last several years. From 1986 to 1992, BOP population grew by 70 percent, from 41,500 in 1986 to its current record level.²⁷⁸ Moreover, the federal prison population is expected to grow to more than 102,000 inmates by 1996.²⁷⁹ Aside from handling convicted criminals, BOP also accommodates the overflow of Immigration and Naturalization Service (INS) detainees and pre-sentence prisoners held by the U.S. Marshals Service (USMS) and, in some cases, the U.S. Probation Service (USPS). Significantly, the U.S. has the world's highest rate of incarceration, with 455 people incarcerated per 100,000 people. South Africa is second, with 311 people per 100,000.²⁸⁰

The major reasons for the explosive growth of the federal prison population have been the implementation of strict sentencing guidelines beginning in 1987 and the results of the nation's "war on drugs" over the past decade. The Sentencing Reform Act of 1984²⁸¹ established the U.S. Sentencing Commission and fundamentally altered federal sentencing practices by limiting the discretion of judges, restricting the awarding of "good time," and eliminating parole in order to reduce sentence disparities. To ensure that major drug traffickers and other offenders did not avoid serving time in prison, Congress established a

set of "mandatory minimum" sentences, which override the sentencing guidelines for certain offenders, based on factors such as the type of crime and an offender's history of violence.²⁸² In drug cases, which are the cases that most often trigger mandatory minimum sanctions, the amount of drugs involved is heavily weighted in the sentence, and in cases where a weapon was involved, an offender's criminal history is especially important. As a result of the guidelines and the mandatory minimums, more people are serving time in prison, and they are serving longer sentences.²⁸³ Moreover, because BOP experience indicates that longer sentences increase the security risks associated with a particular inmate, BOP policy and the federal sentencing structure tend to place inmates in the higher, more expensive security facilities rather than lower cost alternatives. An additional factor in the rising federal prison population is the growing "federalization" of the criminal justice process, with Congress, federal prosecutors and others promoting federal responses to what were traditionally state crimes and state and local governments encouraging federal prosecution and imprisonment of joint federal-state offenders.

As a result of the federal sentencing guidelines, targeted law enforcement efforts and other factors, the nature of the prison population has not only increased, but it has also changed over time. Inmates in the federal prison system convicted of drug-related crimes currently make up approximately 61 percent of those incarcerated, a percentage that is expected to grow to 66 percent (or 71,000 inmates) by 1996. Many of these inmates are first-time offenders serving long sentences due to the "mandatory minimums," and a significant number have no history of violence. In addition, some have noted that a number of federal inmates have been imprisoned due to their roles as conspirators or "mules" in drug trafficking schemes, rather than as principals, in part because the sentencing structure prohibits plea bargaining except in cases where an offender can offer "substantial assistance" to the prosecution; this mechanism is generally available only to the more senior members of a criminal organization. The population of white collar criminals from financial institutions, insider trading, public housing and health care scandals has increased as well, with an inmate population of over 5,000.

While BOP has undertaken a massive expansion program to keep up with this growth, the increased population has led to severe prison overcrowding. In 1981, there

were 24,000 bedspaces at federal facilities, and there was little overcrowding. In 1992, BOP had 49,000 bedspaces and 46 percent overcrowding. The current BOP goal is to reduce overcrowding to 28 percent by 1995.

To meet that goal, prison construction has increased tremendously. Since 1990, BOP has been appropriated approximately \$2 billion for new construction, and it has begun building prisons at a record pace, with 44 new facilities and over 35,000 new bedspaces planned through 1996.²⁸⁴ According to several estimates, the average cost of building a new prison is approximately \$50,000 per bed, and the average cost of running a prison is approximately \$20,000 per inmate per year.²⁸⁵ In general, lower security prisons are less costly to build and run than those at higher security levels. BOP has explored a variety of ways to reduce the cost of new prison construction, including the use of military bases for new facilities, standardized prison design and other methods for reducing costs. In fiscal 1993, for instance, BOP has been able to acquire a portion of a former military base in New Jersey and has been actively pursuing efforts to acquire facilities in Massachusetts and Texas, among others.²⁸⁶

There are a number of alternatives to incarceration that have been implemented by BOP and others in the federal criminal justice process. The USPS, which assists in the pre-trial monitoring of suspected offenders and is responsible for probation and the "supervised release" of former inmates, has explored and begun to implement home electronic detention and other devices as a cost-effective way to handle its burgeoning caseload. Under the sentencing guidelines, probation (up to five years) can be ordered by judges as an alternative to prison only in limited situations, and it has not been used as frequently as in the past. As a result, much of the USPS' role in the former probationary process has been in the area of supervised release, whereby a USPS officer handles the case of a former inmate for a certain term after release from BOP custody.

BOP has also explored alternatives to incarceration within the framework of the sentencing guidelines, including the development of intensive "boot camps" for certain first-time, non-violent youthful offenders with less than 30 months to serve in their sentences. Under the federal boot camp pilot program, inmates participate in an intensive, military-style program that lasts approximately six months, with the remainder of their time served

in a halfway house or in home detention, rather than in a prison camp. Although boot camps are more staff intensive than traditional minimum security facilities, a recent GAO study indicated that the use of boot camps resulted in lower housing costs over time since inmates who successfully complete the programs spend a greater portion of their sentence in a community setting. However the report concluded that the long-term impact of the program was uncertain and that the effect on recidivism was unclear.²⁸⁷ With respect to the period at the end of a sentence, BOP often moves inmates to halfway houses but the law limits stays at halfway houses to the greater of 6 months or 10 percent of an inmate's sentence. As a result, BOP generally moves inmates to halfway houses only in the last 120 to 180 days of their sentences. Since halfway houses are significantly less expensive to run than prisons, with an average cost of \$33 per day per inmate (less an average of \$4.40 per day contributed by the inmate from work proceeds), savings could be achieved by putting not only more people in halfway houses but also by putting the same people there sooner.

A problematic feature of coordinating the community corrections of the federal criminal justice process is the fragmentation of responsibility among various agencies and branches of government. The USPS has responsibility for compiling pre-sentencing reports on offenders for federal judges, probation and, following the changes brought about by the sentencing guidelines, the supervised release of former inmates. The BOP is involved in community corrections through its agreements with halfway house facilities, and the U.S. Parole Commission, which is scheduled to disband in 1992, has also played a role in this area. As a result of this fragmentation, post-release planning and resource allocation has been difficult since resources cannot easily be shifted over longer sentences from incarceration to alternatives such as electronic home detention. Moreover, since the senior USPS official in each of the 94 judicial districts reports to the Chief Judge of that district, it is difficult to ensure coordination, uniformity and consistency in the development and use of alternative section programs.

Recommendations

- 1. BOP should expand its "boot camp" programs and continue exploring additional alternatives to incarceration.**

BOP should consider developing additional intensive confinement centers based on the boot camp model which reduce costs by requiring inmates to adhere to an intensive work, fitness and education schedule during the first portion of their term in exchange for longer stays at relatively inexpensive halfway house or home detention arrangements during the later segments of their sentences.

2. Congress and the U.S. Sentencing Commission should continue to review the impact of "mandatory minimums" on the federal inmate population to determine whether they have been applied to offenders as anticipated and whether they have resulted in incarceration levels, and costs, that are higher than planned.

The "mandatory minimum" provisions of the sentencing guidelines have had an enormous effect on the number, length and security level of the federal inmate population, and the ability of the prison system to reduce problems of overcrowding in a cost effective manner are limited by the requirements of those guidelines. The impact of the mandatory minimums on law enforcement objectives and whether and how these provisions should be revised are policy issues beyond the scope of the National Performance Review. However, the effect of these provisions on the prison system must be understood by all parties in the process in order to fully assess ways to anticipate and alleviate overcrowding in the federal prison system and the affiliated costs.

3. BOP should continue to explore the use of former military bases, especially in connection with the detention space needs of the USMS and INS.

Given the rapid growth of the federal prison population and the urgent detention space needs of other federal agencies, military bases, along with their local infrastructure and support personnel resources, might be ideally suited for alternative forms of incarceration or other detention space. While BOP actively considers former military base sites, its conversion criteria should be reconsidered to ensure that this option is fully exploited, especially in light of the system's immediate short-term needs.

4. BOP and federal judges should make more prisoners "pay their way" by charging inmates for the costs of their incarceration. In addition, minimum security inmates (such as white collar criminals) suspected of having hidden assets should be housed in stark minimum security facilities with few amenities until they have paid all

of their fines and penalties.

Currently, judges have authority to impose or waive such fines during sentencing, and BOP has proposed a rule establishing guidelines to assess and collect such a fine.²⁸⁸ Currently, BOP means tests federal inmates to determine whether and how much of the costs of prison they may be assessed, but it is unclear how many inmates might be required to pay under this rule since it can collect fines only in the event a judge does not impose or waive them. Overall, a very high percentage of criminals do not pay all of their fines or other fees, and some BOP officials believe that certain inmates may have the resources to pay their financial obligations but are hiding them.

5. The Department of Justice should work with the judicial branch to consider ways to improve the community corrections process, including the possibility of merging or consolidating federal agencies or functions.

Currently, the USPS, BOP and U.S. Parole Commission, among others, play a role in the process, and greater coordination among these groups would improve effectiveness.

6. BOP and the USPS should expand the use of alternative detention mechanisms such as halfway houses, electronic detention and supervised home release for appropriate offenders toward the end of their prison terms.

According to a 1991 GAO report, BOP currently has access to over 5,000 beds at halfway houses across the country, but, on the average, only 1,333 are used daily.²⁸⁹ The report indicated that a larger percentage of the inmate population could take advantage of this program without posing an additional risk to society. Moreover, since inmates who serve time at a halfway house typically work and pay a portion of their housing costs, cost savings can be further achieved.

Implications

The expanded use of the boot camp program should have several effects on the federal prison system. By altering the composition of the prison time served, the intensive confinement centers work to encourage behavior modification at the early portion of the term in exchange for more lenient, and less costly forms of incarceration at the end. While the long-term impact of this program on recidivism is unclear, National Performance

Review staff interviewed several boot camp participants at a BOP pilot program and noted that the attitudes and outlook of the participants compared favorably with those inmates based at traditional less intensive minimum security facilities. Since inmates at halfway houses or in home detention are carefully monitored, BOP has an opportunity to ensure that they receive adequate after-care and demonstrate good behavior after release or face return to prison.

While alternatives to incarceration and other low cost approaches to the prison space problem are important, the only way to address the cause of the problem is to review the current sentencing structure. The experience of the past seven years showed the impact that sentencing has had on the prison system, and a review of that structure is necessary in order to manage the problem of overcrowding.

Converting former military bases to BOP facilities might save BOP a substantial amount of money and alleviate the impact of base closings on local communities, although the data on the subject is unclear and case-by-case judgements must be made. BOP has looked at ways to use military bases to help meet its space needs and has met with success in some cases, including a promising effort to hire former military personnel, but continued efforts should be made. In addition, joint detention facilities could help alleviate space problems for INS, the USMS and others. Finally, BOP might consider using former military bases for joint federal and state "boot camp", drug treatment or other programs, but sharing BOP facilities with state and local governments could be troublesome, particularly since correctional philosophies, priorities and resources might differ, and result in greater cost for the federal government. While the USMS and state and local jails have been able to work out such joint arrangements, such a structure might be more problematic in the area of prisons, where longer terms and larger numbers are involved.

While it is difficult to determine whether charging inmates for their sentences will have any impact, requiring inmates to pay fines or spend time at stark minimum security facilities may help ensure that inmates find "hidden" resources that might otherwise escape the system.

Reviewing the roles of federal agencies involved in handling supervised release and alternative sanctions should help the federal government act more cohesively in the area of

community corrections. At present, the differing missions, resources and objectives of each of the players in the community corrections process makes it difficult to coordinate federal efforts in this area.

Finally, alternatives to incarceration at the end of the process, when offenders are in the process of being reintegrated into society, often have beneficial effects. These include helping inmates to find employment and assisting in developing the support structure needed to function during the crucial first months after release.

Fiscal Impact

A boot camp housing 150 inmates can be constructed next to an existing facility for about \$1 million, much less than the \$50,000 per bed cost for new bed construction at minimum security facilities. However, the operating costs of boot camps, compared with traditional minimum security facilities, are greater, due to increased need for staff supervision and instruction. Nevertheless, the costs are further reduced under the boot camp program since inmates spend a greater portion of their sentence in a low-cost community setting.

Altering the mandatory minimum structure could have an enormous effect on the structure of the federal prison system, although the exact fiscal impact would depend on the extent of the policy change recommended.

It is unclear how many federal inmates could afford to pay for the costs of incarceration and how many who are required to pay actually come up with the money.

Any merger or consolidation of community corrections agencies might save federal funds in the long term, though it may have significant immediate implementation costs. In addition, greater coordination between these entities would assist in the efficient allocation of resources for that purpose.

Since the daily cost of housing an inmate in a halfway house is much less than the cost of housing that individual in a prison, and since halfway house inmates typically pay much of their own way, each additional halfway house bed and each additional day in the halfway house would be a cost savings. With respect to electronic home detention, a monitoring device costs approximately \$6-7, and the costs of a supervisor, who typically

has responsibility for 30-40 individuals, is roughly \$7 per day, also much less than the cost of incarceration.

DEVELOP MORE EFFECTIVE WAYS TO TREAT AND REHABILITATE INMATES WITH SUBSTANCE ABUSE PROBLEMS

Background

As a result of the nation's severe drug abuse problem and the consequent "war on drugs," the number of state and federal prison inmates who are substance-dependant has grown dramatically. In the federal system, it is currently estimated that 44 percent of the federal prison population has a moderate to severe problem, with another 20-25 percent having problems of a more minor nature.²⁹⁰

The Federal Bureau of Prisons (BOP) currently runs several programs designed to treat inmates who are substance-dependent. BOP requires inmates identified as having drug or alcohol abuse histories to enroll in its mandatory 40-hour drug education program. Individual and group counseling, as well as self-help programs such as Alcoholics and Narcotics Anonymous, are also available at most facilities.

More significantly, in response to criticism in the late 1980s, BOP has begun to develop and offer non-residential drug treatment in all institutions and has implemented residential drug treatment programs in approximately thirty institutions. The residential programs usually run for nine months and inmates live in separate facilities but interact with the general population. A 1991 GAO study indicated that only 364 federal prisoners out of an estimated 27,000 eligible inmates who have been identified as having a drug and alcohol problem received treatment. Today, approximately 3,000 inmates are receiving treatment of some sort.²⁹¹ Inmates who participate in these programs continue to at least partially assume their work and other responsibilities within the prison facilities while receiving treatment. BOP is exploring alternative programs and is currently in the process of implementing a 12-month residential program in a number of facilities. From 1990 to 1992, BOP more than tripled the budget for drug treatment, from \$7.2 million to \$21.8 million.

While BOP is studying ways to encourage inmates to join drug treatment programs, requirements or incentives for participation in drug treatment programs while in prison have been limited by federal sentencing guidelines, which removed most incentives for pursuing

treatment in favor of a more determinate sentencing structure. The Sentencing Reform Act of 1984²⁹², which created the U.S. Sentencing Commission to develop the federal sentencing guidelines, stated that rehabilitation was not an appropriate goal of incarceration (as opposed to probation), significantly limited probation and eliminated parole. Similarly, Congressionally-mandated "minimum mandatory" sentences, in which certain offenders are required to serve a minimum term in prison, imposed firm and long sentences on offenders based on the quantity of drug involved in the offense.

Despite dramatically changing the demographics of the federal prison population by incarcerating a higher percentage of drug-related offenders, the guidelines and "minimum mandatories" do not include mandatory treatment as part of a sentencing option, although a judge may recommend treatment. BOP encourages inmates to participate in treatment programs by limiting pay rates to the lowest level or denying inmates extended halfway house placement if they do not participate, but there are limited ways to encourage treatment and few performance measures or statistics in this area to analyze whether these incentives are working.

Some authorities believe that the prison system is an excellent vehicle to target and treat those needing help. A report sponsored by the U.S. Department of Health and Human Services found that separating inmates who are enrolled in drug treatment programs from the rest of the general prison population may be the best way to ensure that substance-dependant inmates receive effective treatment.²⁹³ BOP has developed some residential facilities that house inmates away from the general prison population, but some facilities have had to "mix" populations in order to ease overcrowding. Moreover, even in the residential programs inmates mix during free time. BOP has explored programs that segregate portions of the inmate population in connection with its "boot camp" program, which puts first-time, youthful, non-violent offenders through an intensive fitness, work, and education regimen followed by a stay in a halfway house and home detention (as opposed to time serving the remainder of their sentences in a traditional minimum security facility), but a program of that type has not been implemented in the context of drug treatment.

Another critical component of drug treatment is aftercare. Prior to release, BOP

inmates may spend a period of time either before or after release in a halfway house. While in such a facility, inmates who have completed residential treatment are required to participate in community-based treatment. BOP contracts with community-based treatment providers, often the same providers used by the U.S. Probation Service (USPS), in order to ensure a continuum of treatment as the inmate moves from BOP to USPS supervision. Once prisoners are released from the federal prison system, they often serve a period of supervised release under the USPS, which conducts urinalysis tests and helps inmates find follow-up care. Since the average period of supervised release is relatively short, however, there are few ways to assess results over the long term. BOP has, in agreement with the National Institute for Drug Abuse (NIDA), begun a five-year outcome study to assess the performance of BOP programs, and preliminary results are expected in September 1994. In general, however, the information systems in the federal criminal justice process are highly fragmented, and it is difficult to compile data and analyze the impact of federal substance abuse programs.

Recommendations

1. Congress should instruct the U.S. Sentencing Commission to include mandatory drug treatment as a component of the federal sentencing guidelines for those offenders who are found to have moderate to severe substance abuse problems.

Alternatively, Congress and the U.S. Sentencing Commission should consider using the sentencing guidelines to develop incentives for offenders who need drug treatment to voluntarily undergo it.

2. BOP should develop a pilot "drug boot camp" as a way to encourage inmates to pursue drug treatment and to isolate the those individuals from the general prison population.

3. BOP should reallocate a portion of existing construction funds to build pilot prison facilities dedicated to providing inmates with drug treatment.

To make these programs cost effective and to keep inmates closer to their homes, families and communities, BOP should build the facilities as satellites to existing BOP institutions rather than as separate units. To the extent inmates are non-violent, the USPS

should link or integrate these programs with community drug treatment programs receiving federal funds or community volunteer programs.

4. In connection with any mandated drug treatment programs, Congress, the U.S. Sentencing Commission, BOP and the USPS should extend to probation process or after-care programs to ensure that former inmates continue to stay off drugs after release.

BOP and USPS should use this lengthened process to measure the results of drug treatment programs.

Implications

A very substantial portion of the inmate population with moderate to severe drug problems is not receiving substance abuse treatment of any type, though a larger portion is receiving some drug education. While it is unclear whether successful treatment requires voluntary participation by the inmate, the sentencing structure could do more to encourage participation, if not mandate treatment. Reviewing and revising the sentencing guidelines and the "mandatory minimums" will help to make sure that those who need treatment have incentives to seek it out and receive it.

One alternative model for this might be the BOP's "boot camp" pilot, which appears to be successful. The program encourages participants by allowing them to spend the remainder of their sentences at a halfway house and in home detention. It also serves to focus on the needs of inmates through its wellness and self-analysis program. Starting to develop a parallel program in the area of drug treatment, including the opportunity for inmates to move directly into "supervised after-care," will help assess a potential expansion opportunity.

Developing exclusive drug treatment centers as adjuncts to existing facilities might also provide a cost effective way to treat a larger portion of the inmate population. According to various estimates, the cost of treating an individual in a residential program varies between \$2,500 and \$10,000 per year, which is less than the annual cost of housing an inmate in a medium security facility. It should be noted that the security level of the inmates to be treated will also have an impact on the cost. Since a large portion of the

drug-related inmate population is non-violent, building drug treatment centers rather than prisons would reduce cost. Moreover, such facilities could be shared with other federal agencies and state and local governments, and coordinated approaches to treatment could be facilitated, including using state governments to help handle post-release responsibilities.

~ Since an important part of drug treatment is after-care, the probationary apparatus should continue to be used to monitor former inmates, possibly requiring inmates to return to treatment. The USPS currently monitors drug use as part of its supervision of former inmates, though former inmates who violate the terms of their release due to drug use generally go back to prison rather than into treatment. If a more comprehensive drug treatment after-care program were established, the results might be better. Moreover, by using the information system as a mechanism for post-release follow-up, greater monitoring of the former inmate population could be achieved. In addition, performance data on various treatment programs could be developed using this system.

Fiscal Impact

According to a GAO report, drug treatment in BOP facilities as currently provided costs an estimated \$5,000 per inmate, in addition to the average \$18,000 per inmate per year operating cost.²⁹⁴ This estimate needs to be reviewed, since it incorporates security and other apparatus that might not be necessary drug treatment satellite programs. Drug treatment has recently become a separate line item for BOP, and this has resulted in greater attention, resources, and cost-benefit analysis for the programs. If a separate budget for substance abuse offenders were established, clearer results might be possible. This could also help assist in analyzing the actual costs of treatment (leaving aside long term cost savings from shorter sentences and greater time in the community by the former inmate).

The boot camp model might prove cost effective. The current BOP pilot programs cost approximately \$1 million for a 150 bed facility, and savings are achieved since inmates who complete the program are placed in halfway houses and home detention rather than serve a greater proportion of their sentence in minimum security facilities. Building a drug treatment pilot on this model should cost about the same, though administrative (principally professional) costs would probably be slightly higher.

Developing dedicated drug treatment centers might also significantly reduce the cost of drug treatment. To the extent that substance abusers are non-violent, such facilities might be significantly less expensive than new prisons and could be constructed as an alternative to already authorized and appropriated but not yet funded prison construction projects. A recent article in *The New York Times*²⁹⁵, for example, estimated the cost of running a therapeutic community center at \$2,500 - \$5,000 per participant and noted that the Texas prison system has invested large sums of money for such facilities. Such a model could be implemented at the federal level.

IMPROVE TECHNIQUES USED IN PRISONER TRANSPORTATION AND CUSTODY BY U.S. MARSHALS

Background

Individuals arrested or detained for violation of federal statutes are remanded to the custody of the Marshals Service. Federal prisoners are transported and moved within and between districts for observation and service of sentence. Long-distance prisoner moves are done under the National Prisoner Transportation System (NPTS), which includes large aircraft and small planes and a supporting system of buses and vans operated by the Bureau of Prisons. The NPTS has been called upon with increasing frequency to relieve conditions brought on by the jail space crisis in the Northeast and other areas. Prisoners in Massachusetts are currently held in Danbury, Connecticut, a three-hour ride away, and prisoners in the Southern and Eastern Districts of New York are shuttled to Texas. At any time, the Marshals Service has 20,000 pretrial detainees moving among 908 jails. Overall, the NPTS conducts 91,000 prisoner movements annually.

With respect to prisoner custody, the Marshals Service enters into intergovernmental arrangements for jail space with state and local jails. Because state and local governments find such agreements profitable, the Marshals Service should aggressively promote competitive bidding to provide housing for federal prisoners. Additionally, the Marshals Service may be able to reduce paperwork burdens by availing itself of the Bureau of Prisons' Sentry computerized tracking system, which is an offender-based tracking system that monitors the federal prison population in real time. At present, most of the information collected by the Marshals' paperwork is incompatible with the Sentry system. Because the Marshals Service and Bureau of Prisons split responsibility for transporting inmates, and further, because the Sentry system is currently available on a limited basis at all U.S. Attorneys offices, expanding the system to assist the Marshals Service could be relatively easy.

Recommendations

1. **The Marshals Service and the military should examine ways to provide the use**

of excess capacity aircraft by NPTS. Military pilots, for example, may already be flying aircraft with excess capacity as part of their certification process. The Marshals Service examine similar arrangements with military reserves, which may also have excess aircraft capacity.

2. Expand video arraignment pilot programs to reduce number of pretrial court appearances.
3. Institute competitive bidding by state and local jails for Marshals Service jail space agreements..
4. Expand Bureau of Prisons "Sentry" computer tracking system to monitor pre-sentence detainees.

Implications

1. NPTS has attempted to lease excess capacity military aircraft with limited success. Because prisoners cannot be shackled on commercial aircraft, security considerations dictate that NPTS use dedicated aircraft for prisoner movements. Although NPTS has attempted to lease excess capacity military aircraft, the military has to date only made aircraft available on terms that are generally unfavorable. In one instance, the military offered to lease NPTS an aircraft on six weeks notice for approximately \$6,000 per day, while Federal Express offered to lease a similar capacity plane to NPTS on 48 hours notice for \$3,700 per day. While NPTS can continue to lease privately owned aircraft at market rates, the issue of availability of excess aircraft capacity within the federal government should be examined in order to determine whether NPTS can avail itself of that capacity without restricting the availability of aircraft to the military in the event of troop movement demands or a national emergency.
2. The Marshals Service estimates that it produces each prisoner seven times for appearances at detention hearings, trials and other court appearances. In 1992, the Marshals Service instituted a video arraignment pilot project in an effort to reduce the number of pretrial prisoner movements. The program, currently ongoing at Bureau of Prison facilities in Tallahassee, Florida and Guanaba, Puerto Rico, uses two-way video teleconferencing equipment to enable the prisoner and his or her counsel to "appear" before the federal judge

assigned the case without having to be physically present in the court city. The program has so far proved to be successful and is ready to expand to other Bureau of Prison facilities. The INS has also expressed interest in the project. One disadvantage is the concern of among federal judges and public interest groups that prisoners be afforded an opportunity to appear in person at all hearings involving their case. These concerns may be ameliorated through selective use of video arraignments to relieve the most expensive prisoner movements. In addition, several courts have already ruled that video arraignments do not deprive prisoners of due process.

3. The Marshals Service currently spends approximately \$275 million annually on the care of U.S. prisoners in non-federal institutions. The Marshals Service contracts with state and local jails to board federal prisoners and detainees before and during a trial and while awaiting transfer to federal institutions after conviction. Instituting competitive bidding among state and local jails for federal prisoners will have the effect of lowering average daily prisoner costs, which currently average \$55.75 per offender. A possible disadvantage to this approach is that state and locals may object to the institution of a "market" rate for federal prisoners. State and locals will benefit long-term, however, to the extent that they become more efficient providers of jail space.

4. Expanding the Bureau of Prison's Sentry prisoner tracking system forward to include Marshals Service prisoners and detainees will reduce paperwork burdens on the Marshals Service while providing the Department of Justice with an expanded offender-based tracking system. There are no apparent disadvantages to this option.

Fiscal Impact

The actual fiscal impact of these recommendations has not been estimated yet.

Endnotes

1. GAO/GGD -91-75, Justice Model, Appendix VI, Federal Organizations With Some Law Enforcement Functions, pages 81 through 85.
2. Report of the National Advisory Commission on Law Enforcement, April 1990, page 32.
3. Federal Times Law Officers are Caught in Cross-fire of Duplicate Efforts, June 7, 1993.

Federal Times, Reinventing Drug Enforcement, June 14, 1993
4. U.S. Attorney Databases on Defendant Referral, Declinations and Indictments: FISCAL YEAR 1991, Table I.
5. Treasury Organization Chart Manual, October 1992, page 45.
6. Office of Management and Budget (OMB), Federal Drug Control Programs, Budget Summary, Fiscal Year 1994
7. The United States Government Manual, Section on Bureau of Alcohol, Tobacco and Firearms, page 504, 1992/93.
8. Congressman John Conyers introduced bill H.R. 1927, to transfer all functions of the Bureau of Alcohol, Tobacco, and Firearms relating to the regulation of firearms from the Department of the Treasury to the Federal Bureau of Investigation.
9. U.S. General Accounting Office, Report to the Chairman, Committee on Governmental Affairs, U.S. Senate JUSTICE DEPARTMENT, Coordination Between DEA and the FBI, March 1990, page 1.
10. Implementation Directive for Concurrent Drug Investigative Jurisdiction Between The Drug Enforcement Administration and The Federal Bureau of Investigation, Department of Justice, March 1982.
11. Federal Times, In This Drug War, It's FBI versus. DEA.
12. FBI White Paper, Reorganization of Federal Drug Law Enforcement Resources, 1993, page 2.
13. DEA Response to FBI White Paper Titled: Reorganization of Federal Drug Law Enforcement Resources, June 1993, page i.
14. GAO Report, January 8, 1993, Testimony Before the Committee on Governmental Affairs United States Senate, Major Issues Facing a New Administration, Statement of Charles A. Bowsher, Comptroller General of the United States.

15. U.S. Department of Treasury, Paper on Border Management provided to the National Performance Review, July 26, 1993.
16. Department of the Treasury Rebuttal Paper to National Performance Review Recommendation to "Create an Independent Border Management Agency," July 30, 1993.
17. Memorandum from Dick Thornburgh, Chairman Pro Tempore, Domestic Policy Council and Brent Scowcroft, Assistant to the President for National Security Affairs, to the Vice President, the Secretaries of State, Treasury, Defense, Agriculture, Commerce, and Transportation, the Directors of the Office of Management and Budget, Office of National Drug Control Policy, and Central Intelligence Agency, "Conclusion of the Border Security Review, April 5, 1991," including the "Border Security Implementation Plan" (Tab C), p. 1.
18. U.S. Congress, Senate Committee on Governmental Affairs, *Border Management Reorganization and Drug Interdiction*, (Congressional Research Service, Library of Congress, Washington D.C., June 1988), p. 35.
19. U.S. Comptroller General, *Customs and INS: Dual Management Structure for Border Inspections Should Be Ended*, GAO/GGD-93-111 (Washington, D.C., June 1993), p. 6.
20. Ibid.
21. Ibid., pp. 6-7.
22. Ibid., pp. 5-8.
23. U.S. Department of the Treasury, U.S. Customs Service, "Master Plan for Passenger Processing at United States Airports for the 1990's," provided to the National Performance Review, Washington, D.C., June 21, 1993, pp. 2-7.
24. IBIS includes: the Department of State's Automated Visa Lookout System (AVLOS) and Consular Lookout and Support System (CLASS); INS' National Automated Immigration Lookout System (NAILS); and Customs' Treasury Enforcement Communications System (TECS). Memorandum from Dick Thornburgh to the Vice President, et. al., "Border Security Implementation Plan" (Tab C), p. 4.
25. U.S. Department of Treasury, Paper on Border Management provided to the National Performance Review, July 26, 1993.
26. Senate Committee on Governmental Affairs, *Border Management Reorganization and Drug Interdiction*, p. 90.
27. Senate Committee on Governmental Affairs, *Border Management Reorganization and Drug Interdiction*, pp. VII-X.

28. Ibid., pp. 3-4; and Memorandum from Ralph B. Thomas, Acting Director, Congressional and Public Affairs, Immigration and Naturalization Service (INS), to Chris Sale, Acting Commissioner, INS, Washington, D.C., February 18, 1993, "Reorganization: INS and the Customs Service."
29. Senate Committee on Governmental Affairs, *Border Management Reorganization and Drug Interdiction*, p. 4.
30. Ibid., p. 18.
31. U.S. Comptroller General, *Customs and INS: Dual Management Structure for Border Inspections Should Be Ended*, p. 2.
32. Interview with Chris Sale, Acting Commissioner for the Immigration and Naturalization Service, Washington, D.C., June 15, 1993.
33. U.S. Department of Treasury, Paper on Border Management provided to the National Performance Review, July 26, 1993.
34. U.S. Comptroller General, *Customs and INS: Dual Management Structure for Border Inspections Should Be Ended*, p. 28.
35. No firm estimates exist on the number of aliens who escape apprehension upon entry. Various sources estimate from one and one-half to five million.
36. Daniel James, "To Cut Spending, Freeze Immigration," *Wall Street Journal*, Counterpoint, June 24, 1993, p. A 13. (Additional estimates cited include: \$35 billion annually for all immigrants; \$450 billion in the 1993-2002 period.)
37. U. S. Comptroller General, *Managing the Customs Service*, GAO/HR-93-14 (Washington, D.C.: , December 1992), pp. 6, 10.
38. Data on INS provided by Justice Reinvention Team to the National Performance Review, July 26, 1993.
39. Office of Management and Budget, *Summary of the Fiscal 1994 President's Budget Request for the U.S. Department of the Treasury*, April 8, 1993.
40. U.S. Congress, House Committee on Government Operations, Subcommittee on Information, Justice, Transportation, and Agriculture, Testimony by Dan Stein, Executive Director of the Federation for American Immigration Reform, Washington, D.C., March 30, 1993, p. 8.
41. U.S. Comptroller General, *Customs and INS: Dual Management Structure for Border Inspections Should Be Ended*, p. 13.

42. Ibid.

43. U.S. Department of Treasury, Paper on Border Management provided to the National Performance Review, July 26, 1993.

44. Treasury Internal Reinvention Team, data provided to the National Performance Review via facsimile, July 21, 1993.

45. Data on Customs provided by the Treasury Internal Reinvention Team to the National Performance Review via facsimile, July 21, 1993; Data on INS provided by the Justice Reinvention Team to the National Performance Review, July 26, 1993.

46. Remarks by the President, the Vice President and the Attorney General during Immigration Policy Announcement, Roosevelt Room, The White House, Washington, D.C., July 27, 1993, pp. 1-4.

47. No firm estimates exist on the number of aliens who escape apprehension upon entry. Various sources estimate from one and one-half to five million.

48. Daniel James, "To Cut Spending, Freeze Immigration," *Wall Street Journal*, Counterpoint, June 24, 1993, p. A 13. (Additional estimates cited include: \$35 billion annually for all immigrants; \$450 billion in the 1993-2002 period.)

49. U.S. Department of Justice, Immigration and Naturalization Service, *Statistical Yearbook of the Immigration and Naturalization Service 1991*, (U.S. Government Printing Office, Washington, D.C., September 1992), p. 160.

50. U.S. Congress, Senate Committee on Governmental Affairs, *Border Management Reorganization and Drug Interdiction*, (Congressional Research Service, Library of Congress, Washington D.C., June 1988), p. 11.

51. *The Immigration Reform and Control Act of 1986 (IRCA)*, (November 6, 1986), P.L. 99-603.

52. Sandia National Laboratories, "Systematic Analysis of the Southwest Border," prepared for the Immigration and Naturalization Service, funded by the Office of National Drug Control Policy, prepared by Advanced Systems Integration Department 9651, Albuquerque, New Mexico, January 1993, Volume 1, p. ES-9.

53. Ibid., p. ES-2.

54. U.S. Immigration and Naturalization Service (INS), "U.S. Border Patrol Program Overview," Washington, D.C.; June 1993, pp. 1-2.

55. See endnote 2.

56. Sandia National Laboratories, Volume 1, pp. ES 2-4.
57. Gustavo De La Vina, Chief Patrol Agent, U.S. Border Patrol, "San Diego Sector Operational Profile," San Diego, CA, provided to the National Performance Review June 22, 1993, p. 1.
58. U.S. Border Patrol, U.S. Immigration and Naturalization Service, "Daily Apprehensions -- May 1993," provided to National Performance Review team members, by the San Diego Sector, San Diego, California, June 22, 1993.
59. Border Trade Alliance, "Position Paper on Unified Port Management", provided to the National Performance Review team members during interview in San Diego, California, June 25, 1993.
60. U.S. Immigration and Naturalization Service (INS), U.S. Border Patrol, "Draft Results of a Border Patrol Staffing Requirements Survey," provided to the National Performance Review, Washington, D.C., July 2, 1993, p. 1.
61. U.S. Immigration and Naturalization Service (INS), U.S. Border Patrol, "Border Patrol Staffing & Apprehensions (Agents & Support)," Washington, D.C.; June 7, 1993.
62. Sandia National Laboratories, Volume 2, p. 209.
63. Ibid., p. 202.
64. Border Patrol notes provided to the National Performance Review, July 20, 1993.
65. The White House, "Fact Sheet: Initiatives to Curb Illegal Immigration," Washington, D.C., July 27, 1993, p. 1.
66. Ibid.
67. Immigration and Naturalization Service (INS), "Employer Sanctions Questions and Answers," Washington, D.C., June, 1993, p. 38.
68. Ibid., p. 41A,
69. Ibid., p. 29A.
70. Ibid., p. 12.
71. Ibid., p. 6.
72. Border Trade Alliance, "Position Paper on Unified Port Management."
73. INS, "Employer Sanctions Questions and Answers," p. 36.

74. Ibid., p. 16.
75. Ibid., p. 36.
76. Selected Chief Patrol Agents' Focus Group Interview, U.S. Immigration and Naturalization Service, Washington, D.C., July 1, 1993.
77. U.S. Congress, House Committee on Government Operations, Subcommittee on Information, Justice, Transportation, and Agriculture, Testimony by Dan Stein, Executive Director of the Federation for American Immigration Reform, Washington, D.C., March 30, 1993, p. 7.
78. Data provided by the Justice Internal Reinvention Team to the National Performance Review, July 20, 1993.
79. Office of Management and Budget, *Federal Drug Control Funding, FY 1994 Budget Summary* (Washington, D.C., 1993), p.5.
80. Majority Staffs of the Senate Judiciary Committee and the International Narcotics Control Caucus, *America's Drug Strategy: Lessons of the Past...Steps Toward the Future.*, (Washington, D.C., April 1993), p. 138.
81. Interview with Colonel Robert Newberry, Principle Director for Drug Enforcement Policy and Support, Office of the Secretary of Defense, Pentagon, Alexandria, Virginia, May 25 and June 11, 1993.
82. Office of Management and Budget, *Federal Drug Control Funding*, p.113.
83. Ibid., pp. 17-20.
84. Ibid., p.123-125.
85. Ibid., p. 123.
86. U. S. Customs Service, Information Provided for the NPR, July 15, 1993.
87. U.S. Comptroller General, *Drug Control: Impact of DOD's Detection and Monitoring on Cocaine Flow, Report to Congressional Requesters, GAO/NSIAD-91-297* (Washington, D.C.: General Accounting Office, September 1991), p.6.
88. Interview with Robert Newberry, May 25 & June 11, 1993.
89. U.S. Comptroller General, *Drug Control: Oversight Needed to Prevent Acquisition of Unnecessary Equipment*, Report to the Chairman, Committee on Government Operations, House of Representatives, GAO/NAIAD-92-260 (Washington, D.C.: General Accounting Office, July 1992), p.3.

90. Information provided to the NPR by Customs, July 12, 1993.
91. Ibid.
92. Memorandum from Director, Aviation Operations Center (West), to Deputy Assistant Commissioner, Office of Air and Marine Interdiction, June 10, 1993.
93. Interview with Joseph W. Maxwell, Director, Aviation Operation West, U.S. Customs Service, Riverside, California, June 21, 1993.
94. Peter Reuter, Gordon Crawford, and Jonathan Cave, "Sealing the Borders: the Effects of Increased Military Participation in Drug Interdiction: (Prepared for the Office of the Under Secretary of Defense for Policy, the RAND Corporation, 1988), pp. vi-xiii.
95. Memorandum From Director, Aviation Operations Center (West), June 10, 1993.
96. Advanced Systems Integration Department 9561, Sandia National Laboratories, *Systematic Analysis of the Southwest Border*, Vol.1 (Albuquerque, New Mexico, January 1993), p.ES-9.
97. The White House, Office of the Press Secretary, Remarks by the President, The Vice President and the Attorney General during Immigration Policy Announcement, July 27, 1993, p.4.
98. Office of Management and Budget, *Federal Drug Control Funding*, p.123.
1. U.S. Department of Justice (Justice), Office of the Inspector General (OIG), Audit Division, Audit Report, *Controls Over Established User Fee Accounts in the Immigration and Naturalization Service* (Washington, D.C., December 1992), p. 199.
100. A one dollar (\$1) increase in INS inspection fees from \$5 to \$6 is included in legislation entitled "Expedited Exclusion and Alien Smuggling Penalties Act of 1993" announced by the President on July 27, 1993. The White House, "Fact Sheet: Initiatives to Curb Illegal Immigration," Washington, D.C., July 27, 1993, p. 4.
101. U.S. Congress, House Committee on Government Operations, Subcommittee on Information, Justice, Transportation, and Agriculture, Testimony by Dan Stein, Executive Director of the Federation for American Immigration Reform, Washington, D.C., March 30, 1993, p. 13.
102. U.S. Department of Justice, Office of the Inspector General Audit Report, *Controls Over Established User Fee Accounts in the Immigration and Naturalization Service*, p. 7.
103. Immigration and Naturalization Service (INS), Draft "Proposal to Amend the Agreement on Passport Visas (Treaty) of 1953," provided to National Performance Review during interview with Michael D. Cronin, Assistant Commissioner for Inspections,

Washington, D.C., June 17, 1993, p. 1.

104. Immigration and Naturalization Service, Draft "Proposal to Amend the Agreement on Passport Visas (Treaty) of 1953," p. 1.

105. Memorandum from Nick Sherwood, Bureau of Consular Affairs, Department of State, National Performance Review: Department of Justice Issue Paper and Recommendations--Request for State Position," to Bob Service, State National Performance Review Team, (Washington, D.C.), August 2, 1993.

106. Section 101, *Immigration and Nationality Act (INA) of 1952* (as amended), [8 U.S.C. 1101]; Section 221, INA, [8 U.S.C. 1201].

107. Immigration and Naturalization Service, Draft "Proposal to Amend the Agreement on Passport Visas (Treaty) of 1953," p. 1; Treaty, October 28-November 12, 1953, United States-Mexico, 5 U.S.T. 174 T.I.A.S. 2912.

108. Immigration and Naturalization Service (INS), Draft changes to Title 8, *Code of Federal Regulations (CFR)*, Parts 103, 212, 217, 235, 264, and 286, "Charging Fees for Services at Land Border Ports-of-Entry," provided to National Performance Review during interview with Michael D. Cronin, Assistant Commissioner for Inspections (Washington, D.C., June 17, 1993), p. 6.

109. Immigration and Naturalization Service, Draft "Proposal to Amend the Agreement on Passport Visas (Treaty) of 1953," p. 2; Telephone interview with John Adams, Deputy Assistant Secretary of State for Visa Services, Bureau of Consular Affairs, Department of State, Washington, D.C., July 7, 1993.

110. U.S. Congress, House Committee on Appropriations, Surveys and Investigations Staff Report, "Immigration and Naturalization Service Dedicated Commuter Lane Pilot and Inspections and Overseas Locations," Washington, D.C. March, 1993; transmitted by letter to Attorney General Janet Reno from Neil Smith, Chairman, Subcommittee on the Departments of Commerce, Justice, and State, The Judiciary and Related Agencies, April 20, 1993, p. i.

111. Ibid, p. 3.

112. Ibid., p. i.

113. Ibid., p. 3.

114. Ibid., p. 1.

115. Ibid., p. 4.

116. Ibid., pp. 4-5.

117. Ibid., p. 4.
118. Ibid.
119. U.S. Department of Justice, Immigration and Naturalization Service (INS), Office of Inspections, "Dedicated Commuter Lane," Washington, D.C., May 1993, Tab 2, p. 2.
120. U.S. Congress, "INS Dedicated Commuter Lane Pilot," p. 5.
121. Immigration and Naturalization Service, "Dedicated Commuter Lane," Tab 2, p. 2.
122. U.S. Congress, "INS Dedicated Commuter Lane Pilot," p. 5.
123. Ibid.
124. Ibid., pp. i, 6.
125. Ibid., p. 6.
126. Ibid., p. 7.
127. Ibid., pp. ii; 7.
128. Ibid., p. ii.
129. Ibid., p. 8.
130. Ibid., pp. ii; 9.
131. Ibid., p. 8.
132. Ibid., pp. ii; 9.
133. Ibid., p. 9.
134. Immigration and Naturalization Service, "Dedicated Commuter Lane," Tab 3, p. 1.
135. Immigration and Naturalization Service, Draft changes to Title 8, *CFR*, p. 4; Section 286, INA, [8 U.S.C. 1356].
136. Immigration and Naturalization Service (INS), Draft "Proposed Land Border User Fee Charges Cost Analysis Fiscal Year 1994," June 4, 1993, provided during interview with Michael D. Cronin, Assistant Commissioner for Inspections, Washington, D.C., June 17, 1993.
137. Immigration and Naturalization Service, Draft changes to Title 8, *CFR*, p. 5.

138. Immigration and Naturalization Service, Draft "Proposed Land Border User Fee Charges Cost Analysis Fiscal Year 1994."

139. Immigration and Naturalization Service, Draft changes to Title 8, *CFR*, p. 5. Canadians and lawful permanent residents who have common nationality with Canada are normally waived passport and visa requirements unless excludable. This form eliminates the need for a yearly waiver application for those who had previously been found ineligible for waivers.

140. Immigration and Naturalization Service, Draft changes to Title 8, *CFR*, p. 4.

141. Immigration and Naturalization Service, Draft "Proposed Land Border User Fee Charges Cost Analysis Fiscal Year 1994."

142. Telephone interview with Lorraine Lewis, Immigrant Visa Control and Reporting Division, Foreign Operations, Visa Services, Bureau of Consular Affairs, Department of State, Washington, D.C., July 7, 1993.

143. Telephone interviews with Diane Hinckley, Acting Assistant Commissioner for Inspections, Immigration and Naturalization Service, Washington, D.C., July 7, 1993; and George E. McCubbin, Area Port Director, San Ysidro, California, July 7, 1993.

144. Immigration and Naturalization Service, Draft "Proposal to Amend the Agreement on Passport Visas (Treaty) of 1953," p.1.

145. Immigration and Naturalization Service, Draft changes to Title 8, *CFR*, p. 6.

146. Immigration and Naturalization Service, Draft "Proposal to Amend the Agreement on Passport Visas (Treaty) of 1953," p.2.

147. Telephone interview with Lorraine Lewis, July 7, 1993.

148. Immigration and Naturalization Service, Draft changes to Title 8, *CFR*, p. 4.

149. Immigration and Naturalization Service, Draft "Proposed Land Border User Fee Charges Cost Analysis Fiscal Year 1994."

150. **Debt collection claims are claims which the agencies refer to DOJ for litigation and/or debt collection, for which litigation is not necessary to establish that the claim is due and payable.** These claims include defaulted loans, overpaid benefits, and unpaid agency-imposed civil monetary penalties, but exclude claims referred to DOJ that require litigation to establish the amount due or claims involving tax litigation from the Internal Revenue Service. *Final Report of the Multi-Agency Action Team On Financial Litigation Information* (Washington, D.C. June 1992), p. 41. DOJ attorneys also sue to collect unpaid criminal fines and assessments, which are tracked by the Administrative Office of U.S. Courts' National Fine Center.

151. The Federal Claims Collection Standards contain the regulations used by agencies to refer claims to the DEDUCE for litigation and enforced collection. 4 C.F.R. §§101-105.
152. FLUs are staffed by debt collection paralegals working under the supervision of an Assistant U.S. Attorney.
153. The NCIF screens all incoming debts to ensure that the statutes of limitation have not expired, that the debtors' addresses are within the judicial district to which they are addressed, and that a correctly completed Claims Collection Litigation Report is attached. The NCIF does not currently track debt collection claims referred to Deduce headquarters divisions, nor does it function as a case tracking system with respect to debt collection claims.
154. The private debt collection counsel pilot program currently runs through September 1996. 31 U.S.C. §3718(b). The law authorizes its expansion to a total of not more than 15 federal judicial districts.
155. In one typical case, JET pilot USMS personnel in Arizona seized two limousines and \$4,500 in cash from a debtor who had defaulted on a \$2,380 student loan. To date, the JET pilot has undertaken over 1,040 asset investigations, located over 200 absconded debtors and closed over 800 cases.
156. In the private debt collection counsel pilot districts, DEDUCE has expanded the NCIF to include information on the status of agency debt collection claims.
157. In fiscal years 1991 and 1992, Deduce Executive Office for U.S. Attorneys administered a Debt Collection Activity Fund (DCAF), which provided \$5 million to be used to train debt collection personnel, locate debtors and their property, and pay the costs of the sale of debtor property not covered by sale proceeds. The DCAF was authorized by Congress in fiscal year 1993, but no money was appropriated to fund it.
158. The expanded NCIF would produce debt collection litigation documents, generate statements to debtors on installment payment plans, provide for debtors to send payments directly to the appropriate lockbox, and generate default letters to all debtors in a payment plan who fail to make their required payments on a timely basis.
159. In Tennessee, for example, one FLU could service the debt collection litigation activities in each of the state's three federal judicial districts.
160. Public law 98-473, 98 Stat. 1837 (1984).
161. U.S. Government Accounting Office, *Federal Prisons: Inmate and Staff Views on Education and Work Training Programs*, January 1993, GAO/GGD-93-33.
162. Ibid.

163. Ibid.
164. Ibid.
165. Ibid.
166. Bureau of Prisons post-release employment study, 1992. See also Bureau of Justice Statistics Special Report, April 1989, *Recidivism of Prisoners Released in 1989*.
167. General Accounting Office, *Asset Management-Government-wide Asset Disposition Activities*, GAO High-Risk Series, (Washington D. C., December, 1992), p. 1.
168. Ibid, pp. 9-10.
169. Ibid, pp. 1 & 11.
170. Ibid, p. 6.
171. New York Times, p 1, June, 20, 1993
172. *Asset Management-Government-wide Asset Disposition Activities*, p. 1.
173. Memorandum of Understanding between the US Customs Service and IRS which creates the procedures for the Treasury Asset Forfeiture Fund, May 3, 1993
174. Focus Group meeting, p 1, June 21, 1993 & Focus Group meeting, p 1, June 23, 1993
175. Department of Justice on the Asset Forfeiture Program, p. 78.
176. Department of Justice, United States Marshals Service Seized Assets Division Statistical Charts as of April, 1993, p. 1.
177. Phone Conversation with Tim Virtue, SUMS, 6/29-30/93
178. *Asset Management-Government-wide Asset Disposition Activities*, p. 29.
179. Department of the Treasury, Financial Management Service, *Final Recommendations or a Model Real Property Management/Disposition System*, (Washington, D. C., January 18, 1991), p. 1-2.
14. Ibid., pp.1-4, 2-2, 2-4.
181. Ibid, pp. 2-2 to 2-6.
182. *Asset Management-Government-wide Asset Disposition Activities*, p. 1.

183. JTR-64: Re-engineer the Affordable Housing Disposition Programs using the Resolution Trust Corporation Initiative as a Model
184. Treasury Reinvention Team paper on the same subject.
185. *Asset Management-Government-wide Asset Disposition Activities*, p. 1.
186. *Asset Management-Government-wide Asset Disposition Activities*, p. 5.
187. House of Representatives, Intelligence Authorization Act For Fiscal Year 1994, Mr. Glickman, from the Permanent Select Committee on Intelligence, page 13.
188. GAO, Drug Control, Coordination of Intelligence Activities, April 1993.
189. Department of Justice document, National Drug Intelligence Center, April 1993
190. Department of Justice document, National Drug Intelligence Center, April 1993
191. Funding Data sheet provided by the National Drug Intelligence Center.
192. Sources for this section of the report are numerous. Unless otherwise specifically cited elsewhere, they include:
 - Interview with John W. Cummings, Acting Director, International Affairs and Outreach, Immigration and Naturalization Service, Washington, D.C., June 3, 1993.
 - Interview with John Davis, Adjudicator, Northern Service Center, Lincoln, Nebraska, Immigration and Naturalization Service, detailed to the National Performance Review, Washington, D.C., April 19, 1993.
 - Interview with Jay Jennings, General Accounting Office, U.S. Congress, Washington, D.C., May 17, 1993.
 - Interview with Joan C. Higgins, Assistant Commissioner for Detention and Deportation, Immigration and Naturalization Service, Washington, D.C., June 3, 1993.
 - Interview with Joseph L. LaCombe, Area Port Director, and Christopher T. Hess, Assistant Port Director, Dulles International Airport, Washington District, Immigration and Naturalization Service, Washington, D.C., June 1, 1993.
 - Interview with Thomas Walters, Acting Assistant Commissioner, Border Patrol, Immigration and Naturalization Service, Washington, D.C., June 11, 1993.
 - John F. Shaw, Assistant Commissioner for Investigations, Immigration and Naturalization Service (INS), "Balance Between Service and Enforcement Functions," Investigations' Submission to the INS Commissioner's Conference, Denver, Colorado, June 7 - 11.
 - John F. Shaw, Assistant Commissioner for Investigations, Immigration and Naturalization Service (INS), "INS Enforcement: Documenting the Need for Organizational Change," Investigations' Submission to the INS Commissioner's Conference, Denver, Colorado, June 7 - 11.

193. Rudolph Valdez, Western Regional Administrator, Immigration and Naturalization Service, "Hundred Day Comments," November 14, 1992, p. 2.
194. U.S. Congress, House Committee on Government Operations, Subcommittee on Information, Justice, Transportation, and Agriculture, Testimony by Gene McNary, Former Commissioner of the Immigration and Naturalization Service, Washington, D.C., March 30, 1993, pp. 8-9; and Round table with INS Washington District personnel, June 16, 1993.
195. U.S. Congress, House Committee on Government Operations, Subcommittee on Information, Justice, Transportation, and Agriculture, Testimony by Dan Stein, Executive Director of the Federation for American Immigration Reform, Washington, D.C., March 30, 1993, p. 8; and Round table with INS Washington District.
196. Memorandum from C. M. McCullough, Acting Regional Administrator, Western Region, Immigration and Naturalization Service (INS), Laguna Niguel, California, to Gary S. Messina, Director, Office of Strategic Planning, Headquarters, INS, "Request for instances of 'bureaucratic nightmares,' your memo dated May 6, 1993," May 7, 1993, p. 2.
197. Ibid, p. 2.
198. Round table with INS Washington District.
199. Interview with James Gildea, Staff Assistant to the Associate Commissioner for Enforcement, Immigration and Naturalization Service, Washington, D.C., May 18, 1993.
200. U.S. Congress, Testimony by Gene McNary, pp. 11-12.
201. U.S. Congress, Testimony by Dan Stein, p. 10.
202. U.S. Congress, Testimony by Gene McNary, p. 7.
203. U.S. Congress, Testimony by Dan Stein, p. 10.
204. Interview with James B. Turnage Jr., District Director, San Diego District Office, Immigration and Naturalization Service, San Diego, California, June 23, 1993.
205. U.S. Congress, Testimony by Gene McNary, p. 5.
206. Round table with INS Washington District.
207. U.S. Congress, Testimony by Gene McNary, p. 5.
208. Interview with Cliff Rogers, Acting District Director and Don Looney, Deputy District Director, Los Angeles District Office; and Mario Salgado, Deputy Port Director, Los Angeles International Airport, Immigration and Naturalization Service, Los Angeles, California, June 21, 1993.

209. U.S. Congress, House Committee on Government Operations, Subcommittee on Information, Justice, Transportation, and Agriculture, Statement of Theodore Ruthizer, President, American Immigration Lawyers Association, Washington, D.C., March 30, 1993, pp. 10-11.
210. Ibid.
211. Interview with Selected Members of the Border Trade Alliance, San Diego, California, June 25, 1993.
212. U.S. Congress, House Committee on Government Operations, Subcommittee on Information, Justice, Transportation, and Agriculture, Testimony by Richard M. Hankinson, Inspector General, Department of Justice, Washington, D.C., March 30, 1993, p. 35.
213. U.S. Congress, Statement of Theodore Ruthizer p. 10; and U.S. Congress, House Committee on Government Operations, Subcommittee on Information, Justice, Transportation, and Agriculture, Testimony by Cecilia Munoz, Senior Immigration Policy Analyst, National Council of La Raza, Washington, D.C., March 30, 1993, p. 4.
214. Interview with James B. Turnage Jr.
215. Richard E. Norton, Managing Director, Facilitation, Air Transport Association (ATA), "Implementing Immigration Policy in the 1990's: Managing Change at the Immigration and Naturalization Service," Washington, D.C., December. 1992, p. 8.
216. U.S. Congress, Testimony by Richard M. Hankinson, p. 36.
217. U.S. Congress, House Committee on Government Operations, Subcommittee on Information, Justice, Transportation, and Agriculture, Statement of Don Wortman, Fellow of the National Academy of Public Administration, Washington, D.C., March 30, 1993, p. 1.
218. U.S. Congress, Testimony by Dan Stein, p. 3.
219. Interview with Paul Virtue, Deputy General Counsel, Immigration and Naturalization Service, Washington, D.C., May 17, 1993.
220. U.S. Congress, Testimony by Dan Stein, p. 5.
221. Interview with Marion Metcalf (Enforcement), Immigration and Naturalization Service, detailed to the National Performance Review, Washington, D.C., April 21, 1993.
222. U.S. Congress, Testimony by Dan Stein, p. 13; and Interview with James A. Puleo, Acting Executive Associate Commissioner for Operations, Immigration and Naturalization Service, Washington, D.C., June 15, 1993.
223. U.S. Congress, Testimony by Dan Stein, p. 13.

224. Selected Chief Patrol Agents' Focus Group Interview, U.S. Immigration and Naturalization Service, Washington, D.C., July 1, 1993.
225. Letter from William T. Veal, Deputy Chief Patrol Agent, San Diego Sector, U.S. Border Patrol, U.S. Immigration and Naturalization Service, San Diego, California, to Carol L. Levy and Carolyn S. Lowengart, Treasury and Justice Team, National Performance Review, June 25, 1993.
226. U.S. Congress, House Committee on Government Operations, Subcommittee on Information, Justice, Transportation, and Agriculture, Summary of Testimony of Leonel J. Castillo, Former Commissioner of the Immigration and Naturalization Service, Washington, D.C., March 30, 1993, p. 8.
227. U.S. Congress, Summary of Testimony of Leonel J. Castillo, p. 9.
228. Interview with John F. Shaw, Assistant Commissioner for Investigations, Immigration and Naturalization Service, Washington, D.C., June 17, 1993.
229. U.S. Congress, Testimony by Cecilia Munoz, p. 10.; and U.S. Congress, House Committee on Government Operations, Subcommittee on Information, Justice, Transportation, and Agriculture, Testimony by Richard J. Wilson, on behalf of the American Bar Association, Washington, D.C., March 30, 1993, p. 1.
230. U.S. Congress, Statement of Theodore Ruthizer pp. 5-6.
231. Ibid.
232. Ibid.
233. U.S. Congress, Testimony by Richard M. Hankinson, p. 6.
234. Rudolph Valdez, "Hundred Day Comments," p. 4.
235. Memorandum from C. M. McCullough, Acting Regional Administrator, Western Region, Immigration and Naturalization Service (INS), Laguna Niguel, California, to Gary S. Messina, Director, Office of Strategic Planning, Headquarters, INS, "Organizational Analysis: Your memo dated May 27, 1993," June 18, 1993, p. 1.
236. Richard E. Norton, "Implementing Immigration Policy in the 1990's," p. 4.
237. Rudolph Valdez, "Hundred Day Comments," p. 4.
238. Ibid.
239. U.S. Congress, Statement of Theodore Ruthizer, pp. 7, 9.

240. Memorandum from C. M. McCullough, "Organizational Analysis," p. 2.
241. Interview with James Booe, Acting Staff Assistant for Field Operations, Western Region, Immigration and Naturalization Service, Laguna Niguel, California, June 22, 1993.
242. Interview with James A. Puleo.
243. Letter from William T. Veal.
244. Interview with James A. Puleo.
245. Richard E. Norton, "Implementing Immigration Policy in the 1990's," p. 4.
246. Interview with Richard K. Rogers, Special Assistant for Field Operations; C. M. McCullough, Acting Regional Administrator; and Virginia K. Kice, Chief, Congressional and Public Affairs Office, Western Region, Immigration and Naturalization Service, Laguna Niguel, California, June 22, 1993.
247. Letter from William T. Veal.
248. Rudolph Valdez, "Hundred Day Comments," p. 5.
249. Interview with Cliff Rogers et. al.
250. U.S. Congress, Testimony by Dan Stein, p. 12.
251. U.S. Congress, Testimony by Richard M. Hankinson, p. 31.
252. The legal divisions are located at DOJ headquarters in Washington, while the U.S. Attorneys offices are located in each federal judicial district throughout the United States. Because a single U.S. Attorney administers offices in both Guam and the Northern Mariana Islands, there are 94 U.S. Attorneys offices but only 93 U.S. Attorneys.
253. U.S. Comptroller General, *Transition Series - Justice Issues*, OCG-93-23TR (Washington, D.C.: General Accounting Office, December 1992); U.S. Comptroller General, *Improved Management Processes Would Enhance Justice's Operations*, GGD-86-12 (Washington, D.C.: General Accounting Office, March 1986); U.S. Comptroller General, *Department of Justice Case Management Information System Does Not Meet Departmental or Congressional Information Needs*, GGD-83-50 (Washington, D.C.: General Accounting Office, March 1983); and U.S. Comptroller General, *Department of Justice Making Efforts to Improve Litigative Management Information Systems*, GGD-79-80 (Washington, D.C.: General Accounting Office, September 1979). The term "litigative organizations" as used herein includes the DOJ legal divisions and the U.S. Attorneys offices.

254. Letter from Howard G. Rhile, Director, General Government Information Systems, GAO, to the Honorable Jack Brooks, Chairman, Committee on the Judiciary, House of Representatives (December 9, 1992).

255. The Executive Office for United States Attorneys provides administrative support to the U.S. Attorneys offices.

256. U.S. Comptroller General, *Transition Series - Justice Issues*, OCG-93-23TR (Washington, D.C.: General Accounting Office, December 1992).

257. For example, DOJ's Environment and Natural Resources Division may defend the Department of Defense against a hazardous waste claim in one case while representing the Environmental Protection Agency as a plaintiff in a similar matter.

258. The General Accounting Office recently observed that estimates that fraud adds ten percent to the nation's \$800 billion in health care costs are uncertain because of the hidden nature of fraudulent and abusive practices. U.S. Congress, House Subcommittee on Crime and Criminal Justice, "Legal and Resource Constraints Complicate Efforts to Curb Fraud and Abuse," testimony by Janet L. Shikles, Director, Health Financing and Policy Issues, Human Resources Division, U.S. General Accounting Office, February 4, 1993.

259. Affirmative civil fraud also includes civil actions to stop a fraud in progress or to obtain restitution or other relief to non-governmental victims of fraud. The government is seldom the only fraud victim in health care cases, and often there are victims in other cases as well. DOJ's Civil Division also prosecutes affirmative civil fraud violations, particularly those cases involving more than a \$500,000 loss to the government.

260. Although the Federal Bureau of Investigation (FBI) recently reassigned 50 agents from other areas to health care fraud, the agents typically focus on criminal fraud investigations.

261. DOJ's Civil Division has observed that promotions and other measures of professional accomplishments within agency Inspector General offices appear to be based upon the number of convictions obtained. As a result, petty convictions can "count" for far more than major civil recoveries.

262. Shikles testimony before House Subcommittee on Crime and Criminal Justice, February 4, 1993. For example, the HHS Inspector General has less than two full-time investigators working on health fraud in southern California, where fraudulent billing schemes have been prevalent. Id.

263. U.S. Attorneys' offices in the Central District of California, Western District of New York and Middle District of Pennsylvania participated in the program.

264. The affirmative civil enforcement pilot program recovered just over \$7 million at a cost of \$642,884.

265. Affirmative civil fraud cases are cases in which the U.S. Government initiates a lawsuit against a defendant to recover monies owed to the government, as opposed to defensive cases in which the U.S. Government defends itself against a claim in a lawsuit. U.S. Attorneys contend that an increasing number of civil fraud cases they prosecute involve losses to the government in excess of \$500,000.
266. *U.S. Attorneys do not take similar issue with settlement authority limits in defensive cases, in which the requirement of DOJ Civil Division approval of settlements in excess of \$500,000 often induces plaintiffs to settle at or below \$500,000 rather than submit their case to uncertain outcome of DOJ headquarters review.
267. Note that on December 30, 1992, former Attorney General Barr issued a directive increasing U.S. Attorneys' settlement authority to \$1 million. On January 31, 1993, however, then Acting Attorney General Gerson suspended the directive.
268. USMS personnel frequently assist the U.S. Attorneys in determining whether pursuing a civil fraud case will be cost effective, as well as in satisfying judgments obtained.
269. Shikles testimony before House Subcommittee on Crime and Criminal Justice, February 4, 1993.
270. Civil Monetary Penalty Inflation Adjustment Report: Report to Congress, Office of Management and Budget, Executive Office of the President, July 1991.
271. Civil Monetary Penalty Assessments, Collections, and Status of Receivables, FY 1992: Report to Congress, Office of Management and Budget, Executive Office of the President, January 1992 (See Exhibit 1).
272. Civil Monetary Penalty Inflation Adjustment Report: Report to Congress, Office of Management and Budget, Executive Office of the President, July 1991.
273. Ibid, (See Exhibit 1).
274. Civil Monetary Penalty Inflation Adjustment Report: Report to Congress, Office of Management and Budget, Executive Office of the President, July 1991, [See Exhibit 1, p. 7 and Exhibit 2, p. 7, 42, U.S.C. 7413(b).].
275. Civil Monetary Penalty Assessments, Collections, and Status of Receivables, FY 1992: Report to Congress, Office of Management and Budget, Executive Office of the President, January 1992 (See Exhibit 1).
276. P.L. 101-410, the Federal Civil Penalties Inflation Adjustment Act of 1990.
277. U.S. Government Accounting Office, Federal Prisons: Revised Design Standards Could Save Expansion Funds, March 1991. GAO/GGD-91-54. According to this study, as of January 1991, the distribution of inmates in the federal prison system was as follows:

minimum -- 21%, low -- 14%, medium --31%, high -- 9%, and administrative -- 25%.

278. Bureau of Justice Statistics Bulletin, Prisoners in 1992. This study also indicated a 15.9% increase in sentenced federal prisoners in 1992.

279. U.S. Government Accounting Office, Transition Series, Justice Issues, December 1992.

280. Edna McConnell Clark Foundation, Americans Behind Bars (New York: Edna McConnell Clark Foundation), May 1992, p.5.

281. Public Law 98-473, 98 Stat. 1837 (1984).

282. At present, approximately 60 federal criminal statutes, mostly relating to weapons and drug offenses, require mandatory sentences.

283. See, e.g., GAO Transition Series, supra note 3 (indicating that 74% of offenders were sent to prison under the sentencing guidelines, as opposed to 53% under the previous structure, and that the average inmate could expect to serve three years longer under the system) and Bureau of Justice Statistics Special Report, Federal Sentencing in Transition, 1986-90, June 1992, NCJ-134727 (indicating that, even if sentences decreased under the new guidelines, time actually spent in prison increased under the new structure).

284. The BOP construction budget has increased from \$600 million in 1986 to over \$2.3 billion in 1992. GAO Report, supra note 3.

285. See, e.g., U.S. Government Accounting Office, State and Federal Prisons: Factors That Affect Construction and Operating Costs, May 1992, GAO/GGD-92-73, and U.S. Government Accounting Office, Prison Costs: Opportunities Exist to Lower the Cost of Building Federal Prisons, October 1991, GAO/GGD-92-3.

286. According to BOP officials, approximately one-third of BOP's facilities are located on active or former military bases. BOP has reviewed recently-available sites and, as noted, is pursuing some locations, though BOP has strict criteria for determining site selection. The U.S. Department of Defense, in connection with the BOP, has published a guide to using former military installations as correctional facilities.

287. U.S. Government Accounting Office, Prison Boot Camps: Short-term Prison Costs Reduced, but long-term Impact Uncertain, April 1993, GAO/GGD-93-69.

288. Attorney General Order No. 1753-93, 28 C.F.R. Part 505, 58 Fed. Reg. 122, June 28, 1993.

289. U.S. Government Report, Prison Alternatives: Crowded Federal Prisons Can Transfer More Inmates to Halfway Houses, March 1991, GAO/GGD-92-5.

290. U.S. Government Accounting Office, Drug Treatment: Despite New Strategy, Few Federal Inmates Receive Treatment, September 1991, GAO/HRD-91-116, p. 2.

291. Ibid., p. 3.

292. Public Law 98-473, 98 Stat. 1837 (1984).

293. GAO/HRD-91-116, endnote 1, Appendix II, Elements of Effective Prison Drug Treatment Programs Reported by the OTI, NIC and IOM. The study reviews characteristics of successful programs as determined by the Office of Treatment Improvement (HHS), the National Institute of Corrections (Department of Justice) and the Institute of Medicine.

294. Ibid.

295. [New York Times Magazine, June 25, 1993, p. 16.]

Clinton Presidential Records Digital Records Marker

This is not a presidential record. This is used as an administrative marker by the William J. Clinton Presidential Library Staff.

This marker identifies the place of a tabbed divider. Given our digitization capabilities, we are sometimes unable to adequately scan such dividers. The title from the original document is indicated below.

INTERIOR

Divider Title: _____

U.S. DEPARTMENT OF INTERIOR AGENCY TEAM REPORT

NATIONAL PERFORMANCE REVIEW

INTERNAL WORKING DOCUMENT -- NOT FOR DISTRIBUTION

AUGUST 4 , 1993

TABLE OF CONTENTS

	<u>Page</u>
I. Introduction.....	1
II. Issue Papers and Recommendations.....	7
A. Shifting from Red Tape to Results.....	8
Establish a Hard Rock Mine Reclamation Fund to Restore the Environment.....	9
Redefine Federal Oversight of Coal Mine Regulation.....	13
Establish a National Spatial Data Infrastructure.....	19
B. Introducing Market Dynamics.....	24
Entrepreneurial Management of the National Park Service Fair Return for Federal Resources.....	25 31
C. Creating a Quality Management Culture.....	36
Rationalize Federal Land Ownership.....	37
Improve the Land Acquisition Policies of the DOI.....	42
Improve Mineral Management Service Royalty Collections.....	47
DOI Should Establish a System of Personnel.....	52
Consolidating Administrative and Programmatic Functions in DOI.....	56
Streamline Management Support Systems in the DOI.....	60
D. Now is the Time.....	68
Create a New Mission for the Bureau of Reclamation.....	69
Change the Federal Role in Helium Production.....	75
Enhance Environmental Management by Remediating Hazardous Material Sites.....	82
III. Agency Reinvention Activities.....	87
IV. Fiscal Impact Summary.....	93

THE DEPARTMENT OF INTERIOR

Introduction

The Department of Interior's (DOI) primary mission is to provide stewardship and management of federal lands and natural resources. As the nation's principal conservation agency, DOI has jurisdiction over approximately 450 million acres of public lands, which include national parks and monuments, national wildlife refuges, and other protected areas. Departmental responsibilities include fee and royalty collection for grazing, timber, oil, and gas operations; mine regulatory and reclamation activities; basic and applied scientific research; geological and hydrological mapping; development and management of water projects; and oversight of trust obligations to Native Americans and some foreign entities.

To accomplish its current missions, DOI has approximately 77,000 full-time employees, who are located at more than 700 U.S. sites, and a proposed operating budget of \$7.58 billion for fiscal year 1994. During the past decade, the department's operating budget has decreased 12 percent in constant dollars. Prior to 1987, DOI collected more in revenue, primarily from offshore oil and gas leases, than it spent.

Created in 1849 to administer the nation's internal affairs, DOI has both evolved and fragmented over the last century. The department is divided into ten distinct, and somewhat isolated, bureaus. DOI has been referred to as the "Mother of Departments" because many of today's federal agencies originated, at least in part, from within the department. The remaining functions of DOI are complex and diverse, presenting DOI with challenges and opportunities for reinvention.

A new perspective is needed for DOI to revise historical missions, adapt to new technologies, and resolve internal conflicts. The bureau's historical missions, some defined at the turn of the last century, need to be reexamined and revised. For the future, the department needs to adapt to new technologies that will revolutionize the workplace. The department needs to resolve internal conflicts between bureaus that promote development interests and other bureaus that promote environmental interests. Focusing on these DOI characteristics, the National Performance Review (NPR) has developed a set of issues to begin the process of

reinvention. These issues are not intended to be a comprehensive review of the entire department, but rather consist of specific recommendations to resolve recognized problems. The DOI issues are organized using the standard themes of the NPR report: Shifting from Red Tape to Results; Introducing Market Dynamics; Creating a Quality Management Culture; and Now is the Time.

Shifting from Red Tape to Results

Several DOI issues involve stripping away barriers that prevent effective, efficient governance; eliminating federal micromanagement of state and local government; or managing across agency lines through boundary-spanning mechanisms. The following recommendations show ways that DOI can shift from red tape to results.

To address health and safety threats and environmental damage caused by toxic metal and chemical leaching from abandoned mines, NPR recommends that the Federal Government establish a hard rock mine reclamation fund. Current interest in legislation for mining law reform provides an opportunity to structure an organization to effectively and efficiently address the reclamation issue.

To overcome organizational problems that inhibit an effective state/federal relationship, NPR recommends a redefinition of federal oversight of coal mine regulation. Using a system of national standards of excellence for regulatory and reclamation programs, establishing goals, performance measures and an evaluation process, the federal government can improve oversight, develop an appropriate organizational structure and better evaluate state programs.

By supporting a cross-agency coordinating effort, the federal government can develop a coherent vision for the national spatial data infrastructure (NSDI). Spatial, or geographic, data refers to any information that can be placed on a map. The NSDI will permit simultaneous analysis of many different, but related, data sets that are digitally recorded. These digital maps will be essential to analyze and depict, among myriad applications, environmental information such as geographic distribution of endangered species and monitoring of wetlands.

Introducing Market Dynamics

By encouraging entrepreneurial management and instituting user fees, DOI can introduce

market dynamics to its operations. Faced with a \$5.5 billion backlog of projects to protect natural and cultural resources and other pressing needs, the National Park Service (NPS) needs to find new revenues through entrepreneurial management of the national parks. By embracing an entrepreneurial management strategy that includes reforming the nature, level, and collection of fees; updating concession contracts; and increasing voluntary partnerships, the NPS would enhance the public's enjoyment of the parks and protect them for future generations.

The federal government should institute reforms to guarantee a fair return for federal resources such as livestock grazing and hard rock mining. Some of the programs regulating the commercial sale and use of natural resources on federal lands operate at a loss to the taxpayers and fail to provide incentives for good stewardship practices. The administration should also develop a new fee schedule for communications sites on Department of Interior and Department of Agriculture lands.

Creating a Quality Management Culture

To create a quality management culture, DOI needs a cultural transformation in the workplace. Innovative management techniques, empowerment of workers, a streamlining of management support functions, and more are needed to change the way DOI works.

DOI needs to reinvent the way it manages and acquires federal lands. Due to historical patterns of settlement and development of this country, adjacent federal lands often fall under the jurisdiction of several federal agencies. This intermingled ownership pattern prevents efficient operations; in many cases, lands that are administered by separate agencies share the same users, resources, and management problems. NPR recommends the establishment of a pilot program to coordinate the administration of selected federal lands based on principles of ecosystem management.

The federal government acquires lands using inconsistent methods that often reflect political considerations over objective criteria. The current approach is based on a single-ranking system, devised by OMB, that compares incompatible qualities, such as recreational benefits and the value of endangered species. NPR recommends that the Secretaries of Interior and Agriculture and the Director of OMB modify the process for determining land acquisition priorities and procedures. The new system should be separated into three parallel ranking

systems, as proposed by the National Research Council, that reflect major objectives of federal land acquisition: outdoor recreation resources, resource protection, and cultural heritage protection.

Better management of DOI's royalty collection program would increase revenues and improve efficiency. DOI's Royalty Management Program (RMP) collects an estimated \$4.7 billion annually in royalties. To achieve more prompt and accurate royalty collections, NPR recommends that RMP proceed with a vigorous program of compliance verification, develop new computer programs to analyze transactions, and identify and adopt new methods to simplify royalty reporting.

A change in management philosophy, empowerment of workers, and a cultural transformation is needed to address bureaucratic barriers at DOI. The department has a rigid organizational structure consisting of ten independent bureaus with separate missions and strong internal cultures. Many of the emerging issues in the department, such as ecosystem management, will require integrated, cross-cutting management approaches. A system of personnel exchanges and in-house contracts across bureau boundaries will help develop cooperative approaches to departmental problems, encourage employee movement, and provide incentives for innovation.

To effectively manage its bureaus, DOI needs to reduce duplicative services. Each DOI bureau has its own administrative staff, and provides its own administrative services and certain programmatic and public affairs services. By consolidating administrative and programmatic functions, DOI will improve customer service, promote efficiency of operations, and reduce costs. NPR recommends that, within six months, all DOI offices should identify parallel administrative, programmatic and public outreach functions in areas where offices are co-located. Then, over the next three years, DOI should consolidate functions to provide commonly needed services, wherever feasible.

To create a quality management culture, the department should streamline its management support systems, including telecommunications, procurement, financial information, and paperwork control. NPR recommends that standard practices for electronic communications between government agencies and within DOI be implemented. It is also recommended that the existing correspondence review process be revised to delegate signatory authority to the lowest

appropriate organizational level. Furthermore, NPR recommends that a system of steps and timeframes be developed for the regulatory review and approval process and a regulatory alert system be implemented to provide notice to all interested parties.

Now is the Time

Now is the time to cut spending and eliminate outdated functions in DOI. The Bureau of Reclamation needs to redefine its mission, which would cut spending. The original mission of the Bureau of Reclamation (BOR) -- to develop water resources and provide for economic development of the West -- is almost complete. As its traditional construction mission ends, the BOR must clarify its proper federal role in water management and devolve secondary support functions to state and local authorities. The BOR must assist in defining the federal policy for water management in the West and maintain a leadership role in managing completed projects. NPR recommends that, by the beginning of fiscal year 1995, BOR should develop a new mission which assumes a leadership role in Western water policy and focuses on water management functions.

The federal government needs to reexamine its role, and reduce its involvement, in the federal helium program. The federal government owns and operates a helium processing plant, a 425-mile helium pipeline, a reservoir containing crude helium, and related facilities. NPR recommends that the federal government cancel the helium debt and close the federally-owned helium processing facilities.

The time is right to integrate skills across bureau boundaries in the remediation of DOI's hazardous materials (HAZMAT) sites. The high cost of HAZMAT remediation requires DOI to make maximum use of existing resources. NPR recommends that managerial and scientific expertise be integrated in cooperative, cross-bureau efforts to assess and remediate HAZMAT sites designated as pilot projects. Furthermore, a legal strike force should be established by the end of 1994 to address legal barriers to cleanup.

Fiscal Impact Summary

The most important benefits of implementing the reinvention recommendations cannot be quantified at this time. Improved customer service, greater efficiency, and a better work

environment will be the ultimate rewards. Of the benefits that can be quantified, implementing these recommendations would collectively save \$693 million and 1533 FTE's over five years.

Section II

Issue Papers and Recommendations

Shifting from Red Tape to Results

ESTABLISH A HARD ROCK MINE RECLAMATION FUND TO RESTORE THE ENVIRONMENT

Background

Health and safety threats and environmental damage caused by toxic metal and chemical leaching from abandoned hard rock mines are serious national problems. Acid drainage from these mines not only poses a direct environmental hazard at the source but also creates potential liability for the federal government due to downstream contamination. Currently, reliable data on the total number of mines producing acid drainage and the number of miles of streams affected by acid and metal drainage are not available. However, various estimates have placed the number of these mines in the range of 20,000-50,000.¹ It is estimated that \$11 billion would be needed to reclaim all existing abandoned noncoal mines.

The environmental problems of hardrock mining occur when acid drainage create large toxic, metal-bearing sediment loads in stream channels. The channels may be brightly colored-red, purple, and orange-by precipitates of iron and other metal compounds. Stream waters become acidified by the metal constituents. Fish and other organisms in the system are lost in the waters most affected as a result of metal contamination. Streamside vegetation is often changed and the nearby ground water may become contaminated with metal ions.²

A more vigorous cleanup effort can be mounted by creation of a new abandoned mine land (AML) reclamation fund similar to the existing fund for abandoned coal mines. The Surface Mining Control and Reclamation Act of 1977 (SMCRA) created the Abandoned Mine Land (AML) Fund to be used for restoration of abandoned coal mines. Abandoned mine reclamation in hard rock mining is permitted using existing AML grants only after all coal mine reclamation has been completed in each state or if the noncoal project is for the protection of human health and safety. The existing fund, which is based on a tax on coal production, is not intended to address the major cleanup requirements arising from abandoned noncoal mines nor are sufficient funds available to meet noncoal needs.

Structural problems also make the existing program less effective than it might be. These problems include: (1) a distribution formula which is not directly related to priority reclamation needs; (2) a structure which permits appropriation of only part of the fund each year; (3) lack of a mine inventory which is widely accepted as accurate; and (4) use of the fund for nonreclamation purposes. Legislation currently under consideration in Congress contains possible alternatives for structuring a new program for hard rock mine reclamation. Current interest in legislation for mining law reform provides an opportunity to structure this new fund so as to avoid problems that exist with the current fund.

Creating a new AML fund at this time provides the added opportunity to structure an organization to effectively and efficiently address the issue of abandoned hard rock mine reclamation. While the existing AML program can provide the framework of a reclamation program for hard rock mine reclamation, creating a new, separate program will provide an opportunity to address and avoid perceived financial, managerial, and political problems with the existing AML program. These problems are discussed in detail in a separate issue paper on redefining federal oversight in coal mine regulation.

Although the currently pending mining reform legislation (HR. 322 and S. 775 introduced by Nick Rahall, D., West Virginia and Larry Craig, R., Idaho, respectively) provides an opportunity to create a responsible reclamation program, the current uncertain status of that legislation complicates the NPR task of making specific recommendations to resolve this issue. The Administration has not yet made final decisions about many of the elements of a reclamation program, and there is currently some sensitivity to the inclination of members of Congress on these matters. Therefore, the recommendations outlined here represent current thinking or sketch the range of options currently under consideration, but are subject to change.

In addition to supporting legislative remedies, the Department of Interior should play an active role in coordinating research on acid mine drainage and clean up of toxic waste. Cross-agency, intergovernmental and private sector cooperation in research activities could improve clean-up results and lower the costs of mine reclamation. The U.S. Forest Service (USFS) and Bureau of Mines (USBM) are engaged in a cooperative research project focusing on acid draining prediction, development of effective technologies to control draining at both

abandoned and operating sites, and development of cost effective technology to correct acid drainage from abandoned sites. USBM and the National Park Service (NPS) also have a Memorandum of Understanding to coordinate activities related to mine reclamation. While the USFS/USBM and NPS/USBM cooperative agreements are a start, there is no broader coordinated effort involving research organizations, land management agencies, state and local governments and the private sector. Nor is funding specifically targeted for this purpose.

Recommendations

1. **In establishing the new hard rock mining reclamation fund, the Department of Interior should recommend that statutory restrictions be placed on the purposes for which the fund can be spent, emphasizing its use for cleanup and research, prohibiting use for unrelated purposes and limiting the administrative expenses of the program. This would require new legislation.** The Department should further recommend that the fund be structured as a permanent appropriation with distribution to be based on priority needs based on a nationwide priority system and inventory of abandoned mine sites on federal, state and private lands.
2. **The Department of Interior should establish a nationwide priority system for cleanup of abandoned hard rock mines based on the risks involved and identified through an inventory of mine sites.** For example, the system would rank mine sites by risks as follows: imminent and substantial harm to the public health or safety, significant risk of harm to the public health or safety, significant risk of harm to the public health and safety or the environment, restoration of degraded lands and waters. The states should participate in the inventory and prioritization.
3. **In the course of formulating the Administration's position on hard rock mine reclamation, the Department of Interior should carefully review the strengths and weaknesses of the existing coal AML program.** As with the existing coal program, states should implement and manage regulatory and AML programs with federal approval and oversight. A decision on which office within Interior will manage the new program should be based on a determination of which office has existing personnel and program experience

to best implement it.

4. **The Department of Interior should recommend that proposed legislation devote a significant portion of the royalty for mines on federal lands to reclamation and/or levy a separate reclamation fee on all hard rock mines.**

5. **Using the USFS/USBM joint program as a model, Interior should take the lead in developing an interagency program of research and development and implementation of mine clean-up on federal lands, beginning with a thorough inventory of mining sites.**

The program should be established, with responsibilities clearly delineated, by the beginning of fiscal year 1995. This program should take maximum advantage of opportunities for private sector participation and cooperative funding.

Implications

Western states are supportive of the idea of an AML reclamation program and will favor options that maximize their discretion and control over funding and priorities.

The mining industry is not supportive of fees or royalties in general and is opposed to the idea that the industry should be taxed to correct the errors of the past.

Fiscal Impact

Implementation of the program will likely require more federal personnel and will also have an impact on the states in their implementation of regulatory and reclamation programs. In theory, royalties and fees will provide adequate funding to cover the new programs. It is impossible at this time to determine the fiscal impacts of the proposal because many of the essential elements, such as the amount of royalties and/or fees, are still unknown. However, this process should move forward over the next several weeks and the agency will provide fiscal background as soon as information is available.

Endnotes

1. United States Department of Agriculture. "Acid Drainage from Mines on the National Forests." March 1993. p. 3.
2. Ibid. p. 5.

REDEFINE FEDERAL OVERSIGHT OF COAL MINE REGULATION

Background

Both mine regulation and reclamation of abandoned mine lands are structured by the Surface Mining Control and Reclamation Act of 1977 (SMCRA) to permit states to assume primary responsibility for their programs while reserving an oversight role for the federal government. However, the state-federal relationship is strained, and the Office of Surface Mining (OSM), which performs the oversight function, suffers from management and organizational problems. With over ten years of experience, many state programs can handle more responsibility than provided by the 1977 law. Changes in law and regulation could improve performance, save money, and result in more efficient program operations by restructuring the federal oversight role in mine regulation, reorganizing OSM, and increasing state responsibility and flexibility in administering abandoned mine reclamation funds.

The federal oversight role should take maximum advantage of states' expertise in mine regulation developed since SMCRA was passed. Instead, the intergovernmental relationship is a source of friction between state and federal regulators. A recent study concluded that, while a certain level of conflict is inherent in any oversight relationship, "the frustration gap between federal and state inspectors in this policy area is far wider than one might expect."¹ Federal and state inspectors favor different enforcement styles, with state inspectors traditionally tending to accommodate coal companies, while federal inspectors commonly adhere to a strict forced compliance style.² Despite differing styles, both state and federal regulators consider themselves environmentalists but apparently disagree on how to reach environmental goals. While states are uncomfortable with aggressive federal oversight, environmental groups believe that active federal oversight is essential and that the federal regulatory system needs "to . . . accomplish the goals of SMCRA while reducing intergovernmental conflicts and misallocation of resources."³

With regard to state responsibility, SMCRA provides that any state may adopt its own program regulating the environmental effects of coal mining. States submit programs to the Secretary of Interior for approval and, if approved, states are granted primacy (the

term *primacy* refers to primary, as opposed to exclusive, responsibility for a program). The federal government retains oversight responsibility carried out by OSM. If a state's program either fails or is not approved, a federal regulatory program run by OSM must be implemented in that state. It is to a state's advantage to assume primacy for coal mining regulation because only those states with primacy are eligible to receive Abandoned Mine Land (AML) grants. State primacy is to the federal government's advantage because state programs are less expensive to operate than federal programs due to the difference in state and federal salaries. Tennessee is the only major coal mining state that does not have primacy.

A basic problem is to determine the proper scope and focus of oversight efforts. Federal oversight under SMCRA is frequently criticized for focusing on strict compliance with the rules rather than on success in meeting the environmental goals of the law. For example, in the area of mine reclamation, the Federal Government keeps track of the number of sites reclaimed regardless of the environmental importance of these sites. The Federal Government has not established measurable goals or evaluation criteria for environmental results. The study cited above concluded that the federal-state relationship might be improved if federal staff "communicated their common desire to achieve qualitative on-the-ground environmental results, rather than merely quantitatively monitoring state enforcement efforts."⁴ What is needed is an evaluation system that identifies effective performance in meeting environmental goals.

Once such a system is established, the Department of Interior will have objective criteria with which to propose to Congress a new distribution formula for AML funds. The current formula is based on the amount of coal currently mined in each state rather than on the number of abandoned mine sites requiring reclamation. This results in allocating a large proportion of available funds to certain Western states with relatively small reclamation needs. A formula based on reclamation needs and program goals would make better use of available funds.

A second concern is how to structure OSM to perform a more effective oversight role. Since SMCRA's inception, the number of coal mines has dropped significantly (about 6,200 in 1976 to about 4,100 in 1988) and most states have assumed primacy, but the

number of federal employees involved in the surface mine program has not decreased. A recent Congressional staff report questioned both field/central office staffing ratios and geographical location of field offices. While it is clear that a reorganization of OSM, with a likely reduction of personnel, is in order, organizational changes can most effectively be made in concert with the revision of the office's oversight role and establishment of national goals and standards for mining regulation and reclamation.

Although AML grants provide most funding for mine reclamation, a related grant program, the AML emergency program, addresses urgent problems such as mudslides and mine fires that occur outside planned reclamation schedules. Emergencies are most common in Appalachia, with most high-cost projects occurring in Kentucky, Ohio, Pennsylvania and West Virginia. Although emergencies have traditionally been a federal responsibility, many states are assuming responsibility for managing their own programs. Nine states, including Kentucky and Pennsylvania, have not yet done so. Congress, concerned that certain states were taking advantage of the separate emergency funding pool to supplement their reclamation funds, added appropriations bill language beginning in fiscal year 1992 that capped an individual state's share at 25 percent of the appropriation. This solution limited spending in the highest spending states, but generated carryover of appropriated funds in all others. A better solution is to require states to take over their emergency programs and do away with separate funding of the emergency program.

The Rural Abandoned Mine Program (RAMP) is a related mine reclamation program funded from AML funds but administered by the Department of Agriculture Soil Conservation Service (SCS). Administration of the RAMP program duplicates existing state capabilities to administer mine reclamation programs. Providing all AML funding as a consolidated grant building on the simplified grant program already in effect would permit states to take responsibility and to choose among priorities and would also substantially reduce federal administrative costs.

Recommendations

1. **The Department of Interior's Office of Surface Mining, in consultation with state mining regulators, should develop national standards of excellence for regulatory**

and Abandoned Mine Land programs, establishing goals, performance measures and a process for evaluation of effective performance. Oversight should be changed from a quantitative to a qualitative approach, directed toward preventing environmental harm and assessing progress in meeting the objectives of the law. This project should be completed and new procedures should be implemented by October 1994, the beginning of federal fiscal year 1995.

2. The Department of Interior should propose legislation to revise the distribution formula for Abandoned Mine Land grants based on program goals and state performance.

3. By January 1995, OSM should review its organizational structure based on the review of its oversight role and submit a plan to close or downsize offices with declining workloads, eliminate unnecessary management levels and adjust its field/Washington staffing ratio.

4. The Secretary of Interior should persuade Tennessee to submit its proposed regulatory programs to the Department of Interior by June 1994 as a first step toward assuming primacy. This will strengthen the commitment to primacy and provide greater efficiencies in program operations.

5. Future appropriation bills should remove language requiring per state limits on AML emergency funds. States should be required to assume responsibility for administering their AML emergency programs.

6. SMCRA should be amended so that RAMP is administered by the states.

7. Grant funding for reclamation should be in the form of consolidated grants, building on the existing simplified grant program, with states given the responsibility for establishing reclamation priorities.

Implications

Distribution of AML grants to meet priority reclamation needs is a contentious political issue reflecting a conflict between Eastern and Western states. The existing distribution formula, based on the amount of coal currently mined in any state rather than on priority reclamation needs, favors Western states. Establishment of a system of goals and

performance measures could provide an objective basis for proposing a restructuring of the distribution formula to better meet environmental goals.

OSM, Facts about Coal in Tennessee (Tennessee's private coal association) and the Governor of Tennessee support primacy for Tennessee. If primacy were approved, Tennessee could begin receiving AML grants that would speed reclamation and support its construction industry.

Changes in the administration of RAMP will be controversial because Congress favors keeping RAMP in the current SCS district structure rather than having it run by the states.

Fiscal Impact

Assumption of primacy by Tennessee will save an estimated \$3 million per year beginning in fiscal year 1996.

RAMP administrative costs are capped at 15 percent of the program. The program cost is \$13.385 million so \$2 million per year would be saved by moving program funds to AML grants for administration by the states.

Savings in the range of \$2-3 million will occur if the remaining states take over their emergency programs and OSM closes or downsizes offices with declining workloads.

	In Millions of Dollars				
	1994	1995	1996	1997	1998
Budget Authority	\$0	\$0	\$7	\$7	\$7
Outlay	\$0	\$0	\$7	\$7	\$7
Change in FTEs	0	0	0	0	0

These estimates are based on cost savings gained through consolidating grant programs and transferring more responsibility to the state level. Additional savings, both in dollars and in FTE's will be generated from the review of the federal oversight role, which should eliminate duplication of functions, and from the reorganization of OSM.

Endnotes

1. Denise Scheberle, "In the Eye of the Beholder: State and Federal Perceptions about the Surface Mining Control and Reclamation Act Enforcement" in Uday Desai, ed., *Moving the Earth, Cooperative Federalism and Implementation of the Surface Mining Act* (Westport, Connecticut: Greenwood Press, 1993), p. 209.
2. Ibid., p. 210.
3. James M. McElfish and Ann E. Beier, *Environmental Regulation of Coal Mining, SMCRA's Second Decade* (Washington, D.C.: Environmental Law Institute, 1990), p. 29.
4. Scheberle, "In the Eye of the Beholder," p. 212.

ESTABLISH A NATIONAL SPATIAL DATA INFRASTRUCTURE

Background

The federal government has a unique opportunity to coordinate and manage partnerships with private industry and with state and local governments to develop what promises to be one of the most important information technologies of the 21st century, the national spatial data infrastructure (NSDI). The NSDI refers to digital, spatial (geographic) data that will replace the analog maps of the past. These digital maps of the future will be essential to analyze and depict environmental information (geographic distribution of endangered species, monitoring of wetlands) and, more generally, hydrology, soils, agriculture, climate, geology, transportation, and urban development throughout the U.S. The NSDI will play an integral role in the Administration's information infrastructure investment and "information highway."

In an April 1993 report, the National Academy of Sciences (NAS) stated: "...improvements in the NSDI are critical to the maintenance of a competitive position for the United States in an increasingly international economic arena."¹ An estimated \$8-\$10 billion dollars per year are spent on spatial, digital data worldwide. Federal agencies currently spend an estimated \$1-\$3 billion dollars on geographic data acquisition. These expenditures will increase in the future, but currently the framework to obtain, catalog, and transmit this information is in an *ad hoc*, largely incoherent state. Data collection is duplicated at the federal, state, local, and private levels for different purposes (e.g., transportation planning and water resource management). Moreover, different entities (e.g., federal and local agencies) are often unaware that much needed data have already been acquired by another party. Even when specific spatial data are known to exist, non-standardized collection procedures and lack of easy access often restrict use by others.

The principal federal roles in this area are to lead the development of NSDI and to coordinate its implementation. Currently, the Federal Geographic Data Committee (FGDC), led by the Department of Interior (DOI), is authorized by Office of Management and Budget (OMB) Circular A-16 to coordinate federal agency involvement in the NSDI.² The FGDC needs to be strengthened as the principal federal mechanism to coordinate mapping, surveying, and related spatial data activities. Key issues that need to be addressed by the FGDC include:

(1) establishing standards for data collection and cataloging; (2) developing federal policy for creating cost-sharing partnerships; (3) identifying and creating a plan to produce core data sets that will form the basic framework of the NSDI; (4) identifying thematic data sets that will have specific applications; and (5) creating a clearinghouse for finding, accessing, and sharing spatial data. In addition to leading the national effort, the federal government will be a major provider of spatial data through its various agencies (especially Interior, Commerce, Environmental Protection Agency, National Aeronautic and Space Administration, Transportation, Defense, and Agriculture). The Department of Interior (in particular, the U.S. Geological Survey) has always been a leader in mapping of natural resources and will be a major player in the evolution of the NSDI.³

Recommendations

An executive order is needed to implement the following recommendations:

1. **The leadership role of the Federal Geographic Data Committee (FGDC) should be strengthened beyond its original charter of OMB Circular A-16. Federal agencies should be instructed to participate fully in FGDC activities by providing adequate staff support and high-level committee representation.** The FGDC will create and implement common procedures and standards for data collection (content, quality, and other characteristics). Adherence to these standards should be a condition of budget approval and will apply to all expenditures of federal resources for geospatial data production, including those allocated to state and local governments, or the private sector. The FGDC will participate in an OMB-led budget crosscut (i.e., a government-wide budget for geospatial activities) for fiscal year 1995 to assure a coordinated and coherent federal effort.
2. **The federal government should establish, through the FGDC, a program by June 1994 to form partnerships with state and local governments and the private sector with a goal of 50 percent or higher non-federal cost share for new or enhanced activities.** Federal/state partnerships can be modeled after the 50/50 joint funding agreements that the U.S. Geological Survey has with state governments to produce topographic maps and data. Federal/private partnerships should be based on Cooperative Research and Development Agreements (CRADA).

3. **The FGDC should submit a schedule and funding plan to OMB by June 1994 for completing the collection and production of national core geospatial data by January 2000.** Core data refer to information that nearly all users of spatial data technologies require to accurately locate features on the earth's surface. Such information forms an underlying framework from which other data sets may be derived or to which other data sets can be referenced. Core data include geodetic, topographic, hydrographic, land survey, and transportation data.
4. **The FGDC should identify thematic data sets of critical national importance and establish priorities, standards, and a funding plan by June 1994 based on partnerships for collection of these data.** Thematic data, although not required for developing other data sets, are critical to solve specific problems of national significance (e.g., wetlands, endangered species, and seismic).
5. **By June 1994, the FGDC should create a Geospatial Data Clearinghouse, which will use existing computer networks, to provide public access to spatial data.** The FGDC should identify an incentive system to encourage sharing of data and discourage redundancy in data collection. One possible incentive could be a partial federal rebate for the costs of data collection.

Implications

The Federal Geographic Data Committee (FGDC) is an organization consisting of representatives from the federal geospatial data community. Until now, the organization has been mostly limited to setting standards, coordinating efforts, and consensus-building for general policy. The above proposal will significantly strengthen the FGDC by specifying enforcement authority and setting clear policy goals.

From the perspective of reinventing government, the question is what should be the federal government's role in the NSDI? In the past, a technology of such vital, national, economic interest would involve a massive federal investment, but today, the magnitude of money needed for such an investment is unavailable. An alternative is for the federal government to forge cost-sharing partnerships horizontally among federal agencies, vertically between state and local governments, and, most importantly, with the private sector to leverage

the money already being spent by the federal government on spatial data. Additional federal investments could be tiered by considering the value of the data and the degree of non-federal cost-sharing.

Fiscal Impact

The fiscal impact of NSDI is difficult to determine for several reasons. First, the value of digital data in existing applications is just beginning to be measured. Second, as spatial data become more common, new applications with immeasurable value will be realized. Third, the value of foresight (e.g., coordinating efforts to avoid waste and duplication) is difficult to measure. However, some attempts have been made to estimate benefits resulting from digital data being used in existing applications. For example, the U.S. Geological Survey estimates that \$309 million in benefits will accrue between 1994-2000 by accelerating the digitization of one map series (i.e., 7.5 minute quadrangles). The estimated benefits represent only federal government cost savings; the benefits associated with new applications and reduction in duplication are not included in the benefit estimates.

As noted in the background, significant resources are already being spent on digital, spatial data in the U.S. These expenditures will rapidly increase regardless of the above proposal. Whatever the level of resources allotted to spatial data activities in the future, implementation of the above recommendations would greatly increase the return on investment. Although some additional expense could be incurred by converting existing data to a new standard, this will be more than compensated by advantages such as cost partnerships and data-sharing. Given the current growth rate of expenditures, future savings for the federal government from cost partnerships alone could be billions of dollars over the next decade. The sharing of data among federal agencies and other organizations will yield (as yet) undetermined large savings for the federal government and its partners in NSDI. The development of plans that are specified in the recommendations will be budget-neutral.

Although NSDI plans can be developed at nominal cost, implementation of the plans would require additional resources. These costs cannot be accurately determined until actual plans are developed. However, some approximate estimates of expenditures⁴ can be made on the basis of different scenarios. A minimal approach to NSDI, involving only data standards

and a clearinghouse, would cost about \$4 million annually in new federal support. Acquisition of a basic national data set for identified high priority areas, with significant non-federal cost-sharing, would cost about \$20-\$30 million annually. A more ambitious approach, which would accelerate collection of thematic data (e.g., national wetlands and biodiversity mapping) and include core data for moderate priority areas, would require \$50-\$75 million annually in new federal investment. Although these figures seem large, they are only a part of what would be spent if the federal government proceeds with an uncoordinated effort.⁴

	In Millions of Dollars				
	1994	1995	1996	1997	1998
Budget Authority ¹	-\$6.0	-\$6.0	-\$6.0	-\$6.0	-\$6.0
Outlays	-\$6.0	-\$6.0	-\$6.0	-\$6.0	-\$6.0
Revenues	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0
Change in FTE's	5	5	5	5	5

¹Includes costs for data standards and clearinghouse; excludes costs for accelerated data collection. Approximately \$2 million is required for federal agencies to provide support to FGDC activities and could be absorbed within individual agency budgets.

Endnotes

1. National Academy of Sciences, *Toward a Coordinated Spatial Data Infrastructure for the Nation* (Washington, D.C.: National Academy Press, 1993), p. 171.
2. *FGDC Newsletter*, (Washington, D.C.: Federal Geographic Data Committee, No. 1, Spring 1993).
3. Interview with Dallas Peck, Director, and Doyle Frederick, Associate Director, United States Geological Survey, Reston, Virginia, July 2, 1993.
4. Scott Cameron, Office of Management and Budget.

Introducing Market Dynamics

ENTREPRENEURIAL MANAGEMENT OF THE NATIONAL PARK SERVICE

Background

The National Park Service (NPS) was established in 1916 to "promote and regulate the use of the National Parks...by such means as will leave them unimpaired for the enjoyment of future generations." In the face of urgent internal needs and growing demands on its resources, the NPS will be unable to accomplish this mission without increased revenues. Since present deficit reduction efforts make expanded federal appropriations unlikely, the NPS must enhance revenues on its own by embracing an entrepreneurial management strategy. By reforming the nature, level and collection of fees, updating concession contracts, and increasing voluntary partnerships, NPS would enhance enjoyment of the parks in the present and future.

The vital needs of the NPS must be met or the parks will not be left unimpaired for future generations. The NPS has an estimated backlog of projects totalling \$5.5 billion. By their current accounts, the NPS calculates backlogged projects totalling \$500 million each in natural resource, cultural resource and operational maintenance projects, \$1.8 billion in transportation and housing construction, \$1.8 billion in building and utility construction, and \$400 million in park operations. Current appropriations cannot meet these challenges confronting NPS. These fiscal shortfalls reflect pressing, fundamental needs which must be addressed to protect the national parks from continued deterioration. Beyond these operational exigencies of the present, moreover, lie the emerging demands of the future, demands which call on NPS to respond with a new vision. The long-term viability of the parks will depend not just on repaving roads, but on promoting alternative transportation; not just on improving facilities, but on redesigning them for the next century; not just on stretching customer service, but on revitalizing it with information-age technology. These specific reforms, and many others, must serve a holistic effort to integrate the natural and cultural resources of the parks within a single management strategy. The strategy - and the vision behind it - will require fiscal support not presently available.

Reform in the nature, level and collection of fees in the national parks holds strong potential for addressing the unmet needs of the NPS. Despite the immense challenges facing NPS and the costs they will entail, public access to the national parks is virtually free of

charge. Of 367 NPS sites, 182 require no entrance fees at all and only 15 impose the maximum allowable admission rate of \$5 per vehicle and \$3 per person. (Three parks are permitted to assess \$10/vehicle and \$5/person for admission: Yellowstone, Grand Teton, and Grand Canyon.) The problem is not just that current fee levels seem arbitrarily low, but that the array of fees assessed does not account for the many special demands users impose on the parks. These demands include high-risk activities requiring search and rescue, commercial filming, and bike/foot races, but also everyday pursuits such as fishing, hiking, and biking. Each places strains on the infrastructure, staff, and resources of the sites that go beyond those associated with simple entry and observation, yet these additional costs are passed on to special users only in part, or not at all. Thus, present fees cover only five percent of annual park operating costs.

Fees which are both unreasonably low and non-comprehensive do not seem to reflect public expectations. NPS has conducted a number of surveys which indicate general willingness to pay more, as long as the money directly benefits the parks themselves. Higher and more specialized fees, however, must be collected aggressively. Unfortunately, present policy gives NPS unit managers little incentive to do so, since most of their revenues pass directly to the Treasury and they see little direct benefit. To reinvigorate collections, incentives must be introduced to make individual parks more entrepreneurial in their operations. Allowing them to keep a meaningful portion of fees and allocate the funds without undue constraint would represent an empowering first step. This proposal need not threaten the viability of the park system as a whole if some percentage of individual revenues are contributed to a central trust with the authority to assist less popular NPS units and the entire park system as needed.

NPS must complement efforts to raise the level of collections with a program to improve their efficiency. Currently, collections demand the manual labor of rangers who take fees and issue permits at various visitor contact points. This procedure diverts scarce NPS employees from more specialized tasks and can significantly slow admissions. In smaller areas, remote locations, and off-peak time periods, manual collection becomes highly inefficient and is sometimes foregone altogether: 119 National Parks do not collect entrance fees because doing so would be "infeasible." If visitation grows by three million annually as expected,

using rangers as cashiers will create increasing difficulties.

To moderate its dependence on manual processing and the problems which ensue, the NPS should explore barrier-free admissions based on automated entry equipment and off-site ticket sales. The new system could offer an array of entrance options available "any time, anywhere." Several specific pilots already exist, such as the vending machines at Carlsbad Caverns, the Duck Stamp program of the Fish and Wildlife Service (FWS) and several credit-card payment schemes. These experimental programs should be compared to the present régime on the basis of operation and maintenance costs, customer satisfaction, safety issues, and frequency of fraud. If successful, they could provide a useful complement to traditional collection approaches.

Concession contracts, like fees, can provide much-needed revenues for an entrepreneurial NPS. Therefore, like fees, receipts from concession franchise fees must be actively pursued by the NPS. In the past, the Park Service has viewed these contracts not as fiscal assets but as customer service obligations. Due to isolation, short tourist seasons, and large capital requirements, some concessions have been essentially subsidized. Reaching agreement with vendors has been a difficult process. The cumulative result: average net return to the government has remained under three percent of gross concession revenue. By the end of fiscal 1994, 142 concession agreements will have expired. The NPS must seize this opportunity to promote competition, expedite renegotiations, and boost the government's return. To prevent revenues from being lost during the renegotiation period, NPS must have the means to expedite its renewal program.

Private donors, even more than park fees and concession contracts, represent a source of untapped revenue for NPS. The NPS must make the most of these voluntary contributions. Though over 200 site-specific non-profit groups and countless corporations give money to the parks, NPS remains rigidly constrained in its dealings with them. At present, the NPS has no authority to solicit funds and may enter into cooperative agreements with non-federal partners only when explicitly authorized by law. It also lacks the fiscal means needed to fully pursue an incentive program for donors, such as the successful Challenge Cost Share Program of 1993 which asked outsiders to "match" \$2 million of federal money with \$2 million of their own. An entrepreneurial NPS must have enhanced legal and financial flexibility to pursue voluntary

resources.

Full advantage has not been taken of opportunities to increase the revenues of the NPS. Those who benefit from the parks, the visitors, the businesses, and the contributors are able and, in most cases, willing to do more.

Recommendations

- 1. The Secretary should work with Congress to enact legislation giving the National Park Service authority, subject to broad policy oversight, to set fees at all parks. Full fee revenues should be allocated to the National Park Service through the budget and appropriation process, on a no-year basis, for backlog projects and new reforms.** The NPS should take aggressive interim measures to complete the renegotiation of its concession contracts, calling for special appropriations and outside expert support as necessary. This would allow the NPS to begin higher collections and receipts in fiscal 1995. To ensure accountability, the legislation should hold NPS to strict performance standards based on demonstrated results in program output and project execution.
- 2. The NPS should explore barrier-free admissions based on automated entry equipment and off-site vending of tickets and permits.** The NPS should designate a small set of parks as "Advanced Fee Collection Demonstrations" in 1994. These parks should become two year pilots testing the effectiveness of barrier-free admissions, as previously described.
- 3. The NPS should accelerate its concession reform and renewal program. Concession contracts which expire by 1994 should be renegotiated by 1995.** One half of revenues from concessions contracts should return to the parks of their origin, the remaining half should be used at the Secretary's discretion for park reform.
- 4. Enact legislation to enhance the legal and financial flexibility of NPS fund-raising.** This legislation should authorize up to \$25 million for the NPS Challenge Cost Share Program over the next five years. It should also authorize direct solicitation of funds by NPS employees for all park purposes and allow the NPS to enter partnerships with non-federal organizations at its discretion and when it is to the government's benefit or will increase government efficiency. To support these enhanced activities, the NPS should set up a special partnerships

and fund-raising unit to coordinate and maximize its charitable receipts.

5. NPS should establish its own permanent Reinvention Team to meet emerging, long term needs of the National Parks with a holistic, new vision. One immediate areas for exploration should be customer service, which could be improved substantially yet inexpensively through entrepreneurial measures. A "900" number, for example, could provide information on fees, permits, reservations, and transportation while generating revenue.

Implications

Shaping an entrepreneurial NPS will demand long-term, far reaching changes all the more difficult in the present climate of fiscal austerity. The fact that the National Park System has remained relatively unaltered for decades will likewise make reform daunting. The status-quo, however, would drive the NPS to certain decline, as strained revenues would evaporate ever more quickly in an atmosphere of multiplying demands, leaving parks unprotected and customers unsatisfied. The future viability of these nationally significant resources hinges on embracing entrepreneurial measures now. The recommendations in this brief report are not a panacea, but they do represent a step in the right direction which could infuse the NPS with fiscal resources sorely needed to fulfill its mission.

Fiscal Impact

These recommendations will generate new revenues totalling \$787 million over 5 years. The Department of the Interior would like to use these revenues for backlog and reform projects.

	In Millions of Dollars				
	1994	1995	1996	1997	1998
Budget Authority ¹	0.0	0.0	0.0	0.0	0.0
Outlays ¹	0.0	0.0	0.0	0.0	0.0
Revenues	70.0	123.0	182.0	206.0	206.0
Change in FTEs	0	0	0	0	0

¹ To be determined during Tollgate #4.

FAIR RETURN FOR FEDERAL RESOURCES

Background

The Federal Land Policy and Management Act of 1976 established a policy that "the United States receive fair market value for use of the public lands and their resources unless otherwise provided for by statute."¹ Programs regulating the uses of federal lands, however, often lose money and fail to provide incentives for good land stewardship. Federal grazing and hard rock mining programs have historically operated at a loss to the taxpayers. Moreover, the fees from communication sites on federal lands (radio and television towers, mobile radio, microwave antennas, and so on.) have not reflected the true value of these unique resources. The federal government should institute policies which guarantee fair return for the commercial sale or use of mineral, renewable and other natural resources. Revenues gained from these fees should cover program costs to the extent possible and provide additional funds to better manage the land base. Whenever possible, the fee structure should include the use of incentives to encourage good land stewardship practices. Federal policy should be fair to the taxpayers and also to livestock permittees, mining operators, and owners of communications sites.

The current formula for setting grazing fees on federal lands was established in 1986 by Executive Order 12548. Grazing fees are measured in Animal Unit Months (AUMs). BLM authorizes between 10 and 11 million AUMs per year, and the U.S. Department of Agriculture's Forest Service (USFS) authorizes approximately 7.5 million AUMs annually. The grazing fee is currently set at \$1.86 per AUM, which results in annual receipts of about \$33.5 million. The Secretaries of Interior and Agriculture are currently developing regulations which will be published in August 1993 establishing the new fee formula and the estimated 1994 fee level.

There are currently at least two bills in Congress that would reform the Mining Law of 1872. These bills (H.R. 322 and S. 775) differ in their approaches to reform items such as rental fees, royalties, bonding and patenting. The administration is seeking a compromise package which would result in new federal revenues from rents and royalties. The administration supports the following provisions in a mining reform bill:

- * Elimination of patenting on mining claims. The patenting provisions of the 1872 Mining Law allow claimants to gain title to federal lands for as little as \$2.50 per acre.
- * Collection of a royalty on hard rock mining. Coal operators on federal land currently pay a 12.5 percent royalty. Both congressional reform bills contemplate a lower royalty rate on hard rock mining.
- * Creation of a trust fund, to be supported entirely from federal revenues generated by the royalties paid by industry, that would pay for the clean-up of lands damaged by past mining practices. The fund should be structured as a permanent appropriation.
- * Use of the land planning process to determine what lands may be unsuitable for certain types of mining activity.
- * Requirement of operation and reclamation plans and mandatory bonding for mining operators.

The Bureau of Land Management has approximately 1,500 communication right-of-way authorizations that generate approximately \$1.5-\$2.0 million in annual rental payments. The Forest Service has approximately 6,000 communication authorizations. The rental payments for most authorizations have not been updated for more than four years. BLM does not have an inventory of the type and number of users within existing buildings. There are instances where the holder of the right-of-way authorization has subleased to others and the government receives no additional rent.

Previous efforts by the BLM and Forest Service to update the rental schedule have resulted in industry groups seeking Congressional relief. Over the last 4 years Congress has limited BLM and Forest Service authority to increase communication use fees. The Radio and Television Broadcast Use Fee Advisory Committee was created under the fiscal 1992 Interior Appropriations Act. The advisory committee was created to provide a means to resolve the longstanding debate over fair market rental payments. However, the committee report, completed in December 1992, recommended a fee schedule that was below fair market value. Neither the Department of Interior nor Department of Agriculture supported the committee's recommendations. The administration will need to work closely with

Congress and industry groups to devise a payment schedule which is fair and equitable to taxpayers and users.

Recommendations

- 1. The administration should establish a formula for grazing of federal land at a fee level that is fair to both the taxpayers and the livestock permittees.** A new fee level has not yet been determined, but regulations will be issued in August focusing on the proper fee structure for returning fair value. Collections and adjustments under the new fee schedule would be implemented using existing systems and procedures.
- 2. The administration should support hard rock mining reform legislation.** A reform package should establish a royalty on hard rock mining and create a trust fund to pay for reclamation of lands damaged by past mining activities. It should also eliminate patenting of mining claims and require operation plans and mandatory bonding for mining operators.
- 3. The department should develop new regulations by January, 1994 establishing a new rental schedule for communications sites. The rental schedule should be fair and equitable and based on fair market rent.** BLM should coordinate development of the schedule and administrative procedures with the Forest Service to ensure uniform application by both agencies. The new rental schedule should be easily implemented and reduce current administrative costs, and allow users to anticipate assessed rental payments and increases in payments.

Implications

Federal land use policy has been a very contentious issue in Western states. Successful resolution of these problems will require a process of consensus-building and public involvement. Secretary Babbitt recently held a series of public meetings on the grazing issue which provides a good model for developing support. The government's costs in administering a revised mining law will increase in the areas of regulatory development, permitting/reclamation, inspection and enforcement, abandoned mine lands, and administrative/judicial review. The Minerals Management Service would carry out all royalty management functions of mining law reform.

Implementing a new rental schedule for communications sites, in addition to increasing revenue, would also result in better identification of unauthorized users and generate revenue from users who are now paying little or no rent.

Fiscal Impact

Implementing a new grazing fee, assuming an annual fee of \$4.00 per AUM and a total of 18 million AUMs sold annually, would increase total receipts from \$33.5 million to \$72 million, yielding \$38.5 million per year in gross new revenues. Current law provides that 50 percent of grazing revenue be returned to the Range Improvement Account, which is used by the managing agencies for rangeland improvement activities. An additional 25 percent of grazing revenues are returned in payments to states and counties. Thus, the net revenue from an increased grazing fee would be \$9.6 million per year. No change in BLM operating expenses are anticipated because of the new fee approach.

The House mining law reform bill (H.R. 322) would place a royalty of 8 percent on all minerals extracted from federal land. Under this bill, the royalty would begin in 1998. The Senate bill (S. 775) would authorize a 2 percent net royalty on the mineral value. GAO has estimated that the gross value of mineral production on federal land in 1991 was \$1.2 billion. If an 8 percent royalty were imposed on a gross value of \$1.2 billion, receipts would be \$96 million.

Both the House and Senate bills would establish a permanent annual rental fee for mine operators. Interior estimates that a \$100 per claim rental fee would produce \$74 million to \$82 million. With an exemption for small miners, annual receipts would total about \$50 million. Because mining reform legislation has not yet been enacted, accurate estimates of new revenue cannot yet be made.

Permits for communications sites on federal lands (Interior and USDA Forest Service) currently return approximately \$15 million per year. Interior estimates that a new fee schedule would result in additional fees of approximately \$1 million per year on BLM lands. (Note: need Forest Service fiscal impact) It would cost BLM about \$500,000 per year in administrative costs to implement the rental schedule. This includes development of an automated billing system with the capability of producing consolidated billings for major

users, and associated personnel training costs. Costs in years 3-10 should decline dramatically.

	In Millions of Dollars				
	1994	1995	1996	1997	1998
Budget Authority*	-29	-29	-29	-29	-29
Outlays	-29	-29	-29	-29	-29
Revenues**	59.6	59.6	59.6	59.6	59.6
Change in FTEs	-0-	-0-	-0-	-0-	-0-

*Note: Increase in budget authority reflects mandatory contributions to Range Improvement Account and payments to states resulting from increased grazing fees.

**Note: Revenue totals reflect net revenue from grazing fee and annual rental fee for mine operators.

Endnotes

1. Public Law 94-579, Oct. 21, 1976. Federal Land Policy and Management Act of 1976, Sec. 102, a, 9.

Creating a Quality Management Culture

RATIONALIZE FEDERAL LAND OWNERSHIP

Background

The public lands of the United States have played a major role in the settlement and the development of the country. During most of the 19th century, national policy promoted disposal of public domain lands to stimulate settlement of the West. From 1812 to 1935 more than one billion acres of land were transferred to individuals and organizations through land sales, homesteading and grants to railroads.¹ In the late 1890s, the federal government began to set aside lands for specific purposes such as national forest, parks, military reservations and wildlife refuges. The remaining public domain lands were managed by the Department of Interior (DOI).

As a result of these activities and other uncoordinated land actions, present federal lands, particularly those of the Bureau of Land Management (BLM) and the United States Forest Service (USFS), in the Department of Agriculture, lie side by side or are intermingled in many areas. This dispersed ownership pattern prevents efficient operations and results in fragmented assistance to customers. In many cases, the lands administered by the two agencies share the same users, resources, and management problems. The agencies maintain two separate staffs in more than 70 communities, resulting in inefficient use of federal resources and overall confusion to land users.² Regardless of ownership, the goal for federal land management agencies is to provide responsible land management which protects and enhances the resource, protects the environment and provides efficient and effective service to the public.

Since the 1930s there have been a number of proposals to merge the functions of various Interior Department and Agriculture Department organizations. A key element of all proposals was to merge the lands and resource responsibilities of the USFS and the BLM or its predecessors. Because of consistent opposition to merger proposals, in the early 1980s attention was directed to realigning ownership patterns between the USFS and the BLM. In 1980, the Secretaries of Agriculture and Interior outlined a plan to identify lands where transfer between the BLM and USFS had the potential to increase efficiency and effectiveness. An example problem ownership area is the Sawtooth National Forest which are many small land areas surrounded by BLM ownership. Both agencies have personnel and offices in Pocatello, Idaho,

which provides land management assistance under different agency policies.

In August 1983, the President's Private Sector Survey on Cost Control in the Federal Government (the Grace Commission) recommended that BLM and the USFS implement a land interchange designed to consolidate ownership patterns in geographic areas. In December, 1984 the General Accounting Office reported that by combining offices and consolidating land patterns, the government could achieve cost savings plus great improvement in management efficiency and in service to the public.

In January 1985, the BLM and USFS announced a land exchange proposal to transfer 24 million acres of land between BLM and USFS. The agencies prepared a Legislative Environmental Impact Statement and met with Congressional delegations, governors, and hundreds of key public groups and individuals in more than 600 documented consultations and individual sessions. During the review stage, 85 public meetings were held across the country.³ Due to concerns of potential reduction in revenues to counties and states and environmental and social impacts, the proposal actions were eventually blocked in the U.S. Senate.

Current regulations permit ownership to be realigned through land exchanges. BLM is the primary agency within DOI that uses land exchanges to acquire lands. Sections 205 and 206 of the Federal Land Policy and Management Act as amended by the Federal Land Exchange Facilitation Act are the primary authority to process land exchanges. BLM typically exchanges 250,000 acres annually with other federal and state agencies. This process is very cumbersome and current policies and procedures prevent efficient exchanges. Many times it requires three years or more to complete a land exchange.

Land tenure adjustments through exchange or new management arrangements are now more important than ever. To focus on ecosystem management and maintain the biological diversity of public lands, the existing, virtually unmanageable "checkerboard" land ownership pattern must be consolidated through cooperative management or exchanging scattered or isolated public lands with intermingled parcels of private land. Experience shows that vast federal land transfers or exchanges are difficult to accomplish due to impacts on authorized programs, economic concerns from state and local government, and public perception that the changes will have a personal negative impact. Much political controversy usually accompanies proposed federal land changes. A process or method is needed to reflect the impacts on small areas

before implementing a land exchange proposal nationally.

The difficulty of successfully implementing land transfers requires BLM and USFS consider alternative ways to improve federal operations. Cooperative land management and improved land exchange procedures among the agencies would provide a means of improving land management based on ecosystems principles. It also should improve agency efficiency and customer service through simplified rules and policies.

Recommendations

1. The Department of Interior should establish trial pilot coordination management areas, preferably watershed based. The department would develop a coordinated management plan on a ecosystem basis for each selected area. Each plan should include all federal land management agencies plus state and local governments within the designated area. The pilots should begin operation early in calendar year 1994 and operate for up to 24 months.

Different concepts should be addressed in various pilots. One would be in an area where there already is ongoing work to forge ecosystem based management approaches and would include all federal agencies with land and resource management responsibilities in the area. Another should be a new effort focusing on BLM and the USFS. In addition to addressing cooperative ecosystem based management, it should include shared public service, administrative, and program activities. This would be an opportunity to reengineer BLM and USFS permitting and other public service activities to develop single processes used by both agencies. The third area should propose changes in regulations to accelerate current exchange activities. If required, a waiver of regulations or procedures to improve land patterns and management capability could be requested. Current authorities for land transfers requiring possible waivers include provisions of the Bankhead-Jones Act, the Withdrawal (Sec 204) and Exchange (Sec 206) provisions of the Federal Land Management and Policy Act, and other exchange provisions codified in 43 CFR 2200. Limited administrative actions such as detailing employees can be taken under the Economy Act of 1932 and can explore other opportunities for policy changes. A fourth area should address the use of limited jurisdictional transfers. An example might be one state such as Nevada with large federal ownership.

After the pilots have been operating for 18-24 months, the department should evaluate

their progress to determine if legislative proposals, as developed in the 1985 exchange initiative, of transferring lands between the Forest Service and BLM on an agency-wide or limited jurisdiction are required.

Implications

The pilot projects would provide the method for determining the success of cooperative land management. The pilots would show if it is possible to provide consistent ecosystem land management, foster interbureau and interdepartment cooperation, develop consistent policies, and improve efficiency and effectiveness in land management. It would provide for shared service to the public and recommend changes to current exchange regulations. It is anticipated that legislation would be required to implement some of the changes.

Pilots are a method by which examples and successes are shared with the local people, Congressman and government implementors.

Fiscal Implication:

Implementation of the proposal would be budget neutral. To implement the pilot projects priority would be established by the agencies and needed personnel would be assigned from existing staff. Estimated needs will require reassignment of 2 FTEs per pilot project plus 2 support personnel.

It is anticipated the long term impacts would result in gained efficiencies through improved procedures and regulations. Starting in 1996 benefits are estimated to provide savings of about \$6 million annually, (the same as those reflected in the Intermingled Lands Alternative presented in the 1986 Legislative Environmental Impact Statement). This would provide the support for needed legislative change. Any savings resulting from the pilots and more efficient operations should be permitted to remain in the agency for land management.

Endnotes

1. BLM/FS Interchange, National Summary and Legislative Proposal, February, 1986, p.3
2. Ibid.
3. Department of the Interior and Department of Agriculture, "Legislative Environmental

Impact Statement for the Bureau of Land Management-Forest Service Interchange", February, 1986.

IMPROVE THE LAND ACQUISITION POLICIES OF THE DEPARTMENT OF INTERIOR

Background

The Department of Interior (DOI) owns and manages approximately 500 million acres of land and has responsibility for thousands of historical and cultural sites across the country. The Department of Agriculture, U.S. Forest Service (USFS) manages another 197 million acres of land. To meet the mandate of law and adjust to current priorities, federal government agencies need to acquire additional land. An effective acquisition program can provide the means for developing efficient and cost effective management units that result in lower management cost per acre and better service to the public.

DOI lands provide important natural resources, recreational and scenic values, as well as an abundance of resource commodities and revenue to federal, state, and local governments. Bureaus with major ownership interests are the Bureau of Land Management (BLM), 270 million acres; the Fish and Wildlife Service (FWS), 90 million acres; and the National Park Service (NPS), 80 million acres and 367 natural, cultural and historical units. The BLM's public lands are located in 28 states and in many instances, are intermingled with tracts of land owned by private entities, state and local governments, and other federal agencies. The FWS lands currently include 485 wildlife refuges, 78 fish hatcheries, and 13 research centers. The NPS units range from less than one acre to more than 13 million acres in size. They include parks, monuments, seashores, historic sites, historical parks, military parks, memorials, recreation areas, rivers, and parkways.

Federal land acquisition is accomplished primarily by the Departments of Interior and Agriculture using the Land and Water Conservation Fund (LWCF). Bureaus acquire additional land and real property to protect nationally important wetlands and fish and wildlife habitat, to preserve nationally important natural and historic resources, to provide for public use and enjoyment through enhanced recreational opportunities, and to promote effective management of existing departmental land and resources. For fiscal years 1986 through 1991, the Congress appropriated about \$813 million to DOI for land acquisition from the LWCF. Bureau expenditures were broken down as follows: BLM \$58 million, FWS \$367 million, and NPS

\$388 million.¹ The proposed appropriation from the LWCF for fiscal year 1994 is \$208 million including funds for state grants and the USFS.

In past years DOI has used inconsistent methods for determining land acquisition priorities. Beginning in 1990, the LWCF acquisition process required each concerned bureau to prepare a priority acquisition ranking list for funding. Bureaus use different methods for establishing priorities for proposed purchases but all use the OMB system as an overlay. The OMB system uses four minimum criteria: (1) whether the proposed acquisition is within the boundaries of or is contiguous with an authorized unit; (2) absence of known health or safety hazards; (3) absence of opposition from current owners; and (4) a limit of 10 percent of the purchase price for the infrastructure expenses. These lists are then submitted to the DOI's Office of the Budget which compiles a joint list using the OMB procedure.² This list is submitted to Congress with the President's annual budget. Congress receives the list and modifies it significantly, adding new properties so that the list often bears little resemblance to the original priorities set forth by the bureaus. For the 1994 budget proposal, the FWS used its own land acquisition priority system, BLM used the land acquisition priority procedure developed by OMB, and NPS did not use any standard system.

In a 1993 study, the National Research Council found "the OMB method for setting federal acquisition priorities among the priorities of individual agencies forces nonadditive criteria into a single composite ranking. This skews results in favor of potential land acquisition that would best meet specific purposes. The current approach also emphasizes certain considerations at the expense of others and diminishes the agencies' ability to fulfill their legislative charges."³ In essence OMB's current method compares incompatible qualities, such as recreational value and endangered species value. The system applies the same set of criteria nation-wide and across all agencies, despite regional needs and agency mission, resulting in significant modifications of individual bureaus' priorities.

The system also permits micro-management since the bureaus' priorities are often obscured by OMB's single ranking system. The differences between bureau lists and projects eventually funded by Congress have led critics to the charge that political considerations override objectivity, rationality, science-based criteria and agency mission. According to critics, Congress is often the focus of political input to the acquisition process, and together with the

OMB ranking system, prevents the department from making long term decisions which provide for wise ecosystem planning and management.

Another method of land acquisition is for department bureaus to ask nonprofit organizations to assist in the acquisition of properties when a project has not yet been authorized or funded. Nonprofit organizations support acquisition projects by: (1) actively lobbying for Congressional support; (2) providing assurance that funds will be available for purchase of a proposed project when there is a willing seller; and (3) obtaining property at less than fair market value through their tax-exempt status.⁴

A May 1992 Inspector General's (IG) Report pointed out several aspects of the implementation of relationships with non-profit organizations which have raised questions of illegality and impropriety. During a six-year study period, the IG found that approximately 30 percent of acquisitions had been facilitated by non-profit organizations. The IG report listed instances where bureaus had acquired land from non-profit organizations at excessive prices, resulting in what were perceived to be undue profits to the organization, and expressed a concern that the non-profits were driving bureaus' acquisition priorities. The Department of the Interior Solicitor subsequently issued an opinion clarifying and concurring with some of the issues addressed in the IG report.

Rational land management strategies require that the department be able to acquire lands using a comprehensive approach to achieve widely accepted goals and to have a set amount of discretionary funds so the Secretaries of the Interior and Agriculture can take advantage of unforeseen opportunities or urgent acquisition developments. It is vital that a system be developed which establishes criteria for decision making and which incorporates the needs of the land management agencies within established national goals. Well developed, objective criteria will provide a framework for good decisions and effective implementation.

Recommendations

1. **The Secretaries of the Interior and Agriculture and the Director of OMB should modify the process for determining land acquisition priorities and modify current procedures.** The new system should be separated into three parallel ranking systems reflecting major objectives of federal land acquisition. The suggested base categories are outdoor

recreation resources, resource protection, and cultural heritage protection.⁵ Objective criteria should be developed for each category. The bureaus would develop acquisition lists based on the established criteria. The Secretary of Interior would consolidate and prioritize Interior's request into a single list. The Secretary of Agriculture would do the same for the USFS. Development of criteria for the categories and the annual combination of the lists should be completed by a collaborative effort between policy level officials from DOI, USDA, and OMB, supported by appropriate technical specialists.

2. **The Department of the Interior should issue a series of policy directives for the NPS, BLM, and FWS to address the issue outlined in the IG Report and clarified in the Solicitor's opinion of July 30, 1992.** These directives should reaffirm the usefulness of non-profit organizations to land acquisition objectives of the bureaus, better define the relationship between the two, and provide further guidelines for the implementation of that relationship. Specific guidelines should: (a) direct DOI bureaus to immediately discontinue the practice of paying interest for income foregone; (b) limit payment for land acquired to the bases of the purchase price plus allowable expenses, or the approved independent appraisal value plus normal closing costs; (c) establish an evaluation team at the department level which would evaluate land acquisitions; and (d) require all non-profit transactions be subject to an annual audit.

Implications

Modifying the ranking system for determining land acquisitions would focus the land purchased on specific purposes and objective criteria, not upon the individual land parcels. The bureaus and agencies could then prepare overall strategic plans that identify land acquisition priorities based upon future needs.

The issuance of final department guidelines on the use of non-profit organizations will resolve the concerns of the IG Report, establish uniform operating procedures, and clarify working relationships with the non-profit organizations.

Fiscal Implications

Implementation of the proposal would be budget neutral. It would not affect

appropriations but would focus land acquisition for the bureaus. This would have a positive effect on management decisions and improve unit operations.

Endnotes

1. U.S. Department Interior, Office of the Inspector General, Audit Report, "Department of the Interior Land Acquisition Conducted with the Assistance of NonProfit Organizations", NO.92-I-833, May 1992, p. 25.
2. 'National Research Council, "Setting Priorities for Land Conservation", Washington,D.C., National Academy Press, 1993, pp. 237-241.
3. Ibid.
4. "Department of the Interior Land Acquisition Conducted with the Assistance of NonProfit Organizations", p. 4.
5. "Setting Priorities for the Land Conservation", p. 9.

IMPROVE MINERALS MANAGEMENT SERVICE ROYALTY COLLECTIONS

Background

The Minerals Management Service (MMS) of the Department of the Interior (DOI) will account for an estimated \$4.7 billion dollars in mineral royalty income in fiscal year 1994. These revenues are collected and disbursed to Indian Tribes, individual Native Americans, states and the U.S. Treasury by the MMS Royalty Management Program (RMP). In its ten-year history, the RMP has improved the timeliness of payments to these recipients from 50 percent timely payments (inherited from its predecessor agency) to the current 96 percent of payments made on time.

While payment timeliness is on track, even more prompt and accurate royalty collection and disbursement could be accomplished by enhancing current efforts to verify industry compliance with royalty reporting requirements. To enhance royalty verification, the RMP has developed a compliance action plan intended to encourage improved industry compliance in royalty payment.

Royalty payments are currently verified primarily by an audit program which focuses on the largest royalty paying companies. Traditionally, a small handful of companies have been responsible for over 80 percent of royalty payments, leading to a compliance strategy dominated by field audits of these large companies. As a result, hundreds of medium to small companies paying on thousands of leases have a lesser chance of being audited. The RMP is under constant pressure to increase both the number of audits and associated resources committed to such audits, especially for the majority of companies not considered large royalty payors. However, a cost effective approach includes more than just increasing resources devoted to traditional audits.

MMS is developing a new compliance strategy which integrates field audits with computer-based compliance activities. The new strategy is based in part on compliance programs developed by the Internal Revenue Service. By screening payments at an early stage of the process, errors can be identified and corrected immediately. Information indicating the need for more thorough review can be collected and used to identify companies for further field audit. By integrating the results of automated compliance activities with those of field audit,

RMP can eliminate duplication of effort and ensure complete coverage.

A crucial adjunct to the royalty compliance process is a regulatory enforcement program designed to foster voluntary compliance by industry. One approach involves new regulations currently awaiting approval by the Office of Management and Budget which propose assessing companies for RMP administrative costs incurred for a broader array of erroneous reporting situations than currently assessed. For example, current regulations provide for an assessment for late or incorrect reports but does not permit a second assessment for incorrect reports that have already been charged a late fee. Proposed regulations would permit both assessments. Another proposed change would permit an assessment to be made when a payment is submitted separately from the report document or bill.

A second approach involves penalties. Civil penalties are used as a last resort and have not been routinely incorporated into an enforcement program. Unlike the Internal Revenue Service, RMP does not have the authority to charge penalties for substantial underpayments. Although RMP can charge interest on underpayments, the interest rate may not be high enough to motivate companies to pay accurately and on time. For example, regulations required RMP to charge interest rates in 1992 ranging from 7 to 9 percent, a range which was comparable to commercial rates. Therefore, it may have been worthwhile for a company to underpay its royalties and use the amount of the underpaid royalties as a "low interest loan" to itself rather than securing a loan or accessing a line of credit at a higher interest rate. RMP should streamline the use of available enforcement tools, such as subpoenas and notices of noncompliance, and develop and implement a legislative approach to impose penalties for significant royalty underpayments.

At the heart of royalty reporting is the party responsible for making the report. Royalties from mineral leases may be collected from numerous parties. Existing regulations of the MMS, the Bureau of Land Management (BLM), and the Bureau of Indian Affairs (BIA) are vague as to the responsibilities of the parties involved, and policies regarding liabilities are not uniform. Enforcement actions are hampered as a result. A coordinated approach toward the issuance of joint regulations clarifying responsibilities is needed.

A final area for improvement in royalty collection lies in the reporting process itself. Currently, the royalty reporting process requires over 2,000 payors to report over 200,000 lines

of data each month with each of those lines consisting of over a dozen different elements. The amount of detail and report frequency is the same regardless of the amount of royalty due. In addition, the present process requires complex accounting and research to place a value on products sold, particularly in the case of gas.

Several ideas have been advanced to try to simplify the present royalty payment process without decreasing royalty revenue or jeopardizing appropriate accountability. These ideas include reducing the frequency of reporting depending on the amount due, replacing the complex valuation system with published prices for royalty valuation, reducing the number of data requirements and data fields required on reporting forms, and allowing small payors to use a short form. DOI has established a reinventing laboratory to evaluate alternatives for simplifying royalty collection. The laboratory work group will include representatives from the MMS, the states, the Indian tribes, the Department of the Treasury, the American Petroleum Institute, and the Independent Petroleum Association of Mountain States.

Recommendations

- 1. By fiscal year 1995, the Royalty Management Program should develop and implement additional computer programs to analyze and verify transactions across the lease population.** The programs chosen will be drawn from research conducted as part of the compliance action plan in a small ongoing pilot program working with a sample of leases including variables such as volume, royalty rate, and value. The approach will integrate information developed through office-based compliance activities and traditional field audit approaches to eliminate duplication of effort and ensure complete coverage.
- 2. RMP should redirect personnel whose functions are reduced by up-front compliance measures to compliance tasks with the potential for additional financial gains.** While comprehensive audits will continue to be an essential element in the compliance program because they are the only way of assuring that all issues affecting royalties are verified to source documentation, they will no longer be the dominant approach. By January 1994, RMP should modify the scope, coverage, and methodology used in field audit. In fiscal year 1995, when systems-based compliance activities are applied across the lease population, the field audit function should be reviewed and revised as appropriate.

3. **The Department of the Interior should submit legislation similar to IRS provisions to enable penalties to be assessed for substantial underpayments.** OMB should carefully examine proposed rules to increase assessments for errors to cover administrative costs. Additional actions to streamline use of civil penalties, including issuance of notices of noncompliance, should be implemented by RMP.
4. **Current inconsistencies in liability issues should be resolved by the Department of the Interior and a uniform policy developed by January 1994.** A work group composed of MMS, BLM, and BIA representatives has been formed and development of options began work in July 1993.
5. **The reinvention laboratory which has been established to study royalty reporting simplification should evaluate the potential for significant impact on efficiency, effectiveness, cost savings and additional revenue of new reporting procedures.** After the laboratory team submits its final report in mid-October 1993, the Department of the Interior should implement those recommendations that will lead to added efficiencies.

Implications

Improvements in royalty collections will benefit payees, and clarification of rules and requirements will assist payors, especially small leaseholders. The recommendations build on improvements in royalty collection that are ongoing at RMP. They should provide an effective alternative to expanding the field audit approach. More aggressive use of civil penalties and new assessments can be expected to be unpopular among payors.

Fiscal Impact

Implementation of the new compliance approach will not increase administrative costs. An additional \$1.5 to \$8.5 million annually in new revenues would be generated. This estimate is based on analysis of the impacts of previous improvements and analysis of the historical benefits/costs of revenue generating activities. An estimate of fiscal benefits from royalty simplification must await the laboratory report due in October 1993.

	In Millions of Dollars				
	1994	1995	1996	1997	1998
Budget Authority	0	0	0	0	0
Outlay	0	0	0	0	0
Revenues	0	\$2	\$5	\$7	\$7
Change in FTEs	0	0	0	0	0

THE DEPARTMENT OF INTERIOR SHOULD ESTABLISH A SYSTEM OF PERSONNEL EXCHANGES

Background

Interior Secretary Babbitt has identified the need to develop cooperative approaches to departmental issues as a major priority within the Department of Interior (DOI). Many of the emerging issues in the department, including ecosystem management and science-based management, will require coordinated department-wide policies. A system of in-house contracts and personnel exchanges across bureau boundaries offers a novel approach to accomplish these goals.

DOI has a very rigid organizational structure. It consists of ten bureaus with separate missions and strong internal cultures. The bureau structure, which was designed to execute large, long-term programs, has become static and slow to adapt to changing mission requirements. Talented employees with skills which would be applicable to emerging priorities are not being effectively used within the department. The current system often results in poor allocation of human resources and low employee morale.

DOI's rigid bureau structure inhibits effective approaches to cross-cutting problems. For instance, the department is currently addressing the problems of acid mine drainage in the Eastern U.S. and metallic contaminants from mines in the Western U.S. The Bureau of Mines (BOM) has world-class inorganic chemists on its staff who could apply their expertise to these and other environmental problems, however, they are limited by bureaucratic obstacles.

One way to address bureaucratic barriers is with a "top-down" approach, such as creation of a new bureau. In contrast, a "bottom-up" approach to develop cross-cutting approaches within the department may be more effective. In-house contracts and personnel exchanges would provide incentives for innovation, encourage employee movement, and foster competition across the department. A system of in-house contracts would allow individuals to work as consultants on specialized problems within the department. A program of personnel exchanges would involve temporary assignments of employees between bureaus.

The department's field offices are widely dispersed and employees are often unaware of the activities of other bureaus. To successfully implement a policy of employee movement

and flexibility, an improvement of the department's internal communication system is necessary. The department needs to develop an internal communication system that informs employees of opportunities and needs across the department.

Recommendations

1. DOI should implement a system of in-house contracts by January 1994. The in-house contracts would assign individuals with special skills to work as consultants to other bureaus. Participation on an in-house contract would usually be on a full-time basis for a specified length of time (1-6 months). The program should have a target participation rate of 2-5 percent per year of each bureau's total permanent workforce. The following steps are recommended to implement an in-house contract program:

A) Designate a Mobility Coordinator at the departmental level to implement a system for inter-bureau sharing of human resources. The Mobility Coordinator should develop a brief format for advertising positions and a similarly brief format for employees to apply for these positions. An Intra-Departmental Personnel Agreement (IDPA) form, modeled after OPM OF-69, should be developed to document the specific terms of each approved in-house contract.

B) Each bureau should designate an In-House Contract Coordinator (preferably a line or program manager) who would have program responsibility for monitoring compliance, program quality, and effectiveness. Specifically, the coordinator would provide oversight of project proposals, further define the statement of work, and clarify the skills needed for special projects to be carried out through the program. Each bureau should submit an annual compliance report to the Secretary of Interior.

C) The in-house contract program would operate under a matrix management concept. Employees would remain under their traditional line organization configurations; however, employees would be under the technical and administrative supervision of the project manager for the duration of the contract. Project managers would generate contract positions, review applications, and make tentative selections of participants for particular contracts.

2. DOI should implement a system of temporary inter-bureau details and personnel exchanges by January 1994. General participation in a detail/exchange effort should not be limited to upper management levels, but should include all specialties, job series, and grade

levels. This program would encourage cooperation across bureau boundaries and broaden opportunities for employee training and development. The detail/exchange program should include the following elements:

A) A mandatory program of developmental assignments of 6-8 weeks duration should be included in all management and supervisory development programs. The required developmental assignments should be included as part of an approved Individual Development Plan as described in Personnel Management Letter No. 93-8 (410).

B) A voluntary program of details/exchanges of 1-6 months duration should be established for all non-management staff and technical positions. The program should have a target participation rate of 5 percent per year of each bureau's total permanent workforce. Each bureau should designate an Exchange Coordinator who would have program responsibility for monitoring compliance, program quality, and effectiveness. The departmental Mobility Coordinator should assist the bureaus in implementing the program. Each bureau should submit an annual compliance report to the Secretary of Interior.

3. DOI should facilitate personnel exchanges and inter-bureau cooperation through an improved internal communication system. In-house contracting opportunities and detail/exchange opportunities should be advertised and promoted actively throughout the department. The system should include the following elements:

A) Use computer bulletin boards and LAN systems which are currently under development. This would provide an effective means of distributing project bulletins and detail/exchange information at minimal cost, once the systems are operational.

B) Replace the 10 separate bureau newsletters with a single department-wide newsletter. One departmental newsletter would improve the flow of information and provide employees with additional knowledge about the activities of other bureaus.

C) Use DOI's Automated Vacancy Announcement Distribution System (AVADS) to create and distribute project opportunity bulletins.

Implications

The recommendations have several implications for the workforce and work environment at Interior. The voluntary nature of these programs will naturally attract

motivated or higher-level employees within the department. Limited resources, especially for travel and per diem, would focus mobility within geographic areas (e.g., within Denver offices of different bureaus). Lastly, the bottom-up approach of creating assignments would emphasize temporary, individual, mission-oriented tasks.

Under the system of in-house contracts and details/exchanges described above, the department would have at least 4900 employees serving, learning, and contributing to different bureaus each year. Over a five year period, the program would result in 35-50 percent of DOI employees having the benefit of this experience.

Through better use of electronic mail, a consolidated newsletter, and better utilization of AVADS, DOI could distribute information about detail and contracting opportunities and improve communication across bureau boundaries.

Fiscal Impact

This program would be budget-neutral. The In-House Contract Coordinators and Exchange Coordinators would assume project functions as an additional duty and no additional positions, space, supplies, or equipment would be required. Travel and per diem expenses can be minimized by focusing detail/exchanges and contracts within common geographic areas. Expenses would be the responsibility of the bureau sponsoring the project and would be handled like a reimbursable detail. The accounting and reporting can be accommodated within current systems. Replacing the 10 bureau newsletters with a single departmental newsletter would result in modest savings.

CONSOLIDATING ADMINISTRATIVE AND PROGRAMMATIC FUNCTIONS IN THE DEPARTMENT OF INTERIOR

Background

Each Department of Interior (DOI) bureau has its own administrative structure, and provides its own administrative services and certain programmatic and public affairs services. Each bureau unilaterally decides the resource levels to be devoted to these services, and the locations at which these services will be delivered, without regard to the collective needs of other bureaus. Additionally, within individual bureaus there are instances where more than one office has been established in a given geographic location. Consequently, many offices and bureaus provide the same type of services at varying ranges of services' costs, quality and utilization at both headquarters and field locations.

Within the DOI, improved service and cost savings have been achieved in the past through efforts such as: the establishment of two Departmental Administrative Service Centers to provide consolidated payroll service, a departmentwide personnel/payroll system and a financial management system; use of several Departmental Learning Centers located throughout the country to fulfill common training needs; implementation of an agency-wide contract to monitor unemployment claims; designation of a lead bureau for certain types of procurement, and unique services such as the protection of arts and artifacts; and selective use of Consolidated Administrative Support Units (CASUs). Efforts such as these can and should serve as tools for the department to achieve further improvements in service and cost savings.

During 1992, nine DOI task forces conducted analyses of programmatic areas for fiscal year 1994 budget formulation in an effort to identify ways to improve efficiency and effectiveness. These task forces presented a number of findings and recommendations which were deemed necessary to realize greater efficiencies, including areas for potential co-location and consolidation of functions. For example, one task force recommended a site study to collocate 5-6 bureaus' mapping activities in the Denver area, and identification of other areas where such collocation might realize efficiencies.¹ Options considered by another task force included consolidation of administrative/technical support services of

design centers, and departmentwide consolidation of design and construction offices.²

The DOI Inspector General (IG) noted in 1992 that the Bureau of Land Management (BLM) has multiple state, district, and resource area offices located in the same cities. Of 140 resource area offices, 84 were located in the same cities with 41 district offices. The IG found that there was potential for reducing administrative costs by collocating these offices, permitting consolidation of administrative services.³

The DOI Division of Space and Facilities Management reports that there are approximately 1,300 geographic locations for departmental offices. These offices range from small, 2 person offices to large regional offices. That office advises that the greatest potential for realizing efficiency exists in the following cities where multiple bureaus with a significant number of employees are located: Denver, Albuquerque, Atlanta, Boston, Portland, Anchorage, Phoenix, and Sacramento.

Recommendations

- 1. Within six months, all bureaus and offices should identify parallel administrative, programmatic and public outreach functions in areas where bureaus and/or offices are collocated.** The objectives are to improve customer service, promote efficiency of operations and reduce costs. In conducting this exercise, the department should consider the recommendation of the Secretary's FY 1994 Budget Task Force on Mapping Activities to collocate multi-bureau mapping services in the Denver area, Options B and C of the FY 1994 Budget Formulation Task Force on Design and Construction Management, and pertinent findings of the Secretary's FY 1995 Budget Formulation Task Force reviews initiated by memorandum dated July 7, 1993, from the Assistant Secretary - Policy, Management and Budget. DOI should focus its attention in the areas identified as having the greatest potential by the Division of Facilities and Space Management in the "Background" section.
- 2. Over the next three fiscal years, DOI should use the information identified by bureaus and offices to consolidate offices, increase the use of Cooperative Administrative Support Units (CASUs) and Departmental Administrative Service Centers, and/or designate lead bureau(s) to provide commonly needed services,**

wherever feasible.

Implications

Benefits derive from the elimination of organizations and positions which are duplicative, under-utilized, inefficient and ineffective, and free additional resources for program functions and mission accomplishment. In addition to salaries and related expenses, immediate cost savings are realized in support services (e.g., space, supplies, and information technology) for those organizations, positions and systems.

Fiscal Impact

The fiscal impact of consolidating functions, collocating offices, or using some other approach to providing these services is difficult to determine at this time because of the process involved in these recommendations. Candidate sites must be identified, the most appropriate method of service delivery determined, and implementation plans prepared before fiscal impacts can be identified. Savings realized will be determined by the degree to which the recommendations are implemented in bureaus and offices (e.g., number of consolidations, actual positions eliminated, etc.). However, past experience has demonstrated significant savings and cost reductions such as: a) Implementation of the decision to move from multiple automated payroll/personnel systems to one automated departmental payroll/personnel system saved approximately \$1.5 million per year.⁴ b) Consolidation of multiple payroll offices into one departmental payroll office reduced payroll-related FTE from 205 to 155, with estimated annual savings of \$1 million.⁵ c) The decision to use a departmentwide contract to monitor unemployment compensation claims has yielded savings of nearly \$9 million since 1986.⁶ d) DOI has participated in 17 CASUs throughout the country for an estimated one-year (1991) savings of \$1.2 million.⁷

Endnotes

1. Department of the Interior (DOI), *Report of the Budget Formulation Task Force on Mapping Activities*, July 15, 1992.
2. DOI, *Report of the Design and Construction Management Task Force*, 1992.

3. DOI, Office of the Inspector General, *Staffing and Resource Allocation, Bureau of Land Management*, Report No. 92-I-367, January 1992.
4. DOI, *Improvement of Administrative Management Support Functions*, August 1984.
5. William L. Kendig, *Tighten Up Your Payroll System*, Financial Executive, August 1983, pp 16-22.
6. DOI, *1992 Transition Book, Office of Financial Management*, p.28.
7. National CASU Board of Directors, *Cooperative Administrative Support Program, 1991 Annual Report*, p.4.

STREAMLINE MANAGEMENT SUPPORT SYSTEMS IN THE DEPARTMENT OF THE INTERIOR

Background

The Department of the Interior (DOI) is a large, complex organization with ten bureaus and over 76,000 employees working in hundreds of locations across the United States. In order to efficiently manage this organization, the DOI needs to streamline and modernize its support systems, including telecommunications, procurement, financial management, paperwork control and the rulemaking process.

To transmit information, directives, and messages, DOI's bureaus have historically maintained and operated independent communications networks. Non-standard telecommunications practices prevent effective cross bureau communications. The independent networks that exist within DOI have parallel services (particularly for dedicated circuits) which are costly and often underutilized.

Well-coordinated electronic communications technology can assist in disseminating and maintaining rules and regulations, transmitting mail, and producing technical reports. This technology can also help people manage their time more effectively and encourage sharing of information. Enhanced communication between people and organizations, standard procedures for electronic data interchange, and easier citizen access to federal electronic data will help move DOI onto the "Information Highway". Without the ability to effectively communicate electronically, the department will be hindered in carrying out its mission.

Some possible communication strategies include: (1) sharing circuits on high density routes between heavy use areas; (2) connecting local area networks within buildings or campus environments to a wide-area network; (3) sharing video teleconferencing facilities and using this capability to reduce travel; and (4) improving phone communication through capabilities such as voice mail and conferencing to speed contacts and reduce administrative work-hours.

While DOI's telecommunications can be improved by greater consolidation, current procurement practices in the department are over-regulated and inefficient and need

simplification. The department's procurements are governed by a bewildering array of government-wide rules. To complicate matters even further, bureaus are authorized to issue additional internal regulations. As a result, bureaus have established additional rules at their own discretion which typically exceed the federal guidelines in restrictiveness and stringency -- requiring more documentation, more review, and more approvals. Each layer of self-imposed regulation adds confusion to the process and decreases management's ability to exercise judgment and common sense.

Internal, self-imposed regulations confuse the procurement process even further, adding delays, increasing overhead costs, constraining common sense, and rendering government action more vulnerable to formal protest. To extricate itself from the inefficiency of current procurement regulations, DOI must eliminate as many self-imposed rules as possible and provide a reliable means to review outdated or contradictory regulations.

Facilitating effective procurement depends not only on deregulating the process itself but also on ensuring that it relates smoothly to other management tasks. Financial systems, which serve to record and report monetary transactions, are inextricably tied to procurement since all federal acquisitions have a fiscal dimension. At present, DOI has not placed sufficient priority on guaranteeing that its financial and acquisition systems will be compatible.

Seven of the ten bureaus in DOI use the Federal Financial System (FFS), gaining vast benefits from its ability to automate activities that were previously manual, duplicative, and labor-intensive. DOI also has commissioned planning of the Interior Department's Electronic Acquisition System (IDEAS), which will transform the procurement process with modern technology. If IDEAS could interface with FFS, field managers would gain substantial efficiencies: instead of transferring acquisitions documents onto the financial system by hand, the link would be computerized. This advantage, which would free employees and reduce paperwork, will materialize only if the department makes the FFS interface an integral requirement of IDEAS development.

FFS operating software resides on two mainframe computers which process in excess of 3 million invoice payments annually. Despite the advantages of FFS, a payment

process initiated at a field office still takes a minimum of three weeks from start to finish. The system still requires too much handling of documents and duplicative data entry.

Substantial cost and efficiency savings could be gained by moving the FFS software to smaller computer platforms, such as minicomputers which currently operate in many of the seven participating bureaus. Staffing levels for Administrative Service Centers' mainframe computer operations are higher than levels required to operate the software on smaller, easier to manage, less expensive systems. Because the current trend is to move financial systems away from large mainframe computers, American Management Systems, the designer of FFS, has already created a version of the system that can operate on a file server in a local area network (LAN) environment.

FFS could be further enhanced by expanding remote access and data entry capabilities through implementation of the Department of the Treasury's Vendor Express Program (Electronic Payment System) and Electronic Certification System. This change would allow the originating office to enter invoice payments directly into FFS, which would automatically edit all payment transactions and notify the Treasury electronically to prepare a check for mailing. This enhancement would reduce document handling, eliminate errors, and accelerate payment to the customers. Further efficiencies can be gained by treating DOI as one entity when paying central operating costs, such as rents, workers compensation, unemployment compensation, and costs of health units and learning centers. Needless and costly steps are currently required to bill each bureau separately for a prorated share of these costs.

One common suggestion among DOI employees is the need to reduce the amount of paperwork and review involved in even the seemingly simplest process. The clearance process for general correspondence within the department is extremely complex and unwieldy. The Department should review its correspondence system to ensure that affected program offices have the opportunity to review policy, legal, legislative, and budgetary information and commitments that are communicated to correspondents. This review should be efficient and timely, eliminating unnecessary steps, streamlining operations to avoid delay and reducing the number of reviewers.

At the departmental level, written guidelines are not sufficiently detailed to ensure

that correspondence will be prepared in a consistent manner from one office or bureau to the next. Existing guidelines are incomplete, outdated, and scattered among a variety of sources, often resulting in confusion among correspondence preparers as to what is required.

The regulatory process is a related paperwork processing activity that could be better managed. DOI issues approximately 250 to 330 regulations, or rulemakings, each year. This includes both proposed and final rules. In recent years, however, rulemaking has become increasingly complex and time-consuming, which results in poorer service to the public.

Several problems have been identified at the initial stage of the departmental regulatory process. These problems include a lack of logical, well-communicated workflow and priority assignment of rules on the part of various levels of regulation reviewers. The rulemaking process must be well understood by all bureaus, and deadlines must be met for rulemaking to proceed effectively.

In addition to the internal formulation of rules, DOI needs to streamline procedures for using the semiannual rulemaking agenda. The Regulatory Flexibility Act and Executive Order 12291 require the development of a semiannual agenda to: (1) alert the public to upcoming regulations and to reduce the burdens of existing and future regulations; (2) increase agency accountability for regulatory actions; (3) provide for presidential oversight of the regulatory process; (4) minimize duplication and conflict of regulations; and (5) ensure well-reasoned regulations. In practice, DOI misuses this tool, ignoring its intended purpose and using it as a place to list every conceivable rule that the department might publish. When used in this manner, the agenda provides little information on actual departmental priorities. Use of the agenda can be vastly improved.

There must also be a clear and well-defined process for developing regulations and obtaining approval for their release. In many cases, rulemakings have been delayed because (1) interested bureaus become involved late in the process, forcing reconsideration of issues previously resolved; (2) confusion exists over which bureaus must approve rulemakings before they are released; and (3) deadlines for completion of various phases of the rulemaking process either do not exist or are not enforced.

Recommendations

1. **Standard practices for electronic communications within the Department of the Interior should be implemented.** The department should implement a DOI-wide data network strategy with the following steps: (1) agree upon a conceptual framework identifying networks, common databases (e.g., payroll), and a network architecture; (2) develop a policy to establish ways to share data between bureaus; (3) require data centers to use compatible communications software; (4) require bureaus to optimize communications capacity (e.g., T-1 circuit bandwidth and video conferencing room time); (5) shift to Government Open Systems's Interconnection Profiles (GOSIP); (6) standardize imaging systems across the department for transmission of financial data, land records, rules and regulations, library material, and basic review documents to reduce paperwork in the workplace; and (7) standardize telephone system capability across bureaus to provide timesaving components and to improve quality of direct communication.

2. **DOI should ensure that its data network initiatives all tie into a departmental data network.** DOI data network initiatives are the Secretary's electronic mail project, Local Area Network Administrator's Group and the Data Networking Task Group. In addition there are a number of bureau initiatives which provide further capability for a DOI-wide network. These include the National Park Service (NPS) ParkNet Telecommunications Network; U.S. Fish and Wildlife (FWS) Wetlands Mapping program; Bureau of Land Management's (BLM) Automated Land and Mineral Records System; Office of Surface Mining Technical Information Processing System; Minerals Management Service's (MMS) Technical Information Management Program; U.S. Geological Survey's (USGS) Advanced Cartographic Systems program; Bureau of Mines Minerals Availability System; and the use of Geographic Information Systems (GIS) by Bureau of Indian Affairs, NPS, BLM, MMS, and USGS.

3. **DOI should establish a council to review all internal, self-imposed procurement regulations, eliminate as many of them as possible, evaluate any requests by individual departmental agencies/bureaus to retain specific rules, and determine the advisability of rescinding the authority of agencies/bureaus to issue restrictive supplements to federal acquisition guidelines.** To expedite the council's work, all of DOI's existing

internal regulations should expire at the end of fiscal year 1994. In addition, the department should work with OMB, the General Accounting Office, and the Office of the Inspector General to ensure that these organizations do not encourage self-imposed rules in their circulars or audit reports.

4. To guarantee the compatibility of its financial and acquisition systems, DOI should make Federal Financial System (FFS) interface capacity a top priority in the development of Interior Department's Electronic Acquisition System (IDEAS).

5. DOI should develop and implement a strategic plan for making the Federal Financial System (FFS) readily available to field users through alternative system environments such as mini-computers and local area networks.

6. DOI should expand the remote access and data entry capabilities of FFS users to certify payments and streamline payment processing by implementing Treasury's Vendor Express Program (Electronic Payment System) and Electronic Certification System. Implementation of the Treasury systems will result in direct wiring of payments to employees and outside customers and electronic certification of payments, eliminating preparation of hard-copy payment schedules and reentering of data into Treasury's on-line payment system.

7. DOI should streamline the processing of bills by establishing a separate appropriation account within the department to pay common costs, rather than issuing separate billings to each bureau. A single appropriation account would simplify the administrative process and result in a more timely recording of charges.

8. DOI should take measures to revise existing correspondence guidelines and reduce excessive and unnecessary review of correspondence. This should include: (1) defining the purpose and scope of policy and legal clearance; and (2) delegating signatory authority to the lowest appropriate organizational level.

9. The Department should use its semiannual regulatory agenda to establish dates for formulation and publication of rules that can be achieved within agency resource constraints. These dates should be commitments that are kept by the bureau developing the rule. The agenda should reflect major priorities and concerns requiring interagency coordination.

10. DOI should identify all parties that may be interested in a rulemaking and involve them early in the process. The DOI Office of Regulatory Affairs has developed a flow chart of the steps and timeframes involved in the regulatory review and approval process and a regulatory alert system to provide department-wide notice of all intended rulemakings. DOI should use this system to identify interested parties and encourage them to participate in the process during the initial stages of regulatory development.

Implications

Streamlining these management functions should generate some immediate dollar savings in procurement and financial management and vastly increase confidence in the department's administrative processes. Removing unnecessary obstacles should play an integral role in shaping a more flexible DOI for the coming century.

Fiscal Impact

Assuming the current telecommunications infrastructure is continued, data costs will continue to increase. If an integrated communications network is implemented there will be network implementation costs. Total costs will increase due to current expenditures, added capabilities, and increased usage of network, and network implementation costs. An estimated 20 per cent in annual avoidance savings will be realized in circuit costs due to fewer redundant systems/equipment and productivity improvements.

Implementation of a DOI-wide telecommunications network will result in management efficiency improvements throughout the department. These improvements are not easily quantified thus no direct cost savings are identified, but savings are potentially significant. A telecommunications network will reduce time delays in reviews, enable information to more easily reach its target audience, and expedite information sharing. On a departmental basis the value of employee time gained from more effective telecommunication capabilities to be used for mission oriented work, could reach \$50 million a year.

Aggressively reducing acquisition regulations, both federal and self-imposed, would yield moderate savings. Ensuring compatibility of the FFS and IDEAS would decrease data

entry errors, increase the quality of purchases, quicken payment to vendors, and free-up substantial work hours by eliminating manual, labor-intensive tasks. The current cost of operating FFS at two Administrative Service Centers is \$11.475 million. DOI estimates that when fully implemented in fiscal year 1998, the shift to mini-computers will save \$6 million per year.

There is not a specific, identifiable fiscal impact associated with recommendations 8, 9 and 10. These recommendations would enhance customer service by improving the correspondence and regulatory processes.

The fiscal impacts of all ten recommendations are consolidated and summarized in the chart below. The telecommunications recommendations (numbers 1 and 2) would require expenditures of \$38 million over five years. These expenditures will be partially offset by \$28.8 million in cost avoidance savings in telecommunications over five years. Recommendations 3 through 7 will result in cost savings of \$24.8 million and a reduction of 160 FTE over five years. In total, recommendations 1 through 10 will result in cost savings of \$15.6 million over five years.

	In Millions of Dollars				
	1994	1995	1996	1997	1998
Budget Authority	\$.6	-\$13.1	\$7.5	\$9.3	\$11.3
Outlay	\$.6	-\$13.1	\$7.5	\$9.3	\$11.3
Revenues	-0-	-0-	-0-	-0-	-0-
Change in FTE	-7	- 90	-117	-139	-161

Now is the Time

CREATE A NEW MISSION FOR THE BUREAU OF RECLAMATION

Background

The original mission of the Bureau of Reclamation (BOR), to develop water resources and provide for economic development in the west, is almost complete. The BOR has completed currently planned capital construction on all major water projects except the Central Arizona and Utah projects. It is anticipated that all ongoing construction projects will be completed in the next five to eight years. The BOR has federal oversight responsibility for 355 storage dams and reservoirs, 52 hydroelectric power plants, 240 pumping plants, 300 recreation sites, 15,853 miles of canals, and 17,002 miles of drains composing 238 projects. The projects were constructed either for single purpose usage, such as irrigation water delivery, or for multiple purpose usage, such as hydroelectric power, municipal and industrial water deliveries, and flood control, recreation, and fish and wildlife purposes. The BOR operates and maintains 25 multipurpose projects and shares responsibility with local water districts or agencies for 39 other projects. Local water districts have full responsibility for operation and maintenance of the remaining 174 projects.

The original mission of BOR was amended by passage of the Rehabilitation and Betterment Act (R&B) in 1949; the Distribution System Loan Act (DSLTA) in 1955; and the Small Reclamation Projects Act (SRPA) of 1956. Programs established under these acts permit local water users to finance the construction or rehabilitation of water supply and storage systems without obtaining individual project authorization.¹ They provide subsidies to irrigators, via no interest loans, in addition to those provided by the Department of Agriculture. The 1986 amendment to the SRPA program places emphasis on modernization of existing projects and on water and energy conservation, environment enhancement, and water quality improvement.

The 1992 Central Valley Project Improvement Act provides significant governance changes in the BOR project and provides guidance and opportunities to engage in a number of "new" activities, such as facilitating water transfer, strengthening conservation activities, and restoring damaged ecosystems. The Act should serve as a model for reforms to other BOR

projects.

Many BOR multipurpose projects provide water for municipal and industrial (M&I) as well as irrigation purposes. The existing program requires the BOR to administer contracts and agreements in which interest on facilities serving M&I purposes is collected while those serving irrigation purposes are interest free. Recent Inspector General Reports identified changed water use from irrigation to M&I where associated revenues had not been collected.² Also, delayed collections of revenues on the Central Arizona Project and cost allocation and repayment based on irrigation benefits and power revenues are reducing income to the federal government.

As the BOR's traditional construction mission ends, the BOR must clarify its proper federal role in water management and devolve secondary support functions to state and local authorities. To do this, the BOR developed a strategic plan with 25 elements but did not establish a single, clear mission or establish priorities for implementation of identified elements.³ This plan calls for an in-depth development of each element which could result in an expanded role in water and power operations, water conservation, drought management, project development, energy, investing in rural America, land resources, recreation, and research and technology transfer. This undertaking could result in an expanded role in some areas where there already exists a federal presence. This ambitious undertaking would be better focused on environmental restoration and wise use of this nation's water. Alternatives to continuing with the current strategic plan are transferring all responsibilities to other federal agencies and eliminating BOR or defining a smaller, more focused mission. Eliminating BOR would require legislation to transfer project responsibility to another agency such as the Army Corps of Engineers. Projects which affect only a single state could be devolved to the state or a legal local entity such as an irrigation district. Such an effort could result in opposition from Congressional representatives of Western states.

Although the traditional BOR construction mission is ending, a significant federal role in water management remains. The BOR must assist in defining the federal policy for water management in the West and continue a role of leadership in installed projects. The future of BOR must foster organizational changes that are flexible and able to respond to climatic conditions and public values. The BOR must address environmental issues associated with water use in the installed projects.

Recommendations

- 1. By the beginning of fiscal year 1995, BOR should develop a new mission which assumes a leadership role in western water policy and focuses on water management functions.** To assume this role BOR should make its primary mission to increase the flexibility of the existing western water supply infrastructure. Priority should be given to: (a) improved water management (water transfers, conservation, more efficient use, pricing incentives, and so on); (b) operation and maintenance of the existing multipurpose facilities; and (c) environmental restoration and enhancement.
- 2. BOR should complete construction of approved projects, review personnel needs and reduce FTEs and/or redirect skilled personnel to other DOI priorities.** Approved project construction work could be completed by local districts with agreements with BOR. Reduction in construction personnel should be accomplished by attrition or reassignment to other positions.
- 3. BOR should develop legislation to sell or transfer title to state or local water user organizations entities (such as irrigation districts) all distribution and drainage facilities.** The BOR should continue to collect repayment of BOR's capital investment payback in existing facilities until contract obligations are discharged by water users. Technical assistance to landowners for water management and conservation on irrigated cropland should be provided through USDA authorities.
- 4. Enact legislation to repeal the existing Rehabilitation and Betterment Act and Distribution System Loan Act and amend the Small Reclamation Projects Act to eliminate the provision making irrigation a required project component.** The BOR should revise its policies in order to reduce subsidies on SRPA loans. Reductions in subsidies could be in the form of increased interest rates, decreased repayment periods, and/or limited grants in lieu of subsidized loans. The remaining subsidies would be offered as incentives to water users to pursue environmental enhancement and restoration projects.
- 5. BOR should implement internal controls to ensure the government recovers an equitable share of its financing cost for water use changed from irrigation to M&I.** BOR should revise its guidelines to ensure an equitable share of its financing costs are recovered during the repayment period, based on the proportionate use of the water for irrigation and M&I purposes. The BOR should conduct detailed reviews of each project receiving miscellaneous revenue to

determine whether current crediting practices are in accordance with applicable legislation.

Implications

The redirection of the BOR would provide for continued federal interest in reservoirs which impound 245 million acre-feet of water for 28 million people and about 10 million acres of irrigated lands but eliminate continued BOR involvement in single-purpose diversion, water delivery, and water drainage facilities. It would also provide a well qualified work force in contracting and construction which could address environmental problems.

Savings associated with the sale or transferring of title to single-purpose facilities are minor since the cost of project operations and maintenance are already borne by the water users. However, transfer of title would eliminate the federal responsibility for operational oversight, managing outgrants (crossing agreements, leases, and so on) and future R&B loans. In the short run, additional outlays will be required to comply with the National Environmental Policy Act (NEPA) and for the legal and other costs associated with transferring title. In the long term these additional costs could be more than offset by the savings resulting from the transfer of title.

Western water associations will be concerned about loss of support to irrigated agriculture and the decrease in major construction projects. This concern will be voiced by the associations and individuals to their Congressional delegations. Opposition to proposed legislation should be anticipated.

Fiscal Implications

Downsizing the BOR will result from completing construction of currently funded water supply development projects and eliminating the traditional civil works program. The anticipated reduction in the construction budget will come from a four to six percent decrease in personnel by the end of fiscal year 1995 and from a reduction in construction activities (which are contracted out to private firms). Upon completion of the revised mission in 1995 an estimated additional personnel reduction of 10 percent is anticipated. A six percent decrease in personnel in construction activity provides an estimated annual savings of \$28 million. A 10 percent

reduction, due to change of mission, is estimated to save an additional \$44 million annually after 1995. Total downsizing savings at the end of five years is estimated to be \$72 million annually.

BOR could sell or transfer title on single-purpose projects. There are currently 39 projects which could be transferred. If 21 projects are transferred over the next five year period, estimated transfer cost would be \$25 million. These costs should be paid by the receiving government unit. There would be no savings; however, reduced long-term liability to the government would occur.

Eliminating the R&B loan program will prevent approval of 11 proposed projects with a value of \$132 million, avoiding an interest subsidy of \$8 million annually and a capital expenditure of \$132 million. However, current R&B loan applicants could apply for SRPA loans. Therefore these cost savings have not been included.

Reforming the SRPA loan program could reduce federal subsidies by about 50 percent. The current subsidy averages 44 percent per dollar loaned. Increasing interest rates on the irrigation component from zero to three to five percent would reduce the subsidy to 15 to 20 percent. Applied to the existing eight proposed loans, a reduction of the subsidy to 20 percent would result in a savings of \$25 million.

The total from all three initiatives; reduced construction and new mission, transfer of titles, and reduction of loan subsidies would result in the following savings.

	In Millions of Dollars				
	1994	1995	1996	1997	1998
Budget Authority	0	13.3	22.0	22.0	21.4
Outlays	8.0	17.0	22.0	22.0	22.0
Revenues ⁴	0	12.5	25.0	25.0	25.0
Change in FTEs	-250	-458	-709	-960	-1202

Note: There would be an additional \$28 million revenue increase due to repayment collections of unauthorized annual credits and monitoring of water use change of irrigation to M&I.⁵

Endnotes

1. Bureau of Reclamation's Report, "A Review and evaluation of the Bureau of Reclamation's Loan Program", December 1992, pp 1-2.
2. U.S Department of Interior, Office of Inspector General, Audit Report No 92-I-1128 and No. 92-I-887.
3. Reclamation's Strategic Plan, "A Long Term Framework for Water Resource Management, Development, and Protection", June 1992.
4. Does not take into account the effects of additional defaults as per the Credit Reform Act.
5. Inspector General Report No. 91-I-887 and 92-I-1128.

CHANGE THE FEDERAL ROLE IN HELIUM PRODUCTION

Background

For at least two reasons the helium program provides an excellent opportunity for the government to review its performance. First, the helium program has fulfilled the twin congressional mandates to foster a private helium market and to ensure the availability of helium for the various federal agencies that require helium for their operations. Having done so, a basic question arises as to whether the government has a legitimate ongoing role in certain aspects of the helium program such as production and refining. Second, because of the helium program's unusual budgeting mechanism and its inter-relationship with the private market, in deciding whether or not to modify the helium program, the government is presented with broader questions about governmental operations and policies.

Identifying a sound strategy for getting out of helium production requires a careful analysis of several issues. The Helium Act of 1960 authorized the Department of Interior to conserve, buy, store, produce and sell helium to meet federal and other needs. The objectives of the act were to: (1) conserve helium for future use; (2) provide a sustained supply of helium to meet federal needs; and (3) foster and encourage individual enterprise in the development and distribution of helium. The Bureau of Mines (USBM) has met all these objectives. Private industry can now meet U.S. helium needs, and the USBM has a reserve of crude helium sufficient to meet U.S. government needs for at least 50 years. In fiscal year 1992, the helium program employed 226 people, primarily in Amarillo, Texas. The government owns and operates one helium extraction and purification plant, a helium cylinder and trailer filling facility, a crude helium reservoir, a metering and maintenance station, and a 425-mile connecting pipeline. The reservoir and pipeline are used by private industry to transport and store excess helium.

The helium, and the helium reserve and storage facility--must be considered in determining the future of the program. The debt was incurred in accordance with provisions of the Helium Act requiring USBM to borrow from the Treasury to purchase helium for the government reserve. The Act requires that this debt and accrued interest be repaid to the Treasury by 1995 from helium sales revenues. However, revenues over time have been less

than expected and the debt has grown to approximately \$1.2 billion at the end of fiscal year 1992. Of this amount more than \$1 billion is interest. As long as the debt is an issue, it is difficult to make an objective decision about the program. The General Accounting Office (GAO), the Office of Management and Budget (OMB), and the Interior Inspector General agree that the debt is a paper transaction which could be forgiven with no impact on the budget. Debt forgiveness is a bookkeeping transaction that would remove USBM's responsibility for the debt from government financial records; the debt would remain as part of the total debt of the federal government. According to GAO, "It is no longer realistic to expect the debt to be repaid by the statutory deadline of 1995 and . . . canceling the debt would not adversely affect the federal budget."¹ A precedent for canceling the debt exists in the case of the Defense Production Act of 1950 when the borrowing authority under the act was exceeded primarily by accumulated interest. Congress canceled the outstanding indebtedness and put the programs under the act on an appropriation basis.

A second factor is the cost to the government of purchasing refined helium. The Helium Act requires federal agencies to make major purchases of helium from the USBM, and most of the resources of the helium program are dedicated to production. The helium program receives no direct appropriations as production costs are covered by appropriations to other federal agencies for helium purchases. Approximately \$23 million was appropriated to buy helium in fiscal year 1992. Of that amount, \$15 million funded operations of the helium program, \$4 million paid freight costs, and \$4 million was returned to the Treasury to repay the debt. Although industry maintains it can meet federal helium needs at no increase in cost to the government, USBM and GAO both anticipate a net increase in outlays for helium if private industry supplies federal helium needs using its own sources of crude helium.

The use and disposition of the existing helium reserve is the third important factor bearing on the future of the helium program. Because the reserve is approximately 32 billion cubic feet, or more than nine times the current annual world demand for helium, its sale would devastate the helium market and remove incentives for helium conservation, resulting in the venting of helium that would otherwise be captured during the production of natural gas.² In recent Congressional testimony, the Director of the Bureau of Mines estimated that if the reserve were sold, the price of the gas in the reserve would fall to ten cents on the dollar. At

the same hearing, a representative of the Helium Advisory Council, an industry organization, estimated that the price would be five cents on the dollar. This would result in a significant loss to the government in addition to its dramatic effect on private industry.

If the government maintains the reserve, it must continue to operate the reservoir and pipeline in order to protect its investment, continue to support conservation, and not disrupt private helium supply/demand relationships. The reservoir is a unique facility that supports not only the USBM operation but also the operations of a number of private companies in the area which use the facility for transportation and storage of crude helium. Control of the facility by a single company could put the operations of competitors at risk. Private industry supports continued government ownership of the storage facility.³ USBM currently experiences losses relative to costs of the use of these facilities by private enterprise because fees were set low in 1975 to encourage helium conservation. Contracts for use of these facilities will expire beginning in fiscal year 1995 and new fees will be established to cover expenses. In a recent report, the GAO raised serious concerns about possible degradation of the helium reserve by excessive extraction from the reservoir by private companies.⁴ Costs related to this degradation must also be covered by fees for use of the storage facility.

Any solution which does not carefully address the implications of change in all these areas could have serious unintended consequences for the federal budget, future helium conservation and the health of private industry. A responsible solution should: (1) remove the government from direct involvement in helium production if it can be insured that the private sector can meet federal demands and the cost of helium to the government remains stable; (2) protect the government's investment in the helium reserve; (3) encourage helium conservation to the extent possible; and (4) cancel the debt accrued under the program.

The recommendations below would remove the government from direct helium production, the most resource intensive part of the helium program, once it is clear that the private sector can meet federal needs with no increase in cost to the taxpayer; insure protection of the government's investment in helium by retaining control of the reserve; and cancel the debt. Selling crude from the reserve does not promote conservation goals, but it insures conservation to a much greater extent than an extreme action, such as selling the reserve, while mitigating cost factors associated with purchase of refined helium from private industry.

Recommendations

1. **Amend the Helium Act of 1960 to cancel the principal and interest of the helium debt in fiscal year 1994.** This will eliminate a paper transaction and will not impact the deficit.
2. **Amend the Helium Act of 1960 to permit federal agencies to purchase refined helium from private industry.** This will allow federal agencies to continue to meet their helium needs once the USBM program is terminated.
3. **The USBM program to purify and supply helium to federal agencies should be terminated. The USBM should continue operating the reservoir and pipeline. Crude from the reservoir should be sold to the private sector.** USBM would terminate helium production over a transition period of two to three years, allowing the bureau to absorb the phase out costs and federal users to let new purchase contracts. As it moves from the refining business to a new role as crude helium supplier and custodian of the stockpile, USBM would begin by privatizing some ancillary functions that would reduce employment needs by ten percent and save approximately \$1 million in operating costs. Simultaneously, the Bureau would explore with industry the viability of a price of \$40/mcf and pursue negotiations with private industry refiners to secure long-term arrangements for the purchase of crude helium at the quantities and price levels that would support this recommendation. Once those commitments are secured, USBM would begin the process of phasing out of the helium refinery business. In order to offset the loss of pure helium sales revenue currently returned to the Treasury from the helium program, USBM would need to sell about 326 million cubic feet of crude, the equivalent of the amount of refined helium currently purchased by federal users, to the private sector. This would lower costs to the government by taking maximum advantage of industry's strengths--efficient production and transportation facilities--and of the government's position as the owner of a large reserve of crude helium.
4. **USBM should raise fees for private industry use of the pipeline and reservoir once current contracts expire in 1995.** Fees would be increased to cover the cost of operation and maintenance of the storage facility. New fees should not only cover operating expenses but also compensate for helium degradation caused by excessive extraction by private industry.

Implications

Canceling the debt could cause public criticism since the debt will not be repaid as initially intended. However, canceling the debt would put the program on a reasonable economic footing and remove this nonproductive bureaucratic hassle that currently ties up the limited resources of the Bureau of Mines and Department of Interior.

Ceasing production implies risks because of increased reliance on private industry and on market pricing factors. In order for the government to stop production without increasing costs, private industry must agree to purchase crude helium from the reservoir to meet federal agency needs. Cost estimates based on industry purchase of crude are highly speculative as they assume industry willingness to buy crude at a price which will not result in an increased overall cost for government helium purchases.

Although 44 positions would be retained to manage the reservoir system, 182 jobs would be lost in the Amarillo area, something that can be expected to have a severe impact on the local economy. The helium program contributes more than \$10 million annually to the economy and is among the top twenty employers in the Amarillo area. This problem might be mitigated to some extent by developing programs with local industry to encourage them to absorb some of the displaced employees.

Fiscal Impact

USBM would incur the following estimated closeout costs: (1) plant shutdown cost of \$5 million; (2) reduction-in-force costs of 3.4 million; (3) cost to mitigate environmental hazards caused by use of asbestos in plant insulation of over \$250,000; and (4) \$70,000 per year security until plant disposal is complete. Some revenue may be generated by the sale of the Exell plant and distribution equipment.

The attached chart prepared using USBM figures compares current helium costs and estimated costs to the federal government if the recommendations above are implemented. The estimated costs are based on a possible net-back arrangement with private industry with the price of crude set at \$40 per thousand cubic feet. These figures are highly speculative.

The five year fiscal impact would be:

In Millions of Dollars

	1994	1995	1996	1997	1998
Budget Authority	\$0	\$0	\$0	\$0	\$0
Outlay	\$0	\$0	\$0	\$0	\$0
Revenues	\$0	\$3.1	\$3.1	\$3.1	\$3.1
Change in FTEs	0	-71	-182	-182	-182

Endnotes

1. U.S. General Accounting Office, *Mineral Resources, Meeting Federal Needs for Helium*, Report to the Chairman, Subcommittee on Mining and Natural Resources, Committee on Interior and Insular Affairs, House of Representatives, GAO/RCED-93-1 (Washington, D.C., October 30, 1992), p. 32.
2. U.S. Congress, House Natural Resources Committee, Subcommittee on Energy and Mineral Resources, testimony of the Helium Advisory Council, May 20, 1992, p. 2.
3. Ibid, p. 3.
4. U.S. General Accounting Office, *Mineral Resources, Federal Helium Purity Should be Maintained*, Report to the Chairman, Subcommittee on Mining and Natural Resources, Committee on Interior and Insular Affairs, House of Representatives, GAO/RCED-92-44 (Washington, D.C., November 8, 1991), p. 4.

Estimated Helium Program Costs
(figures in millions of dollars)

	Actual FY-92	Recommendation
<u>Assumptions</u>		
Helium product	Refined	Crude
Price of crude-\$/Tcf	---	40.00
Volume sold--MMcf	326	326
Appropriation for helium	23	23
<u>Bureau Revenue¹</u>		
Federal	19.0	---
Non-federal	4.0	13.8
Total	23.0	13.8
Funded costs of operation ²	15.3	3.0
Funds returned to Treasury	7.7	10.8
Delivered cost to federal agencies	23.0	23.0
Less funds returned to Treasury	7.7	10.8
<u>Cost of refined helium to the taxpayer</u>	15.3	12.2

¹Reimbursable freight (\$4 million) and fee sales (\$5 million revenue only) excluded

²The funded cost of operations does not take into consideration user fees for the storage facility. These costs should be lower than the \$3 million estimate when user fees are deducted.

ENHANCE ENVIRONMENTAL MANAGEMENT BY REMEDIATING HAZARDOUS MATERIALS SITES

Background

As the nation's principal conservation agency, the Department of the Interior (DOI) is responsible for most of the United States' federal lands and natural resources (over 440 million acres). These lands are geographically dispersed across the country. The DOI mission statement emphasizes preserving the environmental values of these lands and providing for the enjoyment of life through outdoor recreation. Some DOI lands were formerly used as defense sites or for industrial purposes and have become contaminated with hazardous waste. The EPA currently lists 432 DOI facilities on the Federal Agency Hazardous Waste Compliance Docket. The department is continuing its efforts to identify hazardous materials (HAZMAT) sites that result from the effects of human activities on lands under its jurisdiction. Because a large portion of DOI lands are open to public access for activities ranging from hiking and fishing to the operating of mines, additional contamination can still occur. Maintaining an accurate inventory of these HAZMAT sites is therefore an ongoing process. DOI needs to increase its effort to address HAZMAT cleanup on its lands. Because of the high costs of remediation, DOI must make maximum use of existing resources.

Several of the bureaus within DOI, including the Bureau of Land Management, Bureau of Indian Affairs, National Park Service, and Fish and Wildlife Service, have primary responsibility for managing lands where hazardous materials have been identified. These agencies have skills in land and natural resource management, provide training for professional staff in handling hazardous materials, and provide contract oversight for activities on their lands ranging from National Park concessionaires to reclamation of polluted lands.

Other bureaus, including the U.S. Geological Survey, Bureau of Mines, and Bureau of Reclamation, have scientific and technical expertise for assessing hazardous materials sites and assisting with site construction and oversight. Decisions related to mitigation of HAZMAT sites cannot be made without reliable data about the sites in question. Above

all, coordination of scientific understanding with management issues is crucial when fulfilling trust responsibilities for the resources and people living on these lands.

Therefore, DOI recommends integration of managerial and scientific expertise in seeking cooperative approaches to HAZMAT site assessment and remediation. The complementary capabilities of bureaus have the potential of providing high quality, objective information for planning remediation of hazardous waste sites. The department recommends a multi-bureau, team approach to planning HAZMAT remediation that draws on DOI's full array of in-house resources.

A memorandum of understanding was signed in 1991 by DOI, the Western Governors' Association and other Federal agencies to work on a collaborative approach to the development of technical solutions for environmental restoration. The purpose of the partnership is to test ways to expedite the deployment of innovative technologies for cleanup. Following a department-wide HAZMAT conference in 1993, the Assistant Secretary for Water and Science recommended that DOI designate pilot projects to develop remediation plans for contaminated lands in the Western states. The purpose of the pilots is to test the use of in-house expertise to develop a strategy for cooperative assessment of HAZMAT sites.

Pilot projects are needed to demonstrate new models for state and federal partnerships. Pilots will also provide an opportunity to field test new technologies for remediation. These model approaches and technologies should lead to achieving cleanup goals more rapidly and at less cost than current methods.

DOI needs to send a strong message that pollution of public lands is unacceptable. Responsible parties should be prosecuted to the full extent of federal law and be held liable for cleanup costs. However, before a remediation program can be fully realized, the department needs to surmount legal and fiscal obstacles.

DOI should seek remedies to current regulations which leave all participants in HAZMAT remediation open to liability. Under these regulations, personnel who work on a HAZMAT site are considered "potentially responsible parties" in any future litigation. This is a significant disincentive for DOI personnel with scientific and technical expertise to participate in assessment and remediation activities since by simply providing services on a

HAZMAT site, they may risk being named a responsible party. This could be remedied by offering indemnifications as are now available to Environmental Protection Agency contractors.

DOI must pursue enhanced enforcement authority to clean up departmental lands by those parties actually responsible for the pollution. At present, the department has no enforcement authority in this area. A remediation and restoration effort based on the principle that "polluters pay" will require a financial investment in planning and oversight. Because of the large number of sites, high cost of cleanup, and long time period to plan for and reclaim HAZMAT sites, DOI must plan for a long-term effort. In sum, resolving the HAZMAT problem will demand fresh legal and fiscal resources.

Establishing a legal strike force will enable bureau environmental staff to work with DOI attorneys toward common departmental remediation and cleanup goals. DOI strike force attorneys will also work with other federal agencies, including the Environmental Protection Agency, to cooperatively address legal and liability issues that present obstacles to cleanups.

Recommendations

- 1. DOI should integrate managerial and scientific expertise in cooperative, cross-bureau approaches to HAZMAT site assessment and remediation.** Most important to accomplishing this goal is the development of formal cooperative agreements among bureaus for planning and implementing cleanup of specific sites. Other methods include use of intra-bureau personnel exchanges, electronic bulletin boards, and collective data base development.
- 2. DOI should designate several HAZMAT sites as pilot projects for cooperative, multi-bureau assessments to develop remediation plans.** The pilots should be designed to model collaborative approaches and demonstrate new and innovative cleanup technologies. Four pilot sites should be identified on DOI lands in Western states during 1993. The sites should be selected in consultation with the Western Governor's Association HAZMAT group. One pilot site should be selected to begin implementation in fiscal year 1994. Site assessment and evaluation and design of a remedial effort will occur during

fiscal years 1994 and 1995. At the end of 1995, an evaluation of the effectiveness of the demonstration project should be conducted. If the demonstration project is successful, implementation of the remediation plan should begin in fiscal year 1996, and work will begin at another pilot site. The remaining two pilots should be started one each year in fiscal years 1997 and 1998.

3. DOI should establish a legal strike force by the end of 1994 to address barriers to cleanup. Aggressive enforcement and cost recovery actions are necessary to ensure that the "polluter pays." The department must have increased enforcement authority to compel the parties responsible for pollution of a site to pay for the cleanup. DOI must also have the ability to retain the monies recovered through cost recovery actions to use to pay for the actual costs of cleanups on Interior lands. The Department must also seek remedies, such as indemnifications now offered to contractors by the Environmental Protection Agency, to prevent personnel who work on a HAZMAT site from being open to future liability as a "potentially responsible party."

Implications

The phased approach to site identification and remediation planning is important to ensure that resources are used wisely, and that time is permitted for resolution of legal issues. After completion, these approaches and technologies can be compared to traditional, contractor-dependent remediation on the basis of cost-effectiveness and reliability. The use of in-house resources in DOI remediation efforts would increase accountability and quality control. Inter-bureau cooperation would also improve DOI's ability to track its dynamic HAZMAT inventory.

Fiscal Impacts

In both fiscal year 1992 and fiscal year 1993, DOI reported spending about \$70 million on HAZMAT-related activities, with costs reported individually by bureau. The majority of these expenditures are for HAZMAT-related activities including site inventory, evaluation and prioritization; staff training, safety and environmental compliance; pollution prevention; and management of HAZMAT sites. It should be noted that only a small

percentage of these funds represent actual cleanup of contamination. Cooperative, cross-bureau agreements which emphasize resource sharing should ensure that the overall DOI effort is optimally efficient and cost effective.

DOI proposes to accomplish cooperative efforts integrating managerial and scientific expertise within current resource levels. However, planning the assessment and remediation of all HAZMAT sites which require cleanup will demand an investment of additional resources. DOI estimates that one additional FTE will be needed to coordinate the pilot project at a total cost of \$100,000 per year. Conservative estimates for implementation of a pilot program to demonstrate cooperative HAZMAT assessment and remediation of single site total about \$14 million over the 5 years. The Environmental Protection Agency estimates actual cleanup of an average superfund site at about \$30 million over several years. Cleanup must then be followed by site operation and maintenance over a 20-year period, estimated to cost about another \$3.8 million. These estimates indicate an investment for complete cleanup of a single site at nearly \$50 million. Many experts believe these figures to underestimate total costs, but they are the best available with current experience.

To establish an effective legal strike force, the department estimates an additional six full time equivalent positions would be required. These positions, with associated salaries, benefits, and administrative support, would cost \$600,000 per year. The large-scale commitment of resources needed to address the restoration of HAZMAT sites makes these recommendations for cooperative pilot and legal enforcement approaches critical. The remediation process is too costly to risk wasting resources on untested approaches, and too lengthy to proceed without enforcement authority and the ability to limit liability.

	In Millions of Dollars				
	1994	1995	1996	1997	1998
Budget Authority	-\$2.1	-\$3.9	-\$6.0	-\$4.1	-\$1.3
Outlay	-\$2.1	-\$3.9	-\$6.0	-\$4.1	-\$1.3
Revenue	0	0	0	0	0
Change in FTEs	7	7	7	7	7

Agency Reinvention Activities

AGENCY REINVENTION ACTIVITIES

The employees of the Department of Interior (DOI) received Vice President Gore's announcement of the National Performance Review (NPR) with enthusiasm. Implementing President Clinton's mandate to revitalize and restore the Department of Interior to an efficient and effective natural resources management agency, the new Administration has taken steps to change practices of the past that had prevented the department from realizing the full potential of its critical resource protection mission.

The Administration's ambitious goals for reinventing the Department of the Interior have inspired Interior employees at all levels and were responsible for generating hundreds of ideas to assist the department in pursuing its reinvention effort.

Chief among Interior's goals for Interior is improving communication in a department with a past that often has experienced barriers among its operating agencies and between its employees. Secretary Babbitt has made it clear that he intends to improve channels of communication between Interior's rank and file employees, the managers within the various agencies, and managers at the department level.

The employees of Interior's many bureaus were challenged to reconsider their missions. Many of these agencies had grown over time without ever benefitting from the direction of clearly defined goals and objectives, so employees were asked to rethink their daily operations, redefine their roles within the Federal system, and reshape their programs to meet the demands of contemporary society. With this challenge, Secretary Babbitt has reemphasized clear and consistent mission statements as the basic management and decision-making framework for Interior's agencies.

As a central part of refocusing the mission orientation, the Department of the Interior has emphasized the increased use of Interior's scientific capabilities in crafting resource management decisions. Scientific information has too often been ignored, misapplied, or even worse, absent in the decision-making process. Researchers in Interior agencies have been challenged with ensuring that their science is conducted and presented in such a way that it can be applied by non-scientists working on policy issues affecting the nation's resource base.

Throughout the reinvention process, Interior has focused on suggestions that would

materially benefit the department and its operating agencies; i.e., achieving mission goals without the need for increased appropriations or additional staff. Interior is seeking to identify efficiency savings that can let the department do a better job of serving the nation within existing resources.

Interior entered the reinvention process with a three-fold goal: to join the Vice President in the exciting but exacting process of review and recommendations outlined for the NPR so that both Interior and its sister agencies would achieve mutual success; to reach the broad range of the department's employees for their assistance in identifying, reviewing and implementing NPR recommendations; and, using the NPR as a tool to incorporate the most successful elements of past efforts to improve government service delivery through integrating its independent bureaus.

Organizing for Change

Based on the direction set by Vice President Gore and Secretary Babbitt's ambitious goals for revitalizing the management of the Nation's irreplaceable natural resources and protecting its outstanding heritage, Interior organized its reinvention efforts to build interagency cooperation and to encourage participation by the rank and file employees of the department.

Interior's effort to include input from its employees officially began with Vice President Gore's visit to the Main Interior Building for his Town Hall meeting. That event, which produced a number of concrete suggestions for change, was soon followed by a second town hall meeting at the Denver Federal Center, home to a large number of Interior's operating agencies and personnel. In addition to these two high-profile events, Interior used suggestion drop boxes, e-mail messages, mailings, and employee contact to solicit ideas for improving the department's operations. Secretary Babbitt made the commitment to respond to each and every suggestion received.

To manage the reinvention process within the department, Interior established a Coordinator's Group made up of representatives from each of its operating agencies and the office of each Assistant Secretary. The Coordinator's Group served as the department's steering committee for reinventing government. Individual members of the Coordinator's Group have been assigned to each one of the department's laboratory and systems teams. The

individual working teams have had early, and consistent and productive access to its counterpart teams at the Vice Presidential level.

Reinvention Labs

Interior is sponsoring seven different reinvention laboratories at both the department and agency levels. These reinvention labs were an early priority for Interior because they offer an unprecedented opportunity to build on past efforts while experimenting with novel management systems, new technology, and fresh ideas.

At the departmental level the Office of Environmental Affairs is examining the natural resource damage assessment process used in determining the fines to be paid following accidents such as the Exxon Valdez grounding.

At the agency level, both programmatic and fiscal management issues are the subject of laboratory experiments. On the programmatic front:

the Bureau of Land Management is reviewing the delivery of services to field offices from its Denver Federal Center;

the Bureau of Mines is looking at its Pittsburgh Research Center, the government's premier center for coal mine health and safety work;

and Sacramento Field Office of the U.S. Fish and Wildlife Service is developing approaches to meet its multiple environmental protection responsibilities, especially those in California's heavily used Central Valley watershed.

Fiscal issues being investigated include:

simplifying and streamlining the Minerals Management Service royalty collection and reporting system which generates Federal revenues from the sale of the nation's oil and

gas resources;

the U.S. Geological Survey, which publishes 1,500 maps annually and sells more than 7 million maps each year to both map dealers and the general public, is reviewing the functions of its map sales and distribution center;

and, the Bureau of Reclamation, which develops and manages irrigation projects in the western U.S., is working in concert with the Department of Agriculture to review the reporting requirements for farmers who participate in both subsidized water projects and who receive commodity stabilization price supports.

The findings from each of the reinvention laboratories will be presented to the department's policy leaders and the bureau management teams in October.

Systems Teams

Interior adopted the Vice President's systems teams concept as the horizontal integrating mechanism for its reinvention efforts. It formed 11 System Reinvention Teams (SRTs), matching the organizational structure devised by the Vice President. Membership reflected a wide range of backgrounds and grade levels; each team was composed of six or seven members, each from a different agency.

The SRTs were charged with reviewing the hundreds of reinvention suggestions generated by Interior's employees through the department's outreach efforts. After sifting through the comments and ranking the priorities within their areas of expertise, more than 100 suggestions emerged from the process. Delegates from each team met to report their findings and develop a consensus on action priorities. The list of suggestions was then narrowed, by combining similar recommendations from different sectors. From that list, Interior's policy team selected 20 recommendations for immediate attention. Implementation plans for these action items are being created by the SRTs.

Continuing the Process

Perhaps the most important and immediate effect of the NPR process has been the building of bridges between Interior's agencies. The SRTs developed through this process found that new lines of communications were created as they worked together. That progress should continue as the SRTs work to implement the suggestions that have already come forward. In addition, dozens of suggestions that have been considered by Interior's policy team also have been sent back to the SRTs for additional research, issue definition, and planning -- all with the ultimate goal of continuing the renewal process within the department.

In anticipation of the implementation process, ideas continue to surface for new reinvention labs to test and verify the incoming recommendations. Interior also is eager to lead national initiatives, such as the National Spatial Data Infrastructure, to begin realizing the gains and potential of many of these ideas.

Opening the doors to participatory management has had a salutary effect on Interior, and suggestions continue to arrive for the SRTs. In some cases, members of the SRTs continue to actively solicit the ideas of their fellow employees. Interior's Reinventing Personnel Management team, for example, will be holding a series of focus groups to identify both concerns and solutions. Interior's SRTs will be providing further recommendations to the department's policy team to help make the reinvention process a continual, productive means of meeting the department's mission.

Section IV

U.S. Department of Interior Fiscal Implication Summary

U.S. DEPARTMENT OF INTERIOR FISCAL IMPLICATIONS SUMMARY BUDGET AUTHORITY

		CHANGE IN BUDGET AUTHORITY Numbers in Millions						
Ch.		Fiscal Year						Change
Ref.	Recommendation	1994	1995	1996	1997	1998	5-YRS	in FTEs
DOI 1	Establish a Hard Rock Mine Reclamation Fund to Restore the Environment ¹	x	x	x	x	x	x	x
DOI 2	Redefine Federal Oversight of Coal Mine Regulation	0	0	7	7	7	21	0
DOI 3	Establish a National Spatial Data Infrastructure	-6	-6	-6	-6	-6	-30	5
DOI 4	Entrepreneurial Management of the National Park Service ²	0	0	0	0	0	0	0
DOI 5	Fair Return for Federal Resources	-29	-29	-29	-29	-29	-145	0
DOI 6	Rationalize Federal Land Ownership	0	0	0	0	0	0	0
DOI 7	Improve the Land Acquisition Policies of the DOI	0	0	0	0	0	0	0
DOI 8	Improve Mineral Management Service Royalty Collections	0	0	0	0	0	0	0
DOI 9	The DOI should establish a system of Personnel Exchanges	0	0	0	0	0	0	0
DOI 10	Consolidating Administrative and Programmatic Functions in DOI ³	x	x	x	x	x	x	x
DOI 11	Streamline Management Support Systems in the DOI ⁴	.6	-13.1	7.5	9.3	11.3	15.6	-161
DOI 12	Create a New Mission for the Bureau of Reclamation	0	13.3	22.0	22.0	21.4	78.7	-1202
DOI 13	Change the Federal Role in Helium Production	0	0	0	0	0	0	-182
DOI 14	Enhance Environmental Management by Remediating Hazardous Material Sites	-2.1	-3.9	-6.0	-4.1	-1.3	-17.4	7
Total, Department of Interior		-36.5	-38.7	-4.5	-8	3.4	-77.1	-1533

¹ Figures to be determined by Congressional action.

² To be determined during Tollgate #4.

³ DOI developing estimates. Issue will provide savings.

⁴ DOI estimates. No review by OMB.

U.S. DEPARTMENT OF INTERIOR FISCAL IMPLICATIONS SUMMARY OUTLAYS

		CHANGE IN OUTLAYS In Millions of Dollars					
Ch.		Fiscal Year					
Ref.	Recommendation	1994	1995	1996	1997	1998	5-YRS
DOI 1.	Establish a Hard Rock Mine Reclamation Fund to Restore the Environment	x	x	x	x	x	x
DOI 2	Redefine Federal Oversight of Coal Mine Regulation	0	0	7	7	7	21
DOI 3	Establish a National Spatial Data Infrastructure	-6	-6	-6	-6	-6	-24
DOI 4	Entrepreneurial Management of the National Park Service ⁵	0	0	0	0	0	0
DOI 5	Fair Return for Federal Resources	-29	-29	-29	-29	-29	-145
DOI 6	Rationalize Federal Land Ownership	0	0	0	0	0	0
DOI 7	Improve the Land Acquisition Policies of the DOI	0	0	0	0	0	0
DOI 8	Improve Mineral Management Service Royalty Collections	0	0	0	0	0	0
DOI 9	The DOI should establish a system of Personnel Exchanges	0	0	0	0	0	0
DOI 10	Consolidating Administrative and Programmatic Functions in DOI ⁶	x	x	x	x	x	x
DOI 11	Streamline Management Support Systems in DOI ⁷	.6	-13.1	7.5	9.3	11.3	15.6
DOI 12	Create a New Mission for the Bureau of Reclamation	8.0	17.0	22.0	22.0	22.0	91.0
DOI 13	Change the Federal Role in Helium Production	0	0	0	0	0	0
DOI 14	Enhance Environmental Management by Remediating Hazardous Material Sites ⁸	-2.1	-3.9	-6.0	-4.1	-1.3	-17.4
	Total, Department of Interior	-28.5	-35.0	-4.5	-8	4.0	-64.8

⁵ To be determined during Tollgate #4.

⁶ DOI Developing estimates. Will provide savings.

⁷ DOI estimates.

⁸ DOI estimates. No review by OMB.

U.S. DEPARTMENT OF INTERIOR FISCAL IMPLICATIONS SUMMARY REVENUE

CHANGE IN REVENUE Numbers in Millions

		Fiscal Year					
	Recommendation	1994	1995	1996	1997	1998	5-YRS
DOI 1	Establish a Hard Rock Mine Reclamation Fund to Restore the Environment	x	x	x	x	x	x
DOI 2	Redefine Federal Oversight of Coal Mine Regulation	0	0	0	0	0	0
DOI 3	Establish a National Spatial Data Infrastructure	0	0	0	0	0	0
DOI 4	Entrepreneurial Management of the National Park Service	70	123	182	206	206	787
DOI 5	Fair Return for Federal Resources	59.6	59.6	59.6	59.6	59.6	298.0
DOI 6	Rationalize Federal Land Ownership	0	0	0	0	0	0
DOI 7	Improve the Land Acquisition Policies of the DOI	0	0	0	0	0	0
DOI 8	Improve Mineral Management Service Royalty Collections	0	2	5	7	7	21
DOI 9	The DOI should Establish a System of Personnel Exchanges	0	0	0	0	0	0
DOI 10	Consolidating Administrative and Programmatic Functions in DOI ^a	0	0	0	0	0	0
DOI 11	Streamline Management Support Systems in DOI	0	0	0	0	0	0
DOI 12	Create a New Mission for the Bureau of Reclamation	0	12.5	25	25	25	87.5
DOI 13	Change the Federal Role in Helium Production	0	3.1	3.1	3.1	3.1	12.4
DOI 14	Enhance Environmental Management by Remediating Hazardous Material Sites	0	0	0	0	0	0
Total, Department of Interior		129.6	200.2	274.7	300.7	300.7	1206

^a DOI developing estimates. Will provide savings.

NATIONAL PERFORMANCE REVIEW
AGENCY TEAMS
ISSUE DECISION PACKAGE

TEAM: DOI

Date: August 4, 1993

Issue No.	Issue Title	5-Year Impact	NPR Team Position	Agency Position	Action from Tollgate 4 Meeting
DOI 1	Establish a Hard Rock Mine Reclamation Fund to Restore the Environment	Not available at this time ¹	DOI should structure the new fund to avoid problems with the existing coal AML fund, using revenue generated from royalties or a broader fee system. Current recommendations are general because of ongoing delicate negotiations with Congress.	Agreement	
DOI 2	Redefine Federal Oversight of Coal Mine Regulation	\$21 Million	To overcome organizational problems that inhibit an effective program, we recommend redefinition of federal oversight using national standards of excellence, performance measures and an evaluation process.	Agreement	
DOI 3	Establish a National Spatial Data Infrastructure	-\$30 Million	The federal government should coordinate and manage partnerships with private industry and with state and local governments to develop the information technology of digitally-recorded geographic data. Digital maps will be essential to analyze and depict environmental information such as geographic distribution of endangered species and monitoring of wetlands.	Agreement	

DOI 4	Entrepreneurial Management of National Park Services	NA ²	NPS should be given additional legislated authority to reform fee collection, including providing for fees to be collected at all parks and raising some fees already established. Recommendations also include concession contract reform. New revenues should be used for NPS backlog and reform projects.	Agreement
DOI 5	Fair Return for Federal Resources	-\$145 Million	DOI should reform grazing fees, hard rock mining law, and communication site fees to generate a fair return to taxpayers and provide incentives for responsible land management practices. Land reform measures may generate opposition in Western states.	Agreement
DOI 6	Rationalizing Federal Land Ownership	0	This proposal would establish pilot areas to be cooperatively managed by state and federal agencies using ecosystem management approaches.	Agreement
DOI 7	Improve the Land Acquisition Policies of DOI	0	DOI should modify the process for determining land acquisition priorities and procedures. The new system should reflect major objectives of federal land acquisition: outdoor recreation resources, resource protection, and cultural heritage protection.	Agreement
DOI 8	Improve Mineral Management Service Royalty Collections	0	To achieve more prompt and accurate royalty collections, the Royalty Management Program should proceed with a vigorous program of compliance verification, develop new computer programs to analyze transactions, and identify and adopt new methods to simplify royalty reporting.	Agreement
DOI 9	DOI Should Establish a System of Personnel Exchanges	0	A system of personnel exchanges and in-house contracts will help develop cooperative approaches to departmental problems, encourage employee movement, and provide incentives for innovation.	Agreement

DOI 10	Consolidating Administrative and Programmatic Functions in DOI	NA ³	By consolidating administrative and programmatic functions across bureau lines, DOI will improve customer service, promote efficiency of operations and reduce costs.	Agency developed issue
DOI 11	Streamline Management Support Systems in DOI	\$15.6 Million	DOI can improve efficiency and employee morale by streamlining its management support systems, including telecommunications procurement, financial management and paper work control.	Agency developed issue
DOI 12	A New Mission for the Bureau of Reclamation	\$78.7	The Bureau of Reclamation will retain a leadership role in western water issues by focusing on improved water management, operation and maintenance of water facilities, and environmental enhancement. The change in function will permit a significant reduction in personnel but could also generate opposition in Western states.	Agreement
DOI 13	Change the Federal Role in Helium Production	0	The federal government should get out of an industrial production activity that can be handled by private industry.	Agreement
DOI 14	Enhance Environmental Management by Remediating Hazardous Materials Sites	-\$17.4	DOI should identify pilot projects to assess and remediate hazardous materials sites. The pilot projects should integrate DOI's managerial and scientific expertise to develop cooperative, cross-bureau strategies. A legal strike force should also be established to address legal barriers to cleanup.	Agency developed issue

NOTES:

1. To be determined by congressional action
2. To be determined in Tollgate 4
3. DOI developing estimates. Recommendations will provide savings.