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SUBJECT: Draft NPR Chapter on the Department of Labor

DATE: July 27, 1993

Attached is a draft chapter on the Department of Labor for the NPR final report. This chapter is to be completed by August 6, 1993. Therefore, we would appreciate receiving your comments by August 4 at the above address so that we can incorporate them into the final report. Please feel free to call me at 632-0150 if you have any questions.

Attachment

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THE DEPARTMENT OF LABOR
AGENCY TEAM REPORT

NATIONAL PERFORMANCE REVIEW

INTERNAL WORKING DOCUMENT--NOT FOR DISTRIBUTION

July 26, 1993

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Section I
Introduction

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Department of Labor

Overview

Congress established the Department of Labor (DOL) as a cabinet-level agency in 1913 "to foster, promote and develop the welfare of the wage earners of the United States, to improve their working conditions and to advance their opportunities for profitable employment." The Department performs service, enforcement, and information and policy support functions. The largest portion of the budget goes towards service and benefits; the largest share of personnel work in enforcement. DOL has a budget of $42.9 billion for fiscal year 1993, of which over 67 percent ($29 billion) is for unemployment benefits. The department's over 18,000 employees are divided among seven major program agencies plus staff and support organizations. The President's budget for fiscal year 1994 requests $40.4 billion.

The primary service agency, the Employment and Training Administration (ETA), promotes efforts to build a quality workforce and improve labor market efficiency. ETA oversees Unemployment Insurance and Employment Service programs administered by the states with federal funds. ETA administers the Job Corps, targeted to disadvantaged young adults, and the Job Training Partnership Act (JTPA). ETA is involved with a joint initiative with the Department of Education to design and implement a national school-to-work transition system. Another service agency, the Veterans' Employment and Training Service (VETS), currently plays a major role in the transition military personnel face as a result of defense downsizing. VETS also provides funds to the states for administration of veterans' employment programs.

Among the enforcement agencies, the Occupational Safety and Health Administration (OSHA) establishes and enforces workplace safety and health standards. Under OSHA-approved plans, 23 states bear primary responsibility for enforcing the federal standards; OSHA provides inspection coverage for the remaining states.

The Employment Standards Administration (ESA) enforces labor standards statutes, including wage and hour laws, child labor restrictions, affirmative action requirements for federal contractors, and the workers' compensation program for the federal workforce.

ESA recently implemented the Family Medical Leave Act, which extends protection to workers who need a temporary leave of absence to care for a relative.

The Pension and Welfare Benefits Administration (PWBA) protects pension and welfare benefits by administering the Employee Retirement Income Security Act of 1974 (ERISA). The Mine Safety and Health Administration (MSHA) promotes a safer and healthier work environment in coal and surface mines. The Office of Labor Management Standards (OLMS), currently being reorganized, enforces standards related to union activities.

In addition to those operations, the department performs activities to monitor significant trends in the workforce and analyzes information to provide support to policy formulation. The Bureau of Labor Statistics (BLS) collects, analyzes, and disseminates data in a number of areas, including prices and living conditions, employment and unemployment, and projections of economic growth. The Bureau of International Labor Affairs provides assistance in the development of international trade policies which support the interests of U.S. workers. The Women's Bureau provides policy guidance and consultation to improve the status of working women.

Supporting DOL's various activities are the Office of the Solicitor, which, unlike most other federal agencies, litigates most of the agency's cases in federal court rather than referring them to the Department of Justice.

The department's reinvention challenge stems from the massive structural changes currently taking place in the U.S. and international economy. Author Tom Peters, speaking to over 1,000 DOL employees at the department's reinvention kickoff, described how the rapidly changing economy produces more job turnover and more short-term work relationships. Much of the nation's social security net was designed under outdated premises. For example, unemployment insurance was originally designed for temporary layoffs; now displaced workers are unemployed longer and often do not return to their previous employers or even find work in the same industries. The federally-funded, state-operated employment services have been geared to serving a low-skill workforce; now many technical and white collar workers are being displaced and need assistance to find new jobs in a changing economy. These issues were highlighted at a Summit on the New

Workplace, jointly sponsored by DOL and the Commerce Department, during the week of July 26.

The recommendations developed through the National Performance Review and DOL's ongoing reinvention efforts provide steps toward an emerging vision of how the government can best respond to the fundamental changes workers and their employers face. By implementing these new approaches, DOL will develop the habits of flexibility and market-responsiveness that will be the hallmarks of those who meet the challenges of moving competitively into the twenty-first century.

Four types of recommendations follow. The first group, Shifting from Red Tape to Results, offers ways to remove barriers to effectiveness which stem from program design or cumbersome procedures. The section on Introducing Market Dynamics demonstrates how market concepts can fundamentally reform service and enforcement. The third, Creating a Quality Management Culture, suggests new ways of focusing on specific DOL missions. The final section, Now Is the Time, includes suggestions for consolidating and streamlining critical DOL functions.

Under the theme of Shifting from Red Tape to Results, the report calls for changes in program design, processes for setting standards and resolving legal issues and reporting requirements. The first paper encourages acceleration and expansion of DOL's programs to enhance reemployment programs for occupationally disabled federal employees, a focus which would better meet the needs of those employees and federal agencies. Federal managers have previously had few incentives to pursue reemployment options for employees who become unable to perform their jobs. Pilot efforts have demonstrated the return on investment offered by promoting reemployment.

Also included in this section is a call for development of a single, comprehensive worker adjustment strategy to replace the numerous categorical programs that currently impede service delivery. Currently, the benefits displaced workers may receive under federal programs depend on the reason they lost their jobs rather than their preparedness for new careers. A consolidated approach would allow agencies at the state and local levels to focus on providing needed services instead of performing detailed screening for eligibility.

This section also focuses on the rulemaking and dispute resolution processes within DOL, proposing changes to lessen the adversarial nature of these procedures when feasible. While these issues are important government-wide, they are especially acute for DOL because the agency must balance strong and often conflicting worker and employer interests when developing and enforcing standards. The department expends considerable resources anticipating and conducting litigation. Moving as many issues as possible out of the adversarial process will improve service delivery and allow the department to pursue priority cases.

Two recommendations in this section reduce the red tape involved in administering ERISA. Improving the process through which PWBA obtains pension-related information from the Internal Revenue Service in the Department of the Treasury will cost less and improve the timeliness of the information. Amending the ERISA requirement for employers to submit annual summary plan descriptions will reduce costs for employers without affecting employees' or PWBA's ability to obtain needed information.

Finally, redirecting MSHA's role in mine equipment regulation from prototype testing to on-site quality assurance, in conjunction with harmonizing MSHA regulatory standards with those of industry and foreign governments, will improve efficiency for both MSHA and the mine equipment industry.

The recommendations for Introducing Market Dynamics represent bold departures in the way employment and training services are delivered and health and safety laws are enforced.

The proposed One-stop Shopping concept, based on service-integration concepts emerging in progressive state and local governments, uses information technology to facilitate access to job-related information. Information provided through a one-stop system would encompass a variety of government and non-government job training programs and their performance track record, benefits provided by multiple departments, and labor market data.

Market dynamics are also involved in the proposal to shift the responsibility for ensuring workplace safety and health from the government to the workplace. This recommendation recognizes that there is a business case for promoting workplace safety, as has been demonstrated by private sector leaders such as DuPont.

The section entitled Creating a Quality Management Culture suggests shifts in management philosophy and program focus. This section encourages the enforcement agencies within the department to use organizational networks to foster customer service by encouraging all components with enforcement responsibilities to view their mission broadly--within the context of all Labor standards--rather than narrowly.

Quality management is also the basis for recommendations to automate the process through which federal contractors obtain required wage determinations from the department, provide MSHA with authority to determine the source from which it obtains research and development support, and increase DOL's assistance to states in collecting delinquent Unemployment Insurance Trust Fund contributions.

The final set of recommendations, Now Is the Time, proposes organizational streamlining, automation, and other cost-cutting measures. This section recommends that the Consumer Price Index be updated. Structural changes are proposed for the Solicitor's office, the VETS program, and the Public Affairs function to promote better service delivery.

This section also advocates the dedication of more resources to efforts to reduce fraud in the Federal Employees' Compensation Act (FECA) program. Finally, the report recommends bringing Unemployment Compensation for Service members who voluntarily separate from military service more in line with the benefits provided to similarly-situated civilians.

Section II
Issue Papers and Recommendations

Shifting From Red Tape to Results

The Department of Labor faces many opportunities to better serve the public's needs through new program approaches. Acceleration and expansion of programs to enhance reemployment programs for occupationally disabled federal employees would better meet the needs of those employees and federal agencies. Displaced workers would receive better service if the current array of categorical programs were replaced with a single, comprehensive worker adjustment strategy. Non-adversarial approaches to rulemaking and dispute resolution would help the agency balance worker and employer interests in developing and enforcing standards. Other recommendations in this section reduce the red tape involved in administering pension plan requirements and establishing mine equipment standards.

Enhance Reemployment Programs for Occupationally Disabled Federal Employees

Background

The federal employees compensation program began on September 7, 1916. Since then the program has expanded considerably both in coverage and level of benefits. It is now a comprehensive workers' compensation system covering job related injuries of most civilian federal workers regardless of where they live and work.[1]

Since 1982 the number of federal employees receiving long-term compensation payments for work-related injuries and disabilities has been increasing by approximately three percent a year--even though the number of federal employees has remained relatively constant. Annual expenditures under the Federal Employees Compensation Act program are approximately $1.7 billion. At the end of fiscal year 1992 more than 53,000 federal employees were receiving tax-free workers compensation payments.[2]

Until recently, not enough had been done by the Department of Labor (DOL) and other federal agencies to aggressively pursue return-to-work programs. In April 1992, the Office of Workers' Compensation Programs commenced a Periodic Roll Management Project in 4 of its 12 field offices. Special teams were formed to review 25,000 cases for continued disability status, reemployment potential, and adjustment of benefits. As of March 1993, more than $155 million in reduced compensation payments are projected to result from these efforts.

In a separate but related effort started in fiscal year 1992, the Office of Workers' Compensation Programs implemented a four-year Congressionally authorized demonstration project known as Assisted Reemployment in all of its field offices. This project uses salary reimbursement incentives to encourage federal or private sector employers to hire injured Federal workers. Incentives in the form of Federal Employees Compensation Act subsidies can be as much as 75 percent of wages in the first year, 50 percent in the second and 25 percent in the third.

At the close of fiscal year 1992, 153 claimants were participating in the Assisted Reemployment project. Of these, 26 claimants had started work with wages subsidized by the program. Each of the reemployed claimants had been out of work and receiving disability compensation for at least one and a half years. The average period since the original injury was six years; and one claimant had been out of work since 1976.[3]

Except for these efforts, federal employers, with some exceptions, have done little to help injured workers transition from the compensation program to full-time employment. Reemployment efforts are sometimes hampered by the lack of qualified positions for the rehabilitated employees within his/her employing agency. In the absence of rehabilitation services or reemployment assistance, potentially productive people may instead draw disability benefits for the rest of their lives. With some adjustments in program emphasis, employees can be retrained and significant future dollar savings can be realized.

Recommendation

1. Congress should expand the authorizations for the Periodic Roll Management Project to all 12 Office of Workers' Compensation Program field offices in fiscal year 1994, and should support and encourage the Assisted Reemployment Demonstration Project. This action would expand the current program, which has already proven its success, to all DOL offices.

Implications

By expanding this project now, instead of waiting until the end of the four-year, four-office demonstration, thousands of people could return to productive careers. In addition, the Federal government would demonstrate a commitment to the general intent of the Americans With Disabilities Act by focusing on rehabilitation aspects of this program and the accommodations made to better match disabled workers with jobs.

Fiscal Impact

The recommendations would require additional four-year term employees for the Office of Workers' Compensation Programs. For example, DOL estimates that an additional 105 FTEs will be needed to fully implement the Periodic Roll Management Project in all 12 field offices.

These FTEs would increase the annual staff costs by approximately $8 million. But, this additional investment would return a cumulative annual savings of approximately $125 million by fiscal year 1998. Combining this with the projected savings from the ongoing four-office demonstration project brings the total savings to over $281 million a year with a total staff cost of $40 million.

Staffing could be accomplished using term employees who are terminated when case reviews are completed, or after four years. These staff do not become permanent federal employees. In addition to the benefit savings already described, costs incurred for the use of term employees would also be partially offset by an increase in income tax revenue derived from the taxable incomes of workers who are reemployed as a result of the project.

Annual Savings (*Millions of Dollars*)

	1994	1995	1996	1997	1998
Budget Authority	($.3)	$28.0	$30.3	$21.3	$23.2
Outlays	($.3)	$28.0	$30.3	$21.3	$23.2
Change in FTE	+105	+105	+105	+105	-105

Endnotes

1. U.S. Department of Labor, Employment Standards Administration, Office of Workers' Compensation Programs, *A History of the Federal Employees' Compensation Program*, by Willis J. Nordlund, n.d., p.14.

2. U.S. Department of Labor, Office of Workers' Compensation Programs, *Rise in the FECA Disability Roll* (Washington, D.C., July 1993).

3. Memorandum from Cari M. Dominguez, Assistant Secretary for Employment Standards to the Secretary of Labor, Washington, D.C., October 6, 1992.

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Develop a Single Comprehensive Worker Adjustment Strategy

Background

The federal government helps dislocated workers make the transition to new employment through a number of programs. These programs have been criticized by the U.S. General Accounting Office, State Employment Security Agencies, and by the Congress because workers who lose their jobs, or are about to lose their jobs, find it difficult to determine the services and benefits for which they are eligible. Other criticisms include the lack of program coordination at the local level and frequent delays in providing assistance to dislocated workers.[1]

The GAO reports that over a million workers lost their jobs during 1990 and 1991 due to business closures and layoffs. Reasons cited for these shifts in employment include international competition, technical change, and shifts in consumer preferences. While some workers adjust quickly and find new jobs, others need counseling and training to help find employment.[2]

The DOL has reported that the number of plant closures and mass layoffs affecting 50 or more workers was about 3,100 in 1990 and increased to nearly 3,900 in 1991. Many of these dislocated workers need help in finding a new job. Whether the assistance succeeds often depends on how soon help was provided by state and local agencies. According to GAO, relatively few workers get sufficient notice of a business closure or major layoff to give them time to obtain assistance before a layoff.[3]

The two major programs designed to help dislocated workers ease the transition to new employment are the Economic Dislocation and Worker Adjustment Assistance Act (EDWAA) which provides approximately $517 million annually for retraining, placement and supportive services and the Trade Adjustment Assistance (TAA) program which provides approximately $190 million in retraining and income support funds for trade-affected workers only. The Job Training Partnership Act (JTPA) administers the EDWAA and State Employment Security Agencies manage the TAA program.

Dislocated worker (EDWAA) services are supplemented by three appropriations--$150 million from the Defense Department to implement the Defense Conversion Adjustment (DCA) program, $75 million for defense diversification, and $50 million authorized under JTPA to assist workers who lose their jobs due to clean air standards. The North American Free Trade Agreement (NAFTA) raises the prospect of another assistance program for yet another class of dislocated workers.

Both TAA and EDWAA provide similar services, including job counseling, occupational and remedial training, placement assistance, and support services, such as transportation and child care. In addition, both provide job search and relocation allowance. Most dislocated workers may receive 26 weeks of income support through the Unemployment Insurance program. TAA also provides up to 52 weeks of additional income support. The variety of programs offered through several agencies tends to confuse the public and add to the administrative costs of the program. It also makes it difficult for dislocated workers to determine the benefits for which they qualify.

Other services provided to dislocated, or potentially dislocated workers by DOL include (1) the Defense Conversion Act program which dispenses grants ($150 million) to states impacted by diminished defense contracts and (2) the Transition Assistance Program, a three-day job search workshop for separating active duty military personnel on 180 military bases throughout the United States. The Department of Defense also provides operational transition programs for uniformed military personnel preparing for civilian employment.

It is predicted that 250,000 active duty military will be separated annually, even after military downsizing has achieved its target level. Resources are targeted to special groups including overseas military, DOD civilians, and defense contractor employees. Jobs of the future will demand a highly skilled labor force making it especially difficult for men and women to find employment upon separation from the military. A single comprehensive worker adjustment strategy would help military personnel by ensuring that participants have access to the most current job information; thereby, helping them make a rapid transition to civilian employment.

Workers employed by the same firm sometimes qualify for benefits from more than one government program administered through separate agencies. Sometimes workers from the same firm qualify for different programs. The results include excessive focus on determining eligibility rather than providing services. Service delivery organizations find the array of eligibility requirements and benefits confusing and an obstacle to meeting individual needs. From their standpoint, the reason a person was laid-off should not determine the benefits to which the individual is entitled. All individuals must receive the necessary assistance to make the transition to a new job as soon as possible.

In their evaluation of the programs that assist dislocated workers GAO estimated that less than ten percent of qualified workers received assistance from TAA within 15 weeks of their layoff and 60 percent of workers qualifying for EDWAA received benefits within 15 weeks of their layoff. The report also commented on the need to streamline the process for determining eligibility for TAA benefits, the importance of ensuring that projects provide a comprehensive mix of services to meet the varied needs of individual dislocated workers, the need to improve coordination between the programs, the lack of adequate data-gathering systems to track participant progress, and the need to monitor program performance.[4]

The Secretary of Labor has indicated that the Administration will seek legislation for a new program which improves programs for dislocated workers. Some of the enhancements called for by the Secretary include: (1) earlier intervention, (2) customer-driven services to greater numbers of workers who need adjustment assistance, and (3) linkage to Unemployment Insurance to ensure early identification and referral.[5] It is important that this program contributes to a national employment training strategy, encourages state and local innovation in program delivery, includes a comprehensive system of information on employment opportunities and training programs, and provides technical assistance to states and communities.

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Recommendation

The Secretary of Labor should develop a single worker adjustment program for jobless workers which disregards the specific cause of dislocation. Such a proposal should also provide an opportunity to offer skills improvement training and retraining to currently employed workers who are vulnerable to dislocation.

Congress should adopt the worker adjustment program as part of a national employment training strategy. This strategy should encourage state and local innovation and a sharing of information on program improvements and innovations. The DOL should ensure that the strategy includes early intervention, incorporates the best aspects of existing programs, and has the flexibility to meet the needs of the various groups it is intended to serve.

Implications

A comprehensive worker adjustment strategy would improve services to dislocated workers--and those at substantial risk of dislocation--while making better use of resources available for adjustment assistance. It is based on the concept that DOL should be the lead agency in providing training services. Coordination should include the Department of Defense, Veterans Administration, Department of Commerce, local and state program administrators, and State Employment Security Agencies.

Fiscal Impact

Current expenditures include: (1) Economic Dislocation and worker Adjustment Assistance Act, $517 million; (2) Trade Adjustment Assistance program, $190 million; (3) Defense Conversion Adjustment program, $150 million; and (4) the enforcement of new clean air standards, $50 million. These programs contributed a total of $907 million toward helping the dislocated worker in fiscal year 1993.

A five percent savings due to streamlined management, paperwork reduction, and improved communications would allow an additional $45 million to be spent on programs designed to help dislocated workers find new employment.

A single worker adjustment program would reduce administrative costs, provide early intervention, and strengthen services provided to the public.

Endnotes

1. General Accounting Office, *Dislocated Workers: Comparison of Assistance Programs, Briefing Report to Congressional Requesters*, September 1992, p. 2.

2. *Dislocated Workers: Comparison of Assistance Programs, p. 10.*

3. General Accounting Office, *Dislocated Workers: Worker Adjustment and Retraining Notification Act Not Meeting Its Goals,* Report to Congressional Committees, February 1993, p. 36.

4. Charles A. Bowsher, *Labor Issues,* "Assisting Dislocated Workers," United States General Accounting Office Transition Series, December 1992, pp. 18-23.

5. U.S. Department of Labor, *FY 1994 Budget Justifications of Appropriation Estimates for Committee on Appropriations,* Dislocated Worker Assistance Program, April 1993, p. TES-44.

Expand Negotiated Rulemaking and Improve Up-Front Teamwork on Regulations

EL44

Background

The rulemaking process in the Department of Labor (DOL) has been characterized as cumbersome, slow, and adversarial. A 1985 General Accounting Office (GAO) report, in analyzing reasons for delays in issuing rules, noted that difficulties stem "from the complexity of the administrative process and the issues addressed."[1]

Although not true of all DOL agencies, because there are strong and organized interests on opposing sides of most issues, rules are commonly litigated after they are promulgated. As an attorney for the Administrative Conference of the United States (ACUS) has noted, "...agencies attempting to implement environmental, health, and occupational safety legislation find too frequently that their proceedings become a battleground for interest groups and other affected parties--in effect, little more than the first round in the expected litigation."[2] Concerns have been raised within and outside DOL that the process of developing rules and standards in many cases has become paralyzed due to concerns about reversal in court.

Some agencies may need to accept litigation as a fact of life--as one manager pointed out, litigation is a "tool available to the public." However, whenever possible, DOL should seek opportunities to foster consensus through rulemaking and streamline the development process.

Two practices which hold promise for improving consensus-building in the rulemaking process are negotiated rulemaking and the use of teams to develop rules. DOL has had some success by experimenting with both approaches.

Negotiated rulemaking. Negotiated rulemaking brings together the parties affected by a regulation, the government agency, and a neutral mediator to develop a proposed rule for publication in the *Federal Register.* Developed in the early 1980s through ACUS's work to reform administrative procedures, the process was codified in the Negotiated Rulemaking Act.[3] Used with particular success by the Environmental Protection Agency, the Act provides a mechanism for creating advisory groups to work on the rule; the advisory group terminates when the rule or process is completed. Even before passage of

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the Act, the Occupational Safety and Health Administration (OSHA) experimented somewhat with negotiated rulemaking. Since passage of the Act, DOL has published a Negotiated Rulemaking Policy in the Federal Register and developed a Negotiated Rulemaking Handbook which explains the steps involved in the process and outlines criteria for selecting opportunities to use the approach.[4]

Team approach to rule development. DOL components use a variety of procedures to develop regulations. Only sporadically do program, policy, and legal staff work as a team to develop regulations, an approach that often helps build consensus and avoid delay. The Mine Safety and Health Administration (MSHA) is an exception; the agency consistently uses the team approach. In addition, the Wage Hour Division in the Employment Standards Administration employed teamwork effectively in 1993 to develop the implementing regulations for the Family Medical Leave Act under a tight Congressional deadline.

While many DOL divisions have a dedicated staff for standards setting, MSHA does not have a self-contained standards office. Instead, a small staff works to facilitate standards development by bringing together teams of field staff, technical experts, and attorneys. Inclusion of field personnel in the rulemaking process ensures consideration of practical implementation issues. The practice also provides field officers with an opportunity to develop new skills.

Regulations for the Family Medical Leave Act were developed this year by a "Tiger Team" involving the Employment Standards Administration (ESA), the Solicitor's Office, the policy staff, the Pension and Welfare Benefits Administration, and the Women's Bureau. The group identified issues for regulation, developed issue papers providing recommendations where there was clear consensus and options where there was not, and presented the issues to a large group representing all DOL agencies. This process left only a small number of issues for resolution by the department's senior management. The team incorporated the policy decisions into draft regulations. As described by Wage Hour management, the breadth of involvement in the early stages helped surface and resolve issues effectively, and also served to focus top managers on policy issues rather than regulatory language.

Teamwork methods appear to offer more efficiency than the more common method in which program offices draft a regulation and send it to the other offices for review. In the latter approach, staff describe a process in which the draft rule goes from office to office for written comment without participants meeting to discuss and resolve issues.

The team approach also promotes more discussion of whether regulations are the best way to achieve the agency's objectives in specific situations. Some regulations might be replaced with less formal advisory processes; use of such processes must conform to the Administrative Procedure Act and the Federal Advisory Committee Act if outside parties are involved. In other situations, DOL may be using alternatives to regulations because staff do not want to wait several years to bring the issue to resolution.

Recommendations

1. DOL should expand use of negotiated rulemaking for discrete issues for which the interested parties may be readily identified. Negotiated rulemaking is most likely to succeed if a few critical conditions are met. First, the interests involved should be adequately represented by a committee of no more than 25 participants; if a larger group is needed, there may be too many interests for a structured negotiation to work. Second, the parties should have an incentive to negotiate and be prepared to do so in good faith. Next, the parties must be able to set priorities among their interests. Those interests should not involve fundamental values which cannot be compromised. Finally, the process works best if circumstances create some urgency to resolution of the issues.[5]

2. DOL should routinely employ teams of program, policy, and legal personnel to develop draft rules. While the team approach may appear more applicable to short-term drafting exercises, the department should also seek ways to use teams in the often-protracted process of developing standards involving complex scientific issues. Field office staff should be involved routinely through direct participation or in an advisory role.

Implications

Negotiated rulemaking involves a trade-off of more substantial up-front costs for greater short- and long-term savings. The up-front costs include expenditures for necessary administrative support, outside participants' expenses, mediation services, and the costs associated with holding a public meeting. Potential short-term savings result from reduced litigation over the implementation of the rule. Potential long-term savings follow from the fact that the rule should be more accurate, clear, and specific and have a higher compliance rate as a result of the consensus process. Accordingly, less resources will be expended to enforce the rule and litigate violations, based on the assumption that negotiated rules will continue to be less likely to yield court challenges.[6] Given the history of other agencies, such as EPA, that have more experience conducting negotiated rulemaking than DOL, this seems a valid assumption.

The assumption often made about alternatives such as negotiated rulemaking is that their use would permit a reduction in legal staff. This recommendation should not be viewed in that way. Rather, increased use of negotiated rulemaking should free legal and program staff to focus more effectively on other priorities.

Team approaches to rulemaking offer savings in staff time devoted to the process, a possible reduction in the size of some of the standards offices, or the freeing of staff to perform other duties. Use of the team approach may affect the need for specialists in standards. Some DOL components are placing analysts in program staffs rather than maintaining separate policy offices; a similar approach might be worth exploring for standards units. While DOL might consider reducing the size of some of the standards offices, this is not recommended as an immediate step.

Fiscal Impact

The Office of the Solicitor currently spends about $45 million each year on litigation and $3 million on rule development. These figures do not include expenditures by the various program staff, and therefore represent a lower bound on the department's annual rulemaking and litigation costs. Negotiated rulemaking is not expected to save tremendous resources in the rulemaking process; savings would be expected from less litigation over negotiated rules. If the reduction in litigation costs was only 3 percent, the savings would be over $1 million per year. Freeing up those resources would enable the Solicitor's office to focus more intensely on significant litigation.

Endnotes

1. U.S. Comptroller General, *Strong Leadership Needed to Improve Management At The Department of Labor*, GAO/HRD-86-12 (Washington, D.C.: General Accounting Office, October 1985), p.43.

2. David M. Pritzker, "Working Together for Better Regulations," *Natural Resources and Environment*, vol. 5, No. 2, Fall 1990. Reprinted in American Bar Association, Section of Business Law, 1992 Annual Meeting, *Reg Neg: Bringing Peace to Regulated Industry Through Negotiated Rulemaking* (American Bar Association, August 10, 1992), p. 1.

3. 5 U.S.C. 561-570

4. The policy was published at 57 Fed. Reg. 61925 (Dec. 29, 1992). The handbook was published as U. S. Department of Labor, Administrative Law Counsel, Division of Legislation and Legal Counsel, Office of the Solicitor, *Negotiated Rulemaking Handbook,* December, 1992.

5. Ibid. p. 12.

6. Administrative Conference of the United States, *Federal Agency Experience with Negotiated Rulemaking,* (Washington, D.C.: Administrative Conference of the United States, March 1, 1993).

Expand the Use of Alternative Dispute Resolution EL28

Background

The litigious nature of labor regulation places a significant burden on the Department of Labor's (DOL) resources. With over 24,000 litigation matters reaching the department's 750 attorneys each year, creative methods of dispute resolution are needed to assist the department in handling its cases.[1] One category of methods is Alternative Dispute Resolution (ADR).

Alternative dispute resolution is any procedure in which the parties to a dispute bring in a neutral party to assist them in reaching agreement and avoiding litigation. In 1990, Congress sought to foster use of ADR techniques by enacting the Administrative Dispute Resolution Act, which requires federal agencies to appoint a dispute resolution specialist to consider whether and under what circumstances ADR methods can assist the agency in serving the public more effectively.[2] The department has issued an ADR Interim Policy to accomplish this task.

As part of the interim policy to explore possible application of ADR to its enforcement programs, DOL pilot tested alternative dispute resolution in its Philadelphia regional office. A regional pilot was chosen "because it permitted testing ADR across a broad spectrum of DOL programs....In addition, the pilot approach provided the opportunity to experiment with training and administrative issues...."[3] The pilot focused on mediation rather than other techniques such as arbitration.

The regional office selected managers from various program offices to receive training in mediation. The managers performed mediation as a collateral duty, providing mediation services for cases arising from offices other than their own. For instance, a mediator from the Occupational Safety and Health Administration (OSHA) would mediate Wage and Hour cases but not OSHA cases.

Most of the cases selected were OSHA and Wage and Hour. This was partly a function of selection criteria, which had been developed through a public comment process, and partly a result of the mix of cases handled by regional enforcement agencies at the time of the pilot.

Of 32 cases selected for possible mediation, 25 were mediated by the end of the pilot period (three were dropped prior to mediation and four were still awaiting mediation). Of those mediated, 19 resulted in settlement.[4]

DOL evaluated the pilot test by surveying both agency and outside participants, including the mediators. The results suggest that mediation has great potential for use in resolving DOL cases. Of particular significance, the private sector participants indicated that use of in-house mediators was acceptable, although almost half indicated that they would be more comfortable with an outside mediator.[5] That preference was mitigated by the use of the Federal Mediation and Conciliation Service (FMCS) to train and provide mentors for the in-house mediators.[6]

The pilot project evaluation yielded a number of recommendations for expansion of the use of ADR. In concert with DOL's reinvention effort, the department is re-convening the steering committee which oversaw the pilot test.

In addition to the regional pilot, DOL is also looking at ADR in other contexts. The Employment and Training Administration (ETA) has implemented a pilot in the National Office to test the applicability of ADR in resolving disputes involving grants and contracts in the audit resolution/debt collection area. The Office of Administrative Law Judges (OALJ) has recently published procedures for the use of Settlement Judges to aid the resolution of its cases. DOL is also in the preliminary stages of looking at other areas, such as Equal Employment Opportunity (EEO), where ADR techniques might prove useful.

Recommendations

DOL should expand the use of Alternative Dispute Resolution. Additional regions should train and deploy mediators, and DOL should continue its new efforts. In doing so, DOL should test ADR in areas which were not included in the pilot project either because the cases are not handled at the regional level or because appropriate cases were not found in the Philadelphia region at the time of the pilot.

If the Office of the Solicitor develops case acceptance guidelines as a means of controlling its increasing caseload, the DOL's ADR Steering Committee should explore use of ADR as an alternative for cases which might not otherwise meet case thresholds. Using

ADR for cases that would not proceed to litigation entails a departure from the approach used in the pilot project. Ordinarily it is important to communicate a willingness to proceed to litigation if the issues are not settled through mediation.[7] While the pilot project concluded that ADR cases should be drawn from referrals to the Solicitor, the agency may need to revisit this question.[8]

Implications

ADR involves some up-front investment in training, and also can entail covering some costs for participants. While it appears to be generally much less expensive and time consuming, the pilot project report notes some obstacles to assessing ADR's cost impact. For example, the report notes that while the costs of using ADR can be calculated, the cost of not using it are much more difficult to ascertain.[9] Furthermore, while in theory the parties to the dispute might split the costs of mediation, the report argues persuasively that the costs should be borne by the government; offering the service only to those who will split the cost will deter its use.[10]

Increased use of in-house mediators also has implications for assessing the performance of DOL programs. During the pilot test, an opinion issued by the Administrative Conference of the U.S. (ACUS) affirmed that the agency would not be misappropriating funds by using personnel to mediate cases outside their assigned divisions. If these cross-program services are to be expanded, they will need to be taken into account when determining whether a particular agency is making effective use of its resources.

The assumption often made about ADR is that its use would permit a reduction in legal staff. This recommendation should not be viewed in that way. Rather, increased use of ADR should free legal staff to focus more effectively on priority litigation matters.

Fiscal Impact

The Office of the Solicitor currently spends about $45 million each year on litigation. This figure does not include expenditures by the various program staff, and therefore represents a lower bound on the department's annual litigation costs. While the pilot project did not offer a basis for estimating the potential reduction to be realized through ADR, if a 5 percent reduction in litigation costs resulted, the savings would be over $2 million a year. Freeing up those resources would enable the Solicitor's office to focus more intensely on significant litigation.

Endnotes

1. Statistics derived from United States Department of Labor, *Annual Report for Fiscal Year 1992*, p. 115 - 137 and p. 218.

2. Public Law 101-552, codified as 5 U.S.C. 571-583.

3. Report to the Secretary of Labor on the Philadelphia ADR Pilot Project, prepared by the Alternative Dispute Resolution Steering Committee, October 14, 1992, page 9.

4. ibid., page 35.

5. ibid., page 40

6. ibid., page 54

7. Ibid., p. 52.

8. Ibid., p. 59 - 60.

9. ibid., page 37

10. ibid., page 59

Automate the Processing of ERISA Annual Financial Reports (Forms 5500) to Cut Costs and Delays in Obtaining Pension Plan Data

Background

Sections 104 and 4065 of the Employee Retirement Income Security Act (ERISA) require pension plan administrators to file an annual return/report (Form 5500 series) with the Department of Labor (DOL). Similarly, Section 6058 of the Internal Revenue Code requires such a return/report to be filed with the Internal Revenue Service (IRS). The Form 5500 series, titled "Annual Return/Report of Employee Benefit Plan," are publicly available documents containing data used by IRS, the Social Security Administration, the Pension Benefit Guarantee Corporation, and the Pension and Welfare Benefits Administration (PWBA).[1] All paper forms are submitted to and processed by the IRS' Atlanta, Brookhaven and Memphis Service Centers.

IRS processes approximately one million Form 5500 series return/reports a year. During fiscal year 1993, IRS' processing costs were approximately $21 million.[2] PWBA's portion of that amount was $12 million, or $12 per form. This processing operation requires over 415 FTE, including 113 FTE for information systems management and administrative staff, 67 FTE for keypunching, 35 FTE for entity control (i.e., identifying and verifying the plan's file on the master database), 28 FTE for correspondence, and 25 FTE for coding and editing.

IRS service center staff manually convert the Form 5500 series data submitted on paper to electronic form. An IRS Edit System then subjects the data to computerized edit checks that are a combination of tests for compliance with IRS tax reporting requirements and ERISA Title 1 reporting requirements.

IRS corresponds with filers to obtain corrections to the 5500 filings, and it adds any information from responses and/or amended returns/reports to the data base of report information compiled from the original submissions. This data base is then sent to DOL where PWBA transfers the data into its ERISA Information System (EIS). The EIS subjects the data to an extensive series of computer program applications which identify plans for investigation of possible ERISA violations. The EIS is also the primary

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governmental source of employee benefit plan data and information and, as such, is used in social and economic research, as well as in legislative and regulatory policy-making.

Computerized targeting is a very important part of PWBA's enforcement role under ERISA. As such, timely and accurate Forms 5500 data are critical to this mission. ERISA requires a pension plan administrator to file the necessary Form 5500 within 210 days after the close of its pension plan year, unless an extension has been granted. After IRS completes its keypunching, edit tests and correspondence cycles, the Form 5500 and attachments are microfiched by a contractor (approximately 130,000 yearly) and returned to IRS for storage.[3] The microfiches are then sent to PWBA.

IRS' processing time averages 60 to 90 days for filings with no problems; others can take four to six months to process. The complete Form 5500 required of plans with 100 or more participants is retrievable only after the data entry, correspondence and microfiche cycles are completed. The delay occurs because the attachments to the Forms 5500 are not converted to electronic form. In addition, when prohibited transactions take place early in a reporting period, the data used to detect them are as much as two years old when provided to PWBA.

While the IRS error rates in processing the data are minimal for the Forms 5500C and 5500R, the error rates for the large plan filings which have free-form attachments average 20 percent. In an effort to reduce errors and shorten the processing times, PWBA has encouraged IRS to develop computer software for the electronic filing of these data. As an incentive to file electronically, PWBA would like to distribute the software free of charge to the Form 5500 series filers. IRS, however, has taken the position that any income tax filing software should be privately developed and sold commercially after IRS reviews and approves it for compliance with IRS' specifications.

IRS has had an electronic filing system for plans with fewer than 100 participants in place for five years. The average number of plans participating in this program has been approximately one-tenth of one percent of the filing universe. Without a new approach to electronic filing, there is little reason to believe that filer participation will increase over the next five years.

Recommendations

1. Amend ERISA to change the employers filing deadline from 210 days after the close of a reporting period to 90 days. Pension plan administrators should have little difficulty in meeting this requirement because they generate much of the same data captured in the Forms 5500 within 90 days of a plan period for income tax purposes.

2. Direct and provide funding to the Department of Labor and IRS to cooperatively develop (1) an automated processing system for Forms 5500 and (2) computer software that would be provided free to filers as an incentive to file electronically. Most of the developmental funds would be needed for designing or modifying off-the-shelf personal computer software that would be used to generate the Forms 5500 data in electronic format.

3. Revise the IRS regulations to facilitate electronic filing of Forms 5500. The pertinent provisions of IRS' regulations will need to be revised so that Forms 5500 can be prepared and submitted on electronic media after the developmental effort in recommendation 2 is completed.

Implications

The data on the Forms 5500 are publicly available and the manual preparation and processing are time consuming and costly to the federal government and the filers. While very small employers are likely to continue manual preparation of the forms, an increasing number of businesses are using personal computers for all of their financial transactions, including federal income taxes. Accordingly, personal computer software for preparation and filing of the Forms 5500 should reduce the employers' costs of preparing the forms and the federal government's costs for capturing the data.

More important for PWBA will be the timely and accurate acquisition of data used for detecting prohibited transactions and other signs of financial trouble evidenced by the plan administrators' submissions. This will enhance PWBA's ability to further protect the pension funds of America's workers.

Fiscal Impact

Although an initial cost of up to $5 million will be associated with developing a new system and computer software for use by Forms 5500 filers, it would be recovered in significantly lower operating costs for IRS and the Department of Labor.

As shown in the chart below, there are developmental costs in fiscal year 1994 and 1995. Cost savings begin in fiscal year 1996 and run through 1998. In the sixth year, 1999, maximum savings would be realized when total participation rates are estimated to reach 95 percent; some small plans may continue to file paper returns.

The following chart is based on financial industry experience that automated transactions cost approximately 25 percent of manual processing. Applying this assumption to the current combined IRS/PWBA annual expenditure of $12 million yields the following projection if a new electronic filing system is installed in accordance with the recommendations outlined above.

Annual Savings (*Millions of Dollars*)

	1994	1995	1996	1997	1998
Budget Authority	($5.0)	$2.1	$8.4	$12.6	$15.8
Outlays	($1.7)	($1.3)	$8.2	$12.4	$15.7
Change in FTEs	-0-	-42	-166	-249	-332

Endnotes

1. Three forms make up the 5500 series: Form 5500, Form 5500C and Form 5500R. In addition, pension plan administrators are required to submit specified schedules and attachments with the applicable Form 5500 series return/reports.

2. Internal Revenue Service Memorandum, titled *IRS Employee Plan Return Processing Budget,* Washington, D.C., July 14, 1993.

3. Since 1990, the 5500Cs and 5500Rs have not been microfiched. IRS performs 100 percent data entry on these returns/reports, and the data are downloaded from the mainframe computer to PWBA's Public Disclosure Facility. As such, these data are available as soon as the 5500s are processed.

DRAFT July 25, 1993

Amend the ERISA Requirement for Summary Plan Descriptions to Reduce Public and Private Workloads

Background

The Employee Retirement Income Security Act (ERISA) requires all employee benefit plan administrators to provide Summary Plan Descriptions (SPDs) to participants, beneficiaries and the Secretary of Labor. The Secretary of Labor makes limited use of these documents, but he is required to have SPDs available for public disclosure, particularly to participants and beneficiaries.

The SPDs contain information such as the name and type of administration of the plan; the name and address of the administrator; names, titles and addresses of any trustee or trustees; a description of the relevant provisions of any applicable collective bargaining agreement; the plan's requirements respecting eligibility for participation and benefits; and so forth. All of the SPD data are important to plan participants in determining their entitlement.

The Department's Pension and Welfare Benefits Administration (PWBA) has been delegated the responsibility for administering the ERISA requirements concerning SPDs. PWBA's primary purpose for acquiring SPDs is to have them available for participants and beneficiaries who are unable or, for some reason, hesitant to obtain them from their plan administrators.

PWBA annually receives about 150,000 SPDs. PWBA date-stamps the documents, indexes them through a data-entry system, and boxes and ships them to a warehouse for storage. When PWBA receives a request for an SPD, it retrieves the document, makes necessary copies, and mails the document to the requestor.

PWBA's direct costs for this system are approximately $52,000 annually. This includes $42,000 for contractor services (one contractor for reports receipt, processing and public disclosure; and another contractor for storage, transportation and retrieval) and

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$10,000 for executive direction and management control over the contractor. In addition, if one assumes that plan administrators spend about one hour in obtaining, assembling and mailing the SPDs to PWBA, then plan administrators incur approximately 150,000 public burden hours in complying with the submission requirements.

On average, PWBA receives requests for about one percent of the documents it obtains and stores. During fiscal year 1992, there were 1,017 requests for SPDs which resulted in disclosure of 3,910 documents. About a quarter of these documents were requested by the Bureau of the Census. Through May of fiscal year 1993, a total of 691 requests were received for 1,200 SPDs.[1]

Recommendations

1. **Amend Sections 101, 102, 104, 106 and 109 of ERISA to eliminate the requirement for filing all SPDs with the Department of Labor.** The costs incurred by PWBA and the plan providers to maintain the current system are unnecessary and outweigh the public benefit because PWBA could satisfy requests by directly contacting plan administrators.
2. **To accommodate the concern of individuals who may be reluctant to ask plan administrators for these documents, ERISA should be amended to authorize PWBA to notify the plan administrators to send the SPDs to the requestors and, when appropriate, for PWBA to obtain the documents itself and forward them to the requestors.**

Implications

The SPDs are quite important to participants and beneficiaries, so they should not be eliminated altogether. With respect to ERISA compliance, PWBA has had experience with plan administrator responsiveness to its requests for the SPDs and reports that compliance is very high. Therefore, PWBA's role should be focused on providing assistance to participants when they are reluctant to contact plan administrators and/or are unable to obtain the document directly.

Changing the ERISA requirement will likely be well received by benefit plan administrators because of the reduced workload and burden of providing these documents to PWBA. It should be noted, however, that some groups such as labor unions may oppose this proposal. Further, a small residual workload may be experienced by PWBA in: (1) informing requestors that the SPDs can be obtained from the administrators and (2) requesting the documents on behalf of participants, as necessary.

Fiscal Impact

In addition to saving PWBA almost all of the current $52,000 in yearly contract and administration costs, benefit plan administrators will experience a minimum annual cost avoidance of approximately $2.5 million. The latter cost estimate is derived by applying the Bureau of Labor Statistics average employer compensation costs of $16.70 per hour to the estimated 150,000 public burden hours devoted to printing, assembling and mailing the documents to PWBA's contractor.[2]

Annual Savings (*Millions of Dollars*)

	1994	1995	1996	1997	1998
Budget Authority	-0-	.05	.05	.05	.05
Outlays	-0-	.05	.05	.05	.05
FTEs	-0-	-0-	-0-	-0-	-0-

Endnotes

1. United States Department of Labor, Pension and Welfare Benefits Administration, *Summary Plan Descriptions Under ERISA*, n.d. (Issue Paper.)

2. United States Department of Labor, Bureau of Labor Statistics, *News*, USDL: 93-220, June 18, 1993, p. 1.

Redirect MSHA's Role in Mine Equipment Regulation

Background

Since 1912, the Mine Safety and Health Administration (MSHA) has regulated certain specified mining products (equipment, components, materials and explosives) by setting standards, reviewing manufacturers' designs for conformance with those standards, and issuing approvals for equipment to be used in mines.[1]

Originally, MSHA and its predecessor agencies assumed responsibility for in-house testing and evaluations because, at the time, mining technology was still quite new and the industry did not have the testing capability or knowledge to conduct the evaluations itself. In addition, at this early stage, only the prototype design of a product submitted to MSHA was tested for safety and, therefore, there was no mechanism to assure that products supplied for use in the field had been manufactured as approved.

Today, through its Approval and Certification Center (A&CC), MSHA continues to evaluate and test the safety factors of products intended for use in coal mines and gassy non-coal mines. However, due to more pressing program commitments, the expertise of A&CC in areas of new technology has lagged. As a result, the agency has been unable to maintain its position at the forefront of mining technology. For this reason, when required to evaluate new technology submitted for approval, MSHA must first acquire the technology necessary for the tests before proceeding to test whether the product can be safely introduced into mines. Due to the cumbersome nature of the existing regulations and the complexity of modern technology, this process is often quite time consuming. The lengthy approval process delays the introduction of new technology that may enhance mine safety.

The approval regulations currently administered by MSHA are often inadequate to address modern technology and demands of the industry. Recently, many industry and foreign government standards have been updated and are more appropriate to present needs. These standards focus on the importance of quality assurance in the manufacturing of safe products.

Although MSHA's in-house processing and evaluation of approval applications has become somewhat more efficient, the agency is weakened by its relative isolation from other industry, labor and international regulatory groups. Consequently, MSHA has had little voice in the development and revision of national and international consensus standards applicable to products for mine use globally. MSHA needs to consult with centers of excellence which study human factors in technology development, such as the MANPRINT program at the Department of Defense.

Also, additional cooperation between MSHA and outside industry and foreign government regulatory agencies would result in increased efficiency and savings for manufacturers of mining equipment.

Recommendations

1. **Shift MSHA's regulatory role from one of in-house prototype testing to one of on-site quality assurance.** Recent experience has shown that conducting product and manufacturing site audits, holding third-party testing site audits, and investigating field complaints provide a greater assurance that safe products are supplied to the field than testing and evaluating prototypes. MSHA is modifying its position and philosophy relative to administering the mine product approval regulations. Under the proposed model, MSHA would no longer function primarily as a tester and an evaluator but would instead establish criteria for independent testing, oversee evaluations, and conduct a more rigorous point-of-manufacture quality assurance function.

The keystone to this program is a modified approval process. This program would shift MSHA's role from evaluation and testing of products prior to approval to oversight of testing and certification by independent bodies. Third-party testing is a mature industry and can be relied upon with no detrimental impact to safety.[2] This recommendation can be implemented through changes in existing DOL regulations. The Secretary should encourage MSHA's efforts in this regard.

2. **Revise MSHA's regulatory standards in order to harmonize with industry and international standards.** By reviewing industry and foreign government standards, MSHA can determine whether any would serve its needs if totally or partially adopted. Adopting existing standards and regulations from an appropriate source precludes the need for MSHA to "reinvent the wheel." In addition, MSHA should adopt voluntary consensus standards

when possible.

Implications

These changes will better define the role of government in mining equipment approval. By transferring testing and evaluation of products to others, MSHA could devote its resources to establishing rules and criteria for certain mining products; monitoring testing and evaluation done by others; evaluating hazards introduced by new technologies; and monitoring the quality of equipment and products shipped to mines. In addition to a significant improvement in mine health and safety, MSHA will become increasingly proactive relative to new technologies. The result will be a more timely evaluation of mining equipment technology.

Furthermore, through this process, many products will be available for use in mines at a significantly reduced cost. MSHA staff express concern that the current approval system may deter some manufacturers from producing mining products because of the limited market. For example, obtaining MSHA approval may require the manufacturer to change product design in ways inconsistent with international standards. Considering the small market available in the mining industry, as well as the cost of possible revisions required for MSHA final approval, it is not profitable for many manufacturers to enter the mining equipment market.

The harmonization of MSHA standards with those of industry and foreign governments will allow manufacturers already in the market, as well as those who previously found the industry to be unprofitable, to compete in world markets by permitting a single, globally-acceptable product line with better control of replacement parts, reduced manufacturing costs, and improved quality control.

Fiscal Impact

Implementation of this new approach will permit the redirection of resources and employees internally, and provide an economic benefit to the industry. Resources currently being used to administer the approval and testing responsibilities at the A&CC will be redirected to expand the quality assurance activities to provide more adequate oversight and increased product safety. The redirection of resources is estimated at 6 FTEs costing $390,000 annually. Additional savings may result in the long term but cannot be projected.

The mining industry will benefit from the ability to design and manufacture a single product to serve multiple markets and applications. Expenditures for engineering and product development, manufacturing, tooling, and product testing and approval will be reduced, as will inventories of spare parts. Monetary savings to the mining industry will be measured in millions of dollars as the program grows to maturity. The savings resulting from internationally standardized approval requirements and the introduction of safer, state-of-the-art mining equipment on-site will produce continuing savings in lives and resources.

Annual Savings (*Millions of Dollars*)

	1994	1995	1996	1997	1998
Budget Authority	$.390	$.390	$.390	$.390	$.390
Outlays	$.390	$.390	$.390	$.390	$.390
Change in FTE	-6	-6	-6	-6	-6

Endnotes

1. This authority is found at 30 C.F.R. 7-36.

2. Examples of third party testing include Underwriters Laboratories' evaluations of electrical appliances and Cornell University's automotive safety tests involving crash dummies.

Introducing Market Dynamics

The Department of Labor can introduce market forces into employment and training service delivery and health and safety law enforcement. The proposed One-stop Shopping concept, based on service-integration concepts emerging in progressive state and local governments, uses information technology to facilitate access to job-related information. The recommendation to shift the responsibility for ensuring workplace safety and health from the government to the workplace stems from the emerging business interest in promoting workplace safety.

Insert One-Stop Shopping Report Here

Shift the Responsibility for Ensuring Workplace Safety and Health

Background

In October 1970, the United States Senate's Committee on Labor and Public Welfare released its report on the Occupational Safety and Health Act (Act) of 1970. In that report, the Committee recognized "the possibility of limited inspection manpower in the earlier phases of the program" and that "the number of inspections which it would be desirable to have made will undoubtedly, for an unforeseeable period, exceed the capacity of the inspection force."[1] Later that year, Congress passed the Act to protect 60 million U.S. workers of which over 26 died on the job each working day.

Twenty-three years later, on any average working day, there are still at least 13 U.S. workers[2] who die from injuries occurring in the workplace and about 11,000 who are injured seriously enough to lose work time or to experience restricted work activity.[3] While some organizations estimate that 11,000 U.S. workers are permanently disabled each year as a result of an occupational injury,[4] other organizations, like the National Council on Compensation Insurance calculate that number to be as high as 60,000.[5] The Rand Institute for Civil Justice has reported that workplace accidents cost the nation $83 billion annually.[6] In addition to workplace injuries, tens of thousands of workers die prematurely each year as a result of long-term occupational diseases.

The Department of Labor's Occupational Safety and Health Administration (OSHA) has the responsibility for enforcing the provisions of the Act. OSHA and approved state programs, which OSHA oversees and partially funds, currently employ about 2,400 inspectors to enforce safety and health standards for 93 million workers at over 6.2 million worksites.[7] Consequently, there are only enough federal inspectors to inspect even the most hazardous workplaces every several years.[8] Although inspections often result in citations and proposed penalties, OSHA, when it begins negotiating payment of an assessed fine, typically reduces a fine by almost 50 percent, and according to fiscal year 1992 OSHA data, OSHA follows-up on only three percent of all inspections.[9] New approaches to protecting the health and safety of workers are needed.

With a growing field of professionally certified safety and health workers and a trend in the number of employers working toward improving their workplace environment, the new approach should shift the responsibility of ensuring worksite safety and health to the workplace.

Recommendation

1. The Secretary should issue regulations to provide employers options for conducting self-inspections. Currently, the Secretary is authorized to require employers to conduct certified, self-inspections. The Secretary should develop regulations that would offer employers options for conducting these inspections. The first option that could be considered is the use of a third-party, such as a private inspection company. The regulations pertaining to this option could specify the responsibilities of OSHA, employers, and the private inspection companies. Responsibilities for OSHA would include prescribing inspection and reporting standards and conducting random reviews of private inspection reports for on-site quality reviews. Inspection company responsibilities would include conducting inspections of worksites, obtaining employee participation in the process, and providing employers with a safety and health report. Employer responsibilities would include arranging and paying for safety and health inspections and developing and implementing corrective action plans.

As an alternative, the Secretary would authorize the employees of a workplace to conduct inspections. Employee participation could be provided through the use of employee experts for specific inspections, the nomination of safety and health representatives to a quality team, or employees volunteering to serve on a team. Employees who participate in an inspection would have to be certified. Employers, through these voluntary efforts, could determine their own state of compliance with applicable safety and health requirements. The teams should certify the results of the inspections.

The responsibilities of these employee teams would include: reviewing an employer's existing safety and health program; reviewing incident reports resulting in work-related deaths, injuries, and illnesses; reviewing employer's work injury and illness records; and conducting inspections of the worksites once every three months. OSHA would conduct random audits of the certified inspections, provide technical assistance to the employee teams and conduct random inspections of worksites.

2. The Secretary should establish a sliding scale of incentives. The scale should go into effect a year or two after the regulations concerning self-inspections were established. The scale would be used to provide employers incentives for maintaining a safe and healthy workplace. The scale could include, based on an employers' injury and illness records, less frequent reporting to OSHA, the continued use of self-certification, an on-site inspection from OSHA, or a required third-party audit. As an employers' safety record improved they should be allowed to submit less paperwork or be subject to fewer audits. OSHA should also consider the companies' good record in adjusting fines. If an employers' safety and health record did not improve or worsened, DOL could require the employer to pay a higher fine or be subject to an OSHA inspection.

Implications

Either option selected by an employer should substantially increase current safety and health inspection and prevention efforts and reduce injuries and time lost on the job.

The first option may create jobs in the private sector as a private inspection industry grows to meet demand. This option could be opposed by employers because of the costs involved in arranging for and paying for inspections. Employers may actually welcome less interference from the federal government. Unions could be opposed to the first option because of a possible increase in opportunities for circumvention. OSHA would still be responsible for responding to complaints and providing oversight.

Under the alternative recommendation, with inspectors on-site daily, the safety and health environment of the establishment could be maintained at a higher level. With strong involvement from labor and management both may feel ownership of the problem and have safety and health concerns truly become a part of the day-to-day operations. The concept of employee involvement with safety and health inspections, specifically through the use of labor and management teams, is found in Senator Kennedy's and Congressman Ford's versions of the Comprehensive Occupational Safety and Health Reform Act of 1993. The Administration has not yet supported or opposed either piece of legislation.

Fiscal Impact

At this time, without knowing which options may be chosen by employers, the potential costs and savings involved with these recommendations can not be determined. The Office of Management and Budget believes that in the early stages of these proposals OSHA may require additional funding for certifying and training employee participants and an increased role in oversight.

Endnotes

1. *Legislative History of the Occupational Safety and Health Act of 1970*, Subcommittee on Labor of the Committee on Labor and Public Welfare, United States Senate, June 1971, p. 152.

2. *Occupational Injuries and Illnesses in the United States by Industry, 1991,* Bureau of Labor Statistics (BLS) Bulletin 2424, p. 7. BLS estimates 2800 fatalities in establishments with 11 or more employees. Additionally, OSHA's Office of Statistics extrapolates 500 additional deaths in establishments with fewer than 11 workers from BLS data. Therefore, 3300 fatalities/250 working days = 13.2 fatalities/day.

3. *Occupational Injuries and Illnesses in the United States by Industry, 1991,* Bureau of Labor Statistics (BLS) Bulletin 2424, p. 40. BLS estimates that there were nearly 2.8 million lost workday cases resulting from injuries in 1991. Therefore, 2,800,000 lost work days/250 work days = 11,200 lost work days/day.

4. Estimates by OSHA's Office of Statistics based on data provided by the National Council on Compensation Insurance (NCCI). NCCI is located at One Penn Plaza, New York, New York 10119.

5. ibid.

6. *Compensation for Accidental Injuries in the United States*: Executive Summary. Rand Institute for Civil Justice, 1989, p. 13.

7. *County Business Patterns*, Department of Commerce, Bureau of Census Bulletin CBP-90-1, 1990, p. 3.

8. Estimate provided by OSHA's Office of Statistics.

9. Data provided by OSHA's Integrated Management Information System.

Creating a Quality Management Culture

In working to create a quality management culture, the Department of Labor needs to build on its previous successes. A series of recommendations in the first paper illustrate how the enforcement agencies can foster customer service by operating within organizational networks. Other proposals promote automation of the process through which federal contractors obtain required wage determinations from the department, flexibility in obtaining mine safety research, and expansion of assistance to states in collecting delinquent Unemployment Insurance Trust Fund contributions.

Create a Virtual "Enforcement Branch" within the Department of Labor to Rationalize the Enforcement Image to the Customer and Capitalize on Commonality EL27

Background

Opportunities for improving the effectiveness of the Department of Labor (DOL) in conducting its enforcement activities cut across program lines in a variety of ways. The department needs to project a consistent message to its customers and integrate its approaches to common issues. Introducing more horizontal coordination and flexibility into the organization will foster achievement of these goals.

DOL enforces laws designed to ensure that employees receive the compensation to which they are entitled, that they have a safe environment in which to work, that pensions and other benefit programs are properly administered, and that unionized workers' rights are protected. The various enforcement agencies within DOL have distinct cultures, stemming from their diverse histories and missions.

Five DOL agencies have enforcement as their primary role. The Occupational Safety and Health Administration (OSHA) enforces safety and health standards which apply to most employers except government, the self-employed, family farms, and specific industries in which other regulations supersede. The Mine Safety and Health Administration (MSHA) enforces standards that apply to mine operators. The Pension and Welfare Benefits Administration (PWBA) enforces fiduciary standards and reporting requirements under the Employee Retirement Income Security Act (ERISA). The Employment Standards Administration (ESA) enforces wage and hour laws, child labor laws, affirmative action requirements for federal contractors, and other workplace standards. The Office of Labor Management Standards (OLMS) oversees specific union activities.

Two DOL agencies have enforcement-related responsibilities as a secondary part of their missions. The Employment and Training Administration (ETA) supports state enforcement efforts in the Unemployment Insurance program and adjudicates immigration labor certifications. The Veterans' Employment and Training Service (VETS) enforces the Veterans' Reemployment Rights Act, which establishes job reinstatement rights for persons called to active duty.

The enforcement activities also interact with varying combinations of other DOL offices, including the Solicitor's office, the policy office, the DOL Academy, and the Bureau of Labor Statistics (BLS).

The responsible agencies carry out their enforcement activities in ways that meet their specific needs. From the perspective of the various agencies, the goal is to achieve compliance by enforcing laws under that component's jurisdiction as effectively as possible. Understandably, officers observe that inspectors for the various agencies look for different violations using different methods. For example, when inspecting a manufacturing company, OSHA would go to the factory floor and review operations, ESA to the personnel office to review employment and wage practices,[1] and PWBA to the corporate office to review the handling of the pension fund.

From the perspective of the worker or employer, however, these distinct missions may be viewed more generally as labor standards, all of which affect the employer-employee relationship and the working environment. The inspector represents the Federal Government first, DOL second, and the specific division third.

DOL has taken some steps in recent years to develop more coherence among its enforcement branches. In 1990, the Secretary mandated a review of all enforcement programs after the Inspector General criticized their effectiveness.[2] Several changes resulted, such as the development of Memoranda of Understanding (MOUs) within and outside DOL.[3]

Those first steps need further development. For example, another result of the 1990 effort was a *Small Business Handbook* that DOL developed which provides an overview of labor laws.[4] The handbook is available to employers but is also used by officers, who previously were placed in the position of admitting ignorance of laws they did not enforce. Such efforts have yet to be consistently reinforced through training. Cross-training programs such as the one recently-completed between ESA and the Immigration and Naturalization Service (INS) in the Department of Justice could be implemented more consistently within DOL.[5]

Cross-cutting issues are complicated by changing conditions. For example, immigration issues cut across ETA, ESA, PWBA and BLS. A given immigration issue might involve some or all of those agencies and require coordination with the Department of Justice and other agencies. A specific case might require consultation between agencies. Yet the conditions surrounding these issues change rapidly. The department needs the ability to respond to the issues more quickly and in a coordinated fashion. Creating a separate immigration division within DOL would be an inefficient and incomplete solution: for example, the new division would still have to coordinate with ESA when Wage and Hour issues are involved.

Traditional hierarchical structures have historically efforts to deal with cross-cutting issues. Those structures are also criticized as slow to meet rapidly-changing requirements. DOL cannot reorganize around every cross-cutting issue or new requirement.

Recent advances in information technology have simplified the challenge of dealing with new cross-cutting tasks. The result in the private sector has been increasingly flexible organizational structures, variously termed virtual organizations, boundary-crossing networks, and agile manufacturing.

The "virtual organization" concept offers a model for how DOL could operate within a common framework for setting enforcement priorities and achieve economy and quality through shared methods. In the private sector, a "virtual corporation" is one that "adapts in real time to the customer's changing needs," an approach that involves "traditional offices, departments, and operating divisions constantly reforming according to need."[6]

The necessary flexibility is created by working in an "organizational network," defined by Jessica Lipnack and Jeffrey Stamps as having "independent members with multiple leaders, a unifying purpose with lots of voluntary links, and interacting levels."[7] Rather than reorganize in the traditional sense of the word around enforcement missions, DOL needs to create organizational networks to solve specific problems and work the solutions through the hierarchy. Illustrations of opportunities to use these flexible approaches are given below.

A consistent message to the Department's customers

When an inspector enters a workplace, the employer sees a representative of the Federal Government as much as a Wage and Hour or OSHA inspector. DOL can do more to take advantage of this workplace presence by developing shared customer service approaches, working to rationalize its penalty structure, and acting on any readily-identifiable violations of labor laws.

Customer service opportunities. DOL's enforcement mission may be viewed as protecting the American worker, a perspective that makes the nation's workforce its primary customer. To accomplish that mission, DOL must also treat businesses that may be targets of enforcement as potential customers. Viewed in that light, customer service would include making it easy for employers to find out what the law requires of them, keeping the rules simple and easy to understand, and protecting individuals' rights during the inspection and penalty process. This is particularly important when inadvertent violations can result from misunderstanding of the standards.

DOL's *Small Business Handbook* is a good first step in offering simple, easy-to-understand materials on labor laws. DOL also deserves credit for developing a straightforward handbook explaining the new Family Medical Leave Act requirements. The enforcement agencies should look for ways to expand on these steps. For instance, when ESA certifies farm labor contractors, the agency might provide a bi-lingual pamphlet on contractors' legal responsibilities. The department might explore possibilities for consolidating the various posters employers are required to display informing employees of their rights. To simplify regulations, DOL might consider routinely developing handbooks or guides in plain language simultaneously when writing regulations. This process could identify legally sufficient, simple language for use in both handbook and regulations.

The department might also explore ways to use on-line computer inquiry systems to assist both employers and employees in navigating the complexities of the law and understanding the rules that apply to them. Inspectors could publicize the availability of information services in the course of site visits.

This type of across-the-board outreach could particularly help promote understanding of new requirements when DOL implements new laws or regulations.

Anomalies in Labor's penalty structure. Expanding the use of site inspections as educational opportunities is only one approach to projecting a consistent message. When violations occur, penalties are the "performance measures" through which the justice system communicates expectations to the public. Public perception that the "penalty fits the crime" promotes compliance with the law. Weak or absent penalties undermine compliance by communicating to the public (and to others in the justice system, such as U.S. Attorneys who decide which cases to prosecute) that a violation is not very serious. On the other hand, penalties that are perceived as excessive may promote litigation or resistance to compliance.

An across-the-board review of the penalties available to DOL's officers suggests that the penalties do not consistently reinforce the requirements in the law. ESA enforces laws requiring employers to maintain records that establish hours worked and wages paid. However, the law provides no penalty for failing to maintain the records, even though a lack of records undermines the officer's ability to establish whether a violation has occurred. OSHA enforces laws requiring employers to maintain a safe working environment. However, if failure to do so results in the death of an employee, the employer is subject only to a misdemeanor. (Under present law, illegally duplicating a videotape carries a more severe penalty.)

DOL also needs better tools to address the repeat violator. In other arenas, "career criminal" or "habitual offender" provisions provide enhanced penalties for those with a clear history of breaking the law. Measures to address this problem may take various forms. The 1989 Fair Labor Standards Act Amendments added penalties for repeat and willful violations of Wage and Hour laws. Alternatives to penalties are under review by the Mine Safety and Health Administration (MSHA), which is considering a licensing mechanism that could preclude individuals with a history of operating unsafe mines from opening new operations.

"Warning" mechanism. Another mechanism DOL could use to communicate a more consistent message to the public is warning notices. An MOU between INS and ESA offers a model. ESA inspectors review employers' records of their employees' work eligibility, required under the immigration laws. If they find a violation, the inspectors may issue a warning notice documenting the deficiencies. If the INS follows up and finds the deficiencies uncorrected, INS may impose a penalty. DOL should consider developing a warning mechanism for its officers to use when they find easily recognized violations of DOL laws beyond that officer's specific jurisdiction.

In some circumstances, issuing such a warning directly to the employer may be superior to the more common practice of referring the violation to another agency. With a warning, the employer is notified of the violation and any corrective action needed. Often, this is sufficient to bring the employer into compliance.

The enforcement agencies should jointly consider where and how they might use warnings effectively. The MOU between INS and DOL involves referral of the warning to INS and a commitment to follow up. Other models might involve use of the mechanism as an alternative to immediate referral or where the violation is easily detected but would not ordinarily warrant full investigation.

Opportunities to Take Advantage of Commonality

Integrating the message DOL communicates to its customers requires integrating its work horizontally. A variety of models exist for facilitating integration. Some require policy synthesis, which may be achieved by designating a coordinator for specific cross-cutting issues or creating teams to develop integrated strategies. Some require horizontal communication about "best practices." Some require coordination at the field level, which is currently promoted through formal MOUs. In the long term, an integrated set of goals and the right reward structure could encourage the desired cooperation without the need for formal written agreements to cover each situation.

Integrated goals and missions. DOL agencies should work together to set individual program goals and priorities. In some instances, this may be a matter of data sharing (e.g., OSHA might use data already available from BLS and workers' compensation from ESA). In others, the issues involved may be more complex. For example, sweatshops that might be of priority interest to the Wage and Hour Division might have unsafe working conditions that would not meet OSHA's priority thresholds.[8] Without a common understanding of the overall departmental goals, the two agencies could have different expectations about the potential OSHA role in such cases. To alleviate that concern, Wage and Hour and OSHA entered into an MOU in 1991 to share information and coordinate strategies. Such mechanisms can give the department's inspectors guidelines to assist them in determining proper and effective approaches. The department should, therefore, develop a common framework for reviewing priorities and the potential for overlapping interest.

Targeting strategies. Another area in which more cross-communication appears desirable is targeting methods. Most enforcement programs are primarily complaint-driven.

Currently, OSHA has a small random sampling program. While OLMS and Wage and Hour have performed some sampling in the past, they do not currently use this method.

Sampling programs are helpful in developing a national picture of compliance, and thus judging the performance of the enforcement program. While such programs are sometimes criticized for diverting scarce resources from efforts directed at likely violators, they also have a deterrent effect by communicating that anyone may be subject to enforcement (the potential of a random audit by the Internal Revenue Service is commonly credited with promoting compliance with the tax laws). Targeted sampling may be useful in industries for which complaints are less likely to be received. This is an important point for DOL given that labor law violators in some industries tend to hire recent immigrants who would not speak the language or know how to complain.

PWBA performs an annual review of its cases to determine which sources resulted in the best cases, judged according to a variety of criteria. Applied department-wide, this type of analysis could help better define areas where information-sharing is needed.

"Full court press." DOL agencies have attempted to identify areas in which referrals of potential violations make sense, while noting that the kinds of employers who violate wage/hour laws, for example, are not the most significant safety and health violators. Some within the agency have suggested the need to be more systematic about selecting joint targets, while ensuring that all officers are aware of certain violations. This approach might be expanded beyond DOL, so that any federal officer would have general information about how to recognize and report certain serious violations. A recent interagency experiment in the area of child agricultural labor may provide a good model. For this approach to work, selected priority areas should involve commonly-supported laws and require little training.

Rewards for pursuit of the mission. The Chief Financial Officers' Act (CFO) requirements are DOL's primary vehicle for coordinating development of performance measures. Most of the measures developed to date focus on inputs rather than results, and fail to measure progress towards cooperative goals, such as referrals to other agencies. A generic cross-training program was abandoned in the face of budget cuts, in part because managers did not perceive it as related to accomplishing the objectives by which they are being measured.

The process through which performance measures have been developed under the CFO and, previously, the Federal Managers' Financial Integrity Act (FMFIA), leaves much to be desired. Initial operational performance measures were developed with little or no input from the operational agencies. While the agencies deserve credit for progress since then, the hard issues of how to measure the effectiveness of enforcement programs have yet to be joined. It is not clear that the CFO Act, which is aimed at internal management accountability, is the proper vehicle for developing such measures.

Performance measures provide a good example of an issue for which there are recurring dilemmas for each of the agencies. All enforcement agencies are confronted with the "quality versus quantity" trade-off, difficulty in developing objective assessments of case quality, and the question of how to measure and reward cooperation. The enforcement agencies should work together with analysts to develop common approaches for adaptation to specific program needs. The requirements of the recently-enacted Government Performance and Results Act place additional emphasis on the development of performance measures.

Recommendations

1. DOL's enforcement agencies should operate as a flexible organizational network. Messages to the enforcement "customers" as well as strategies, tactics, and rewards should be developed within a common department-wide framework. This framework should assist DOL in determining how to effectively promote labor standards across the board.

2. To communicate a consistent message to enforcement customers, DOL should ensure that its officers project its overall enforcement mission, particularly during site inspections. The development of materials to assist officers in educating employers should be incorporated into the development of regulations and standards. DOL should also pursue automated approaches to facilitate employers' access to information about the laws that apply to their specific situations.

3. Based upon recommendations from DOL, Congress should redress the anomalies in the labor law penalty structure. DOL should review its penalty structure across the board and develop a legislative proposal that creates a penalty for the wage and hour recordkeeping requirements, provides a significant criminal penalty for deaths in the workplace due to serious health and safety violations, and establishes oversight mechanisms to prohibit "habitual offenders" from continuing operations.

4. DOL should assess the feasibility labor inspectors employing warning notices to employ when they encounter violations of other agencies' laws. The ESA's experiences with its recent initiative with INS to issue warnings for recordkeeping violations should be instructive in developing such strategies within DOL.

5. DOL should ensure policy coordination of individual agencies' goals and missions. This should encompass not only enforcement priorities but integration of other cross-cutting activities such as the agency's role in immigration issues.

6. DOL enforcement activities should collaborate in developing targeting methods. The agency should consider the need for all enforcement programs to perform some random sampling or have a single sample receive a general review of all major requirements under Labor's jurisdiction. Targeted sampling should be used in industries for which potential violations exist but complaints are unlikely.

7. DOL should select one or two priority areas to receive a "full court press." DOL should consider expanding this concept beyond the area of child labor laws. DOL should explore developing "full court press" strategies in consultation with other law enforcement agencies that perform significant activities in workplaces.

8. DOL agencies should collaborate to develop meaningful performance measures that reward quality and collaboration. The department needs to ensure that cooperative efforts, prevention programs, and high quality work are rewarded. The measures should encourage pursuit of enforcement strategies that may have greater impact than resolving issues on a complaint by complaint basis. DOL should establish a cross-component team of field officers, analysts, and managers to develop measures that reflect results and coordination.

Implications

These recommendations may appear obvious. For example, the General Accounting Office and the Grace Commission have previously called for better coordination and performance measurement at the department.

The purpose of presenting these recommendations in the context of a discussion of flexible organizational networks is to highlight a need for change in DOL's style of working. Its many Memoranda of Understanding (MOUs), within and outside the agency, reflect both a willingness to cooperate and a vertically-structured approach to doing so. The process of developing and revising MOUs helps ensure that the parties clarify expectations. However, it may be impracticable to develop and revise MOUs in response to rapidly changing conditions.[9] DOL should build on its record of recognizing the need for coordination by creating a reward structure that encourages initiative and cooperation, and flexibility in the way officers' jobs are defined.

Like other federal agencies, DOL faces barriers to promoting more flexibility in its organization. One barrier is line-item budgets, which give rise to concerns about the possible misappropriation of funds through pooling efforts. DOL has overcome such barriers in the past, such as its use of in-house mediators in its Alternative Dispute Resolution pilot project, but has exercised caution such as legal review before undertaking the initiative. Additionally, each of the enforcement agencies handles its own debt collection. While centralization might be more cost-effective, the pressure on agencies to keep administrative overhead costs low creates a disincentive to placing these activities under Administration and Management.

Another barrier is cultural. Organizations that are accustomed to working vertically find it difficult to adapt to working horizontally. DOL managers should seek and employ models that integrate teamwork into hierarchical organizations.

Finally, in considering these recommendations, the Secretary should undertake only those for which the department's top management is prepared to seek a commitment from DOL's agency heads. As consultant Daryl R. Conner notes in discussing organizational change,

> Change cannot succeed without a network of sustaining sponsorship that constantly reinforces the importance of a change as it moves through the organization. With cascading sponsorship, initiating sponsors enlist the commitment of other key managers below them to support the change throughout the organization. These managers, in turn, do the same with those below them.

An effective network of sponsors minimizes logistic, economic, or political gaps that exist between layers of the organization, and it also produces the appropriate structure of rewards and punishments that promotes achievement.[10]

Fiscal Impact

The fiscal effect of these proposals cannot be determined.

Endnotes

1. ESA would also interview employees at various locations.

2. Department of Labor, Office of Inspector General, *DOL Criminal Enforcement*, Report number 09-90-202-01-001, June 4, 1990. In the report, the Inspector General presented the results of a review of the criminal enforcement activities of the department. The review focused on mechanisms for identifying and pursuing criminal violations. A key conclusion (page 24) was that "the Department lacks a framework for evaluating future criminal enforcement achievements."

3. Most of the enforcement agencies report that they have MOUs with each other. Most also have MOUs with other agencies where there is a common interest. For example, OSHA receives leads from other agencies with specific worker safety and health responsibilities, such as the Federal Railroad Administration and Federal Aviation Administration in the Department of Transportation. Finally, most agencies have encouraged their local offices to develop MOUs with their local counterparts.

4. U.S. Department of Labor, Office of the Assistant Secretary for Policy, *Small Business Handbook: Laws, Regulations and Technical Assistance Services,* (Washington, D.C.: Government Printing Office, 1993).

5. Such cross-training would not necessarily lead to agencies performing investigations for each other, but would enable officers to answer common questions and, in some areas, recognize indicators of possible violations.

6. William H. Davidow and Michael S. Malone, *The Virtual Corporation* (New York: Harper-Collins Publishers, Inc.), p. 6.

7. Jessica Lipnack and Jeffrey Stamps, *The TeamNet Factor,* (Oliver Wight Publications) 1993, p. 36. The model outlined in this book is particularly applicable to the suggestions in this paper because it does not assume the elimination of hierarchy.

8. This discussion differs from GAO's definition of sweatshops, which involves serious violations of both Wage and Hour and health and safety laws. *Sweatshops in the U.S.* 1988

9. DOL began work with the Department of Agriculture on an MOU following a disastrous fire in a poultry processing plant in North Carolina. The MOU has not been completed.

10. Daryl R. Conner, *Managing at the Speed of Change* (New York: Villard Books, 1993) p. 121.

DRAFT July 26, 1993

Apply Information Technology to Expedite Wage Determinations for Federal Contracts

Background

The McNamara-O'Hara Service Contract Act (SCA) of 1965 provides protection to workers employed on federal service contracts. Most covered employees tend to be low-skill, low-wage workers, associated with janitorial services, refuse collection, grounds maintenance, food service, laundry and dry cleaning, and guard services. The intent of this law is to ensure that taxpayers' monies are not used to undermine locally prevailing wages and such workers receive no less than locally prevailing wages and benefits on all federal service contracts of $2,500 or more.

Federal agencies are required to file with the Department of Labor (DOL) a notice of intent to enter into a service contract. Each year, over 50,000 such notices are processed by the Wage and Hour Division. In response to these notices, before contract bid solicitation, the Wage and Hour Division furnishes the contracting agency with a wage determination that specifies the minimum wage and fringe benefit rates to be paid service employees for each occupation to be utilized on the contract.

More than 80 percent of all wage determination requests are responded to within the 60-day regulatory target (in an average of 57 days). However, increased service contracting and reduced Wage and Hour staffing have meant that each year over 10,000 requests are not met in 60, 90, or sometimes even 120 days. Even those determinations provided within 60 days often do not meet customer needs, as most agency requests are received less than 30 days before the wage determination is actually needed.

A majority of SCA wage determination customers are not satisfied with the service Wage and Hour is providing, as procurements are delayed because the federal procurement agencies do not have the required wage determinations. Each year, such delays mean thousands of telephone calls to check on the status of wage determination requests, actions to extend solicitations, and actions to amend contracts that result from options exercised without the current wage determination. Other actions include requests to extend current contracts because the award of RFPs has been delayed due to the absence of a current wage determination; responses to complaints from members of Congress, unions, contractors, and employees, either because procurements have been delayed or the proper wage determination has not been included in the solicitation or contract; and work to revise and resubmit incorrect/incomplete requests for wage determinations.

To explore ways of improving the SCA wage determinations process, the Wage and Hour Division in 1991 formed a Quality Management Outreach Project that resulted in a recommendation to utilize Electronic Data Interchange (EDI)/Data Mapping (DM) technology. Wage and Hour staff have been developing this recommendation. Wage and Hour staff currently envision that the system would perform as follows:

1. Applicable federal procurement agencies would receive software that will allow the creation and transmission transactions for requesting and defining SCA wage determinations.

2. Federal procurement agencies would request a wage determination by entering the required data, assisted by computer software which specifies the information needed, and furnishing relevant listings for possible agency use.

3. As wage determination requests are received, they would be automatically coded and appropriate entries would be made in an on-line tracking system.

4. If it is appropriate to issue an existing wage determination (estimated to be for over 50 percent of requests), that wage determination. Log-out and tracking system routines would be initiated automatically, and the procurement agency then would print the newly-issued wage determination for their use in solicitation and contract actions.

5. If no current wage determination can be issued, the request would be referred to an analyst, who would either revise an existing wage determination, or develop a new one. Such work would occur on a terminal, so that once completed, it could be issued electronically to the requesting agency.

In the absence of sufficient funding, the Wage and Hour Division has explored alternative means of implementation (e.g., a joint venture with the National Technical Information Service); however, alternative efforts have not been successful because of a lack of resources.

Recommendation

In accordance with a Wage and Hour Division quality management initiative, the DOL should develop and integrate an Electronic Data Interchange/Data Mapping system into the Service Contract Act wage determinations process.

The system would eliminate most procurement delays due to lack of timely wage determinations and ensures the delivery of many wage determinations in minutes instead of months.

Implications

With the federal mandate to utilize EDI and the huge time savings likely to result from this application, it should be relatively easy to get federal agencies committed to the system. All that would be required on the part of federal agencies would be a personal computer and a modem, and the knowledge and the commitment to utilize the new SCA system, although cost-sharing through a transaction or user fee may be appropriate.

Fiscal Impact

Although structured cost analysis has not been completed, Informal estimates place total system design and implementation costs between $300,000 and $500,000. Step 1 of the proposed project to apply EDI/DM would initiate a formal system requirements study that will provide more reliable preliminary cost estimates. The cost estimates include the acquisition of some hardware, in the form of a microcomputer, communication server, and multi-port cards. Total system design and implementation is estimated to take one to two years. However, some benefits could be a reality in as little as six months. The Air Force (at Wright-Paterson) and the General Services Administration have volunteered to help field test the new system.

The primary benefits of the system are based upon the considerable workload/staff-time savings provided to federal procurement agencies. Conservative estimates of annual savings derived from the electronic SCA wage determinations process are $5 million to be realized by federal agencies. In addition, some modest savings, in the form of reduced contractor staff required ($250,000 per year) might accrue to the Wage and Hour Division.

Provide Research and Development Authority for the Department of Labor's Mine Safety and Health Program

Background

The Department of Labor's (DOL) Mine Safety and Health Administration (MSHA) is the agency directly responsible for the nation's mine safety and health programs. MSHA has approximately 1,190 inspectors to oversee over 15,000 mines. In 1992, MSHA conducted nearly 62,000 inspections and issued over 150,000 citations for violations of health and safety rules. During this same period, there were 100 mine-related fatalities.[1]

Over the years, MSHA has had to rely on the Department of the Interior's (DOI) Bureau of Mines (BOM) for research and development of mine safety instruments and devices, and has given requirements to BOM for R&D. MSHA is concerned that their requirements to BOM are not given the top-priority that they deserve, and therefore take far too long to obtain.

In 1989, MSHA began investigations that showed some employers tampered with dust samples used to enforce compliance with medically-based limits for exposure to respirable coal mine dust. Coal mine respirable dust is the cause of "black lung" disease, and the federal government pays nearly $1.4 billion annually to miners disabled by this disease. On April 4, 1991, the Secretary of Labor announced that MSHA had issued 4,700 citations to approximately 500 coal mine operators for tampering with coal mine respirable dust samples. As of July 1993, agency investigations into dust sample tampering have led to over $7 million in civil penalty assessments and 118 criminal convictions.

Among the ensuing issues of concern, and a primary recommendation of the Agency's Respirable Dust Task Force, was the acquisition of devices which could be used to continuously monitor the amount of dust in the working environment and the overall dust control systems in mines. MSHA feels confident that continuous monitoring of the mine environment and the components used to control dust offer the best solution for improving the dust enforcement program. The ability to implement this solution requires the development and acquisition of new sampling and monitoring devices.

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In 1991, MSHA alerted BOM of its immediate need for research and development of new continuous monitoring devices. In March 1992, MSHA again made clear the urgency of its need and appealed to the BOM to elevate this project to its highest priority. At the present time, the requested research has produced no results, and practical applications are not expected for at least 3-5 more years.[2]

The foregoing illustrates a continuing problem faced by MSHA. Current governing statutes (1969 Coal Act and 1977 Mine Act) designate the DOI to conduct research and development activities in support of improvements to mine working conditions and practices. With the enactment of the 1977 Mine Act, MSHA was transferred to the Department of Labor, from the Department of Interior; however, the research and development (R&D) responsibilities remained with the DOI's BOM.

The BOM is MSHA's primary source for safety, research and development, but it is MSHA's view that BOM research is generally geared toward long-term research rather than short-term problem solving. While long-term research provides a necessary foundation for strategic planning, it is not responsive to the need for solutions to urgent health and safety problems. Frequently, MSHA's need for certain research and development work is deemed time-vital. Often by the time research is delivered to MSHA, the agency has already been forced to expend additional human resources and significantly expand policy and directives to address problems that applied technology would have readily resolved. Many mine safety and health problems require an immediate response in the form of practical, usable applications developed from technology that already exists -- not years of research. Timely solutions are critical to the lives and well-being of miners today and every day.

Recommendations

The Mine Safety and Health Administration should be granted the authority and funding to directly procure all services and products necessary to maintain a state-of-the-art mine safety program. This would require changing the Federal Mine Safety and Health Act of 1977 and Public Law 91-173 (as amended by Public law 95-164), which required the Department of Labor, Mine Safety and Health Administration to process acquisition of new and improved technology through the BOM. The BOM should remain a source of advice, expertise, and long-range research; but the existing forced source dependency relationship should be eliminated.

Implications

If implemented, this recommendation will improve the effectiveness of the DOL, Mine Safety and Health Administration by increasing its authority and control over the research and development of necessary state-of-the-art instruments and devices. It will eliminate excessive time delays, and increase the ability of MSHA to promptly address mine safety and health issues by removing the DOI/BOM layer from the current process. This is an issue of empowerment that will shift necessary capabilities and controls to MSHA, the organization that has the ultimate responsibility for the nation's mine safety and health.

Alternative sources for R&D services needed by MSHA include: the National Institute for Occupational Safety and Health, the Environmental Protection Agency, the Department of Energy, various universities, and private laboratories.

The Department of Interior, Bureau of Mines is likely to be opposed to this recommendation since it will affect their authority, budget, and work assignments.

Fiscal Effect

The MSHA estimates that the DOI processes \$3.5-\$4 million annually in applied R&D requests. These funds should be shifted from the DOI/BOM to DOL/MSHA.[3]

Additionally, but of lesser consequence, are the administrative costs and time savings that will be derived from eliminating the dependency on DOI, and streamlining the acquisition process.

Endnotes

1. Memorandum from Harvey Lewis, Director, Division of Budget and Finance, Mine Safety and Health Administration (MSHA), to Cliff Luber, National Performance Review (NPR), July 14, 1993.

2. Memorandum from Ed Hugler, Acting Assistant Secretary, Mine Safety and Health Administration, U.S. Department of Labor, to Jerome Vidibor, NPR, June 28, 1993.

3. Memorandum from Glen Hofman, MSHA, to Cliff Luber, NPR July 2, 1993.

DRAFT July 26, 1993

Increase Assistance to States in Collecting Delinquent Unemployment Insurance Trust Fund Contributions

Background

Employers covered by the state unemployment insurance program are assessed Unemployment Insurance contributions on the basis of the wages they pay to their employees. Although over 90 percent of the contributions due are received on time and without any collection activity required by the State Employment Security Agency (SESA), some remain delinquent despite various collections efforts. As of fiscal 1993, more than $1.6 billion in contributions due from employers remain outstanding, representing about 8 percent of the nearly $20 billion in State UI collections for that year.

Although there is no close statistical relationship between accounts receivable or changes in accounts receivable, and amounts borrowed from the Federal Unemployment Account by various states, all such shortfalls weaken the solvency of States' UI programs and jeopardize their ability to pay benefits without borrowing. The uncollected contributions due have the effect of raising the amounts needed by states that are forced to borrow.

Until recently, most of the effort to improve collections have been initiated by individual states, through their own pilot projects. The Department of Labor (DOL) has now begun to take an active role in helping the states improve their collection activities. The departmental effort is concentrated in the Revenue Quality Control program, now being voluntarily implemented by the states. It seeks to improve collection operations in two ways. First, all states are implementing new measures of how fully their employers comply with payment of contributions and the effectiveness of their collection operations. Second, all states will conduct a survey of the methods they use to collect accounts receivable. The department will correlate the measures of effectiveness with the methods used and disseminate to all states the most effective methods.

Although DOL involvement in SESA collections activities has historically not been high, the Internal Revenue Service and state agencies have long worked closely to identify employers who do not file, or who pay state taxes but not federal taxes, or vice versa. This primarily has involved the exchange of tapes based on the IRS Form 940, on which federal taxpayers identify by state the UI payroll taxes they have paid. The exchange helps the states identify firms with state tax liability and the IRS to identify firms which have paid state UI taxes, but not the federal UI payroll (FUTA) tax.

Recommendations

The Department of Labor should work with state agencies to develop more effective programs for collecting delinquent Unemployment Insurance contributions. This should include aggressively moving to ensure that the methods surveys and measures of collections effectiveness developed through Revenue Quality Control are implemented by the states and their results analyzed and disseminated.

Implications

State agencies have bottom-line authority for operating their UI programs and thus regularly change the emphasis of their spending. Bottom-line authority also means that there is no guarantee that additional funds provided them for any purpose, e.g., collections, will be spent for that purpose. Improved collection methods, rather than increased funds, may induce states to emphasize collection activities and thus reduce outstanding accounts receivable.

The additional yield to be achieved through improved collections activities is not clear. A small percentage of the $1.6 billion in uncollected contributions due is uncollectible and will eventually be written off by the states. Improved procedures may allow some to be recovered more quickly. Many of the delinquent employers are small businesses and/or in financial trouble; bankruptcies may mean not all will be recovered; or stretched out payment plans may mean some recoveries will be delayed and temporarily add to the backlog of accounts receivable. Most, however, is attributable to slow payers and employers with temporary financial problems. It will eventually be recovered, even with existing collections procedures.

Fiscal Effect

This recommendation can be implemented without change to existing funding or staffing levels.

Now is the Time

This section recommends changes to promote better service delivery by the Solicitor's office, the VETS program, and the Office of Public Affairs. In addition, this section recommends ways to reduce fraud in the Federal Employees' Compensation Act (FECA) program. Finally, the report recommends bringing Unemployment Compensation for Service members who voluntarily separate from military service more in line with the benefits provided to similarly-situated civilians.

6I

REVISE AND UPDATE THE CONSUMER PRICE INDEX

Background

The Consumer Price Index (CPI), the principal source of information concerning consumer price trends and inflation in the United States, is one of the most important economic indicators. Both the public and private sectors use the measure extensively for economic analysis and policy formulation as well as to escalate contract costs among individuals and organizations. Thus the CPI impacts on many elements of everyday living.

It is essential to maintain the accuracy of the CPI, which measures price changes for a fixed market basket of goods and services purchased in a historical base period. The CPI tends to overstate a true cost-of-living index, however, in part because a fixed market basket does not reflect consumers' tending to not purchase items whose relative prices increased over time and buying items with declining relative prices. Because the current market basket for the CPI is based on a 1982-1984 consumer spending pattern, it may be overstating changes in current living costs.[1,2] Studies in the economic literature have shown that introducing a new market basket could reduce the change in the CPI by 0.1 to 0.2 percent per year. Further, recent research[3] suggests that, had a 1987-1989 market basket been used last year, the CPI would have been about 0.7 percent lower. Assuming that this difference accumulated equally over the six years since the last market basket update, the difference would be about 0.1 percent per year.

To assure the CPI's accuracy, index revisions are scheduled every ten years — after each decennial census — so that population shifts can be incorporated. Additionally, decennial revisions provide opportunities to reflect changes in consumers' buying habits, incorporate improvements in technology and indexing methodology, and redesign survey questionnaires and computer systems to make the index more accurate, reliable, and timely.

The CPI also affects the finances of the federal government because it is used to adjust payments to social security recipients, to federal and military retirees, and for a number of entitlement programs, such as food stamps and school lunches. In addition, the CPI is used to adjust individual income tax brackets and personal exemptions for inflationary changes. Each 0.1 percent change in the CPI results in a net change of about $600 million in federal spending and revenues.

Revision of the CPI is a multi-year effort and the current revision was planned to be completed over a six-year period. The work would begin in 1994, a revised index released in January 1998, and the revision completed in 1999.

Funding for the CPI revision was deleted from the budget due to the projected costs of $56 million and the estimated peak of 267 personnel required to be hired solely for the project's six-year life.

Recommendations

Because of the significant impact the CPI has on the federal government's finances, the following six areas should be the major changes for the revision:

1. Introduce new geographic sample and new market baskets. Reselect the sample of geographic areas on which the index is based to reflect population shifts since the 1980 census. Incorporate these changes in the CPI as well as into the two surveys which support the CPI: the Consumer Expenditure Survey (CES) and the Point of Purchase Survey (POPS). In addition, the index's expenditure patterns, which currently refer to 1982-1984, will be updated to the period of 1993-1995.

2. Redesign the processing system for the Consumer Expenditure Survey. The system presently in use to process CES data was designed and programmed in the late 1970s. Since then, there have been significant improvements in computing capabilities and numerous changes in the CES questionnaires. A new processing system can take advantage of improvements in computing technology and allow efficient program changes and adaptation to future improvements.

3. Revise the housing sample for the CPI. Because of the changes in geographic sample, the housing sample must reflect the 1990 census data. The housing sample needs to accurately represent housing cost patterns of owners and renters for the 1990s. Use of pertinent HUD housing data will conserve time and use of resources.

4. Redesign the computer system for processing housing data. The current computer system for processing housing data was the first major system designed during the last CPI revision. It needs to be redesigned both because it is the CPI program's oldest computer system and because the housing sample must be redesigned. The redesigned computer system will support the CPI more efficiently in this essential area of price measurement.

5. Introduce Computer Assisted Data Collection (CADC) technology. Computer technology has advanced since the last revision to the point that collectors can efficiently capture data using small computers in the field and transmitting the data electronically to Washington, thereby, eliminating data entry processing in Washington. CADC will replace a system in which collected materials are mailed to regional locations and mailed to Washington for data entry into the computer. The proposed new process, including automatic edits built into these small individual computers, will result in greater accuracy by enabling data collectors to correct errors at the source. Further, the data transmission process will be more reliable and timely.

6. Convert the Point of Purchase Survey from personal visit to telephone interview. The current POPS, used to select stores in which CPI prices are collected, is conducted by personal visit. Research[4] has shown that, because of the length of the interview, the survey suffers from high nonresponse levels. Further, testing has demonstrated that the survey can be restructured using telephone interviews[5] in a manner which results in a shorter interview spread over more respondents. Using a telephone based survey has three advantages over the current survey method. First, by including more places of business, the results are more comprehensive. Second, it is more flexible, enabling survey adjustment on short notice to replenish samples that experience unusually rapid changes. Finally, it will result in a more balanced work load for data collection: Instead of revising all samples in 20 percent of the geographic areas every year, approximately 20 percent of the products and services priced will be resampled in all geographic areas every year.

Implications

The expected decrease in the CPI resulting from the revision and update will affect the finances of the federal government; that is, it will adjust payments to social security recipients, to federal and military retirees, and to recipients of food stamps and school lunches. It will also reduce the indexed deductions allowed to taxpayers.

Fiscal Impact

Overstatement of the CPI has a significant detrimental budgetary impact on federal government outlays and receipts. To the extent the CPI does not account for market substitutions, social security and many other benefit adjustments are larger than need be.

The precise level of savings cannot be determined until the CPI revision is accomplished, but will impact dramatically on the national economy. The Office of Management and Budget (OMB)[6] has recently shown that a 0.1 percent CPI increase in calendar 1993 would trigger an increase in the U.S. deficit of approximately $600 million in fiscal year 1995, with an even larger effect in subsequent years. Thus, for an initial investment of $56 million spread over six years, there is the potential to avoid costs of $600 million for every 0.1 percent decrease in the CPI due to the revised market basket. . The costs which would be avoided include both of the following:

1. $400 million increase in federal entitlement payments. Social security payments would increase $290 million; payments for all other indexed programs, such as U.S. civilian and military retirement programs, would increase $120 million.

2. $200 million decrease in potential federal income tax revenues. Tax revenues are reduced because IRS personal exemptions and tax brackets are adjusted annually by changes in the CPI.

ANNUAL COSTS (MILLIONS OF DOLLARS)

	1994	1995	1996	1997	1998
Budget Authority	0	-4	-8	-15	-19
Outlays	0	-4	-8	-15	-19
Change in FTEs	0	-23	-33	-70	-151

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Endnotes

1. Steve D. Braithwait, Substitution Effect in the Tasperyes Price Index, American Economic Review, March 1980, Vol. 70, pp. 64-77.
2. Marilyn Manser & Richard McDonald, An Analysis of Substitution Bias in the Measurement of Inflation, Econometica, July 1987, Vol. 57, pp. 909-930.
3. BLS Research Article to be published in forthcoming Labor Review Journal
4. ibid.3
5. ibid.3
6. ibid.3

DRAFT July 26, 1993

Improve the Delivery of Legal Services by the Office of the Solicitor

Background

The Department of Labor's (DOL) Office of the Solicitor (SOL) has a staff of 775, of whom 442 work in the National Office and 333 in 16 field offices. The field offices do almost exclusively trial-level litigation (as well as some opinion work), whereas the National Office handles primarily appellate litigation and the review and drafting of regulations, opinions, and legislation (as well as some trial-level litigation). SOL provides legal services to all agencies of the Department of Labor except for the Office of the Inspector General and the adjudication agencies of DOL (such as the Office of Administrative Law Judges).

For the past several years, the services that DOL's client agencies have requested of SOL have exceeded SOL's capacity to handle the workload. As a result, SOL is experiencing a backlog of cases. Factors that contribute to the backlog, and that SOL has taken steps to remedy, include: the difficulties that are encountered in establishing case priorities; the submission of budget requests that do not adequately reflect program agencies' needs for legal services; an inadequate system for keeping track of attorneys' and paralegals' time; the lack of extensive training opportunities; and an insufficient computer system.

Efforts have been made to increase SOL's productivity through the use of automation, particularly microcomputers, but there is insufficient funding for local area networks (LANs) and for replacements, spare parts, and maintenance. Almost two-thirds of SOL's microcomputer equipment is over six years old, and SOL has money only to pay for spare parts and maintenance, not to purchase new equipment. SOL has a total of over 1,400 microcomputers, printers, and related pieces of equipment, but thus far in fiscal year 1993 it has purchased only one new item of equipment (a printer).

Recommendations

1. SOL should take steps to reexamine and possibly expand the scope of existing cooperative arrangements with its client agencies. Currently, SOL has established cooperative arrangements with a number of its client agencies. SOL should review these arrangements to assure that cases that can be resolved at the client agency level are resolved at that level and to deal with any problems as soon as practicable.

2. Efforts at "coordinated budgeting" should be expanded. The Office of the Solicitor should work closely with the client agencies when preparing its budget requests so that these requests adequately reflect the client agencies' need for legal services. In an effort to further this coordination, DOL's budget office should build into the budget submission schedule, time for planning between SOL and its client agencies. This coordination should provide for a more informed budget request from SOL.

3. SOL should make certain that its pilot "time distribution" project determines the hardware, software, personnel, and other requirements of an SOL-wide system. It is important for SOL to have more detailed information than is currently available on how SOL attorneys and paralegals divide their time among the various program areas (e.g., OSHA, Wage-Hour) and in performing differing functions (e.g., opinions, trial litigation). In order to keep better track of the time spent by attorneys and paralegals in performing each of the various tasks that SOL employees perform for each of DOL's client agencies, SOL has begun several pilot "time distribution" projects. Accordingly, SOL should make certain that its pilot "time distribution" project truly determines the costs, needs, and other requirements of an SOL-wide time distribution system.

4. SOL needs to provide more training opportunities for its employees. The Solicitor's Office should work with the DOL Academy to explore ways to provide SOL-specific training. In addition, SOL may want to work with law schools and Bar associations to identify training opportunities. As a potentially less expensive approach, SOL should also make more use of videotapes for training.

5. SOL should upgrade its equipment through replacement of obsolete equipment, and make wider use of more advanced communications technology and

information-sharing capabilities; greatly enhancing SOL's productivity. Upon replacing obsolete equipment, SOL should examine ways in which its various offices can gain ready access, through use of a computerized database, to earlier memos, briefs, and other pleadings, so as to take advantage of previous work done by others.

6. SOL should look toward making wider use of paralegals and interns.

Implications

The above recommendations would enable SOL to become more responsive to client agencies' needs for legal services. SOL would become more efficient in its operations, and each of SOL's client agencies would have more precise information about the cost to it of the legal services being provided.

Fiscal Impact

In weighing the fiscal impact of these recommendations, it is important to bear in mind that SOL's activities in effect generate a profit (or, more precisely, reduce the federal deficit). Thus, in fiscal year 1992, SOL's budget was $64,855,000, but this expenditure resulted in at least $84,194,738 being deposited in the U.S. Treasury. This $84 million came from fines and penalties imposed in litigation, federal income and Social Security taxes paid on back wages recovered in litigation, and various other sources. To the extent that SOL can operate more efficiently, its ability to continue helping to reduce the federal deficit in this manner can be enhanced.

With regard to the recommendations made above, most but not all would require additional funding for SOL, but even where additional funding is needed, some of the money could come from other component parts of DOL.

Greater use of "cooperative arrangements" with client agencies will not cost additional money at all. Offering more training opportunities will cost more money, as will the "coordinated budgeting" approach if client agencies, as SOL anticipates, will identify a need for more legal services than are currently available. However, if DOL can shift some of its training funds to SOL for the purpose of providing SOL-specific training, and if the client agencies are willing to "donate" FTEs to SOL for greater legal services, then there will be no increase in the overall DOL budget.

As for the "time distribution" system and the greater use of office automation, these will cost additional money that may not be available from other DOL components. SOL anticipates that these improvements would lead to greater efficiency. A wider use of paralegals and interns would serve to enhance SOL productivity. To the extent that SOL can operate more efficiently, its ability to continue helping to reduce the federal deficit by depositing monies in the Treasury Department can be enhanced and could offset a federal investment in these systems.

Draft July 27, 1993

Restructure Public Affairs at the Department of Labor

Background

The Office of Public Affairs has a staff of 22 in the Office of the Assistant Secretary for Public Affairs, and a regional field structure to support regional press organizations and Department of Labor (DOL) regional operations. Each regional public affairs office has a staff of three employees. In total, the national and regional public affairs offices have 52 employees which consume $4.8 million in salaries and expenses.

Most agencies also have their own public affairs staff. For instance, the Employment and Training Administration has six people on its public affairs staff, including a public affairs director, three public affairs specialists, and two clerical support staff persons. The Pension and Welfare Benefits Administration public affairs office has a staff of five; the Pension Benefit Guaranty Corporation public affairs office has a staff of eleven; the Employment Standards Administration has a staff of four; the Occupational Safety and Health Administration has a staff of five; and the Mine Safety and Health Administration has a staff of six. These agency public affairs officers consume $2.7 million in salaries and expenses. In addition, some agencies have employees that act as press liaisons although they are not classified by the Comptroller's office as public affairs personnel.

These agency public affairs offices are supervised through both their agencies and the Office of the Assistant Secretary for Public Affairs. Responding to press inquiries by agency public affairs officers (PAOs) requires approval by a variety of layers of program managers and the Assistant Secretary for that agency. In addition, the PAO must receive approval from the Assistant Secretary for Public Affairs. All publications and press releases most be approved both by the agency Assistant Secretary and by the Assistant Secretary for Public Affairs or designee. This split and indirect management of public affairs employees puts unproductive pressure on these employees. Under this system, there is no centralized way for an overview of agency public affairs needs.

Recommendation

To create more efficiency, less duplication of efforts and improved coordination, all department public affairs staff that handle news related functions should work directly for the Office of the Assistant Secretary for Public Affairs. The operations of the Office of Public Affairs could be organized on a beat/desk basis to preserve program familiarity by public affairs specialists. The public affairs desk for the Employment and Training Administration would live in the agency, but report to the Assistant Secretary for Public Affairs. News organizations would have one central point of contact.

This recommendation in conjunction with an implementation study would give the department the opportunity to assess the department's public affairs needs, rather than each agency making staffing determinations in a vacuum. Such an assessment would give the department the information needed to consider reductions in agency public affairs staff.

The Department of Agriculture is planning to adopt a desk system soon in order to significantly reduce its public affairs staff throughout the department by having no more than two public affairs specialists per agency desk. The Department of Agriculture has had positive feedback from the media about having a centralized reference point for information.

Implications

The consolidation of public affairs staff members under the Office of the Assistant Secretary for Public Affairs will decrease the control that assistant secretaries for the agencies have over the news emanating from their agencies; however, it will increase the coordination the department has over the information it releases to the public and the message it puts forth with regard to administration priorities. In addition, with one central system of management over personnel handling news related activity reductions in agency public affairs management and clerical support seem likely. One possible implementation goal of this recommendation is to have two to three public affairs specialists for the large, news generating agencies and one to two for the smaller.

Fiscal Impact

Until the department is able to conduct a study to assess public affairs needs, the fiscal impact of this recommendation including FTE reduction can not be identified.

Transfer the Veterans' Employment and Training Service to the Employment and Training Administration

Background

As its major function, the Veterans' Employment and Training Service (VETS) in the Department of Labor (DOL) develops policy for and plans and oversees grants to the states for veterans' employment services. The VETS national office has approximately 30 employees. In VETS regional offices, there are 10 Regional Administrators, 10 Assistant Regional Administrators; 10 management assistants, and 10 clerical support positions. In addition, most regional offices maintain one or more specialists in veterans' reemployment rights and grants management. Each state, the District of Columbia, the Virgin Islands, and Puerto Rico, has a Director for Veterans' Employment and Training (DVET). States, the District of Columbia, and Puerto Rico employ a varied number of Assistant Directors (ADVETs) based on a veteran population formula.

Local Veterans' Employment Representatives (LVERs) and Disabled Veterans' Outreach Program (DVOP) specialists, who are employees of State Employment Security Agencies, provide direct services to veteran customers. States and other jurisdictions receive grants from VETS for employing these DVOP specialists and LVERs. The DVET or an ADVET visits each site where DVOP specialists or LVERs provide services to ensure compliance with program performance indicators. In providing services, DVOP specialists and LVERs must work with employers and other government agencies. For example, to conduct a significant portion of their duties, DVOP specialists and LVERs must closely cooperate with representatives of the Department of Veterans Affairs.

Although DVOP specialists and LVERs can provide a range of services to veterans, they are prohibited from assisting nonveterans who come into Employment Service offices. When nonveterans ask a DVOP specialist or LVER for assistance and learn they must go to another Employment Service staff member, they often perceive this as a failure of government to adequately satisfy their needs.

VETS administers several smaller programs that directly or indirectly benefit service members and veterans. For example, VETS delivers the larger part of the presentations in the Transition Assistance Program for service members about to leave active duty; contracts for the National Veterans Training Institute for training LVERs and DVOP specialists; works to ensure veterans' reemployment rights; and makes Homeless Veterans' Reintegration Program grants under the Stewart B. McKinney Homeless Act.

Because VETS is an employment and training service, it belongs in the Employment and Training Administration (ETA) where it could more closely integrate into a comprehensive delivery system of employment and training services. If VETS merged into ETA, this would facilitate the redesign of state-level service delivery systems using a "one-stop shopping" model. This model works best when everyone in the state office is participating in the unified service delivery system. Having DVOP specialists and LVERs "out of the loop" in the new system would lessen the overall effectiveness of the system and, by limiting their knowledge base, could result in reducing their effectiveness to their principal customers, veterans. In the new system, DVOP specialists and LVERs who were not serving veterans at any given moment would help other State Employment Security Agency officials to serve other customers. This change would require amending Title 38 U.S.C. regarding VETS and the duties of DVOP specialists and LVERs.

State-level service delivery of veterans' employment and training services could improve at a lower cost if VETS or ETA, if VETS reintegrates with ETA requests bids for delivery of these services by contractors. State DVOP and LVER staffing levels would decrease based on the share of the workload which contractors assume. Current law already provides an option to contract for service delivery to veterans.

Regional administrators and their staffs prepare personnel actions, execute and allocate grants to states, and decide whether to recommend litigation of veterans' reemployment rights cases. The regional administrations do not add sufficient value to the delivery of services to justify their continuation. The national level of VETS could handle these responsibilities. Unless this regional level of administration receives increased authority and responsibilities to justify their retention, the Congress should amend Title 38 to eliminate the 4 base positions in each regional office. VETS or ETA, given consolidation could use the money this elimination saves to improve communications between the national office and state-level offices. The veteran's reemployment rights specialists and grants managers would become part of the national office staff.

Recommendations

1. Relocate VETS to improve service delivery and oversight. VETS should return to the Employment and Training Administration (ETA) in DOL. Congress should remove the limitations on DVOPs and LVERs providing services to nonveterans to allow greater flexibility in providing assistance to the public in State Employment Service offices. Placing limitations on customer assistance from any state employee in the Employment Service office frustrates the public and leads to a poor impression of the service delivery system.

2. Under the first recommendation or even if VETS remains in its current configuration VETS should institute a policy of improving employment delivery and customer choice of service provider by requiring states to make delivery of veterans' employment and training services competitive. Competitively won contracts would have to carefully require quality service delivery and not just lead to contractors playing a numbers game as to how many veterans they pushed through the program. All contracts should have clearly stated penalty clauses. The law already allows the possibility of contracting and would not need to change. State Employment

Services could compete for these contracts on the same basis as private sector providers.

3. Eliminate DVETs and ADVETs. ETA does not use state directors for the Employment Service or Unemployment Insurance operations. Special state-level directors and assistant directors are unnecessary for veterans employment services. The regional administrators can provide sufficient oversight to ensure the integrity of program service delivery.

Implications

Employers and veterans would have only one DOL agency responsible for providing Employment Services with guidance and oversight, simplifying DOL staff relationships with the State Employment Security Agencies and facilitating "one-stop shopping."

Allowing private contractors to bid on providing services to veterans would make providing these services more cost-effective because the more efficient service provider would have a competitive edge in winning contracts.

Elimination of DVETs and ADVETs would flatten the VETS hierarchy and facilitate faster communication between state-level service deliverers and the national office.

Fiscal Impact

Fiscal savings from the option moving VETS to ETA and restructuring the state-level VETS offices would be substantial. Given program administration centralization in ETA, DOL might also realize some savings in program management at the national level. Making the delivery of VETS services competitive should result in savings, but a specific amount cannot be determined at this time. The restructuring of VETS would result in the following fiscal impact:

In Millions of Dollars

	1994	1995	1996	1997	1998
Budget Authority	$11	$11	$12	$12	$13
Outlays	$11	$11	$12	$12	$13
Change in FTEs	-200	-200	-200	-200	-200

DRAFT July 26, 1993

Reduce Federal Employees' Compensation Act Fraud

Background

The Federal Employees' Compensation Act (FECA) provides income replacement and medical benefits to civilian employees of the United States for disability due to personal injury sustained while in the performance of duty. The Act also provides compensation for employment-related disease.

Several agencies, including the Office of Investigations, Office of the Inspector General, DOL, the Postal Inspection Service, and the Tennessee Valley Authority have aggressively investigated allegations of FECA fraud which have been successfully prosecuted. In spite of these successful prosecutions, DOL's Office of Workers' Compensation Programs (OWCP) must pay benefits to claimants convicted of defrauding the FECA program because of current statutory language. To comply with a request from Congress, DOL's Office of Inspector General (OIG), in June 1992, completed an assessment of the frequency with which OWCP continues to pay FECA benefits to claimants convicted of defrauding the program. The assessment was based on 63 convictions obtained against FECA claimants by OIG and the Postal Inspection Service during fiscal years 1990 and 1991. Over 50 percent of the claimants convicted of defrauding the program continued to receive benefits because OWCP lacks the statutory authority to terminate compensation benefits based solely on a claimant's conviction for defrauding the program.[1]

For example, a former program analyst with the U.S. Department of the Treasury's Bureau of Public Debt was alleged to have failed to report that he was working while receiving FECA benefits. An investigation revealed that the individual made false statements to the OWCP and fraudulently received almost $200,000 in FECA benefits. In furtherance of his scheme, the individual allegedly hired someone to murder the key witness who had supplied information that he was not totally disabled and actually was the owner and/or operator of four different corporations while receiving FECA benefits.[2] Despite the fact that he was convicted in federal court on these charges, under the current statute, OWCP could not terminate compensation benefits based solely on his conviction for making false statements to obtain FECA benefits.

Recommendations

1. **Congress should amend the Federal Employees' Compensation Act (FECA), and Section 1920 of Title 18, United States Code to make it a felony to knowingly and willfully make a false or misleading statement or representation in connection with the application for or receipt of FECA benefits.**

2. **Congress should amend Section 8102(a) of Title 5, United States Code to provide that an individual convicted of a violation under the amended statute or other fraud related to FECA forfeit all entitlement to any benefits as of the date of conviction.**

3. **Congress should amend Section 8116 of Title 5, United States Code to provide no benefits to an individual confined in a jail, prison, or other penal institution or correctional facility if that individual's conviction constituted a felony under applicable law.** During this period of incarceration, the dependents of an above mentioned individual would receive a percentage of the benefits that would have been payable to such individual.

4. **The Office of Investigations, Office of the Inspector General (OIG), should be provided with an additional 20 Full-Time Equivalents (FTEs) to enhance FECA fraud investigations.**

Implications

The recommended statutory changes would help reduce benefits to persons who filed fraudulent claims. As a result, the federal government would achieve a cost savings by not providing fraudulent benefits and removing the administrative costs connected with these benefits. The final recommendation would require an annual investment; but through an increase in the number of convictions involving FECA fraud the federal government would realize significant annual cost benefits.

Fiscal Impact

The 63 convictions identified during the two-year period of the FECA assessment represents a small portion of the 53,000 claims that comprise the average OWCP periodic roll inventory. However, the FECA payments to these claimants totaled approximately $1.2 million per year. Although OIG has not developed evidence of epidemic fraud, OIG has determined that some claimants (more than half of those included in the assessment) continue to draw FECA benefits after being convicted of defrauding the FECA program.

Though the additional FTEs would require an annual budget increase of $1.5 million, OIG believes the expenditure would result in 60 additional FECA fraud convictions per year. OIG estimates these convictions would result in identification of $3.4 million in declared overpayments and the termination of $1.2 million in FECA benefits per year. Based upon actuarial tables, the additional convictions would result in $62.4 million in future benefit payments avoided per year.

Annual Savings (*Millions of Dollars*)

	1994	1995	1996	1997	1998
Budget Authority	$3.3	$3.4	$3.7	$3.8	$4.1
Outlays	$3.3	$3.4	$3.7	$3.8	$4.1
Change in FTEs	+20	+20	+20	+20	+20

Endnotes

1. U.S. Department of Labor, Office of Inspector General, Office of Investigations, "Assessment of Actions Taken Against FECA Claimants Convicted of Defrauding the Program in fiscal years 1990 and 1991", June 30 1992.

2. U.S. Department of Labor, Office of the Inspector General, Semiannual Report, October 1, 1991 - March 31, 1992, p.50.

DRAFT July 26, 1993

Change the Focus of the Unemployment Insurance Benefits Quality Control Program

Background

Each State Employment Security Agency (except the Virgin Islands) is required to conduct a Benefits Quality Control (BQC) program. Several state agencies reported that this program: (1) uses scarce staff resources to identify the same types of payment errors quarter after quarter, year after year; (2) measures only one aspect of the quality of the unemployment insurance program (benefit payment accuracy); and (3) fails to improve the quality of the program. The states maintain that little attention is paid to correcting errors identified through the BQC program.

States are required to perform an in-depth audit on a sample of at least 400 paid claims (actual size determined by DOL) to determine whether the payment was proper. This involves interviewing the individual and verifying base period wages, job search contacts during the week in question, and all other aspects of the individuals's eligibility. The BQC verifications, done almost entirely in person until July 1993, averaged about 13 hours per claim audited; some took much longer. A new auditing methodology, introduced in June 1993, combines telephone, mail and facsimile with in-person contact. These procedures were designed to reduce the audit to approximately ten and a half hours. As data are verified, they are entered into a computer provided through BQC for analysis by the state and transmitted to DOL.

These audits are used to estimate each state's proper payment and payment error rates and to identify the party responsible and the reason for improper payments. The largest dollar errors identified are due to claimants' working while claiming benefits, their failure to meet work search requirements, and their being separated from the job for reasons that should disqualify them from receiving benefits. States have the primary responsibility for analyzing QC data and using it to improve program operations. Each June states must report to the public the findings for the preceding calendar year, which DOL then releases in a compendium in July. Data release is intended to get interest groups involved in UI improvement at the state level. Some states contend that DOL does make some use of the reports but appears to have done a poor job of explaining how the information gathered applies to effective management.

A review of several state employment security offices provided differing opinions on the value of BQC data. Some office directors report that the data are necessary because of the potential for overpayments in a program that distributes more than $33 billion in funds annually.

Many states take the position that something must be done because the data are not being used in a manner that justifies the cost. State recommendations range from abolishing the program to reducing the number of cases reviewed and thereby reducing the cost of the QC. Others call for a combination of actions including an explanation of how the data is improving the quality of the program.

The DOL is aware of state dissatisfaction with the BQC program. DOL agrees that, despite efforts to promote analysis and improvement actions through small funding grants, QC's evaluation mechanism has not produced the desired level of QC-inspired corrective actions. Some resources have already been diverted away from BQC. In 1994 about one tenth of the resources potentially available for BQC will be used to examine the quality of UI tax operations through the newly developed Revenue Quality Control program. However, DOL contends that BQC is indispensable because it measures total payment accuracy in a way that is considered to be statistically valid. This measure is essential for state management and federal oversight. OMB considers the UI overpayment accuracy rate an essential measure of UI's program accomplishments as required by the Chief Financial Officers Act.

Recommendation

The DOL should re-examine its attempt to improve the performance of the Unemployment Insurance program through the present in-depth audit program and give greater emphasis and importance to strategies designed to improve the effective management of the program.

This reexamination should include a substantial focus on the BQC program, and how its resources can best be divided between measurement, analysis, and direct support for program improvement. In addition, DOL should consider the extent to which the BQC performance measurement should continue to keep its existing focus on paid claims in Unemployment Insurance core programs, or should include measurement of decisions to deny claims, or activities designed to strengthen the quality of the program.

Implications

The approximately $34 million currently spent on the Unemployment Insurance Quality Control program now goes mostly to measure the accuracy of paid claims ($2 million funds RQC and roughly $1 million is diverted to state-designed studies to craft program improvements). Some of the resources could be employed more directly in drawing implications from the performance measures for program improvement, or used to improve benefit payment processes or used to measure other areas to complement existing measures (e.g. denied claims).

The present QC operational model relies heavily on state action for data analysis and program improvements; the oversight dialogue is to structure a means of making analysis/improvement happen more readily and with greater federal involvement. The net result is intended to be a shift in focus from error measurement to constructive use of the results to improve benefit payment quality and more effectively achieve the UI program's goals.

Fiscal Impact

States were allocated approximately $34 million to operate QC programs in fiscal year 1993, which is approximately 1.7 percent of the $2 billion states receive to administer the UI program. These funds can be used more efficiently if the DOL, in consultation with the state agencies which operate the program, can identify the combination of activities which will lead to program improvements. The net result is expected to be a shift of resources from performance measurement activities to data analysis and process improvement. The magnitude of the shift cannot be projected in advance of the policy review.

DRAFT July 26, 1993

Modify Unemployment Compensation to Service Members Who Voluntarily Leave Military Service

Background

Under 85 United States Code section 8521, service members who leave active duty voluntarily may receive unemployment compensation. In contrast, an individual who voluntarily leaves a job in the civilian sector is not eligible for this compensation. States pay the same rates of compensation to these former service members as to civilians who lose their employment involuntarily.

The Federal-State Unemployment Insurance Program was designed to assist individuals who lose employment for reasons beyond their control. Most military personnel separating from service do so voluntarily, although the percentage leaving service involuntarily is projected to increase dramatically for the next five years. Although the general public would not seek to reduce benefits for involuntarily separating service members, the current law appears inequitably favorable to veterans who leave service voluntarily.

The rationale for the current eligibility scheme equates service members to civilian contract employees. Enlisted service members must sign an enlistment contract for a set term. Normally, contract employees can receive unemployment compensation at the end of their contracts even if the employee does not seek extension of the contract. Thus, as long as the service member completes 180 days of service and meets character of discharge criteria, he or she is eligible for unemployment compensation.

With some gaps in coverage, service members have received unemployment compensation or a similar benefit since World War II. Under Public Law 78-346, the Servicemens' Readjustment Act of 1944, service members were automatically entitled to receive $20 per week for 52 weeks once they left active duty. This benefit, commonly known as the "52-20 Club," was in lieu of unemployment compensation. Through the program's termination in 1950, the Veterans Administration paid this benefit directly to veterans. Public Law 82-550, the Veterans' Readjustment Assistance Act of 1952, instituted Unemployment Compensation for Veterans, payable for 26 weeks at $26 per week. This benefit covered service only between June 27, 1950, and January 31, 1955. Again, the Veterans Administration paid the benefit. Because Public Law 82-550 did not include an ending date for veterans' entitlement to the benefit, President Eisenhower issued a proclamation designating a final date of January 31, 1960.

In 1958, Public Law 85-848 established the basis for the current program, with eligibility for all service members leaving active duty to receive unemployment compensation at the same rate and for the same duration as any civilian in any state. States could deny the benefit only if the military discharged or released an individual for a disqualifying reason.

In 1981, David Stockman, the Director of the Office of Management and Budget, successfully guided through the Congress a bill that eliminated this special eligibility for service members voluntarily leaving active duty. Immediately, veterans service organizations began a relentless campaign to restore the benefit, achieving partial success by the end of President Reagan's first term. The Congress restored the benefit, but service members were only authorized to receive unemployment compensation for 13 weeks. In 1991, after Operation Desert Storm, the Congress extended the length of unemployment compensation benefits for service members to equal the period for civilians.

Except for the liberalized eligibility for unemployment compensation, service members do not receive greater unemployment compensation benefits than other entitled individuals. The rate of payment and the time during which service members can receive unemployment compensation is the same as for civilian sector employees. States pay up to 26 weeks in basic benefits. After that period, the Federal Government can pay unemployment compensation for an additional 26 weeks in areas of high unemployment or 20 weeks in other areas. On July 11, 1993, this additional federal benefit reverted to 15 weeks and 10 weeks respectively. There is no current momentum on the Hill to keep the longer benefit terms.

Veterans deserve every consideration to help them successfully reenter the civilian economy, but the fiscal condition of the federal government argues against additional benefits of this type. Moreover, given the wide range of assistance available to service members and veterans, it is difficult to justify continuance of this special unemployment compensation benefit to voluntarily separating service members. Upon voluntary separation, a large number of service members will draw retirement pay or payment under one of the voluntary separation incentive and special separation benefit programs. In the next several years, there should be very few service members separating voluntarily who do not receive either retirement pay or some form of financial inducement to separate.

The federal government already funds veterans' training and job service programs, such as the the Servicemembers' Occupational Conversion and Training Act (SMOCTA), the Transition Assistance Program (TAP), and the Disabled Transition Assistance Program (DTAP). Veterans electing to train or pursue further education following service may do so under the Montgomery GI Bill or, if service-disabled, in the VA Vocational Rehabilitation Program. These programs have subsistence benefits built into them. Receipt of these benefits indicates student status, which precludes receipt of unemployment benefits.

Recommendations

Congress should change the Federal-State Unemployment Insurance Program to put service members leaving active duty on the same footing as civilians who leave noncontractual employment. Voluntarily separating service members would not be eligible for unemployment insurance.

Implications

Service and veterans organizations will undoubtedly oppose this change, arguing that military service is a contractual obligation and is intrinsically different from most civilian employment. They may also argue that many service members will leave active duty with skills not readily useful to civilian employers, reducing their immediate employability. In addition, they may present the difference in Unemployment Insurance as a basic inducement to enter military service voluntarily, although doubtless very few newly sworn-in service members make their service commitments to gain the possibility of unemployment benefits several years in the future.

The implementation of this recommendation will restore equity to the award of Unemployment Insurance to service members. Nearly all civilian workers will approve of this change and see it as a fairness issue. This will even include former service members, many of whom never availed themselves of Unemployment Insurance following discharge or release from active duty. For service members who leave active duty without marketable skills, the Department of Veterans Affairs provides education, training, and vocational rehabilitation for the large majority to obtain the needed skills and knowledge. While in training, however, these individuals are not eligible for unemployment insurance. Military service is unique in many respects, but none of these argues strongly enough for the preservation of this inequitable provision of unemployment insurance benefits to voluntarily separating service members who can plan well ahead to prepare for adjustment to the civilian sector.

Fiscal Impact

The Congressional Budget Office estimates that the cumulative savings in outlays from fiscal year 1994 though 1998 would be $1.4 billion. These savings are the same for both budget authority and outlays, broken down as follows:

DRAFT July 26, 1993

	In Millions of Dollars[1]				
	1994	1995	1996	1997	1998
Budget Authority	$320	$280	$270	$260	$270
Outlay	$320	$280	$270	$260	$270
Change in FTEs	0	0	0	0	0

1. Congressional Budget Office, *Reducing the Deficit: Spending and Revenue Options*. (Washington, D.C.: U.S. Government Printing Office , February 1993), p. 98.

Section III
Agency Reinvention Activities

Draft, July 20, 1993

Agency Reinvention Activities

Goals for Reinvention

Between the kickoff of the Reinventing DOL Program on April 29 and President Clinton's acceptance of Vice President Gore's National Performance Review report on September 7, the Department of Labor (DOL) sought to lay the foundation for a long-term, successful effort to reinvent the department.

DOL began by responding fully and creatively to the Vice President's request for participation in the National Performance Review. In an effort that began in January, the department's work to refine its mission and critical objectives became the foundation upon which DOL would build a reinvention process.

Since taking office, Secretary Robert Reich has repeatedly sent the message to DOL employees that this is a new era, one in which their ideas and proposals for improvement are wholeheartedly sought. One way DOL sends this message is by following through quickly on proposals that provide immediate payback. This shows that DOL takes the reinvention challenge seriously. The department wants to demonstrate that this is not just a rerun of old and discredited management improvement programs.

Getting Started

DOL is building its Reinvention Program on the premise that it needs to examine its programs and initiatives at all levels of the department. As a result, DOL has created a three-pronged approach to review and approve proposals to reinvent and improve DOL programs and activities. The department has created three levels of teams: Agency Reinvention Teams, Functional Reinvention Teams, and a Leadership Team.

Agency Reinvention Teams. DOL has set up separate teams in all of its large agencies. These agencies include: the Bureau of Labor Statistics (BLS), Employment and Training Administration (ETA), Employment Standards Administration (ESA), Mine Safety and Health Administration (MSHA), Office of the Assistant Secretary for Administration and Management (OSAM), Office of Inspector General (OIG), Occupational Safety and Health

Administration (OSHA), Pension and Welfare Benefits Administration (PWBA), and Office of the Solicitor (SOL). Teams will also be established in most of the smaller agencies.

The Reinventing DOL Program asks the agencies to examine their own programs and practices. The department recognizes that any examination of current practice would fail without full employee involvement. Thus, DOL determined the composition of the teams in partnership with the unions to be sure that the teams are inclusive of all perspectives.

Functional Reinvention Teams. These cross-cutting reinvention teams are examining issues of relevance and concern departmentwide or to several DOL agencies. These teams are looking at generic issues such as enforcement and adjudication, employment and training, and human resources, to name a few.

Leadership Team. This team provides general direction and policy for operating the Reinventing DOL program. The team began by publicizing the program and encouraging all employees to submit ideas. The Leadership Team has the responsibility for overseeing the agency and functional reinvention teams. While agency teams have a large measure of autonomy, the functional teams are proposing changes that require review by the Leadership Team. Finally, the Leadership Team serves as the bridge between DOL and the National Performance Review.

Employee Involvement

In keeping with its commitment to give all employees an opportunity to participate in reinventing the department, DOL has already completed several activities. The department began with a kickoff meeting for all department employees in Washington on April 29, 1993. Tom Peters, the author of *In Search of Excellence*, was the keynote speaker.

In addition, the Secretary has held three employee town meetings to ask for ideas from across the department. Vice President Gore attended one of these meetings and, together with Secretary Reich, fielded employees' questions and suggestions.

The Department has also invited all employees to participate in reinvention through a program called PRIDE (Proposals to Reinvent and Improve DOL Effectiveness). DOL has sent a tear-off form to all DOL workers. The form asks for their proposals for improving customer service, enhancing program efficiency, dropping unnecessary rules, and improving morale by empowering employees. To date, employees have already submitted hundreds of

PRIDE forms.

In June 1993, a three-day reinvention retreat brought together a cross section of the department's management and employee leadership. The retreat participants identified more than 300 ways to improve customer service, program management and reduce costs. The most popular proposals were assigned to working groups for further development at the retreat. The remaining ideas then went to the DOL functional and agency reinvention teams for review.

The Secretary took immediate action to accept, reject or assign responsibility for further review of the proposals that received retreat working group development. The Secretary then gave each team responsible for further review of a proposal ninety days to act and report to the DOL retreat participants. Examples of DOL's proposals include volunteering to pilot performance budgeting concepts, automating its time and attendance system, implementing a flexible workplace pilot program, and eliminating one third of DOL required forms and reports.

Reinvention Laboratories

DOL believes that ideal locations for Reinvention Laboratories are programs or offices where services to the public are highly visible. In these public settings, DOL is seeking to empower workers to reengineer their work processes to better accomplish their missions. As part of this, reinvention labs will, first and foremost, work from a customer orientation. They will be looking constantly to decentralize authority and empower DOL employees. Labs will find ways to promote competition within the government, believing that competition and choice leads to better service. Finally, the labs will be building performance measures that provide accurate and timely indicators of how well DOL is doing its work.

The Department has already begun work in three reinvention labs: Customer Satisfaction Surveys, One-Stop Career Guidance Centers, and the Cincinnati 2000 Program.

Customer Satisfaction Survey. The Wage and Hour Division has developed a customer survey as part of the Division's joint labor-management, quality improvement efforts.

Wage and Hour has articulated its mission as "enforce the nation's employment standards to serve and protect the present and future workers of America." In seeking ways to fulfill this mission, the Wage and Hour Division is seeking to exceed all customer requirements. They will be working through an internally designed quality model to improve both enforcement and wage determination processes.

To test its progress in meeting these goals, Wage and Hour will conduct a customer survey. The survey will measure customer satisfaction and expectations among workers whose complaints the division has investigated. They are piloting the survey in three district offices before doing the survey nationwide.

One-Stop Career Guidance Centers. The Employment and Training Administration is working to develop one-stop career guidance centers. These centers will give job seekers and employers a common point of access for career guidance activities. These activities, until now, have been available only through separate offices.

Job seekers will be able to go to a one-stop center and get most of what they need to find desirable work. In these centers, individual job seekers will find information on labor markets, jobs, education and training programs. These information programs will be paired with skills assessment and career counseling. Employers will also be served by the centers through screening, recruitment and testing services. This array of service in one location should go far to empower those who are unemployed or underemployed.

These centers will move the department away from the fragmented delivery system of training and employment services, to a system that is customer focused and market responsive. These centers will offer universal coverage and access, and they will be performance and outcome based.

The Cincinnati 2000 Program in OSHA. OSHA, in its Cincinnati 2000 program, is experimenting with a new style of management. Procedural rules now require supervisory review for even the most minor action. Following these rules leave little time for true leadership.

The Cincinnati 2000 program focuses on changing the way OSHA does its business by emphasizing teamwork, self-reliance and employee input. The goal of the project is to improve the quality of work by challenging employees and shifting accountability from management to the employees.

This project will give compliance officers wide latitude to manage their inspections.

The program will free up supervisory time up and allow the supervisors to function as executives, truly managing their employees and troubleshooting where needed.

Employees in DOL may apply to have their program or office chosen as a reinvention laboratory. DOL has sent a Reinvention Laboratory Application Form to all workers with this in mind.

Looking Forward

After September, DOL will dramatically intensify its efforts to ensure that reinvention becomes an integral part of departmental thinking and effort. DOL will magnify its drive to create a flatter organizational structure. This will assure that the ideas of the front-line staff flow readily to the decision-makers without extraneous levels of review. A flatter structure will also serve to enhance and accelerate the decision-making process itself.

In addition, the department recognizes that some improvement proposals from the teams will require in-depth analysis, more time, or more involvement of other parties such as the Congress. The Department of Labor is in the reinvention business for the long haul.

Section IV
Fiscal Impact Summary

DEPARTMENT OF LABOR
FISCAL IMPLICATIONS SUMMARY

CHANGE IN BUDGET AUTHORITY
Numbers in Millions

Ch. Ref.	Recommendation	Fiscal Year 1994	1995	1996	1997	1998	5-YRS	Change in FTEs
EL 1	Enhance Reemployment Programs for Occupationally Disabled Federal Employees	($0.3)	$28.0	$30.3	$21.3	$23.2	$102.5	0.0
EL 2	Develop a Single Comprehensive Worker Adjustment Strategy	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	0.0
EL 3	Expand Negotiated Rulemaking and Improve Up-front Teamwork on Regulations	$0.0	$1.3	$1.3	$1.3	$1.3	$5.2	0.0
EL 4	Expand the Use of Alternative Dispute Resolution	$0.0	$2.2	$2.2	$2.2	$2.2	$8.8	0.0
EL 5	Automate the Processing of ERISA Financial Reports (Forms 5500) to Cut Costs and Delays in Obtaining Pension Plan Data	($5.0)	$2.1	$8.4	$12.6	$15.8	$33.9	(332.0)
EL 6	Amend the ERISA Requirement for Summary Plan Descriptions	$0.0	$0.1	$0.1	$0.1	$0.1	$0.2	0.0
EL 7	Redirect MSHA's Role in Mine Equipment Regulation	$0.4	$0.0	$0.0	$0.0	$0.0	$0.4	(6.0)
EL 8	One-stop Shopping	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	0.0
EL 9	Shift the Responsibility for Ensuring Workplace Safety and Health	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	0.0
EL 10	Create a Virtual "Enforcement Branch" Within the Department of Labor to Rationalize the Enforcement Image to the Customer and Capitalize on Commonality	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	0.0
EL 11	Apply Information Technology to Expedite Wage Determinations for Federal Contracts	($0.3)	($0.2)	($0.1)	$0.2	$0.3	($0.1)	0.0
EL 12	Provide Research and Development Authority for the Department of Labor's Mine Safety and Health Program	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	0.0
EL 13	Increase Assistance to States in Collecting Delinquent Unemployment Insurance Trust Fund Contributions	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	0.0
EL 14	Revise and Update the Consumer Price Index	$0.0	($4.0)	($8.0)	($15.0)	($19.0)	($46.0)	277.0
EL 15	Improve the Delivery of Legal Services by the Office of the Solicitor	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	0.0
EL 16	Restructure Public Affairs at the Department of Labor	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	0.0
EL 17	Transfer the Veterans' Employment and Training Service to the Employment and Training Administration	$11.0	$11.0	$12.0	$12.0	$13.0	$59.0	(200.0)
EL 18	Reduce Federal Employees' Compensation Act Fraud	$3.3	$3.4	$3.7	$3.8	$4.1	$18.3	20.0
EL 19	Change the Focus of the Unemployment Insurance Benefits Quality Control Program	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	0.0
EL 20	Modify Unemployment Compensation to Service Members Who Voluntarily Leave Military Service	$320.0	$280.0	$270.0	$260.0	$270.0	$1,400.0	0.0
	Total, Department of Labor	$329.1	$323.9	$319.9	$298.5	$311.0	$1,582.2	(241.0)

CHANGE IN OUTLAYS
Numbers in Millions

Ch. Ref.	Recommendation	Fiscal Year 1994	1995	1996	1997	1998	5-YRS	Change in FTEs
EL 1	Enhance Reemployment Programs for Occupationally Disabled Federal Employees	($0.3)	$28.0	$30.3	$21.3	$23.2	$102.5	0.0
EL 2	Develop a Single Comprehensive Worker Adjustment Strategy	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	0.0
EL 3	Expand Negotiated Rulemaking and Improve Up-front Teamwork on Regulations	$0.0	$1.3	$1.3	$1.3	$1.3	$5.2	0.0
EL 4	Expand the Use of Alternative Dispute Resolution	$0.0	$2.2	$2.2	$2.2	$2.2	$8.8	0.0
EL 5	Automate the Processing of ERISA Financial Reports (Forms 5500) to Cut Costs and Delays in Obtaining Pension Plan Data	($1.7)	($1.3)	$8.2	$12.4	$15.7	$33.3	(332.0)

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EL	6 Amend the ERISA Requirement for Summary Plan Descriptions	$0.0	$0.1	$0.1	$0.1	$0.1	$0.2	0.0
EL	7 Redirect MSHA's Role in Mine Equipment Regulation	$0.4	$0.0	$0.0	$0.0	$0.0	$0.4	(6.0)
EL	8 One-stop Shopping	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	0.0
EL	9 Shift the Responsibility for Ensuring Workplace Safety and Health	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	0.0
EL	10 Create a Virtual "Enforcement Branch" Within the Department of Labor to Rationalize the Enforcement Image to the Customer and Capitalize on Commonality	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	0.0
EL	11 Apply Information Technology to Expedite Wage Determinations for Federal Contracts	($0.3)	($0.2)	($0.1)	$0.2	$0.3	($0.1)	0.0
EL	12 Provide Research and Development Authority for the Department of Labor's Mine Safety and Health Program	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	0.0
EL	13 Increase Assistance to States in Collecting Delinquent Unemployment Insurance Trust Fund Contributions	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	0.0
EL	14 Revise and Update the Consumer Price Index	$0.0	($4.0)	($8.0)	($15.0)	($19.0)	($46.0)	277.0
EL	15 Improve the Delivery of Legal Services by the Office of the Solicitor	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	0.0
EL	16 Restructure Public Affairs at the Department of Labor	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	0.0
EL	17 Transfer the Veterans' Employment and Training Service to the Employment and Training Administration	$11.0	$11.0	$12.0	$12.0	$13.0	$59.0	(200.0)
EL	18 Reduce Federal Employees' Compensation Act Fraud	$3.3	$3.4	$3.7	$3.8	$4.1	$18.3	20.0
EL	19 Change the Focus of the Unemployment Insurance Benefits Quality Control Program	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	0.0
EL	20 Modify Unemployment Compensation to Service Members Who Voluntarily Leave Military Service	$320.0	$280.0	$270.0	$260.0	$270.0	$1,400.0	0.0
	Total, Department of Labor	$332.4	$320.5	$319.7	$298.2	$310.8	$1,581.6	(241.0)

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Section V
Appendices

Acknowledgements and Contributor list (forthcoming)

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.

Divider Title: **ONE STOP SHOPPING**

DRAFT -- FOR INTERNAL NPR USE

CREATING A CUSTOMER DRIVEN WORKFORCE DEVELOPMENT SYSTEM

NPR Report Number xx
September 1993

Contributing to this report: Suzanne Teegarden (Team Leader), Stephen Ruud, Susan Moffitt, and Larry Good

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Issue 2 - Create A Boundary Spanning Workforce Development System

Background

Recommendations

1STOP 2.1. Create a Workforce Development Council for Strategic Planning

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1STOP 2.2. Implement "Bottoms-Up" Waiver Authority

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Introduction: The Need to Build a New Market For Employment, Training, And Continuing Education

The Demand for a Skilled Workforce

The future of the American economy depends on the skills of its people. Structural change in the U.S. economy has caused our workforce to face the need, challenge and opportunity to pursue multiple careers and jobs over any one individual's work life. Permanent job security in any one occupation or with any one employer can no longer be assumed. Those occupations and employers offering some stability are most likely those that require the continual addition of skills.

Study after study has argued that if America is to remain a high-wage country, it must be a high-skills country.[1] According to a Department of Labor study, workers who needed training to get their jobs earned on average $10,000 a year more in salary than those who did not require training. Workers who did not need training for their jobs had unemployment rates three times higher than those who did.[2]

The changed economy creates the demand for high quality labor market information and, in many cases, training and education for new skills. New, existing, and unemployed workers need information and training to find and maintain high wage employment. Employers need it to find and maintain competitiveness through a highly skilled workforce.

Current Programs

Unfortunately the public sector now addresses the demand for employment, skills, and knowledge through a multiplicity of government programs that are frequently confusing, difficult to access, and resistant to effective coordination. A 1993 GAO report to Congress counted 150 separate employment and training programs located in 14 separate federal departments or independent agencies, funded at over $24 billion a year.[3] The federal funding is also delivered through many different paths. Some programs are operated directly by federal agencies; others by state or local agencies. In some instances, funding flows from a federal agency to a state agency. In other instances, it is required that those funds be passed along to specified local operators. These different federal rules and regulations, therefore, create further fragmentation at the state and local levels. For example, in New York State, there are 61 employment and training programs overseen by 16 different state agencies.[4]

Despite the large number of programs, however, the sum of these parts does not create the whole -- a comprehensive workforce development system that works for all Americans. Some of the existing programs perform well, but taken as a whole, the many programs represent a fragmented response to the needs of the people who use them.

Current national practice in employment and training programs creates the following problems:

Lack of Information. There is very little accessible information on labor market trends or the quality of different training and education courses. This makes it difficult for those seeking jobs, employees, or additional skills to make well-informed choices even when they have their own resources to spend. Additionally, job seekers may need different services from several programs, but face tremendous barriers in knowing what is available or what they may be eligible to receive.

Fragmentation. If a job seeker succeeds in locating all the necessary services, bringing together the resources of several programs is nearly impossible. Even when programs serve the same populations with similar or complementary services, they have different eligibility requirements, compliance regulations, programmatic definitions, fiscal systems, and reporting requirements. Program rules and regulations can restrict the range and timing of services, which prevent workers from changing their skills as rapidly as economic change creates new employment demands.

Inadequate Scale. Existing policies create programs for limited numbers of Americans, but do not facilitate or enable the scale of services needed to create a highly skilled workforce. The entire workforce -- whether they are employed or unemployed, young or old, rich or poor, high school drop-outs or college graduates -- needs to be able to obtain employment information, training, and education.

Lack of Leverage. Overall, "U.S. employers' investments in formal training are between $30 billion and $44 billion annually."[5] However, most public sector programs have little interaction with private sector training. This limits their ability to leverage private resources. Designed correctly, public sector training programs could be shaped to coordinate with and stimulate private investment (both individual and corporate) in employee training.

Vision For A Customer-Driven Workforce Development System

We need to create a universal, comprehensive system that allows all Americans to make informed choices about future careers and provides them with the tools to realize these choices. This does not mean that government would pay for all of the training and education required. Most of the money invested in training the American workforce will always be private money. Government can help create a market that leverages a wide range of private resources as well as public resources. This system would use technology to electronically knit together the information required for informed choices. It would allow customers to drive quality through their decisions on using its products. It would unfetter our employment and training professionals from program rules and restrictions that are outdated and overly restrictive.

The solution we propose to address these problems and needs rests on two fundamental premises. First, our workforce development system must be universal: it must help all Americans, regardless of income or work status, get the information and resources they need to acquire more skills and better jobs.

However, we cannot create such a universal system simply by adding new programs, by changing existing programs, or even by folding most existing programs into one broad grant program. If we did the latter, we would make it easier to serve low-income people. But, we would have done nothing to empower those people to find the best education, training, and job placement available at the best price. And, we would have done nothing for those Americans who are not economically disadvantaged. This leads to the second premise.

Second, to create a universal system that works for all Americans, we cannot simply create programs: we must create a functioning market for the acquisition of skills, through which all Americans can get the information and resources they need to improve their skills and careers.

We are proposing two initiatives to help build that market:

1. The creation of one stop centers for career management
2. The creation of a boundary spanning workforce development system

Introducing Market Dynamics

Issue 1 - Create One Stop Centers For Career Management

Background

Currently, many states and localities are experimenting with models of one stop shopping for employment and training. One stop centers are also a key component of the Workforce Investment Strategy that the Department of Labor (DOL) is developing. Before finalizing its plan, DOL is seeking feedback from the many constituencies concerned with workforce development issues. While DOL's plan is not yet completed, it is clear that its major features will achieve the following reinvention goals:

- Provide all Americans with access to high quality information and assistance in finding jobs and developing skills

- Create incentives for responding to customer needs and choices

- Ensure seamless and comprehensive services across public programs

The following are suggested design principles for one stop centers:

Purpose of centers: Centers should give customers high quality information and services that make it possible for them to manage career-related decisions effectively. The centers should both provide direct customer services and manage a labor market data system to support those services. All Americans are potential customers, and could use the centers whenever they need information and help in making career transitions throughout their working lives. The centers should be "honest brokers" of training and education programs, facilitating the skills and education marketplace.

One stop career management centers should be customer-driven and entrepreneurial in their operation. The franchising model proposed would use competition and standards to ensure high quality services. The funding design would allow centers to generate customer payment for services rather than depend solely on a direct federal appropriation.

Core Services: A number of career management services should be available to anyone seeking them at no cost. These include:

1. Local and national labor market information
2. Basic assessment of customer skills and needs
3. Help in career planning and job search
4. Three types of information about training and education providers:

   a. Choices -- what is available in the local labor market
   b. Performance information -- how the service provider has done at meeting defined performance measures
   c. Customer satisfaction evaluations -- feedback from previous customers about the services received
5. Screening for financial aid/program eligibility
6. Basic screening and recruitment for employers

Optional Services: Each center could offer additional services on a fee-for-service basis, which could be paid for either by the individual customer or by public funding. The specifics would depend upon the needs in a labor market and the creativity of the center operators. These services would be consistent with the fundamental mission of the centers, but would be more intensive than those offered as part of the core services. Some examples of possible optional services include:

1. Comprehensive testing
2. In-depth career counseling
3. Outplacement services for employers
4. Custom-designed recruitment for employers
5. Custom-designed group workshops
6. Sale of materials, such as books, videos, etc.

Franchise Model and Standards: The centers should be established and managed through a competitive process, with a shared responsibility between the federal government, states and communities. The competition should be open to anyone who can meet federally-established franchise standards.

The federal role should be to establish national franchise standards, which emphasize high quality customer service, provide that core services will be offered to all comers, and ensure public accountability. A nationwide marketing strategy should also be developed to provide the centers with a common and positive identity and customers with greater access to these centers through easier recognition.

Governors should be responsible for conducting a competitive process for selecting center operators based upon the national standards. To ensure that market forces help govern quality through customer choice, multiple franchises should be awarded. Governors could choose to share or delegate the franchise awarding responsibility to local workforce investment boards where they exist.

Funding Strategy: Federal funds from two sources could support core services: the appropriation for one stop shopping proposed within DOL's budget and the labor exchange portion of Employment Service funding. States and localities could also choose bring together funds from other sources -- Title II programs, EDWAA, etc. -- to support core services.

Centers could also generate revenue from providing optional services which would be paid for by the customers with their own resources or by public funding from other types of employment and training programs. This approach both limits the required direct federal appropriation and requires the centers to be responsive to individuals.

Flexibility for State and Local Initiatives: A number of states and communities have been experimenting with different models of integrated services and through these efforts are creating a rich body of experience and knowledge. Some states have chosen to focus on the location of service delivery. For example, Wisconsin's job centers, house multiple job training programs under one roof.[6] Other initiatives to co-locate services have occurred in Pima County, Arizona, Anoka County, Minnesota, and Indianapolis, Indiana. Camden County, New Jersey[7] and the City of Everett, Washington,[8] conveniently offer a wide range of government services at shopping malls. Other projects, such as New York's Gateway initiative, have focused on using technology to link training and education information and services, enabling customers to enter the system from numerous locations.[9] Michigan, through the Opportunity Card, and California, through the Edu-Card, have also explored methods of using technology to make information and services more accessible to customers.

Within the framework of broad design principles, states and communities should be given the flexibility to build on their current efforts rather than follow a rigid one-size-fits-all formula. Experimentation at the state and local levels will allow centers to tailor themselves to the needs of the community, learn from each others successes and failures, and foster innovation.

Achieving Success: Three Key Recommendations

For one stop career management centers to be effective, they must be designed to encourage excellent customer service and innovative, high quality service delivery. As DOL, states, and localities begin the implementation of this network of centers, we believe the following recommendations will help achieve these goals.

1. Ensure Effectiveness Through Performance-Based Competition

a. Create competition for one stop awards

Currently, the majority of federal employment and training funds flows through the states to a system of presumed service deliverers -- employment service offices, service delivery areas, vocational education schools. While some of the individual agencies are effective, the funding decisions for these agencies are not based on need or performance.

States and oversight boards currently have limited means of improving the performance of service providers, relying mainly on a few carrots of discretionary dollars available for those organizations that perform well and a few sticks of publishing performance data. Removing key personnel or decertifying existing agencies can be a difficult and highly political process that is usually undertaken only in circumstances of extreme mismanagement or fraud and abuse.

Of even greater concern, the users of these agencies and programs have few, if any, mechanisms for choosing among service providers, influencing program design, or influencing the quality or responsiveness of services. Organizations that are monopoly providers can too easily take their customers for granted. These organizations generally have no built-in signals to determine whether programs and services meet users' needs: there are no rewards for outstanding performance or penalties for shoddy service.

Creating new incentives for performance should be an essential component of one stop shopping. Requiring organizations or consortiums of organizations to compete for career management center franchises can encourage greater performance. Those providers now performing well will be able to continue. However, competition should also introduce new types of providers and may lead to existing providers creating new types of organizations to provide services: consortiums, umbrella agreements, or nonprofit corporations. In fact, some states and localities have already developed consortiums to enable the delivery of more integrated services.

The funding for one stop shopping is new money in the system: it does not yet have rules or presumed operators. This is the time to establish, through competition, that funding will be responsive to performance.

Competition for one stop awards should occur on two levels: first, DOL should begin its phase-in of one stop awards through a competitive process of state awards; second, DOL's implementation of one stop should require Governors to establish a competitive process for selecting providers.

b. Allow a wide range of operators to compete for franchises

The competition for franchises should be open to anyone, including public, non-profit and for-profit organizations, who can meet federally-established franchise standards. The range of potential franchisees includes labor unions, local employment service offices, JTPA agencies, community-based organizations, temporary help agencies, outplacement firms, community colleges, and more.

2. Ensure Implementation of One Stop Builds Effective Program Integration

The effectiveness of one stop centers depends partly on their ability to bring together different programs and resources. The creation of one stop career centers should build greater integration by: a) ensuring that the implementation of one stop centers does not create parallel systems of labor market exchange; b) stimulating the coordination of integrated state workforce development councils; c) encouraging the coordination and consolidation of multiple local oversight boards; d) providing relief from burdensome rules and regulations; and e) building system capacity.

a. Ensure one stop centers do not create parallel systems of labor market exchange

One stop centers are being created to provide improved choice to job and training seekers. Therefore, it is desirable to have a system of multiple operators that customers can choose among for labor market exchange services. However, it is not desirable to have multiple systems providing the same function of labor market exchange. Customers would not be well served by this type of fragmentation nor do the resources exist to support duplicative systems. Therefore, once one stop center providers are selected, it will be necessary to ensure that these centers do not operate as a parallel system to current programs of labor market exchange.

The Department of Labor should create a process of over time moving current resources for labor market exchange functions to those operators winning the one stop awards. This will help ensure that resources are concentrated in sufficient quantity to provide the best set of services to those seeking jobs and information on training and education.

b. Stimulate more effective state governance of workforce development

The current system that divides employment and training programs into categories has created a fragmented system of oversight and policy direction at the state level. There are state level oversight bodies for the Job Training Partnership Act programs, for the Employment Service, for Vocational Education schools, for the unemployment insurance system, for community colleges. Each is responsible for a specific funding stream: none have responsibility for overall workforce development. Some states have consolidated some of these oversight boards and/or created "super" boards with the purpose of more effectively developing and overseeing a comprehensive workforce development system. For example, New Jersey has created a State Employment and Training Commission that connects the Job Training Coordinating Council, the State Council on Vocational Education, the Adult Education and Literacy Council, the private sector and labor organizations.[10] This trend should be encouraged.

States should demonstrate that they have effectively coordinated oversight of workforce development systems in order to qualify for one stop funding.

c. Encourage more effective local oversight of workforce development

Local labor market boards are essential to oversee the career management centers and the local workforce development system. However, current categorical programs have created two sources of fragmentation in local governance structures. First, there are separate local oversight bodies for different employment and training programs. Second, there are often different oversight bodies for the same program within one labor market area. For example, in the Boston area, there are five separate oversight bodies for JTPA programs alone.[11] When a local labor market is divided among several governance boards, it is difficult to develop appropriate policies and programs and attract effective private sector participation.

There have been some initiatives not only to combine multiple governance boards within localities, but also to combine boards to create labor market-wide oversight. Bringing together multiple programs and multiple funding sources is crucial to centers. Therefore, these efforts to reform local program governance structures should be encouraged. States should demonstrate their willingness and ability to create better systems of local oversight to qualify for one stop awards.

d. Provide relief from burdensome rules and regulations

The fragmentation of federal funding sources creates burdensome and expensive administrative efforts at state and local levels. For example, several agencies in Rochester, New York recently decided to conduct a joint marketing campaign for a new integrated training initiative. Although one agency was willing to pay all of the $15,000 needed for the campaign, its funding restrictions would not allow any agency money to be used for projects that would reach anyone outside the specified target population. Therefore, the agencies needed to go through five different administrative funding procedures to collect the $15,000. The project director estimates the administrative costs of this requirement exceeded the $15,000 used for the marketing campaign.[12]

Gaining greater operational flexibility is more important to many states and local program operators than the possibility of additional funding from one stop awards. The recommendations in the next section on creating a boundary spanning workforce development system address methods of more permanently providing flexibility through the standardization of terms, fiscal and administrative systems. However, in the short-term, the Department of Labor's legislation on one stop should seek broad authority to waive certain rules and regulations as a means of providing more effective services, promoting the integration of separate funding streams, and implementing a one stop system.

Waiver authority should also be responsive to requests not previously anticipated by allowing states and localities to propose waivers. For instance, one stop proposals submitted to DOL for the initial funding awards could describe specific areas where waivers are needed and the positive impacts these waivers would achieve. States could receive the additional flexibility needed for integrating funding streams without necessarily obtaining funding from the initial round of one stop center awards. This would allow the flexibility achieved through waivers to go beyond the few states receiving initial one stop awards.

The DOL legislation implementing one stop centers could also allow a process whereby certain laws and regulations consistently identified as needing waivers would be permanently changed or eliminated.

(A later section of the NPR report describes a "Bottom Up" waiver process that would facilitate the integration of funding from a number of federal agencies. For instance, this process would allow states and localities to combine funds from the Department of Labor, Education, and Health and Human Services to facilitate one stop centers. This is critical to the ability of one stop centers and/or networks to have fully integrated programs across funding streams.)

e. Build greater system capacity

Competition, greater programmatic flexibility, and increased customer choice and feedback are important measures for creating high quality one stop career centers and generally improving the overall effectiveness of our workforce development system. However, just as we recognize the importance of the private sector investments in workforce skills and education, we need to also invest in the skills of those delivering public sector services. The Department of Labor should ensure that its implementation of one stop centers provides the resources for capacity building including methods of circulating information on best practice and the availability of staff training resources at the state and local levels.

3. Remove Federal Barriers to One Stop Operators Retaining Program Income

A fundamental design principle of the one stop career management centers is that operators must be both allowed and encouraged to generate and keep fee-for-service revenue to complement the public funds being devoted to the centers.

This principle is important for two reasons. First, the career centers need to serve the entire workforce, an extremely large undertaking. This approach will allow the federal investment to leverage private spending for career management services and make it possible to meet that challenge.

Second, it will allow centers to excel, to be fully market responsive, and not be forced to limit their customer services to those activities funded with tax dollars. Allowing centers to retain income increases substantially the likelihood of long-term success for the career centers. The greater the range of high quality service that can be offered, the more reasons potential customers will have to use the centers.

The funding model for the centers is based upon a two-tier strategy. A first tier of core services will be provided to all customers supported by federal funds. A second tier of more intensive services could be provided on a fee-for-service basis. The centers could receive fees for these services in two ways: 1) by simply accepting cash from a customer; and 2) by receiving payment from job training and education programs for which the customer is eligible and enrolled.

Over time, many centers could realize greater fee revenues than federal revenues, thereby ensuring continuing delivery of high quality services while receiving only limited federal funding.

For this strategy to work, legislation must explicitly permit centers to accept and keep fee-for-service revenue. (See NPR recommendation on user fees). Federal stipulations would be a major step toward allowing Centers to keep program income. However, some states may also need to take legislative action to allow public agencies to retain program income.

Implications

The purpose of the above recommendations is to use public resources to create a market for employment and training. If implemented this would be achieved by:

- Improving the quality and availability of information allowing customers to make informed choices

- Introducing performance based competition in the awarding of one stop franchises

- Replacing the fragmentation of separate funding streams with a system organized around the needs of customers

- Leveraging private and public resources to better achieve the scale needed to create a truly universal workforce development system

Fiscal Impact

The fiscal impact of implementing one stop career management centers should be considered within the context of the Administration's workforce investment strategy. Additional resources for training and educating the workforce can result in a stronger economy - *if invested effectively*. The point of the above recommendations is to ensure that both existing resources and potential future investments in workforce development are used as effectively as possible.

Better integration of programs may reduce the administrative burden, and therefore the cost of operating these programs. However, in this instance, these administrative funds should be re-channeled into program services. Additionally, allowing one stop centers to charge for services could generate program income. These fees will allow the centers to leverage additional resources from users (employers and employees that can afford to pay) that allow the system to achieve universal reach while providing improved information to those individuals who now are eligible for public sector funding.

Currently a $42 million appropriation to implement one stop shopping is being considered in Congress. The Department of Labor is considering using some discretionary funds to make a total $50 million available for initial one stop awards. Additionally, funding now used to support labor market exchange functions could be applied to support one stop centers.

Issue 2 - Build A Boundary Spanning Workforce Development System

Background

The biggest single barrier to creating an integrated workforce development system is the categorical nature of federal funds. There are federal programs for welfare recipients, food stamp recipients, displaced homemakers, youth in school, youth out of school, workers displaced by trade impacts, workers displaced by the spotted owl, etc. Those within these categories deserve both federal assistance and a program that is shaped to meet special needs. However, currently many of the key elements of program design are made in law and regulation at the level most removed from the user; and there is little flexibility to alter that design when it does not work.

Efforts at the state and local level to coordinate and combine funding streams have been hampered because each stream has its own rules. Some efforts have resulted in simply bringing together separate programs that maintain their separate character under the same roof. While some synergy may be created by this co-location, it is inadequate to achieve integrated services.

The implementation of the Department of Labor's plan for one stop centers will be a major step in building a more integrated system. However, ultimately all federal agencies that offer workforce development programs will need to join in helping to reduce the current structural fragmentation of these programs. This fragmentation creates a major barrier to building an integrated and comprehensive workforce development system. Program definitions, fiscal systems, performance measures, and reporting periods need to be compatible and consistent at the federal level to achieve program integration at the local level. The public sector must create a new way of doing business, one where accountability is based on effective leadership, clear missions and performance rather than onerous rules and regulations. As a means of building a boundary spanning workforce development system and creating the foundation for local program integration we recommend the following:

Recommendations

1. Create a Workforce Development Council for Strategic Planning on Workforce Development

The National Economic Council (NEC) should convene a multi-agency team that would create and implement a strategic plan across the government on workforce development. At a minimum, this team would include the Department of Labor, the Department of Education, the Department of Health and Human Services, and the Office of Management and Budget. The team should actively seek input from state and local representatives, other federal agencies with employment and training programs (Department of Defense, Department of

Agriculture, Department of Commerce, and the Veterans Administration), and employee and employer representatives.

Within the first year this team would provide leadership on a set of tasks that would facilitate the ability to coordinate/integrate separate funding streams. These tasks would include:

a. Develop a core set of uniform terms and definitions

Creating common definitions across different program funding streams is key to coordinating separate employment and training programs. This standardization will allow the possibility of joint intake forms, comparisons among programs, and the development of common data elements. This will also facilitate using more sophisticated technologies to improve information, services, and access.

Many of the current definitions of terms have been created administratively through agency policies and regulations. These could be changed without legislation. However, some definitions have been legislatively created.

In 1992, Congress amended the Job Training Partnership Act (JTPA) to require the Department of Labor to lead an inter-agency work group to submit a report to Congress that identifies a core of consistently defined data elements and definitions for a set of employment and training programs (JTPA, the Perkins Act, Job Opportunities and Basic Skills and Title V of the Older Americans Act) by January 1, 1994. The report must also include "an analysis of the benefits of the adoption of the data elements and definitions."[13] This is an important step in facilitating program integration. However, this report does not cover all workforce development programs; and it is not clear how the recommendations would be implemented.

The multi-agency team should review the work group report and help its implementation, seek the standardization of terms across all other workforce development programs, and ensure that states, local service providers and customers participate in the standardization of terms process.

b. Standardize fiscal and administrative procedures

Each individual employment and training program has its own rules and regulations on fiscal systems and reporting. At a minimum, this creates an administrative burden for program operators attempting to coordinate funding streams. Of even more concern, these differing fiscal systems discourage the coordination needed to create comprehensive programs.

One example of the negative impact of differing systems comes from rural Allegheny County, New York. This area has been able to coordinate many of its workforce development services, and houses them all in an Employment Center. The Center tries to make the services seem as seamless as possible to customers. However, to accommodate reporting requirements, the staff at the end of the day must enter information on each customer four times, each time at a different computer terminal - once for JTPA, once for JOBS, once for the Employment Service, and once for tracking purposes.[14] Instead of spending limited resources developing methods to cross-walk the information from system to system, these discrepancies should be rationalized.

The multi-agency team should work with states and local service providers to determine where fiscal and administrative systems could be rationalized and develop a plan to achieve this. The goal should be to create the simplest fiscal system possible, such as a system where the only cost categories for reporting purposes are administration and program expenses. Implementing a more rational fiscal and administrative system across different funding streams will facilitate program coordination and, in some cases, integration.

c. Develop a complementary set of results oriented performance standards

Many of the existing employment, training, and continuing education programs have some system of measuring program performance. However, many of these measures do not provide adequate information on the quality of programs. The measures that do reflect program quality are rarely used to inform customer choice or influence funding decisions.

Additionally, some performance measures provide disincentives for service providers to take on the toughest cases. Some measures emphasize gains such as job placements, but neglect to measure achieving a certain level of performance. For instance, an individual may attain a great deal of new knowledge in a training program, but may need further education or training to secure employment. If placement is the only measure of a program, it may discourage operators from seeking participants that need the most training or underestimate the success of a program that aggressively enrolls participants in longer term education and training.

For example, several years ago an attempt to meet job placement goals caused local office staff in the Massachusetts Employment Services offices to delay referring clients to training since the offices received credit for job placement, not for training referrals. Because of the delay, individuals being referred were often more desperate, less likely to be able to support themselves while in training, and more likely to depend on public assistance for a longer period of time.[15]

The lack of an effective performance measure system contributes to a set of workforce development programs where performance is driven by detailed regulations and laws rather than results. This burdens program operators with cumbersome structures and can undermine effective performance by deflecting resources from services to administration. It also does not necessarily lead to accountability.

With the assistance of states and local service providers the multi-agency team should provide leadership to a review existing performance standards and their effectiveness. While different programs will -- and should-- have different performance standards, the team should identify key workforce development initiatives that encompass groups of programs with the same desired outcomes.

For instance, a framework could be established to address four performance areas: academic competency attainment, occupational competency attainment, employment/educational coordination, and employment retention and earnings. The first three measures could provide a common framework for school to work programs; the last three for adult workforce development programs.

The multi-agency team should also establish a continuous process for reviewing and adjusting performance measures.

d. <u>Improve qualitative information on program performance</u>

Performance measures are important, but can not always provide the qualitative information program operators need to improve programs or that users and program funders need to evaluate results. Unfortunately, in many cases audits have been the only source of information on programs. Audits, performance management techniques, and evaluation are very different methods of obtaining information on a program. Each has an important function, but use different tools, assumptions, and methodologies. Performance management tools are useful for state and local operators to continually evaluate and improve their efforts; evaluations are useful for assessing overall program results across many individual programs; audits are useful for assessing fraud, abuse, and compliance.

The team should provide leadership to an analysis of current methods of obtaining and analyzing information on programs. It should then determine whether existing resources are appropriately distributed among audits, evaluations, and performance management tools, and set clear missions for each type of activity. This work should lead to a plan for ensuring a system that more effectively provides program information.

(Also see NPR recommendation on the Office of Inspector General.)

2. Implement "Bottoms-Up" Grant Consolidation

The implementation steps to create a more comprehensive, universal, customer driven, and integrated workforce development system will take time. However, there are states and localities actively experimenting with this development that could be more effective if certain types of federal rules and regulations could be waived. The NPR State and Local Team has developed a recommendation on "Bottom-Up Grant Consolidation." If instituted this recommendation would allow states and localities to bring together existing resources to more effectively provide employment, training, and continuing education programs.

Implications

The process of change often combines the bold with the prosaic. For instance, standardizing definitions and fiscal systems, creating complementary performance measures, and improving methods of receiving information on programs may appear to be the dull details of institutional life. However, if these details are not boldly and completely changed they will continue to transform dedicated and creative public employees into rule driven bureaucrats. It will take leadership to achieve this. Therefore, we are recommending the creation of a Workforce Development Council. This multi-agency team must represent something more than just another meeting on a busy schedule. It must work as a boundary spanning organization across agencies and levels of government with the clear mission of creating the most effective workforce development system possible.

Fiscal Impact

The above recommendations could be realized using existing resources. Better integration of programs may reduce the administrative burden of operating these programs and therefore allow the possibility of shifting administrative resources to program expenditures.

Endnotes

1. See e.g. *America's Choice: High Skills or Low Wages*, the report of the Commission on Skills of the American Workforce, National Center on Education and the Economy, (June 1990); *America and the New Economy*, Anthony Patrick Carnevale, The American Society for Training and Development (1991).

2. Amirault, Thomas. "Job Training: Who Need It and Where They Get It," *Occupational Outlook Quarterly* at 19 (Winter 1992-1993).

3. U.S. Senate, Subcommittee on Education, Labor, and Health and Human Services, Committee on Appropriations, "Multiple Employment Programs: National Employment Training Strategy Needed," testimony by Clarence C. Crawford, United States General Accounting Office, June 18, 1993.

4. Telephone interview with Michael Vitagliano, Executive Director of the New York State Human Investment Sub-cabinet, July 20, 1993.

5. Congress of the United States, Office of Technology Assessment, *Worker Training: Competing in the New Economy* (Washington, D.C.: U.S. Government Printing Office, 1990), p.15.

6. Becker, Gene. "Wisconsin's Job Centers: One State's One-Stop Shop," prepared for the National Governors Association, 1993.

7. Interview with Louis Bezich, Chief Operating Officer and Treasurer for Camden county July 28, 1993. See "The Camden County Store: An Initiative in Customer Service" for further information.

8. Interview with Steve Breeden, Director of Communications and Media Relations for the City of Everett, Washington, July 28, 1993. The services that Everett's "city hall at the mall" currently offers include: voter registration, water payments, job listings, animal licenses, parking permits, listings of weekend events, among many others.

9. Interview with Michael Vitagliano, Executive Director of the New York State Human Investment Sub-cabinet, July 19, 1993. For further information, consult "Computer Gateways: Information Exchange Partnerships in New York State." April, 1993.

10. Telephone interview with Bill Tracey, Executive Director of the New Jersey State Employment and Training Commission, July 20, 1993.

11. Information from Suzanne Teegarden, Executive Director of the Industrial Services Program, Boston, Massachusetts.

12. Telephone interview with Michael Vitagliano, Executive Director of the New York State Human Investment Sub-cabinet, July 20, 1993.

13.1992 JTPA Amendments, P.L. 102-367, sec. 455 (b).

14. Telephone interview with Michael Vitagliano, Executive Director of the New York State Human Investment Sub-cabinet, July 20, 1993.

15. Information from Suzanne Teegarden, Executive Director of the Industrial Services Program, Boston, Massachusetts.

Cross References

Budget Team, Promoting Incentives for Productive Management

State and Local Team, "Bottoms Up" Grant Consolidation

Organizational Structures Team, Crossing Organizational Boundaries To Serve the American Public

List of Abbreviations

DOEd	Department of Education
DOD	Department of Defense
DOL	Department of Labor
ES	Employment Service
HHS	Health and Human Services
JOBS	Job Opportunities and Basic Skills
JTPA	Job Training Partnership Act
NEC	National Economic Council
NGA	National Governors Association

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Selected Terms to be Considered for Standardization

The following list is taken from the National Governors Association report "Bringing Down Barriers: A Policy Paper from the National Governors Association of State Job Training Coordinating Council Chairs."

Adult
Allowable support services
Applicant
Assessment
At risk
At risk youth
Barrier to employment
Basic employability skills
Basic academic skills
Case closure
Case management
Characteristics
Citizenship
Clients
Competencies
Completer
Confidentiality
Coordination
Core demographic
Counseling
Dependent
Disallowed income
Dislocated worker
Displaced homemaker
Economically disadvantaged
Educational placement
Educationally disadvantaged
Emancipated youth
Employability development plan
Employable
Employed
Enrollment
Entered employment
Exemplary employment
Family
Family income
Follow-up
Foster child
Gross wages
Handicapped
Holding status/period of known activity
Homelessness
Income disregard
Individual
Job ready
Job retention
Job development
Job placement
Limited English proficiency
Limited work experience
Literacy
Long-term unemployed
Long-term welfare recipient
Migrant farmworker
Migrant food processing worker
Needs-based payments
Not in labor force
Obligated funds
Obtained employment
Offender
Older worker
On-the-job training
Ownership of resources
Participant
Performance measurement/standard
Personal management skills
Personal income
Placed in unsubsidized employment
Potential dropout
Public assistance
Race/ethnic group
Recently separated veteran
Recidivism
Resources/assets

Selected Terms for Standardization

Resources on order
Retention
School dropout
Seasonal farmworker
Student
Subsidized job
Substance abuse
Suitable employment
Teenage parent
Termination
Underemployed
Unemployed individual
Unsubsidized job
Veteran
Vietnam-era veteran
Work experience
Youth
Youth AFDC recipient

Fiscal Barriers

From the National Governors Association report "Bringing Down the Barriers: A Policy Paper from the National Governors Association of State Job Training Coordinating Council Chairs."

Cost Categories
Cost categories vary dramatically from program to program, making it difficult to manage programs funded by multiple sources. For example, JOBS requires each dollar spent to be identified with ten or eleven program activities and two different matching rates. JTPA has three specific cost categories: administration, direct training services, and training-related and supportive services. Support and administration are defined differently in JTPA and JOBS. EDWAA has some similar, but some different, cost categories: administration, support services and needs-related payments, retraining, basic adjustment, and rapid response. The Adult Education Act requires state and local matching. AEA state administrative expenses include all management and supervisory expenditures and expenditures for state advisory councils. At the local level, 95 percent of the grant must be spent on adult education instructional activities. The remaining may be used for local administrative costs, including planning, administration, evaluation, personnel development, and coordination. Other AEA cost categories at the state level include programs in public housing, special projects and teacher instruction. Instructional programs include local expenditures for client training. The vocational education legislation has categories for state administration, state leadership, sex equity, offenders, and single parents and displaced homemakers.

Cost Limitations
Cost limitations now are defined differently across programs. For example, JTPA Title IIA and IIC allow up to 20 percent to be spent on administration, and no less than 50 percent on direct training. Alternatively, JOBS does not have cost limitations, except as they impact on matching rates: JOBS does have minimum cost levels for target groups. EDWAA has three cost limitations. First 50 percent of annual SSA expenditures must be on retraining services. Second, end-of-year administrative expenditures are not to exceed 15 percent of total program year expenditures. Finally, there is a cap on state

administrative expenses under the Adult Education Act. Local administrative costs are equal to 5 percent, but this amount is subject to negotiations with the state education department. Funds for the AEA's state-level special demonstration projects and teacher training programs currently are pegged at not less than 15 percent of the state grant: of this, two-thirds must be spent on training. AEA also contains a 10 percent setaside for public housing authority programs. The Perkins legislation allows 5 percent or $250,000 for state administration, whichever is higher: of this amount, $60,000 must be spent for sex equity administration. The federal funds also must be matched dollar for dollar with state funds. Both the AEA and Perkins legislation also requires maintenance of effort at the state and local levels. States and local agencies must match or exceed their expenditures in the previous year.

Funds Obligated and Carryover Provisions

Currently, programs have different carryover provisions. For example, JOBS does not allow any funds to be carried over to the next fiscal year, but does allow for obligated funds to be liquidated during the twelve months following the end of the fiscal year. The JTPA program year is different than the JOBS fiscal year. The JTPA gives two additional years to obligate allowable carryovers of up to 15 percent of funds allocated in a specific fiscal year. EDWAA allows only a 20 percent carryover of the state allotment from one year to the next. Both the Adult Education Act and the Carl Perkins Vocational Education and Applied Technology Act are forward-funded because school budgets are prepared about a year in advance. Therefore, funds under AEA and Perkins can be carried over for twenty-seven months. If not experienced in this time, funds revert to the federal government.