

~~RESTRICTED~~ — Not to be released outside the General Accounting Office except on the basis of specific approval by the Office of Congressional Relations.

General Accounting Office

BAF

The Award Of Funds To The National Farm Workers Service Center, Inc. Was Poorly Managed

This report describes how the Department of Labor awarded more than \$800,000 in Comprehensive Employment and Training Act funds to the National Farm Workers Service Center, Inc. a nonprofit organization founded by the United Farm Workers of America, AFL CIO.

The funds were to operate residential farm-worker training programs and to conduct research in agricultural apprenticeship. The report describes various aspects of the programs being funded and some of the plans Labor and the center have to manage them. It also shows that

- Labor poorly managed awarding the funds, contributing significantly to delays in grant negotiations and confusion about programs to be funded and how this was to be done;
- need for the center's English language training program is unclear; and
- Labor is unable to assure that illegal aliens are not participating in its farm-worker programs.



108407



503237

report restrict

HRD-79-30
JANUARY 15, 1979



UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

HUMAN RESOURCES
DIVISION

B-177486

The Honorable Clair W. Burgener
House of Representatives

Dear Mr. Burgener:

This report is in response to a request made by the late Congressman William Ketchum, which was supported by yourself and 31 other members of the Congress, to review the Department of Labor's award of Comprehensive Employment and Training Act funds to the National Farm Workers Service Center, Inc., located in La Paz-Keene, California. The center is a private, nonprofit organization founded by the United Farm Workers of America, AFL-CIO ^{DL40627} ^{DL40628} 1/ to operate and/or support various social, educational, and legal services programs for farmworkers.

Congressman Ketchum raised several questions dealing generally with the process by which Labor awarded funds to the center, selected program characteristics, and the plans Labor and the center have to manage the programs. We specifically examined

- the grant and contract award processes, how Labor managed them, and the source(s) of funding;
- the center's ability to carry out the programs being funded;
- the need for the center's English language training program in light of existing programs operated by the local school system;
- selected participant characteristics;
- the issue of illegal alien participation in Labor's farmworker programs generally and the center's program in particular; and
- Labor's plans to monitor the grant.

1/The American Federation of Labor-Congress of Industrial Organizations

The Employment and Training Administration's Office of National Programs has overall management responsibility for farmworker programs. These programs are monitored by the Office's Division of Farmworker Programs. We interviewed cognizant officials in both of these offices as well as in the Employment and Training Administration's Bureau of Apprenticeship and Training, the grantee's program director, and State and local school officials in California. We also reviewed grant proposals and other pertinent documents, applicable Labor regulations, and Labor's procedures for awarding the funds.

Subsequent to your request, the Comprehensive Employment and Training Act was reauthorized by Public Law 95-524, dated October 27, 1978. The reauthorization made several changes in the act; however, because our field work was conducted between March and August 1978, references to the act are to the then-current Comprehensive Employment and Training Act of 1973, as amended (29 U.S.C. 801).

Our findings are summarized below. More detailed information is contained in appendix I.

BACKGROUND

As part of an overall Federal effort to stimulate the economy, the President directed Labor to implement special initiatives under the Comprehensive Employment and Training Act to provide employment-related assistance to migrant and other seasonal farmworkers. The Economic Stimulus Appropriations Act of 1977 (Public Law 95-29, May 13, 1977) provided funds which could be spent through September 30, 1978, for these initiatives.

On August 2, 1977, Labor published a notice in the Federal Register which solicited grant applications for farmworker economic stimulus program funds. These funds were available for residential skill training and training related to rural economic development.

CENTER SELECTED AS A POTENTIAL
GRANTEE IN ACCORDANCE WITH
LABOR PROCEDURES

The center was one of 43 organizations that applied for farmworker economic stimulus program funds to operate a residential skill training program. About \$429,000 was requested to operate a program to develop and promote economic self-sufficiency among migrant and other seasonal farmworkers in California.

Staff in the Division of Farmworker Programs designed, managed, and participated in a panel review process to select the best applicants for funding. A Department of the Interior employee with residential skill training program experience also participated as a panelist.

In the Federal Register on December 16, 1977, Labor announced the selection of the center and nine other applicants as potential grantees. Generally, Labor's selection procedures appear to have been applied appropriately. More specifically, the center's proposal was evaluated in the same way and according to the same criteria as those of other applicants. We also found no evidence to suggest that the panelists were pressured into rating the center's proposal favorably or recommending it for funding.

However, the selection process was quite subjective. Consequently, we did not attempt to determine whether the center's selection was correct. We could not ascertain how or measure the extent to which the subjective judgments of individual panelists affected the outcome of the selection process.

LABOR POORLY MANAGED
GRANT NEGOTIATIONS

Negotiating with a potential grantee before finally executing a grant award is a routine procedure in the Division of Farmworker Programs--this is to resolve any problems Labor has with specific parts of an applicant's proposal. Negotiations between Labor and the center began in January 1978. Labor handled its negotiations with the center very poorly.

Poor communication among Labor officials and between Labor and the center during the first negotiating sessions in January contributed to producing an amended proposal that the Administrator, Office of National Programs considered unsatisfactory. Labor officials also demonstrated poor judgment during the early negotiations by holding and publicizing a grant signing ceremony on January 11, 1978, involving the Secretary of Labor and the president of the union before agreement had actually been reached on a program to be funded.

The signing ceremony created a great deal of confusion within Labor and among the general public. And the premature announcement of a grant award apparently reduced Labor's flexibility and leverage during subsequent negotiations. The Labor negotiator stated that the negotiations which took place after the ceremony and announcement were much more difficult for him because center representatives felt assured of an award. He felt he could not effect program changes by threatening to not fund the center.

NEGOTIATIONS FINALLY
RESULT IN GRANT AWARD

Negotiations were stalled until May 1978 because the union leadership suspected that Labor was trying to renege on what the union viewed as a completed agreement. In July 1978 Labor finally awarded the center a grant in the amount of \$683,861 for residential English language and vocational skill training. The money was drawn from fiscal year 1978 CETA title III, section 301 and 303 funds. The grant provides residential English language training for 75 participants and residential vocational skill training for 16 participants.

One questionable aspect of the grant agreement appears to be the high cost of the vocational skill training segment. The Solicitation for Grant Applications indicated that the cost per training slot for the residential skill training part of the farmworker economic stimulus program should not exceed \$7,500. When reviewing proposals panelists also accepted estimates ranging from \$10,000 to \$12,000 if they felt they were justified. However, the center's average per-slot cost for 1 year of vocational skill training

is about \$21,000--far exceeding the amount specified in the grant solicitation and that which reviewers accepted during the selection process.

Labor compromised the integrity of the selection process by permitting such a high per-slot cost. Although training slot costs were only one of several criteria which affected how applicants' proposals were judged, five applicants were eliminated during the first phase of the selection process solely because their per-slot training costs exceeded the \$12,000 limit that panelists accepted.

AGRICULTURAL APPRENTICESHIP
CONTRACT AWARDED SOLE SOURCE

In addition to the grant, the center was also awarded a contract for \$120,925 to foster agricultural apprenticeship by studying jobs and training needs in the agricultural industry and by developing new job classifications and a program of training for farmworkers. Labor's Office of National Programs awarded the contract on a sole source basis, citing a section of title 41 of the U.S. Code which permits the suspension of competition when it is considered impracticable. Fiscal year 1978 title I funds targeted for Labor's New Initiatives in Apprenticeship program were used to support the contract.

The Administrator, Office of National Programs defended Labor's decision to award the center a contract without competition by noting that Labor preferred to fund agricultural apprenticeship in California specifically in a union context. He explained that this preference is due to a belief that agricultural apprenticeship cannot be successfully established there in any other way, and he cited past failures by other organizations to develop agricultural apprenticeship as the reason for this belief. However, results from the only two projects Labor has funded in California in the last 7 years do not support Labor's position.

We have taken exception in a prior report to the Office of National Programs' practice of routinely awarding procurement

contracts on a sole source basis. 1/ We also believe that the center's contract should have been awarded under competitive procurement procedures--not on a sole source basis.

CENTER LACKS
PROGRAM EXPERIENCE

Panelists who reviewed the center's proposal noted that the center had no experience operating a residential skill training program and relatively little experience in employment training. We visited the center in July 1978. It appeared that the center had sufficient classroom and dormitory space to conduct the English language and vocational skill training programs. However, the center did not have sufficient staff to operate these programs and planned to recruit and hire nearly all the professional staff needed.

The program director stated that the center also had neither the resources nor the staff to carry out what is required under its apprenticeship contract. The center again planned to hire staff and use consultants to do the work.

NEED FOR A RESIDENTIAL
ENGLISH LANGUAGE TRAINING
PROGRAM IS UNCLEAR

The program director stated that the majority of the center's participants would probably be drawn from the Kern County, California, area. Accordingly, we restricted our review of available alternative educational opportunities to this area.

1/ "Questionable Need For Some Department of Labor Training Programs," HRD-78-4, Apr. 10, 1978. This report reviewed the Office of National Programs' Apprenticeship Outreach and construction-related National On-The-Job Training programs. The Office awarded all of these contracts on a sole source basis.

State and local school officials we interviewed believed that the center's program would duplicate educational opportunities already available through the school system. The program director disagreed, emphasizing that the center's program would be more innovative and more responsive to farmworker needs than the traditional classroom training offered by the school system. ✓

The program director did not have data demonstrating the inadequacy of the school system's English language training programs to justify the need for additional or different types of courses. She also did not have evidence that the new teaching techniques the center planned to use were likely to produce better results than the school system's traditional ones. Without this data, it is unclear whether a need exists for the center's program.

Although a procedure exists for determining local program needs, Labor did not have information about these needs when the center was awarded funds for English language training. Under the Office of Management and Budget's Circular A-95 procedure, applicants for Federal assistance submit their applications to State and appropriate areawide clearinghouses to give State and local governments an opportunity to assess the relationship of the proposals to State, areawide, and local plans and programs.

The center submitted its application to California's State clearinghouse, and it was cleared. But the center did not submit its application, as was required in California, to the areawide clearinghouse serving Kern County. According to Office of Management and Budget officials, Labor should have returned the center's proposal for submission to the appropriate areawide clearinghouse before considering it for funding.

PROGRAM PARTICIPANTS ARE
EXPECTED TO BE PRIMARILY
SPANISH SPEAKING

When we visited the center, program participants had not been selected and procedures for recruiting and selecting participants had not been formulated. Most of the recruiting

was not expected to take place until early 1979, according to the program director. The program director also expected that individuals wishing to participate in English language training--which involves 75 of 91 slots or more than 80 percent of total program enrollment--would be required to speak Spanish and would be drawn from the Kern County area. Vocational skill trainees would probably come from the same area, but speaking Spanish would not be a requirement for selection.

If the center selects participants as the program director suggested, it would be departing from the program outlined in the grant. The center could also risk violating one of the assurances it made when accepting the grant---namely, that no person would be excluded from participation in its programs because of race, color, sex, or national origin. Labor should closely monitor the center's recruiting and selection activities to assure that eligible farmworkers are not denied the opportunity to participate in the center's English language training program solely because of their ethnic backgrounds.

LABOR CANNOT ASSURE NON-
PARTICIPATION OF ILLEGAL
ALIENS IN FARMWORKER PROGRAMS

Regulations governing farmworker programs do not require program sponsors to follow any particular procedures to assure that illegal aliens are not participating in their programs. As a result, Labor cannot assure that illegal aliens are being denied services under its farmworker programs. Labor had no plans to amend its regulations as of November 1978.

The center also has not established any procedures for identifying and screening out illegal aliens. The program director told us that the staff was inclined to rely on applicant self-certification. However, simply relying on applicants' assertions about their citizenship status provides little assurance that illegal aliens will be effectively prohibited from participating in the center's programs.

LABOR'S MONITORING WILL
CONSIST OF VISITS AND REPORTS

Labor plans to visit the center at least once every quarter--a total of six visits during the 18-month grant period. The center will also be required to submit quarterly progress reports to Labor. A grant monitor from the Division of Farmworker Programs was appointed and made his first visit to the center in September. His next visit has not been scheduled.

The apprenticeship contract will be monitored separately by the contract negotiator. The center is to submit monthly narrative reports to Labor. In October 1978 the contract negotiator visited the center to assess initial progress and provide needed assistance. And Labor plans to have the Human Resources Development Institute of the AFL-CIO--funded by Labor to provide technical assistance to AFL-CIO unions operating Labor programs--provide technical assistance to the center.

- - - -

We regret the delay in reporting our findings to you. However, as you know, we were denied access to pertinent records by officials in Labor's Solicitor's Office and the Office of National Programs for more than 2 months at the outset of our work. We were also unable to begin work at the center until a grant award was finally executed in July 1978.

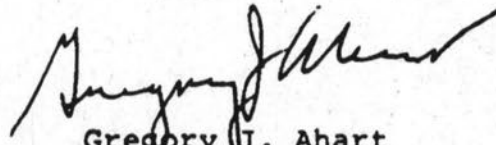
At the request of your office, we did not obtain written comments from the Department of Labor. However, the matters covered in this report were discussed with Labor officials and their comments were considered in preparing the final report.

As arranged with your office, we are today sending copies of this report to the other Congressmen who supported the original request. We are also sending copies of this

B-177486

report to the Secretary of Labor, the Director, Office of Management and Budget, and other interested parties 3 days after issuance.

Sincerely yours,



Gregory J. Ahart
Director

C o n t e n t s

Page

APPENDIX

I	AWARD OF FUNDS TO THE NATIONAL FARM WORKERS SERVICE CENTER, INC. WAS POORLY MANAGED	
	Background	1
	Center Selected As A Potential Grantee In Accordance With Labor Procedures	2
	Labor Poorly Managed Grant Negotiations	5
	Negotiations Finally Result In Grant Award	11
	Agricultural Apprenticeship Contract Awarded Sole Source	15
	Center Lacks Program Experience	17
	Need For A Residential English Language Training Program Is Unclear	20
	Program Participants Are Expected To Be Primarily Spanish Speaking	23
	Labor Cannot Assure Non-Participation Of Illegal Aliens In Farmworker Programs	24
	Labor's Monitoring Will Consist Of Visits And Reports	26

ABBREVIATIONS

CETA	Comprehensive Employment and Training Act of 1973, as amended
------	--

THE AWARD OF FUNDS TO THE
NATIONAL FARM WORKERS SERVICE CENTER, INC.
WAS POORLY MANAGED

BACKGROUND

As part of an overall Federal effort to stimulate the Nation's economy, the President directed the Department of Labor to implement special initiatives under the Comprehensive Employment and Training Act of 1973, as amended, (CETA) to provide additional employment-related assistance to migrant and seasonal farmworkers. The Economic Stimulus Appropriations Act of 1977 provided funds for these initiatives. In their reports on the Appropriations Act, the House and Senate Committees on Appropriations approved \$16 million for farmworker programs and specified that the money be drawn from CETA title I discretionary funds that were already available. 1/

The House Committee's report noted that farmworker economic stimulus programs were intended to "expand and improve upon existing programs and to initiate new approaches." Existing farmworker programs were authorized under CETA title III, section 303 and provided services to individuals who suffered chronic seasonal unemployment or underemployment in the agricultural industry. The primary program objectives were to provide occupational alternatives to agricultural labor and to improve the well-being of persons wishing to remain in agriculture and/or to upgrade their agricultural skills. Authorized services and activities included outreach, counseling, job placement, on-the-job training,

1/ Report No. 95-66, House Committee on Appropriations, Mar. 10, 1977, pp. 15-20 and Report No. 95-58, Senate Committee on Appropriations, Mar. 17, 1977, pp. 13-19.

CETA title I discretionary funds were provided for under section 103(f) of the act. The act stated that these funds were first to be disbursed to maintain prime sponsor funding levels at 90 percent of the previous fiscal year. The remainder could be used according to the Secretary's discretion, taking into account the need to continue funding programs of demonstrated effectiveness.

institutional skill training, and supportive services such as health care, child care, and residential support. The new approaches the House Committee endorsed were the creation of residential skill training centers, training in conjunction with rural economic development, and rehabilitation of publicly owned farmworker housing camps.

In the Federal Register on August 2, 1977, Labor published a notice soliciting grant applications for farmworker economic stimulus program funds. In keeping with the expressed congressional intent, Labor listed residential skill training and rural economic development-related training as two program categories to be funded. Private nonprofit organizations, CETA title I prime sponsors, and other public agencies were eligible to apply. ^{1/} Also, technical and vocational institutes and other training centers, including Job Corps centers, could apply to operate residential skill training programs.

According to Labor's Solicitation for Grant Applications, projects were to be innovative and capable of being replicated. Project activities could include all types of skill training. Among the training-related services which could be provided were employability planning, testing, counseling, basic as well as vocationally related education, and placement.

CENTER SELECTED AS A
POTENTIAL GRANTEE IN
ACCORDANCE WITH LABOR PROCEDURES

The National Farm Workers Service Center, Inc., located in La Paz-Keene, California, is a nonprofit institution founded by the United Farm Workers of America, AFL-CIO to operate and/or support various social, educational and legal services programs for farmworkers. The center was one of 43 applicants seeking funds to provide residential skill training under Labor's farmworker economic stimulus program. Its proposal requested \$428,970 to conduct a two-part program designed to develop and promote economic self-sufficiency

^{1/} Generally, a prime sponsor under title I is a State or local government with a population of at least 100,000, or a combination (consortium) of local governments, one of which has a population of at least 100,000. There are currently about 460 prime sponsors.

and leadership among migrant and other seasonal farmworkers in California.

The first part of the proposal--training for job skills--was comprised of both classroom and on-the-job training intended to provide farmworkers the opportunity to upgrade their agricultural skills and/or to learn new job skills (such as building maintenance, landscaping, auto mechanics, and communications). The job skills segment also included a plan to establish apprenticeship training in agriculture. The second part--training for living skills--was designed to build leadership by providing training that would enable farmworkers to function effectively as citizens. It consisted of workshops and seminars on labor history and union organization, language and literacy training, and a variety of courses in areas such as citizenship, consumer affairs, and family health and nutrition. Direct employment and training services--job development, counseling, and placement--were planned in conjunction with the overall training program.

Staff in Labor's Division of Farmworker Programs designed, managed, and participated in a panel review process to select the best applicants for funding consideration. Because Labor officials wanted to assure that the process was as unbiased as possible, they also sought individuals from other Federal agencies to serve as panelists. A Department of Interior employee with Job Corps experience participated as a panelist in evaluating residential skill training program proposals.

The process consisted of three phases. In the first phase, farmworker program staff screened the proposals by determining whether they adhered to criteria set forth in the Solicitation for Grant Applications. These criteria included whether (1) the proposal actually provided for residential skill training, (2) the applicant was eligible, (3) the program proposed was restricted to the grant period, (4) the total cost did not exceed \$500,000, and (5) the cost per training unit or slot did not exceed \$7,500. Twenty proposals were eliminated during this phase.

During the second phase, two farmworker program staff members rated the proposals on the extent that they addressed factors related to job placement, past experience, cost, goals and objectives, and administration. Three more proposals were eliminated in this phase. The remaining 20 proposals were then evaluated in depth by two panels, each consisting of

two persons, including farmworker program staff and a Department of the Interior representative. The following criteria were used:

- The existence of established relationships or firm commitments with other organizations.
- The applicant's proven ability to operate all facets of the residential skill training program.
- The overall cost effectiveness.
- The applicant's potential ability to provide timely, effective services.
- The extent of staff experience in and knowledge of residential skill training activities.

A total of 110 points was possible in the third phase. The center received 85-1/2 points and ranked third. The panel recommended the center's proposal for funding to the Administrator, Office of National Programs, who was responsible for making the final selection. On December 16, 1977, Labor announced in the Federal Register that the center, along with nine other applicants, had been selected to participate in negotiations with Labor leading ultimately--if both parties agreed on terms--to a grant award.

We examined the screening and evaluation documents generated during the review process for each applicant to determine whether Labor's selection procedures were properly applied. We also interviewed panelists on the methods they used to determine the adequacy of proposals they reviewed.

We found that generally procedures were applied appropriately throughout the selection process. More specifically, the center's proposal was evaluated in the same way and according to the same criteria as those of other applicants. We also did not find any evidence to suggest that the panelists who reviewed the center's proposal were pressured into rating it favorably or recommending it for funding.

However, all of the panelists we interviewed noted that the selection process was quite subjective. Our review

of the screening and evaluation documents verified their position. It indicated that many subjective judgments were made about how to apply certain criteria and how to assign points for meeting criteria. Because the selection process was quite subjective, we did not attempt to determine whether the center's selection was correct. We could not ascertain how or measure the extent to which the subjective judgments of individual panelists affected the outcome of the selection process.

LABOR POORLY MANAGED
GRANT NEGOTIATIONS

Labor's selection of the center as a potential grantee in December 1977 did not constitute a funding commitment. There were several items to be negotiated, and if negotiations did not result in an acceptable proposal, Labor could reject the proposal. According to Labor officials the center also was under no obligation to accept funding if Labor's requirements did not complement its needs.

The first negotiating session between Labor and the center took place at Labor headquarters early in January 1978. By early February negotiations had broken off and did not resume until early May, when agreement was reached on programs to be funded. Our analysis of the proceedings in January indicates that Labor poorly managed the negotiations, which contributed significantly to their initial failure, the general confusion about them, and a weakening of Labor's bargaining position. The negotiations suffered from a lack of direction, poor communication, and poor decisionmaking.

Poor communication leads
to unsatisfactory results

Labor had several problems with the center's proposal which were outlined in a telegram to the center on December 12, 1977. The telegram listed 12 items requiring negotiation. Among other things, Labor pointed out that (1) staff salaries and trainee allowances had not been computed according to CETA regulations, (2) the proposal, by focusing on the Chicano farmworker population in Kern County, seemed to emphasize Chicano farmworkers to the exclusion of other eligible farmworkers, (3) on-the-job training activities that could result in the center contracting with itself were not allowable, and (4) the proposal should list other potential employers of the participants besides the union.

According to Labor's negotiator, the center recognized the weaknesses outlined in the telegram and agreed to come to the negotiations prepared to make whatever changes were necessary to improve the proposal. Present at the first negotiating session in Washington were staff from the Division of Farmworker Programs and representatives from the center, union, and Human Resources Development Institute, AFL-CIO. Institute representatives attended because it is funded by Labor to provide technical assistance to AFL-CIO unions in preparing proposals for funding by Labor and operating Labor programs. Staff from the Institute assisted the center in preparing its proposal and were available at the negotiating session to provide further technical assistance.

During the first day of negotiations, the Administrator, Office of National Programs decided to have the agricultural apprenticeship segment of the proposal negotiated and funded separately. In this segment, the center described plans to perform research, which would culminate in the establishment of apprenticeship in agriculture. In discussions with us, the Administrator indicated that he made this decision because no one in the Division of Farmworker Programs had expertise in apprenticeship programs. To carry out the apprenticeship negotiations, the Administrator appointed a member of his staff who regularly handled apprenticeship training contracts and who had worked previously in Labor's Bureau of Apprenticeship and Training.

Labor's grant negotiator was unprepared for the Administrator's decision. He understood it to mean that all employment and training activities, such as training in industrial and service occupations, as well as the apprenticeship segment were being removed from consideration. Believing that eliminating the employment and training portion of the proposal left little of substance to be funded, the negotiator opposed the Administrator's decision. Our analysis of the center's proposal supports the negotiator's view.

In particular, Labor's negotiator and other staff in the Division of Farmworker Programs were concerned about funding activities that appeared to primarily support union interests. At the request of the Director, Division of Farmworker Programs, the negotiator had analyzed the center's proposal in detail before negotiations began. He concluded that funding the proposal would mean providing a heavy, direct subsidy to the union by training union staff, completing the union's communications system, and constructing buildings for

the union. Once the employment and training activities were omitted, most of what remained were English language training and activities which, based on an analysis of the proposal, also appeared to promote union interests. These included special courses, workshops, seminars and conferences on leadership training for union staff, union contract implementation, union structure and administration, and grievance procedures.

The Administrator, Office of National Programs, had been informed of staff concerns about union subsidization from his subordinate, the Director, Division of Farmworker Programs, before the center was selected in December as a potential grantee. When the Director forwarded the panels' recommendations for funding to the Administrator for final action, he did not give his unqualified support to the center's proposal because of "presumed unionization objectives." In another memorandum to the Administrator he further expressed his concern about "activities proposed related directly to supporting unionization efforts." In his opinion, the proposal would set a precedent for the direct funding of union activities. Moreover, he was convinced that, regardless of what would ultimately be funded, it would be impossible for Labor to determine through some monitoring activity whether unionization activities or union-related indoctrination was actually occurring during the program.

A representative of Labor's Solicitor's Office who worked in the farmworker program area stated before the grant was finally executed that he was not aware of any CETA provisions that prohibited using funds to support union activities. ^{1/} However, he believed that it was important for Labor's top management to know exactly what was being funded. Some of the same farmworker program staff who were concerned about supporting union interests also did not believe such support was necessarily illegal or improper, and pointed to the apprenticeship training grants Labor has awarded to other

^{1/}The Comprehensive Employment and Training Act Amendments of 1978 (Public Law 95-524, Oct. 27, 1978) prohibit the use of funds to assist or promote union organizing and specify that no individual may be required to join a union as a condition of enrolling in a program supported under the act.

unions as examples of subsidization. ^{1/} What they all said they generally feared, however, was that several activities would be considered improper by outside parties. The Administrator, Office of National Programs said that he dismissed the concerns of the Director, Division of Farmworker Programs as mere efforts to protect himself in case the grant came under heavy political fire because of the grantee's identity.

The Administrator, Office of National Programs stated that he intended to withdraw only agricultural apprenticeship for special consideration and funding--not all of the employment and training portion of the proposal. However, neither the negotiator nor the center's representatives understood this to be the case. The result was confusion and unsuccessful negotiations. The negotiator, opposing the Administrator's decision, continued to press for some type of vocational skill training to be included among the programs funded. However, the center's representatives rejected the negotiator's suggestions because they believed that they would already be operating an employment and training program under the agricultural apprenticeship contract to which the Administrator had agreed.

Negotiations in Washington terminated on January 11, 1978, before agreement was reached on programs to be funded. The Administrator, Office of National Programs sent his negotiator to La Paz-Keene, California, the following week to complete negotiations. The negotiator returned with an amended proposal that lacked a vocational skill training component for the reasons cited above. After discussing the amended proposal with the negotiator, the Administrator became concerned about its cost effectiveness and asked the Director, Division of Farmworker Programs to perform a cost analysis. Specifically, the amended proposal requested about \$500,000 to provide

^{1/}Our report, "Questionable Need for Some Department of Labor Training Programs," HRD-78-4, Apr. 10, 1978, stated that national on-the-job training funds--administered by Labor's Office of National Programs and intended to increase chances for disadvantaged persons to enter skilled occupations--were subsidizing the regular apprenticeship system at the local level. Federal funds were replacing local apprenticeship funds (e.g., union funds) to support apprenticeship training.

- English language training to 30 farmworkers;
- instruction of an unspecified length to 30 union staff members to upgrade their skills in providing community resource and personal counseling to farmworkers and in teaching those counseling skills to farmworkers; and
- instruction in 2-day seminars and conferences to 1,200 farmworkers to improve their ability to "deal with their individual problems."

The Director, Division of Farmworker Programs concluded in a February 1, 1978 memorandum to the Administrator that at best the amended proposal should only be funded for about \$50,000 to \$75,000 for English language training. He noted that, although 1,260 participants would receive some kind of service under the amended proposal, 95 percent would receive only 2 days of service. So the heart of the proposal from a training perspective was providing 30 participants English language training for \$500,000--an expenditure he could not justify. Furthermore, he reasoned that the amended proposal was not, in fact, a skill training proposal that would result in the acquisition of any identifiable, employable vocational skill, because the "guts" of the original proposal--job skill training--had been eliminated.

Based on the cost analysis, the Administrator, Office of National Programs determined that the amended proposal was unacceptable and that further negotiations would be necessary before a final grant could be executed. However, by that time the union had begun to suspect Labor of trying to back out of the grant and broke off further negotiations. Although farmworker program officials tried repeatedly, they were unable to reopen negotiations for about 3 months.

Grant signing ceremony
contributes to confusion

The Secretary of Labor held a signing ceremony with the president of the United Farm Workers to announce a grant award before the grant had been finally executed. This action contributed significantly to the general confusion about the funding process and made it even more difficult to successfully complete negotiations.

The signing ceremony was held at Labor's request specifically on January 11, because the Secretary was scheduled to leave town on that day and he wished to demonstrate his concern for the welfare of farmworkers. The Office of National Programs Administrator, Labor staff involved in the negotiations, and other Labor officials we talked with all agreed that it was not Labor's practice to hold such a ceremony before a grant was actually executed. However, they also agreed that those present fully expected negotiations to be concluded on January 11 or very shortly thereafter. The announcement appeared in a January 11 Labor news bulletin.

The union president believed that the Secretary had committed Labor to a \$500,000 grant at the ceremony when he signed a grant signature sheet to that effect. When Labor continued to seek further negotiations, the union interpreted the effort as an attempt to renege on a completed agreement. According to the Administrator, Office of National Programs, the union's view was further reinforced by adverse publicity about the grant. The publicity was generated, in turn, by Labor's announcement of a completed grant award.

Farmworker program officials were unable to locate the grant signature sheet the Secretary reportedly signed on January 11, so we could not independently determine how binding it was. However, it did not appear that Labor was trying to withdraw its offer of a grant. Although a representative from Labor's Solicitor's Office stated that the signature sheet the Secretary signed was not legally binding because no proposal was attached, he stressed that it nevertheless indicated a moral obligation to carry through on the grant award if at all possible. The Administrator, Office of National Programs stated that in his view the signature sheet was binding.

Labor received an estimated 200 letters and inquiries about the award as a result of the announcement. However, since negotiations had reached a standstill, Labor officials did not know what type of grant they were awarding, or for how much, or even if they would be awarding a grant at all. Labor's inability to respond adequately to these inquiries added to the confusion about the grant.

There was also some confusion about who was responsible for handling the grant in Labor. It was clear that the Administrator, Office of National Programs had overall management responsibility but there was some question about

which of two subordinate directors had the direct, day-to-day program responsibility. In the beginning--during the panel reviews--the Director, Division of Farmworker Programs was responsible. However, in light of the amended proposal, the Director, Division of Farmworker Programs became uncertain about whether he or the Director, Division of National Training Programs--who handled English-as-a-second language training programs--was responsible. The Director, Division of National Training Programs assumed responsibility for a very brief time after the unsuccessful La Paz negotiations in January. However, the Administrator decided to handle the matter himself as public controversy about the grant increased during the hiatus in negotiations that followed. When the grant was finally executed in July, the Administrator turned direct management responsibility over to the Director, Division of Farmworker Programs once again.

We believe that Labor officials demonstrated poor judgment by holding a signing ceremony before agreement was actually reached on programs to be funded. Even if the publicity which ensued had not occurred, it was poor management practice for Labor to have committed itself publicly to a grant when the terms of the grant had not even been set. The Labor negotiator stated that the negotiations which took place in La Paz after the signing ceremony were much more difficult for him because the center representatives felt assured of an award. He felt that he could not successfully effect program changes by threatening to not fund the center.

By announcing the grant prematurely, Labor contributed significantly to the controversy about the grant and to the failure of the early negotiations to produce a program both parties could agree to. In addition, the announcement apparently reduced Labor's flexibility and leverage during subsequent negotiations.

NEGOTIATIONS FINALLY RESULT IN GRANT AWARD

After a considerable delay, the Administrator, Office of National Programs sent a telegram dated April 21, 1978, to the union president, which requested written notification of his continued interest in an economic stimulus program grant by April 28, 1978. Labor would assume that he was no longer interested if he did not respond by that date. The result of the telegram was that negotiations resumed in early May in La Paz. The Administrator appointed a new negotiator

from the Division of Farmworker Programs who went to La Paz with specific instructions to add vocational skill training to the amended proposal and increase the proposed number of participants in English language training. The negotiator achieved these objectives, and the parties agreed to a grant in the amount of \$683,861 for residential English language and vocational skill training.

The Economic Stimulus Appropriations Act of 1977 provided the funds for which the center originally applied. However, the funds had been spent by the time Labor was ready to award the center's grant. Consequently, Labor tapped two other sources to fund the grant. The center received \$347,529 for English language training. The money was drawn from fiscal year 1978 CETA title III section 301 funds intended, among other things, to provide employment and training services and other services such as language training to persons with limited English-speaking ability.

Labor supported vocational skill training with \$336,332 drawn from fiscal year 1978 CETA title III section 303 funds earmarked for new initiatives (including economic stimulus) in farmworker programs. These funds were provided by Labor's fiscal year 1978 appropriation (continuing joint resolution, Public Law 95-205, Dec. 9, 1977).

The grant provides vocational skill training for 16 participants and English language training for 75 participants. Nearly the entire living skills segment of the original proposal--which contained many of the courses thought to be too strongly union oriented--was eliminated. The job skills segment was also reduced because training was limited to only 4 occupations instead of 10; agricultural apprenticeship was removed and funded separately as planned during the first negotiating session. (See p. 6.)

The American Farm Bureau--a federation of county farm bureaus headquartered in Park Ridge, Illinois--has charged that the vocational skill training courses to be offered under the grant will act as union subsidies because the union will benefit from them. The Farm Bureau contends that vocational skill trainees will staff the union's statewide microwave communications relay system, work in the union's publications department, and do maintenance and landscaping work at the union's headquarters facilities in La Paz.

Based on the center's grant agreement and a discussion with the program director, it appears that the union will benefit to some degree. The grant agreement, for example, indicates that trainees in printing will spend some time in the union's print shop as part of their training, and it implies that maintenance and landscaping trainees will work on union buildings and grounds. The program director further confirmed that trainees will generally practice their skills on union property, facilities, and equipment.

We know of no provisions in the CETA legislation or regulations that prohibit grantees from benefiting incidentally from the training they provide. However, since the center's vocational skill training program had not begun while our field work was under way, we could not determine the extent to which the center would actually benefit from the training program it would operate.

It appears, after reviewing the grant agreement, that one questionable aspect is the high cost of the vocational skill training segment. The Solicitation for Grant Applications Labor published for the residential skill training part of the farmworker economic stimulus program stipulated that the cost per training slot should not exceed \$7,500. When reviewing proposals, panelists also accepted estimates ranging between \$10,000 and \$12,000 when they felt they were justified. According to the grant agreement, CETA title III economic stimulus funds are supporting residential vocational skill training only. Therefore, \$336,332 is financing 16 training slots for 48 weeks, or about 1 year, resulting in an average cost per slot of about \$21,000. ^{1/} This far exceeds the amount specified in the grant solicitation and that which reviewers considered acceptable during the selection process.

Labor compromised the integrity of its selection process by permitting such a high per-slot cost. Although training slot costs were only one of several criteria which affected how applicants' proposals were judged, it should be noted that five applicants were eliminated during the first phase of the selection process solely because their per-slot training costs exceeded the acceptable limit.

^{1/}The cost per training slot was determined by dividing the total planned enrollment in vocational skill training into the total amount of funds allocated to support the training.

In four of the five cases, the slot costs were lower than what Labor has permitted under the center's grant.

The English language training segment--with a training slot cost of about \$4,600--easily meets the limit Labor suggested for its farmworker economic stimulus program. However, the grant agreement provides for a maximum of 12 weeks of English language training per participant--versus 48 weeks of vocational skill training per participant. Also, according to the grant agreement, nearly 40 percent of the money supporting English language training will be used for curriculum development and the rental, lease, and/or purchase of equipment.

We discussed the center's funding with the Administrator, Office of National Programs, who stated that Labor was in a difficult position trying to mesh the center's program wishes and needs with something Labor considered acceptable. The amended proposal, which essentially only provided English language training to 30 persons, was unacceptable because it was not economical and did not contain a vocational skill training component. At the same time, Labor felt morally obligated to try to negotiate some type of acceptable grant with the center in view of the signing ceremony that was held in January.

The Administrator concluded that he regretted having tried to fund the center through open bidding and a panel selection process, stating that Labor could have awarded the grant on a sole source basis--without advertising or soliciting applications--and probably should have. While we agree that Labor was not required to solicit applications either for farmworker economic stimulus program funds or for funds to operate programs for people of limited English-speaking ability, we strongly disagree with the Administrator's view that Labor should not have done so. Clearly, the center was not the only provider of services since more than 40 other organizations applied, indicating significant interest; and 9 were selected in addition to the center, indicating the availability of expertise. Labor has also awarded English language training funds in the past through advertising and solicitation of applications, which shows that organizations exist with experience in this area as well.

We also do not agree that it was the selection process, as the Administrator implied, that caused the difficulties Labor experienced awarding this grant. Rather, as was demonstrated

in the previous section, Labor's poor management of the negotiations caused the problems encountered in finalizing the center's grant.

AGRICULTURAL APPRENTICESHIP
CONTRACT AWARDED SOLE SOURCE

Labor also awarded the center a \$120,925 agricultural apprenticeship contract in July 1978. The funds were drawn from fiscal year 1978 CETA title I funds targeted for its New Initiatives in Apprenticeship program. The program is to foster apprenticeship training in industries where such training has not been used. In addition, it has been one of the Secretary of Labor's goals to develop apprenticeable jobs in agriculture as a means of improving the well-being of farmworkers and the rural poor. The center's project is consistent with these objectives. Its purpose is to develop and maintain a fair system by which farmworkers will have opportunities to acquire job skills that will enable them to progress upward via skill ladders built on increased responsibilities and a variety of skills.

It appears that Labor has wanted to fund or in some way assist the union in apprenticeship for some time. The Secretary of Labor met with the president and other members of the union at a March 1977 meeting of the Federal Committee on Apprenticeship, which administers skill training programs in all industries and is composed of labor, management, and Government representatives at the national level. This meeting produced an understanding that Labor would be willing to work with the president or someone named by him to further explore the idea of apprenticeship in agriculture. The Secretary publicly acknowledged this understanding in a speech delivered before the union's Third Constitutional Convention on August 27, 1977, in Fresno, California.

Labor awarded the center's apprenticeship contract on a sole source basis. It was negotiated pursuant to title 41, section 252(c)(10) of the U.S. Code, which permits suspension of competition when it is considered impracticable. The Administrator, Office of National Programs defended the use of this exemption by noting that Labor preferred to fund agricultural apprenticeship in California specifically in a union context because he believed that it cannot be successfully established there in any other way. Competition was considered unnecessary because the United Farm Workers is the only agricultural union in California.

The Administrator cited past failures by other organizations funded to develop agricultural apprenticeship in California as the reason for Labor's belief in the necessity of funding the union. However, Labor has only funded two agricultural apprenticeship projects in California in the last 7 years. Both contracts were awarded on a sole source basis, and the project results do not support the position that organizations other than the union cannot successfully develop agricultural apprenticeship in California.

One contract funded a research and development project which was to develop a career ladder for farmworkers. A Labor official familiar with the project stated that it was generally considered a success. He added that, although Labor officials could not persuade the State to continue funding the project, concepts about career ladders developed under the contract will be pursued under the center's apprenticeship contract.

The second contract was awarded in November 1977 to the California Department of Industrial Relations, Division of Apprenticeship Standards. Under this contract, the Division was to develop apprenticeship standards, work processes, and related instructional outlines in agriculture and to eventually register 150 to 200 apprentices. The contract also included a provision requiring that the United Farm Workers be involved in and agree with the Division's activities under the contract. The Deputy Administrator of Labor's Bureau of Apprenticeship and Training said that Labor favored union involvement in the contract because of the Secretary's understanding with the union's president. In addition, the Bureau's Deputy Regional Administrator in charge of overseeing the contract stated that the Governor's Office in California also wanted to assure the union's participation.

The Division did not fulfill the terms of its contract because staff were unable to gain the United Farm Workers cooperation in the project. United Farm Workers representatives only began to participate after the center received its apprenticeship contract in July 1978.

In a report on Labor's Apprenticeship Outreach and National On-The-Job Training programs entitled "Questionable Need for Some Department of Labor Training Programs" (HRD-78-4, Apr. 10, 1978), we took exception to the Office

of National Programs' practice of routinely awarding procurement contracts on a sole source basis. We recommended that the Secretary of Labor require the Office to use competitive procurement procedures whenever awarding these contracts because Federal Procurement Regulations encouraged it and Office officials could not support their belief that competition could not be obtained. They had never tried to solicit proposals from the general public. Labor disagreed with our recommendation, maintaining that the Office's transactions were not subject to Federal Procurement Regulations because they did not actually procure services but merely provided financial assistance to organizations that offered the services.

Labor's written agreement with the center is clearly identified on its face as a procurement contract, as were the agreements discussed in our previous report. Also, Labor officials could not adequately defend their belief that competition was impractical in the center's case; past experience with awarding agricultural apprenticeship contracts did not support this idea. Nor had Labor ever tried to solicit bids in the area of agricultural apprenticeship. Therefore, we believe that the center's contract should have been awarded under competitive procurement procedures and not negotiated on a sole source basis.

CENTER LACKS PROGRAM EXPERIENCE

Experience was one of five factors that were evaluated by panelists during the third phase of the farmworker economic stimulus program selection process. Of a possible 20 total points, the center scored a relatively low 13.5 because of the mixed picture of past experience it presented in its proposal. The panelists who reviewed the center's proposal noted in panel review documents that the center had no experience operating a residential skill training facility and relatively little experience with employment training. On the positive side, they also noted that the center had considerable experience operating farmworker programs generally and a strong technical assistance linkage with the Human Resources Development Institute. (See p. 6.)

We visited the center in July 1978. One of our purposes was to generally assess the center's ability to undertake the programs for which it had been funded. We were specifically interested in the qualifications of the professional

staff and the adequacy of the center's facilities. Because only the program director had been appointed at the time of our visit, we could not review professional staff qualifications. However, it appears that the center does have adequate physical facilities to conduct both the English language and vocational skill training programs.

The program director is responsible for administering both the grant and the contract, and she serves as the director designee for the Farm Workers Institute for Educational Leadership--a new entity being established by the union to handle all of its grants. According to the center's proposal, the Institute is being incorporated as a nonprofit organization entirely separate from the union and the center and will administer the CETA grant and contract under discussion here. Grant funds will support the Institute's entire administrative staff in addition to any needed program staff. As of mid-July, however, the Institute had not been established.

The program director stated that her past experience included working with the Office of Economic Opportunity, planning and supervising the construction of a union retirement center, and administering a volunteer tutorial program. She also administered a CETA title III farmworker program grant in 1975 and 1976.

We discussed the program director's past performance on this last assignment with two staff members from the Division of Farmworker Programs who were closely involved with the grant she administered. One monitored the grant and the other was responsible for overseeing farmworker program grants in the western United States. The grant monitor stated that the program suffered from poor program direction and that it lost its funding in 1977 because of overall poor performance. Both indicated that in their opinion the program director was not a good administrator. Apparently, questions about the program director's ability to adequately administer the center's grant and contract were not raised during negotiations because Labor officials believed that another center employee--one thought to be very competent--would be directing the CETA programs.

In response to questions about her past CETA experience, the program director stated that she had not been solely in charge of the grant. There also was an Executive Director and a Board of Directors that provided no program planning assistance to which she was responsible. She added that,

in her present capacity with the Farm Workers Institute for Educational Leadership, she expected strong, expert management support from the Institute's Board of Directors.

The center plans to hire several other professionals to operate the CETA programs. According to the center's grant agreement, English language training courses will require hiring one training coordinator and four instructors, and the vocational skill training courses will require hiring one training coordinator and five instructors. The center also plans to hire consultants to train English language instructors and help develop the English language curriculum.

The program director described her plans for hiring staff and the roles they would fulfill. The center would have to hire people to fill all of the positions listed in the grant agreement except for the communications, and building maintenance and landscaping instructors. She indicated that the center already had qualified staff in house for these two courses, but it lacked staff to teach English language as well as vocational courses in printing and auto/diesel mechanics.

The center would begin advertising for English language and vocational skill training instructors once grant funds were received. Interview committees would also be established to review applications and recommend candidates to the program director for approval and appointment. Instructors, the program director, and credentialed center staff would develop the English language curriculum. The consultants would also participate in monitoring the instruction in process and evaluating the program's effectiveness by following up on students who complete the course.

According to the program director, neither the union nor the center had the resources or expertise available in house to carry out the work required under the agricultural apprenticeship contract. She planned to hire staff and use consultants to carry out the program and to seek help from universities and labor relations schools in finding staff. The center would also work closely on the project with the California Department of Industrial Relations, Division of Apprenticeship Standards. The Division is responsible for registering apprenticeship training in California.

The program director indicated that all training would probably be conducted on the center's property at La Paz,

with the exception of auto/diesel mechanics training, which would be held at the center's garage in Delano, California. We inspected the facility where the center plans to hold CETA classes and found that, although part of it was already being used for classes, there were many unused rooms and additional space available for other classes. The center also had dormitory space available for CETA participants. Labor negotiators, while visiting La Paz in January and May 1978 before a final award was made, also checked the facilities and found them to be generally adequate.

NEED FOR A RESIDENTIAL
ENGLISH LANGUAGE TRAINING
PROGRAM IS UNCLEAR

Although the center's grant agreement places no geographical restrictions on recruiting participants within California, the program director stated that the majority of the center's participants would probably be drawn from Kern County, California. Accordingly, we reviewed alternative educational opportunities available in that area.

The Adult Education Consultant for the California State Department of Education, whose geographic area of responsibility includes Kern County, stated that the majority of adult basic education courses taught in the county area are English language courses for persons of limited English-speaking ability--some of which are supported by Department of Health, Education, and Welfare funds. The English language courses are predominantly Spanish/English and, except in metropolitan areas, are attended by farmworkers. They are generally held at existing school facilities; however, for groups of 20 or more students, courses can be offered at farmworker locations such as large corporate farms or work camps where facilities are available.

Statistics for the school year ended June 30, 1977, show that 7 of 10 schools holding adult basic education classes in the county offered English language courses. Total enrollment in English language courses was approximately 2,300 students. According to the consultant, the number of courses offered is determined by the number of persons interested in participating. Therefore, all interested persons have a chance to attend courses with very rare exceptions.

Officials of the Bakersfield Adult School--serving about two-thirds of Kern County--indicated that the English language

courses being offered attempt to address community needs. For example, classes would be scheduled in the evening in the case of farmworkers to accommodate their work hours. The English language courses also try to meet students' practical needs. For example, a course segment might be devoted to learning how to complete a medical form.

State and local school officials we spoke with believed that the center's grant duplicated educational opportunities already available through the school system. CETA staff we interviewed, affiliated with the CETA Program Department in Kern County and the CETA Planning Council, also shared the same view. However, the program director disagreed, emphasizing that the center's residential program will be more innovative and more responsive to farmworker needs than the traditional classroom training offered by the school system. According to the program director the center's program will be more innovative because it will focus on the special language needs of farmworkers and will employ new language teaching techniques, and will be more responsive because it will eliminate the problem of transportation to courses and evening courses for which farmworkers are often too tired.

Although the program director, based on discussions with farmworkers, was convinced that the school system's English language courses were unsuccessful, she did not have data demonstrating their inadequacy, in order to justify the need for additional or different types of courses. She also did not have evidence indicating that the new techniques the center planned to use were likely to produce better results than the school system's traditional ones. It is unclear whether a need exists for the center's program without this kind of data. Clearly, English language training is already available through the school system and since school officials have stated that as a rule it is available on demand it appears to meet the expressed need for such training.

Although a procedure exists for determining local program needs, Labor did not have such information when it awarded the center funds for English language training. The Office of Management and Budget's Circular No. A-95 is concerned with achieving the most effective and efficient utilization of Federal assistance resources through coordination and the elimination of conflict and duplication. It establishes procedures whereby Federal agencies and applicants for Federal assistance must give State and local

governments, through State and areawide clearinghouses, an opportunity to assess the relationship of their proposals to State, areawide, and local plans and programs. Federal agencies must consider these assessments, which are advisory, when deciding whether or not to proceed with the proposed project.

The farmworker economic stimulus program solicitation required interested parties to submit their applications to Labor as well as to State and/or appropriate areawide clearinghouses at the same time. An official in the Division of Farmworker Programs explained that the "and/or" option was used to account for every possible State situation. Procedures vary among States so that submission to the State or areawide clearinghouse, or both, may be required depending on the State.

The center submitted its application to the State clearinghouse in California, and the clearinghouse routinely circulated it among State agencies for comment. No comments were received, and the center's application was cleared. However, the center did not submit its application, as required in California, to the appropriate areawide clearinghouse. According to a State clearinghouse representative, the State does not forward applications it receives to areawide clearinghouses for comment. Therefore, a nonresponse from the State represents only the State's view.

The Kern County Council of Governments is the local clearinghouse which serves Kern County and 11 incorporated cities. The Council protested the center's failure to comply with A-95 procedures to the Secretary of Labor in a letter dated March 3, 1978. We discussed the center's situation with the Council's Executive Director. She explained that had the center complied, the council probably would have requested that a center representative explain the proposal in greater detail before deciding whether or not to comment. This is commonly done when proposals are controversial in some respect. Although the clearinghouse may still have commented negatively on the center's proposal, the Executive Director felt that, at the very least, some of the local community's objections might not have arisen because correct information would have been available about the proposed program.

Labor officials in the Division of Farmworker Programs stated that they assumed that the center had complied fully

with A-95 procedures because the center had correctly indicated on its application for funding that it had received no response from the State clearinghouse. The officials further stated that in their view it was the applicant's responsibility to comply with the provisions of Circular A-95. We discussed the matter with two Office of Management and Budget officials. One noted that the language Labor used in its solicitation may have prompted applicants to incorrectly believe that submission to the State or areawide clearinghouse would be acceptable when in fact requirements vary from State to State. Both stated that Labor acted incorrectly by assuming State clearance was sufficient. Since the center's application did not indicate that it had been forwarded to the appropriate areawide clearinghouse as required, Labor should have returned the center's application for review by the areawide clearinghouse before considering it for funding.

PROGRAM PARTICIPANTS ARE EXPECTED
TO BE PRIMARILY SPANISH SPEAKING

When we visited the center, program participants had not been selected and criteria and procedures for recruiting and selecting the participants had not been formulated. According to the grant agreement and the program director, the first 4 to 6 months of the 18-month grant period would be devoted to hiring and training staff and developing curricula. Consequently, most participant recruitment was not expected to take place until early 1979.

The program director stated that she expected recruitment and selection criteria and procedures to be developed at an upcoming planning conference. She also expected a screening committee (possibly including farmworkers) to review and recommend participants for her approval. According to the center's grant agreement, the union's Campesino Centers--which are staffed by farmworkers who provide information and assistance to both union and nonunion farmworkers about local services (such as housing and transportation) will handle recruitment. The program director indicated that the center may also advertise for participants through the California Employment Development Department.

CETA regulations governing the center's English language training program stipulate that only persons who are economically disadvantaged, unemployed, or underemployed may participate. The program director noted that general requirements probably would include a desire, need, and commitment

to undertake training. She also expected that individuals wishing to participate in English language training--which involves 75 of 91 slots or more than 80 percent of total program enrollment--would be required to speak Spanish. She also expected them to be drawn from the Kern County area.

According to the program director, vocational skill trainees would probably come from the same area, but speaking Spanish would not be a requirement for their selection. She indicated that the center hopes to continue English language training once it has been set up and that other language groups might be included at that time.

If the center does select participants as the program director suggested, it would be departing from the program outlined in the grant agreement. The agreement states that both types of training will serve farmworkers--without any ethnic restriction. The center also could risk violating one of the assurances it made when accepting the grant--that no person would be excluded from participation in its programs on the grounds of race, color, sex, or national origin. Although the center submitted figures in its original proposal showing that persons speaking Spanish or having Spanish surnames were the largest group in Kern County that might require English language training, the figures also showed a small representation of other ethnic groups as well. Labor should closely monitor the center's recruiting and selection activities to assure that eligible farmworkers are not denied the opportunity to participate in the center's English language program solely because of their ethnic backgrounds.

As was mentioned previously, the grant agreement also does not restrict the center's recruiting to the Kern County area, although the program director indicated that this might be the case. We discussed this point with Labor officials; they indicated that their understanding is that the grant serves the entire State. Labor should also clarify this issue with the center before participants are recruited and selected.

LABOR CANNOT ASSURE NON-
PARTICIPATION OF ILLEGAL
ALIENS IN FARMWORKER PROGRAMS

Illegal aliens are persons of foreign origin who have entered the United States unlawfully or who, after legal entry, have violated the terms of their admission, generally

by overstaying and/or accepting unauthorized employment. CETA regulations governing farmworker programs and programs for persons of limited English-speaking ability generally limit participation to U.S. nationals and aliens who have been allowed to reside in the United States as permanent residents or are otherwise legally available for work in the United States. However, the regulations do not require program sponsors to follow any particular procedures to assure that illegal aliens are not participating in their programs; and, as of November 1978, Labor had no plans to amend the regulations to include such a requirement.

Officials in the Division of Farmworker Programs and the Office of National Programs believe that requiring proof of citizenship or alien status in order to participate in farmworker programs might result in legal action against Labor on the grounds that such a requirement would discriminate against certain groups or would in some other way violate an individual's civil rights. We also discussed the issue with two representatives from Labor's Solicitor's Office, who stated that the Office does not have an official, documented position or policy on the matter. They agreed that there are some civil liberties questions involved in requiring proof of citizenship or alien status, but they did not both agree that these questions have merit. One of the representatives and another Labor official stated that Labor has chosen not to formulate administrative rules because the Congress has not addressed the matter legislatively. And the other representative indicated that the basic reason for Labor's decision not to require proof of citizenship is that it would be too difficult and time consuming for citizens. Since the United States does not have a national identification card or some other documentary proof which citizens routinely carry with them, such a requirement would place an unreasonable burden on them.

Despite differences in opinion, however, program officials and legal representatives agreed that, under the present circumstances, Labor cannot be certain that illegal aliens are not participating in its farmworker programs. However, if Labor could prove that a grantee was knowingly admitting illegal aliens into its programs, Labor's ultimate recourse, according to the Director, Division of Farmworker Programs, would be to withdraw funding.

The center has not established any procedures for screening out illegal aliens. The program director stated that the

center preferred to rely on self-certification in order to avoid possible legal problems which have arisen in the past when requiring proof of citizenship or alien status. These problems generally involved discrimination complaints by selected groups. However, simply relying on applicants' assertions about their citizenship status provides little assurance that illegal aliens will be effectively prohibited from participating in the center's programs.

LABOR'S MONITORING WILL
CONSIST OF VISITS AND REPORTS

Labor plans to visit the center at least once every quarter for a total of six visits during the grant period. A staff member in the Division of Farmworker Programs has been assigned to monitor the grant. He stated that the visiting schedule does not apply to farmworker economic stimulus program grantees generally, but only to the center because of the controversy and publicity concerning its grant. He added that the center, like the other grantees, will also be required to submit quarterly progress reports to Labor.

The monitor made his first visit to the center on September 27 and 28. Among other things, he said that he reviewed the terms and conditions of the grant with the program director, inspected housing areas, discussed property management, equipment requirements, and methods of recruiting staff, and determined the amount and type of technical assistance the center appeared to require. He stated that he planned to recommend technical assistance in financial management, management information systems, and general program operation. He added that it was not unusual for Labor to contract with firms to provide technical assistance to grantees, especially new ones.

By early December some staff had been hired and some participants had been recruited. However, no training had taken place. The monitor also had not scheduled a return visit to the center.

The apprenticeship contract will be monitored separately by the contract negotiator. He stated that his monitoring program was three-pronged. First, he notified the center that monthly narrative reports were required within 10 days following the end of each month. These reports are to include information on persons hired

under the contract, cooperative arrangements with other organizations having similar goals, contacts with employers to participate in the study, and information on general progress and developments, including problems.

Second, he visited the center on October 18 and 19 to assess progress and provide any needed assistance. In a November 13, 1978, report to the Administrator, Office of National Programs, he stated that the contract was behind schedule because the center was having problems finding staff to administer the project. He also noted that no funds had been drawn to date.

Third, Labor plans to have the Human Resources Development Institute provide technical assistance to the center on a more regular basis from an office to be opened for this purpose in Bakersfield, California. CETA funds provided under an existing contract with the Institute will finance the Bakersfield office.

Single copies of GAO reports are available free of charge. Requests (except by Members of Congress) for additional quantities should be accompanied by payment of \$1.00 per copy.

Requests for single copies (without charge) should be sent to:

U.S. General Accounting Office
Distribution Section, Room 1518
441 G Street, NW.
Washington, DC 20548

Requests for multiple copies should be sent with checks or money orders to:

U.S. General Accounting Office
Distribution Section
P.O. Box 1020
Washington, DC 20013

Checks or money orders should be made payable to the U.S. General Accounting Office. NOTE: Stamps or Superintendent of Documents coupons will not be accepted.

PLEASE DO NOT SEND CASH

To expedite filling your order, use the report number and date in the lower right corner of the front cover.

GAO reports are now available on microfiche. If such copies will meet your needs, be sure to specify that you want microfiche copies.

AN EQUAL OPPORTUNITY EMPLOYER

**UNITED STATES
GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548**

**OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE, \$300**

**POSTAGE AND FEES PAID
U. S. GENERAL ACCOUNTING OFFICE**



THIRD CLASS



RELEASED

11-13-79

110826

~~507725~~

11967



UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548

HUMAN RESOURCES
DIVISION

B-165430

~~RESTRICTED~~~~Accounting~~

NOVEMBER 8, 1979

rel 11-13-79

The Honorable Charles E. Grassley
House of Representatives

Dear Mr. Grassley:

Subject: The Distribution of Senior Community
Service Employment Program Positions
(HRD-80-13)

Your February 3, 1978, letter requested that we examine, as part of an ongoing survey, the procedures used to select project sites for the Senior Community Service Employment Program (SCSEP). You were concerned that SCSEP projects and positions, especially in Iowa, were not being distributed evenly throughout the State.

Our survey was made primarily at the Department of Labor; the Administration on Aging in the Department of Health, Education, and Welfare; and the offices of the five national grantees under contract with Labor to administer the program, whose headquarters are in Washington, D.C. At these locations we also obtained information on the program's operation in Iowa.

Enclosure I details the results of our survey applicable to your request. The law and regulations state that funds should be apportioned equitably among areas in each State. The criteria used by the national grantees in apportioning funds (in essence distributing positions) are based on administrative economy and visible program impact. Although these criteria have merit, considering the limited amount of available funds, they do not result in the most equitable distribution of positions.

(205910)

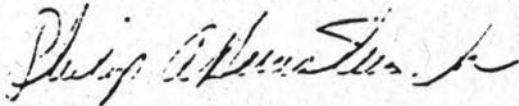
B-165430

Recent revisions to the enabling legislation and new procedures established by Labor could improve the distribution of SCSEP positions within the States.

- - - - -

As arranged with your office, we obtained comments on this report from Labor; the Department of Health, Education, and Welfare; and the national grantees active in Iowa. Their comments, which are included as enclosures II through VI, were in general agreement with our conclusions and we considered them in preparing this report. Also, as arranged with your office, we are sending copies of this letter to the Subcommittee on Retirement Income and Employment, House Select Committee on Aging; the Department of Labor; the Department of Health, Education, and Welfare; and the eight national grantees funded in program year 1979. Copies will also be made available to other interested parties upon request.

Sincerely yours,



Gregory J. Ahart
Director

Enclosures - 6

ENCLOSURE I

ENCLOSURE I

DISTRIBUTION OF SENIOR COMMUNITY
SERVICE EMPLOYMENT PROGRAM POSITIONS

BACKGROUND AND SCOPE

The Senior Community Service Employment Program (SCSEP) was established to offer part-time employment opportunities for unemployed low-income persons age 55 or older who have poor employment prospects. SCSEP participants work in a wide variety of community service activities and facilities, including day care centers, schools, hospitals, senior centers, and beautification, conservation, and restoration projects.

SCSEP was authorized by title IX of the Older Americans Act, as amended by the Older Americans Community Service Employment Act (42 U.S.C. 3001, 3056). The Department of Labor administers SCSEP through its Office of National Programs, Employment and Training Administration. Local involvement in decisions concerning the establishment of SCSEP projects is obtained through State and area agencies on aging. These agencies, established under title III of the Older Americans Comprehensive Services Amendments of 1973 (42 U.S.C. 3021, 3025), are basically responsible for developing plans for providing services to the elderly.

Most SCSEP funds for program years 1977 and 1978 were awarded to the following five national grantees: 1/

- Green Thumb, Inc.--an arm of the National Farmers Union.
- National Council of Senior Citizens.
- National Council on the Aging.
- National Retired Teachers Association--
American Association of Retired Persons.
- U.S. Forest Service.

1/An SCSEP program year is July 1 to June 30. In program year 1979, Labor awarded grants to three additional organizations to operate projects under SCSEP. This report addresses the five national grantees being funded as of program year 1978.

The distribution of SCSEP funds was set out in section 906(a)(1) of the Older Americans Act of 1965, as amended, by the Older Americans Amendments of 1975. This provision required the Secretary of Labor to reserve such sums as may be necessary for national grants or contracts to maintain the level of activities carried on under such grants or contracts at least at the level supported in the fiscal year ended June 30, 1975. ^{1/} The act also gave preference to funding national organizations of proven ability under SCSEP. The appropriation act to fund SCSEP 1978 program year activities reserved about 83 percent of SCSEP funds for continuing SCSEP activities funded under existing grants or contracts.

Funds were also appropriated for the 1978 SCSEP program year by the Economic Stimulus Appropriations, 1977. Under this act, about 75 percent of the funds made available to SCSEP were to continue SCSEP activities funded under existing grants or contracts. As a result of these two acts, about 80 percent of the funds for 1978 SCSEP activities were given to organizations already funded. Most existing activities were carried out by the five national grantees; consequently, they received most of the funds for program year 1978.

The remainder of the 1978 funds (about 20 percent) were not earmarked for any specific group by the legislative acts. Labor made these funds available to all State governments to carry out SCSEP programs in addition to any SCSEP activity established in their State by any of the national grantees.

The following table shows the amount allotted each national grantee and the States for program year 1978.

^{1/}This provision is generally referred to as the hold harmless funding level for national grantees. The Comprehensive Older Americans Act Amendments of 1978 updated the base year for the hold harmless funding level to fiscal year 1978. In applying the hold harmless provision, Labor considers the number of positions funded rather than the actual funds expended. This interpretation permits Labor to maintain the same number of positions even when the costs to maintain the positions increases.

ENCLOSURE I

ENCLOSURE I

<u>Grantee</u>	<u>Amount</u> (millions)
Green Thumb, Inc.	\$ 49.3
National Council of Senior Citizens	27.2
National Retired Teachers Association--American Association of Retired Persons	20.0
National Council on the Aging	13.2
U.S. Forest Service	10.2
State governments	<u>30.1</u>
Total	<u>\$150.0</u>

In awarding funds to maintain the existing level of activities, the Secretary of Labor, to the extent feasible, is to assure an equitable distribution of activities among the States. Also, in awarding funds not required to maintain the existing level of activity, the Secretary is to provide funds to States in proportion to the number of persons age 55 or over in each State with minimum amounts established for the States and other jurisdictions.

SCSEP capacity to serve target population

Funds available for SCSEP activities in program year 1978 were to support 37,400 jobs. Labor received \$211.7 million for SCSEP for program year 1979. Labor estimated that these funds would support about 47,500 jobs. Bureau of the Census statistics for calendar year 1977 show that over 5 million individuals met SCSEP eligibility requirements.

Although not all eligible individuals desire or are capable of participating in SCSEP, our analysis showed that the 1979 funding level will allow less than 1 percent of those eligible to be served.

SCSEP is not the only employment and training program that can serve older workers. For example, older workers can receive employment and training services under various titles of the Comprehensive Employment and Training Act of 1973, as amended (29 U.S.C. 801). However, organizations involved in the provision of services to the elderly have indicated a need to improve the delivery of services to the elderly through the Comprehensive Employment and Training Act programs. The

ENCLOSURE I

ENCLOSURE I

U.S. Civil Rights Commission also noted in a December 1977 report on age discrimination in programs or activities receiving Federal financial assistance that, "Age categorical programs such as those authorized under the Older Americans Act are used to justify limiting the participation of older people in other service programs."

Scope of survey

Our survey was made primarily at the Department of Labor; the Administration on Aging in the Department of Health, Education, and Welfare; the offices of the five national grantees funded in program year 1978 whose headquarters are in Washington, D.C.; and SCSEP projects in Harrisburg, Carlisle, and Lancaster, Pennsylvania. We examined pertinent legislation, Labor regulations, grant agreements, and reports submitted by the grantees. We reviewed trip reports, correspondence, memorandums, and budget and expense reports maintained at the headquarters offices of the national grantees. While at Labor and the offices of the national grantees, we also obtained information on the operation of SCSEP in Iowa.

DISTRIBUTION OF POSITIONS
BY THE NATIONAL GRANTEES

The Older Americans Act, as amended, and program regulations require that:

"The amount [of funds] apportioned for projects within each State * * * shall be apportioned among areas within each such State in an equitable manner, taking into consideration (1) the proportion which eligible individuals in each such area bears to the total number of such individuals, respectively, in that State, and (2) the relative distribution of such individuals residing in rural and urban areas within the State."

Discussions with Labor officials and national grantees indicated that SCSEP funds, which determine the number of positions, are not necessarily distributed within the States in accordance with the criteria stated above. Labor has not determined which areas within a State should be served and the level of funding (and consequently the number of positions) that each designated area should receive. The distribution of positions within a State is basically left up to the national grantees serving the State.

Criteria used by national grantees

According to three of the five national grantees (National Council of Senior Citizens, National Council on the Aging, and National Retired Teachers Association--American Association of Retired Persons), the criteria used for distributing SCSEP positions within the States include serving areas with (1) high unemployment, (2) no existing SCSEP positions, and (3) high concentrations of elderly poor. According to national grantee officials, these factors are designed to enhance program visibility and administrative economy. Green Thumb, Inc., and the U.S. Forest Service serve primarily rural areas.

Regarding whether the national grantees could feasibly distribute positions throughout a State in accordance with the statutory criteria, an official for one grantee testified before the Subcommittee on Aging of the Senate Committee on Human Resources on February 8, 1978, that, "To spread resources thinly results in no visible impact-except on administrative costs."

The administrative tasks to operate a project can be significant because, in addition to employment benefits, Labor regulations state that all program participants are to receive related supportive services, such as yearly physical examinations, assistance with personal and job-related problems through counseling and referral to human service agencies, and consumer-related information in such areas as social security benefits, income tax requirements, nutrition, and personal health. To provide participants these supportive services, a project can be

- restricted to a small geographical area with either one project administrator or several staff members, if available, providing services to participants or

- spread over a large geographical area with responsibility for providing services delegated to other staff members, if available, or requiring the project administrator to do extensive traveling to provide services.

Procedures for distributing positions

With Labor's participation, the five national grantees meet to mutually allocate the positions authorized for each State while ensuring that no grantee exceeds its established

funding level. This procedure allows more than one national grantee to serve a State, as shown in the following table for the program year ended June 30, 1978.

<u>States served by:</u>	<u>Number of States (note a)</u>
All five national grantees	7
Four national grantees	12
Three national grantees	16
Two national grantees	11
One national grantee	3
States not served by national grantees	<u>7</u>
Total	<u>56</u>

a/Includes the 50 States, Puerto Rico, the District of Columbia, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific.

After the grantees determine what States they will serve, they must determine the areas within a State where positions will be located. This may result in establishing new projects or increasing the number of positions at established projects. When determining how the positions within a State will be distributed, each national grantee should consult that State's agency on aging and the appropriate area agencies on aging. This consultation is to gain local views on where positions are most needed, an overview on the employment situation and type of skills possessed by local eligible individuals, and the number and percentage of eligible individuals in the locality.

These procedures give the State and area agencies on aging an advisory role in establishing SCSEP projects in their jurisdictions. National grantee officials told us that the degree of coordination with these organizations varies from agency to agency.

The grantees then submit to Labor their plans identifying the States and areas within a State where projects are to be located and the number of positions to be established for each project. These plans, once approved by Labor, are the basis for the grantees' actions during the program year.

ENCLOSURE I

ENCLOSURE I

Operation Mainstream and
equitable distribution

According to Labor reports, projects under SCSEP include those conducted by the national grantees in fiscal year 1975 under the National Older Workers Program-Operation Mainstream ^{1/} with funding from title III of the Comprehensive Employment and Training Act. Labor merged the Mainstream projects into SCSEP in the beginning of fiscal year 1976; however, special legislative arrangements were needed to do this. Although legislation requires that SCSEP positions be distributed equitably within the States, Mainstream positions were distributed unevenly.

To prevent terminations or cutbacks in local Mainstream projects as a result of the changeover in the funding base, the Congress included a provision in a fiscal year 1976 continuing resolution which provided that no State would receive less than the amount received in fiscal year 1975 under title III of the Comprehensive Employment and Training Act. Therefore, the 12,400 SCSEP positions in existence as of June 30, 1975, did not reflect the original title IX equitable distribution criteria. However, positions established after June 30, 1975, should be distributed equitably as required by the legislation.

We found indications that new positions have not always been distributed as equitably as possible, taking into consideration the statutory criteria. In Pennsylvania, we identified three counties that received more than their proportionate share of SCSEP positions during program year 1978. For example, one county had 2.3 percent of the State's elderly poor ^{2/} which justified an allotment of about

^{1/}The Operation Mainstream program, established in the Office of Economic Opportunity in 1965, was directed to the needs of those chronically unemployed poor who had poor employment prospects and were unable, because of age or other factors, to secure appropriate employment. One component of the program, operated by Green Thumb, Inc., limited participation to persons 55 and older; SCSEP is a direct descendent of this Mainstream project.

^{2/}Available data on Pennsylvania defined the elderly poor as persons age 60 and older with incomes at or below the Office of Management and Budget poverty level.

37 positions by the national grantees. However, the county was allotted 50 positions, all of which were assigned after June 30, 1975. Application of the equitable distribution criteria for two other counties justified about 14 and 29 positions, respectively, in 1978. However, the counties received 30 and 151 positions, respectively, from the national grantees during 1978, with each receiving new positions since 1975.

ADMINISTRATION OF SCSEP IN IOWA

During program year 1977, SCSEP was administered by two national grantees in Iowa. In program year 1978, SCSEP funds were made available to an additional national grantee and to the Iowa Commission on the Aging to administer the State-sponsored program. The following table identifies the organizations that administered SCSEP in Iowa during program years 1977 and 1978, their authorized positions, and the funds allocated for administration of SCSEP projects in the State.

<u>Organizations and project location</u>	<u>Program year</u>			
	<u>1977</u>		<u>1978</u>	
	<u>Posi- tions</u>	<u>Federal funds</u>	<u>Posi- tions</u>	<u>Federal funds</u>
Green Thumb, Inc. (note a)	49	\$132,000	132	\$530,000
National Retired Teachers Association-- American Association of Retired Persons		336,000		687,000
Des Moines	45		60	
Ottumwa	45		60	
Dubuque	-		52	
National Council of Senior Citizens		-		209,000
Davenport	-		52	
Iowa Commission on the Aging (note b)	-	-	93	388,000
Iowa totals	<u>139</u>	<u>\$518,000</u>	<u>449</u>	<u>\$1,314,000</u>

a/Green Thumb, Inc., primarily administers SCSEP in rural communities throughout the State. Therefore, the various communities served have not been listed.

b/The State-sponsored SCSEP is administered through Iowa's 13 area agencies on aging and funds for 1978 were for a 15-month period from July 1977 through September 1978.

ENCLOSURE I

ENCLOSURE I

Iowa is divided into 99 counties and over 155,000 of its citizens are estimated to meet SCSEP eligibility requirements.

National grantees serving Iowa

The organizational structure used by each grantee affects the size of projects and the geographical area served. Green Thumb, Inc., is the largest SCSEP national grantee and primarily serves rural areas. Green Thumb's system of using enrollees to supervise other enrollees has allowed it to serve a larger geographical area than other national grantees serving Iowa.

For economy reasons, the National Retired Teachers Association, which generally serves urban areas, prefers to establish projects in communities that (1) have sufficient host agencies to support 60 positions, (2) are not served by another national grantee, and (3) have high unemployment.

The National Council of Senior Citizens' philosophy is to establish new projects in areas of high unemployment to achieve visible program impact. The Council does not establish multicounty projects. In correspondence with the Secretary of Labor, the National Council's deputy director stated that, "Stretching fifteen slots to cover five counties does not enable a local sponsor to have any impact on needed services."

The criteria used by two of the three national grantees for distributing positions in Iowa are based primarily on administrative economy and visible program impact. Using these criteria has led to some controversy, as evidenced by the Iowa Commission on the Aging's position that available positions should be equitably distributed to all 99 counties in the State. An official of the national grantee that served the most areas in the State told us that the Iowa Commission has criticized his organization's efforts to establish projects in selected areas. According to the national project director for another grantee, Iowa was the only State in which the grantee did not establish projects according to the State's wishes. Statewide distribution of positions would not have conformed with the grantee's criteria for establishing projects. Also, the third grantee did not serve all counties in the State.

Iowa has not been unique in its concerns regarding how positions are distributed within the State. Discussions with Labor officials and our review of comments from State and area agencies on aging on grantees' preapplication plans indicated

that some agencies have resented not being consulted until after the national grantees have determined the allocation of positions within their State. National grantees have modified plans in some States as a result of comments from the agencies on aging. However, these modifications generally have not been as major as those proposed by the Iowa Commission.

State-sponsored SCSEP in Iowa

Iowa's Commission administers the State's SCSEP. Labor allotted \$388,000 to the Commission for 93 positions for program year 1978. According to Labor's grant agreement with the Commission, \$192,000 was to be distributed on a formula basis to Iowa's 13 area agencies on aging. The formula provided at least two positions to each area agency and the State agency on aging, with the remainder distributed according to the percentage of elderly poor in each area. The other \$196,000 was awarded to area agencies on aging based on proposals that requested additional funds for SCSEP.

RECENT CHANGES AFFECTING SCSEP

Recent amendments to the Older Americans Act and Labor-initiated actions could affect the equitable distribution of SCSEP positions within the States. The following sections summarize these changes.

Comprehensive Older Americans Act Amendments of 1978 (42 U.S.C. 3001)

The Older Americans Act was amended in October 1978, and title IX of the act was redesignated as title V. Section 502 requires national grantees to formally submit a description of any project to be conducted within a State to the State agency on aging 30 days before the starting date of the project. This requirement is more specific than the act's previous provision, which required the Secretary of Labor to consult with State agencies on aging through the Commissioner, Administration on Aging.

The new section 502 of the act also provides that:

"The Secretary shall review on his own initiative or at the request of any public or private nonprofit agency or organization, or an agency of the State government, the distribution of

ENCLOSURE I

ENCLOSURE I

programs under this title within the State including the distribution between urban and rural areas within the State."

This new provision should afford State and local or private entities an opportunity to formally contest what they perceive to be an inequitable distribution of SCSEP positions within a State. While the legislation does not address the impact of findings pursuant to this provision on the act's hold harmless requirements, such review should at least establish priorities for future distribution of SCSEP positions within a State.

The new section 506 of the act updates the base year for the hold harmless funding level to fiscal year 1978 and requires the Secretary to reserve not more than 45 percent of any amount appropriated which exceeds the fiscal year 1978 appropriation level for national grants or contracts with public agencies and public or private nonprofit organizations. This provision could result in most of the funds above the 1978 funding level being allotted to State organizations. With these additional funds, the States could be in a better position to equitably distribute SCSEP positions within their boundaries. The impact of this provision, however, will depend upon to what extent subsequent appropriations exceed the 1978 funding level.

Labor initiatives

Labor has also received complaints about the intra-State distribution of SCSEP positions, especially since the introduction of an advisory role for State and area agencies on aging. As a result of these complaints and the program's expansion during the past 2 years, Labor has encouraged, rather than mandated, national and State SCSEP grantees within each State to work cooperatively to achieve an equitable distribution of positions. To achieve this objective, Labor suggested in February 1979 that:

- All grantees within each State discuss and agree upon a rationale for distributing SCSEP funds before the grant application process. The rationale should consider the number of eligible persons within each area compared to the total number of eligible persons in the State.
- Grantees should prepare a chart indicating how the application of the rationale would distribute funds or positions.

ENCLOSURE I

ENCLOSURE I

- Another chart should indicate where current enrollees or dollars are located. The two charts should be compared to identify any areas where an inequitable distribution exists.
- If necessary, a plan should be prepared to eliminate distribution inequities. The plan should be structured to achieve equity within 3 program years and prevent displacement of any permanent participants.
- Copies of the charts and later plans should be given to each grantee and Labor.
- Grantees should adhere to the plan in preparing their preapplications and applications.

A Labor official told us that the Department will implement more definitive directives if this voluntary effort is not successful.

CONCLUSIONS

Although we recognize that other Federal programs can also serve older workers, the availability of such programs has no bearing on the equitable distribution of SCSEP resources. Resources under SCSEP are not sufficient to realistically achieve an equitable distribution of positions throughout a State. In program year 1979, funds were available to support about 47,500 SCSEP positions; however, over 5 million individuals met SCSEP eligibility requirements.

A similar situation exists in Iowa, where over 155,000 individuals are estimated to meet SCSEP eligibility requirements. During program years 1977 and 1978, the total number of SCSEP positions funded in Iowa amounted to 139 and 449, respectively. In addition, the Iowa Commission on the Aging wanted the program to serve all 99 counties in the State.

The national grantees' criteria for distributing SCSEP positions is designed, in part, to enhance administrative economy. Although the grantees' distribution of SCSEP positions has left many geographical areas unserved by the program, their efforts to enhance administrative economy have merit when considered in relation to limited program resources and the significance of the program's administrative requirements.

ENCLOSURE I

ENCLOSURE I

An advisory role for State and area agencies on aging, as established by the Older Americans Comprehensive Services Amendments of 1973, created the potential for controversy regarding the criteria used in distributing SCSEP positions. By nature each area agency on aging desires services for its clientele, and the State agency on aging would like to have services available throughout the State.

Recent revisions to the enabling legislation and Labor's suggested steps could improve the distribution of SCSEP positions within the States. However, unless State and local agencies on aging can work cooperatively with national program grantees, the potential for controversy regarding the equitable distribution of SCSEP positions within the States could still exist.

AGENCY COMMENTS AND OUR EVALUATION

We obtained comments on this report from Labor, the Department of Health, Education, and Welfare, and the National grantees active in Iowa--Green Thumb, Inc., National Retired Teachers Association--American Association of Retired Persons, and National Council of Senior Citizens. Their comments were in general agreement with our conclusions and are included as enclosures II through VI.

Labor pointed out that the State-administered SCSEP activities as well as grantee activities are subject to the equitable distribution criteria. Labor also noted in its comments that, "A chart was prepared by the SCSEP grantees in Iowa, indicating where current job slots are located and where these slots would be located if all counties were equitably served by the SCSEP. It was agreed among the sponsors operating in Iowa that they would work towards a more equitable distribution of SCSEP slots over the next 3 years. Efforts are being made to accomplish this goal through attrition and placement into unsubsidized employment, rather than by displacing individuals currently participating in the SCSEP."

Green Thumb, Inc., pointed out that without a sizable increase in positions, equitable distribution could be achieved only by reducing positions in existing projects to establish positions for new projects.

ENCLOSURE II

ENCLOSURE II

U. S. Department of Labor

Inspector General
Washington, D.C. 20210



AUG 16 1979

Mr. Gregory J. Ahart
Director
Human Resources Division
U. S. General Accounting Office
Washington, D. C. 20548

Dear Mr. Ahart:

This is in reply to your letter to the Secretary of Labor requesting comments on the draft GAO report entitled, "Distribution of Senior Community Service Employment Program Positions." The Department's response is enclosed.

The Department appreciates the opportunity to comment on this report.

Sincerely,

MARJORIE FINE KNOWLES
Inspector General

Enclosure

The U. S. Department of Labor's Response to the General Accounting Office Draft Report entitled --

"Distribution of Senior Community Service Employment
Program Positions"

Since GAO performed its review of the distribution of Senior Community Service Employment Program (SCSEP) positions, there have been a number of developments which have brought about a more equitable substate distribution.

On February 14, 1979, DOL issued a bulletin to all SCSEP sponsors directing them to work cooperatively toward an equitable substate distribution of program resources and suggesting specific steps that should be taken by SCSEP sponsors in order to achieve this objective. The steps recommended by DOL are outlined in the GAO report. In response to this directive, there was a meeting of national sponsors and the State Unit on Aging in Iowa on March 9, 1979, in order to discuss the steps that would be taken in the State to achieve a more equitable allocation of SCSEP resources within the next 3 years. A chart was prepared by the SCSEP grantees in Iowa, indicating where current job slots are located and where these slots would be located if all counties were equitably served by the SCSEP. It was agreed among the sponsors operating in Iowa that they would work towards a more equitable distribution of SCSEP slots over the next 3 years. Efforts are being made to accomplish this goal through attrition and placement into unsubsidized employment, rather than by displacing individuals currently participating in the SCSEP.

Most of the other States have taken steps similar to those taken in Iowa in order to work towards a more equitable substate allocation of SCSEP resources and job slots. DOL is encouraging the sponsors to do this gradually through attrition in order to prevent the layoff of current program participants.

The Federal regulations governing the SCSEP state that no more than 15 percent of Federal funds may be spent on administrative costs; therefore, the conclusion that SCSEP resources are not sufficient to permit an equitable distribution of positions throughout a State while ensuring administrative economy is a valid one. However, as SCSEP appropriations increase, it becomes more feasible to equitably serve all areas within a State. It should be stressed that the goal in each State is the equitable distribution of all SCSEP positions regardless of whether these positions are administered by national or State grantees.

ENCLOSURE II

ENCLOSURE II

As stated in the beginning of the report, the purpose of the SCSEP is to offer part-time employment opportunities to unemployed, low-income persons age 55 or older. The fact that program participants are frequently involved in providing social services is a secondary benefit of the SCSEP. The DOL staff responsible for reviewing and funding SCSEP grant applications works closely with all grantees to try to ensure that SCSEP slots are distributed within a State in a manner that takes into consideration the number of eligible individuals residing within each area in that State and not on the basis of any area's need or desire to increase social services.

DOL is optimistic that recent revisions in the authorizing legislation, the directive recommending that SCSEP sponsors work cooperatively to fairly serve all areas within each State, and increases in the SCSEP appropriations which provide additional positions will result in a more equitable substate distribution of SCSEP resources without displacing current program participants. Indications are that the SCSEP sponsors have already begun working toward this goal.

ENCLOSURE III

ENCLOSURE III



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20201

AUG 29 1979

Mr. Gregory J. Ahart
Director
Human Resources Division
United States General
Accounting Office
Washington, D.C. 20548

Dear Mr. Ahart:

We appreciate the opportunity to comment on the draft of a proposed report entitled, "Distribution of Senior Community Service Employment Program Positions, HRD-79-(2U591U)." *Note: Appears to have been revised as HRD 80-13.*

The report deals specifically with the procedures used by recipients of grants in selecting sites for job projects and in distributing job slots under the Senior Community Service Employment Program. We have reviewed the report, with particular emphasis on the extent to which State and Area Agencies on Aging are consulted and/or involved in the selection process, the coordinative relationship of the Senior Community Service Employment Program and the other Older Americans Act programs administered by the Administration on Aging, and the impact of the procedures on the older low-income population.

With respect to the distribution of positions, the major findings of the draft report deal with the criteria established by the national grantees for the distribution of positions and the procedures used by the Department of Labor and the grantees for allocating the authorized positions for each State.

As we understand the Program and the information contained in the draft report, funds are allocated so that each State receives an equitable share of the total appropriation based on the number of eligible individuals without regard to the sponsoring organizations. The distribution of positions within a State, however, is basically made at the discretion of the national grantees. Thus, criteria established by the national grantees, which are the primary recipients of funds under the Program, are based on administrative economy and visible program impact, as opposed to the apportionment formula prescribed in the Older Americans act as amended.

The Department of Health, Education, and Welfare believes that the criteria established by the grantees are invalid. In addition, as pointed out by the report, we have questions as to the feasibility of distributing positions equitably throughout the State in light of the limited available resources. Various reports from the aging network as well as testimony provided during Hearings on extensions of the Older Americans Act seem to indicate, however, that improvements can be made in criteria developed by the individual national grantees. Some of the problems cited are inefficient distribution of positions, difficulties in placing enrollees in positions because of too many grantees serving the same geographical area, and in many instances, disregard for recommendations and suggestions of State and Area Agencies on Aging.

In view of these problems, the Department of Labor should strictly enforce the new Sections 501-508 of the Older Americans Act Amendments of 1978 as a means of ensuring a more equitable distribution of positions and more efficient services for older persons. Recognizing that the current funding level will not permit the placement of positions in every area of a State including all of the areas covered by designated Area Agencies on Aging, it is imperative that State Agencies on Aging be provided the opportunity to have input into the distribution procedures prior to the grant application process. The suggested approach made by the Department of Labor for achieving as equitable a distribution as possible should be made mandatory and included as part of the grant application package that is to be submitted to State Agencies on Aging 30 days prior to the starting date of the project. This process will better ensure that State Agencies are involved in the allocation of positions within their respective States before national grantees make their final determinations.

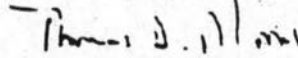
The Department fully understands that the nature of this Program makes it difficult to administer and that the available funds must be used carefully to obtain maximum impact. Robert Benedict, Commissioner of the Administration on Aging, is willing to work with the Department of Labor, however, to develop procedures for selecting sites and for distributing funds and positions in as equitable a manner as possible, consistent with the available resources.

ENCLOSURE III

ENCLOSURE III

Again thank you for the opportunity to comment on this draft report. If we may be of further assistance, please let us know.

Sincerely yours,



Thomas D. Morris
Inspector General

ENCLOSURE IV

ENCLOSURE IV



SENIOR WORKER EMPLOYMENT AND SERVICES IN
CENTROPOLITAN AMERICA
SPONSORED BY NATIONAL FARMERS UNION
FUNDED BY U.S. DEPARTMENT OF LABOR AND OTHER
LOCAL STATE AND NATIONAL AGENCIES AND ORGANIZATIONS

GREEN THUMB, INC.

112 14th STREET N.W.
WASHINGTON, D.C. 20005
(202) 749-4221

Subject Code 4300

AUG 10 1979

Mr. Gregory J. Ahart, Director
U.S. General Accounting Office
Human Resources Division
Washington, D.C. 20548

Dear Mr. Ahart:

We have carefully studied the draft of the proposed report to Congressmen Grassley related to equitable distribution of Senior Community Service Employment Program (SCSEP) positions and generally support both the rationale and conclusions of the report.

It is not fair, we think, to emphasize that under Operation Mainstream the areas of operation were dictated by the Department of Labor and since Green Thumb has expanded the program from this original base, in many states it would mean a discontinuance of existing services to achieve equitable distribution given that there are no appreciable increases in SCSEP positions in the near future. It is always difficult to withdraw services from a community once they have been established but this is the only way equity could be achieved at the present time without an increase in positions.

During the past three to four months, there have been meetings of all SCSEP sponsors in every state where we operate. The specific purpose of these meetings was to develop a plan to achieve equitable distribution within each state. For the most part these meetings have been successful in developing a recommended number of SCSEP positions for every county or planning region of a state, however, as soon as word gets out to local communities that they will have to lose some positions, so that their less fortunate neighboring communities can have the positions they deserve; an immediate hue and cry arises that reaches all the way to the Executive Branch and Congress. The end result is that everyone involved decides not to move swiftly to increase positions in an underserved area at the expense of an area that has based their community services on the presumption that a certain level of activity has been available through SCSEP.

HELP WHIP INFLATION — HIRE A SENIOR WORKER
SENIORS DON'T SIT IDLE — KEEP WORKING

Although the real efforts to achieve equitable distribution have only been going on for about four months now, under Department of Labor, it is already apparent that the only way we can ever fully carry out the intent of Congress in this regard is to have a large enough increase in total positions to allow all underserved counties or areas to be brought up to equitable levels without greatly reducing the activity in current areas of operation.

There are two other factors that affect the SCSEP sponsors, both national and state, willingness to fully implement the equitable distribution suggestions of DOL. These factors are the conflicting demands of the Title V law and regulations that on the one hand require the program in effect to be in geographical areas that contain large proportions of senior low-income people and on the other hand requires that the federal funds be matched by 10% of non-federal funds and to make it even more difficult requires that 15% of enrollees be placed into unsubsidized employment. Communities with high percentages of seniors and low per capita income have very small local tax bases and consequently, very few non-federal resources to contribute to the project. These communities also have very little industrial activity and very poor economic climates. With these factors built into the program requirements, it is very easy to see why administrators of the programs tend to concentrate their program activities in areas where jobs and non-federal resources are available.

Green Thumb has always attempted to place program enrollees in rural areas where there is the greatest need for employment opportunities for older people and greatest need for services, as I think our record will substantiate, however, in doing so we have admittedly had difficulties in meeting the requirement for non-federal matching share and we have never been able, in many rural places, to reach the desired goal for unsubsidized placements.

If the pressure to fulfill the requirement for placements and non-federal matching share continues along with the requirements for equitable distribution, there will rapidly come a time when competition among sponsors to work in areas of higher economic development will severely militate against any real voluntary cooperation to achieve equitability.

In conclusion, we believe that the only way the real purpose of the SCSEP program of insuring that every low-income senior in the United States has an opportunity for useful employment can be achieved is by amending the Title V Act to allow for the following:

1. An increase in positions to at least twice the number currently available.

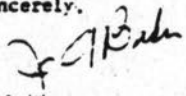
ENCLOSURE IV

ENCLOSURE IV

2. Entirely eliminate the requirement for non-federal matching share at least from areas of low-income or high chronic unemployment and under-employment and of natural or economic catastrophic crisis or emergency.
3. Eliminate the requirement to place enrollees into unsubsidized employment positions or at least reduce it to an overall goal of 5%. This would tend to make the program a true public service employment program.

We hope this will be of some help to you in preparing your final report. If there is any other information we can provide, do not hesitate to call on us.

Sincerely,


J.A. Baker
Executive Vice-President

ENCLOSURE V

ENCLOSURE V



SENIOR COMMUNITY SERVICE EMPLOYMENT PROGRAM
Mr. G. Peter Vogt, Jr. Administrative Officer
1908 K Street, N.W.
Washington, DC 20049
202 872-4813

August 6, 1979

Mr. Gregory J. Ahart
Director
Human Resources Division
United States General Accounting Office
Washington, D.C. 20548

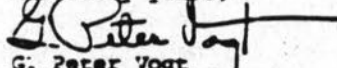
Dear Mr. Ahart:

We have reviewed the Draft Report, "Distribution of Senior Community Service Employment Positions", which you very kindly furnished this office under your letter of July 11, 1979.

The material in the draft report is considered to be well presented; however, it is recommended that mention be made of the A-95 Clearinghouse procedure, sponsored by the Office of Management and Budget; and the coordinating system between the National Sponsors and State programs as required by Older Workers Bulletin 79-1, issued by the Employment and Training Administration, U.S. Department of Labor. Both of these DOL procedures play an important part in achieving equitable enrollee slot allocations, which are agreeable to both state and national programs.

Thank you for giving us the opportunity to comment on the draft report.

Sincerely yours,


G. Peter Vogt
Administrative Officer

GPV:lj

cc: R.F. Yzaquierre, Asst. Natl. Proj. Dir., Field Opns.
R. Ludin, ETA, Dept. of Labor

John H. Hughes
Deputy Dir.

Leonard Ormon
Deputy Dir.

John F. Inoué
Executive Director

National Headquarters 1908 K Street, N.W. Washington, D.C. 20049 202 872-4700

4-5-79

ENCLOSURE VI

ENCLOSURE VI

NATIONAL COUNCIL
OF SENIOR CITIZENS

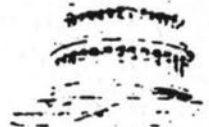
President

JAMES CARRAY

Executive Director
WILLIAM R. HUTTON

1511 K Street, N.W.
Washington, D. C. 20005
Telephone: 347-4800, Code 202

SENIOR
AIDES



SENIOR AIDES PROGRAM
DEPUTY DIRECTOR
LOUIS H. RAVIN

A Program Sponsored by the National Council of
Senior Citizens for the U. S. Department of Labor

August 3, 1979

Gregory J. Ahart, Director
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Ahart:

I regret that I have been unable to reduce to writing until now the comments invited in your letter of July 11. However, I have talked earlier by telephone with two members of your staff. Overall, I think this is an excellent report and I find myself in substantial agreement with the conclusions in Enclosure, on page 12. However, the proposed letter to Congressman Grassley for your signature is significantly at variance with the conclusions. In your letter, you propose to say that requirements with respect to an equitable distribution within states, were not being met by the national grantees in accordance with the law, that the national grantees were apportioning funds on a different basis, e.g. administrative economy and visible program impact.

One of your conclusions states:

"The national grantees' rationale for the distribution of SCSEP positions has merit when considered in relation to limited program resources."

[GAO comment: Our comments in the letter to Congressman Charles E. Grassley summarize the information developed in enclosure I. This summary addresses the requirements of the law and the criteria used by the national grantees which have merit considering the limited amount of funds available. Therefore, we do not believe that the letter to Congressman Grassley is at variance with the conclusions in enclosure I.]

GAO note: Page references have been changed to correspond to page numbers in the final report.

I would like to make some comments on specific items in the following:

1. Equitable does not have the same meaning as "equal" nor even "proportionate". The legislation imposes a strict formula with respect to the allocation among the states by the U.S. Department of Labor. The language with respect to distribution of resources within the state differs from that for allocations among the states, and we must assume that Congress did so knowing what it was doing. - one of its considerations undoubtedly being that which you mentioned, - that is, resources are too limited. In the case of Iowa, if there were an even distribution amongst 99 counties there could not be much effect in any county. That this would be true in other states is supported by your statement in Enclosure 1, page 3, that the 1979 funding level would allow less than 1% of those eligible to be served. The language on equitable distribution in the state relates to two factors. These are to be "taken into consideration". They are not the only factors permissible - other factors such as possibilities of control, supervision, fraud. Our own philosophy is that this is an employment program in good part, - and not simply a method of distributing general revenues as is the General Revenue Act, - that very high concentrations of unemployment should be a consideration.

[GAC comment: The legislation does not provide a clear definition of equitable. Webster's dictionary defines equitable by using terms such as "just," "fair," and "equal treatment of all concerned." Although we consider the requirement for equitable distribution as vague, we do not believe that the establishment of a project to serve 52 to 60 participants in one area, while many other areas in the State remain unserved, can be considered as equitable distribution.]

2. You quote Enclosure 1, on page 5, the testimony of Mr. William R. Hutton, Executive Director of National Council of Senior Citizens, before a Senate Committee on February 3:

"To spread resources thinly results in no visible impact-- except on administrative costs."

On page 7 of Enclosure 1, you refer to an example in Pennsylvania in which three counties had received more than their "proportionate share" of positions in 1978. Here is a specific instance in which equitable is interpreted to mean proportionate and this is not, we believe, the intention of the law. The county to which you refer might have had some reason, a much higher unemployment rate than others - for one thing. There is also an assumption here that every county in Pennsylvania or any area jurisdiction is entitled to some positions, even though that might mean one half-time person, whose contribution would be invisible. That might be justifiable if we were distributing funds under a welfare program, but this is not such a program.

ENCLOSURE VI

ENCLOSURE VII

[GAO comment: Our computations were based on elderly poor age 60 and over in Pennsylvania. We believe this is a better basis for determining the needs of eligible participants within Pennsylvania than use of unemployment data which probably reflect only a small portion of persons eligible for SCSEP.]

3. On page 9 of Enclosure I, I am quoted as stating the following:

"Stretching fifteen slots to cover five counties does not enable a local sponsor to have any impact on needed services." That remains my view. The law is directed toward the dual objectives of employment and needed services to the community - not distribution of welfare funds.

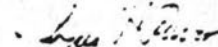
[See
GAO

note.] 4. On page 10, the Iowa Commission is said to have had 99 positions. A statement was made elsewhere that the Iowa Commission believes that available positions should be equitably distributed to 99 counties in the state. Obviously, Iowa State Commission could not do that if it meant equally. What it did do was distribute 2 positions to each area agency, and the State Area Agency on Aging, and on a formula basis, the remainder to all other areas. Obviously, it must have omitted some areas.

5. A question might be seriously raised whether this practice is not a violation of Congressional wishes. The state and area agencies on aging are provided funds for their staff under the Older Americans Act. If the funds for staffing are inadequate then the proper approach would seem to be to request greater funds from the Administration on Aging, which in turn would make these requests of OMB, and this in turn would be reviewed by the Congress in its appropriations process. For an agency to increase staff for its functions beyond the number authorized by Congress, is at the very least questionable. In some cases, in other states, we understand that most of the state's allocations are used to supplement the staff resources of the aging agencies.

[GAO comment: While it is true that SCSEP positions administered by State as well as national grantees should be distributed equitably, comments 4 and 5 address issues that were not considered in the scope of our work.]

Sincerely yours,


Louis H. Ravin

GAO note: Our report cites 93 positions.



111552

12832

BY THE COMPTROLLER GENERAL
**Report To The Honorable
Robert C. Byrd
United States Senate
OF THE UNITED STATES**

Recruiting And Placing Puerto Rican Workers With Growers During The 1978 Apple Harvest Were Unsuccessful

The Department of Labor used about \$275,000 of Comprehensive Employment and Training Act funds to recruit and place Puerto Rican workers with east coast apple growers. However, the workers' contributions to the harvest did not justify the expenditures. Of the 992 workers recruited, only 97 were still working after 15 consecutive calendar days.

This report explains the causes for this situation and details the problems encountered in Virginia and West Virginia.

GAO makes recommendations to the Secretary of Labor aimed at preventing a recurrence of the 1978 apple harvest problems.

Labor informed GAO it has initiated actions which closely parallel the recommendations. Labor also pointed out additional difficulties and problems that complicated the effort and show the need for actions consistent with GAO's recommendations if this type of program is to succeed.



HRD-80-45
FEBRUARY 14, 1980



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-163922

The Honorable Robert C. Byrd
United States Senate

Dear Senator Byrd:

Your November 16 and December 18, 1978, letters requested that we review Labor Department expenditures of Comprehensive Employment and Training Act of 1973 (CETA), as amended (29 U.S.C. 801), funds for transporting and housing Puerto Rican workers during the 1978 apple harvest in several east coast States. You also asked us to answer specific questions about Labor's efforts to recruit and provide Puerto Rican workers for that harvest.

In later meetings with your office, we agreed not to audit specific CETA expenditures, but rather to derive a reasonable estimate of Labor's costs relative to the Puerto Rican recruiting activity. We also agreed to (1) focus on determining the sequence of events and major problems in Virginia and West Virginia during the 1978 apple harvest and (2) develop an overall perspective that would not only include information on your specific concerns but also assess Labor's handling of this effort.

Our findings and recommendations aimed at preventing a recurrence of these problems are summarized below. More detailed information on Labor's efforts and problems related to the recruitment and placement of Puerto Rican workers during the harvest are contained in appendix I.

BACKGROUND ON LABOR'S 1978 EFFORTS
TO RECRUIT AND PLACE WORKERS WITH
EAST COAST GROWERS

For many years U.S. employers engaged in apple harvesting have hired alien workers primarily from the British West Indies. Before foreign workers may be admitted to the United States to work as temporary laborers, the Secretary of Labor must provide a certification to the Justice Department's Immigration and Naturalization Service that U.S. workers capable of performing such labor are not available. The Secretary's authority emanates from Justice Department regulations promulgated under the immigration statutes.

According to Labor's data, more than 17,200 workers were employed by or referred to employers in 10 east coast States during the 1978 harvest. Of these workers, 5,345 (31 percent) were aliens and about 11,882 (69 percent) were domestic workers, of which 992 were Puerto Ricans who were referred to growers in four States. Only 97 Puerto Ricans were still working after 15 consecutive calendar days.

Regarding Virginia and West Virginia, we determined that, of the 992 Puerto Rican workers, 554 were referred to growers in those States. Three hundred and fifty-six were hired, but only 47 remained 15 consecutive calendar days or more and only 19 stayed to complete the harvest.

The recruiting and referring of Puerto Rican workers to growers in the four east coast States during the 1978 harvest resulted in spending about \$275,000 of CETA funds. Of this expenditure, an estimated \$153,066 pertains to Virginia and West Virginia, while the workers referred to those States earned only an estimated \$48,484.

AN ASSESSMENT OF LABOR'S EFFORTS
TO RECRUIT AND PLACE WORKERS WITH
VIRGINIA AND WEST VIRGINIA GROWERS

Clearly, Labor followed legislative intent by attempting to obtain jobs for domestic workers during the 1978 harvest. Labor worked with the Virginia and West Virginia employment security agencies to obtain mainland U.S. workers and generally followed the procedures outlined in its alien labor certification program's implementing regulations, which were revised just before the 1978 harvest. Although not a primary cause for the Puerto Rican recruiting problems, the revised regulations did cause some confusion during the recruiting effort because several sections of the regulations were apparently unclear and subject to misinterpretation.

Regarding the recruitment and referral of U.S. workers from Puerto Rico, we found that the effort was poorly managed and resulted in few acceptable workers being referred to growers. The results, in terms of workers' contribution to the harvest, were not worth the costs, since most workers remained on the job for a short period and only 19 stayed to complete the harvest.

The primary causes for this situation were:

- Planning and initiating the Puerto Rican recruiting effort were begun only several weeks before workers were to be placed with growers because of uncertainty over whether a Puerto Rican labor law, which requires employers to guarantee certain conditions of employment, would be waived for U.S. growers requesting workers.
- Recruiting in Puerto Rico generally did not focus on providing workers with a complete job orientation or obtaining workers with agricultural or apple picking experience.
- Recruited workers were not trained for picking apples.
- Labor attempted to place some workers in jobs before growers were ready to harvest the apples.
- Labor and State employment security agency staff were not fully oriented or prepared to handle the situations that arose during the placement of workers.

In addition, problems with eligibility determinations and the related uncertainty about which sources of Federal funds to use for the Puerto Rican workers' expenses caused further confusion and delays in the final accounting for expenditures. Labor planned to fund this activity primarily with CETA title III (section 303) funds. Labor's regulations implementing that section state that the purpose is to provide job training, employment opportunities, and other services for individuals who suffer chronic seasonal unemployment and underemployment in the agricultural industry. Eligibility for participation under section 303 programs is limited to farmworkers and their dependents.

Consequently, Labor used CETA title III grantees in Puerto Rico, New York, Virginia, West Virginia, and Maryland to make transportation, lodging, and meal arrangements to bring Puerto Rican workers to the mainland. Labor extended a \$250,000 letter of credit to the CETA grantee in Puerto Rico and notified the CETA grantees in the affected east coast States to use their title III grant funds as necessary during the placement of workers.

As the recruiting effort turned out, only about one-third of the Puerto Rican workers met the eligibility requirements for benefits under Labor's regulations. Labor then required the grantees to determine the amount of funds spent for workers eligible under title III section 303 and on workers not eligible for benefits under that section. The grantees submitted notarized statements of their costs. However, problems arose because the number of workers the State title III grantees reported as being eligible did not agree with the Puerto Rican grantee's eligibility data. Labor determined that the Puerto Rican grantee's data were more accurate and required State grantees to submit adjusted statements based on the Puerto Rican grantee's list of eligible and ineligible workers. CETA title I (title II under October 1978 amendments to CETA) discretionary funds were then used to reimburse State grantees for expenses incurred for workers not eligible under title III section 303.

DEPARTMENT OF LABOR CORRECTIVE ACTION

Because serious operational problems during the 1978 harvest severely limited its efforts to recruit Puerto Rican workers, Labor organized a task force which gathered information on the harvest activities and prepared a report. The report, which was in draft form at the conclusion of our fieldwork, contained information on individual growers and workers. Labor stated that some information is considered unreliable and is being reviewed for further action.

Further Labor efforts to address the 1978 harvest problems included issuing March 1979 guidelines to State employment security agencies for implementing the regulations governing the temporary labor certification program. The guidelines established plans for Labor to more closely monitor and provide technical assistance in the future. Labor planned to issue further guidance on these matters in an operating instructions handbook later in 1979 for State employment security agencies.

CONCLUSIONS AND RECOMMENDATIONS TO THE SECRETARY OF LABOR

We recognize that Labor is in the sensitive position of protecting U.S. workers' jobs while providing timely certification of alien workers to prevent growers' crop loss. We believe, however, it is reasonable to expect Labor to ensure

that workers who are recruited and referred to growers can do and will do the work. The statistics show that Labor's Puerto Rican recruiting activity was not only unsuccessful but also resulted in spending thousands of dollars with little benefit to the workers or the growers.

To lessen the probability of a recurrence of the 1978 harvest situation if Labor undertakes a similar effort in the future, we recommend that the Secretary of Labor:

- Ensure that a Puerto Rican recruiting effort is not undertaken unless growers' exemptions from the Puerto Rican labor law permit an adequate recruiting period.
- Plan and implement a recruiting program that includes growers, State employment security agency officials, and CETA title III grantees in pertinent areas. Recruiting efforts should emphasize (1) obtaining qualified workers with experience and attributes acceptable to employers, (2) providing comprehensive orientation on working and living conditions, as well as other aspects of the job, and (3) training workers when appropriate before they arrive at the place of employment.
- Select and brief State and local employment security agency and Labor staff participating in the placement effort before the workers arrive. In this regard, emphasize the need for frequent communication with growers to ensure that workers arrive when needed and to facilitate an orderly acceptance of them.
- If Labor plans to use more than one source of funds, ensure that CETA title III grantees are prepared to account for the expenditure of funds to eliminate the confusion encountered after the 1978 apple harvest.

AGENCIES' COMMENTS

In a November 1, 1979, letter (see app. II), Labor took no exception to our recommendations and in fact stated that the Secretary of Labor had initiated actions in planning a Puerto Rican recruitment effort for the 1979 harvest that closely paralleled the recommendations. Labor described

B-163922

the actions taken for the 1979 recruitment effort with respect to each recommendation. However, no Puerto Rican workers were transported to the mainland by Labor to harvest apples during the 1979 season. We did not look into why this occurred.

Labor also made comments reiterating its reasons for implementing the 1978 Puerto Rican recruitment effort and added its interpretation of certain events. These comments are considered in appendix I.

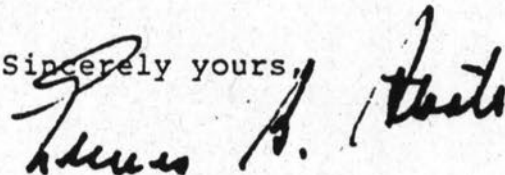
The West Virginia Department of Employment Security, in a September 19, 1979, letter (see app. III), characterized the report as "factual and responsible."

Similarly, the Virginia Employment Commission, in a September 26, 1979, letter (see app. IV), generally described the report as a fair and objective summation of the events as they transpired.

- - - -

We are sending copies of this report to the Secretary of Labor; the Director, Office of Management and Budget; and other interested parties.

Sincerely yours,



Comptroller General
of the United States

C o n t e n t s

	<u>Page</u>
APPENDIX	
I RECRUITING AND PLACING PUERTO RICAN WORKERS WITH GROWERS DURING THE 1978 APPLE HARVEST WERE UNSUCCESSFUL .	1
Background and overall perspective	1
An assessment of Labor's efforts to recruit and place workers with Virginia and West Virginia growers	2
Revised regulations caused some confusion	4
Recruiting efforts on mainland failed to locate enough workers	6
Puerto Rican labor law delayed planning and start of recruiting	8
Crash recruiting in Puerto Rico resulted in few qualified workers	10
Workers arrived before needed and few stayed to complete the harvest	13
Handling of funds for 1978 apple harvest	20
Labor comments and our evaluation	23
II LETTER DATED NOVEMBER 1, 1979, FROM THE INSPECTOR GENERAL, U.S. DEPARTMENT OF LABOR	30
III LETTER DATED SEPTEMBER 19, 1979, FROM THE COMMISSIONER, WEST VIRGINIA DEPARTMENT OF EMPLOYMENT SECURITY	40
IV LETTER DATED SEPTEMBER 26, 1979, FROM THE COMMISSIONER, VIRGINIA EMPLOYMENT COM- MISSION	41

ABBREVIATIONS

CETA	Comprehensive Employment and Training Act of 1973, as amended
GAO	General Accounting Office

RECRUITING AND PLACINGPUERTO RICAN WORKERS WITH GROWERS DURINGTHE 1978 APPLE HARVEST WERE UNSUCCESSFULBACKGROUND AND OVERALL PERSPECTIVE

For many years, U.S. employers engaged in apple harvesting have employed alien workers primarily from the British West Indies. Before foreign workers may be admitted to the United States to work as temporary laborers, the Secretary of Labor must certify that U.S. workers capable of performing such labor are not available. The Secretary's authority emanates from Justice Department regulations promulgated under the immigration statutes.

Under regulations implementing the Immigration and Nationality Act (8 U.S.C. 1101 *et seq.*), nonimmigrant aliens may be admitted to the United States to work as temporary laborers, if persons capable of performing such labor cannot be found in the United States. Foreign workers may be admitted if the Attorney General determines that the requirements of the act are satisfied.

This determination has been delegated to the Immigration and Naturalization Service. Its regulations require that an employer's petition for foreign workers be accompanied by the Secretary of Labor's certification that (1) qualified persons in the United States are not available and (2) employing foreign workers will not adversely affect domestic workers' wages and working conditions. The labor certification process for temporary employment of aliens is administered by the Labor Department's Employment and Training Administration's Division of Labor Certification, U.S. Employment Service.

According to Labor data, more than 17,200 workers were referred to or employed by growers in 10 east coast States during the 1978 apple harvest. Of these workers, 5,345 (31 percent) were aliens and about 11,882 (69 percent) were domestic workers, of which 992 were Puerto Ricans who were referred to growers in four east coast States. Of the Puerto Ricans recruited, 136 were not employed at any time and were returned at Federal expense to Puerto Rico several days after arrival on the mainland. Only 97 (11 percent) of the remaining 856 Puerto Ricans worked for 15 or more days of the harvest.

Labor reported that, of the original 992 Puerto Rican workers, 633 were returned to Puerto Rico at Government expense a few days after coming to the mainland. Of the other 359 workers, 66 were known to be still employed on the mainland in jobs other than the apple harvest, and 293 apparently made other arrangements and remained on the mainland. Labor Department efforts to recruit and refer Puerto Rican workers during the east coast 1978 apple harvest resulted in spending about \$275,000 of Comprehensive Employment and Training Act (CETA) funds.

Regarding Virginia and West Virginia, we determined that 554 Puerto Rican workers were referred to growers in those States, but only 47 workers remained 15 consecutive calendar days or more and only 19 of those stayed to complete the harvest.

Scope of review

We made our review and interviewed officials at Department of Labor headquarters in Washington, D.C.; Labor's Region III offices in Philadelphia, Pennsylvania; and State and selected local employment security agencies in Virginia and West Virginia. We also spoke with CETA title III grantees and two growers in these States. In addition, we reviewed Federal legislation on the admission of aliens for temporary agricultural work and examined Labor's regulations, policies, and practices for administering the labor certification process for temporary employment in agricultural occupations.

AN ASSESSMENT OF LABOR'S EFFORTS TO RECRUIT AND PLACE WORKERS WITH VIRGINIA AND WEST VIRGINIA GROWERS

Labor is in the sensitive position of protecting U.S. workers' jobs while providing timely certification of alien workers to prevent growers' crop losses. Clearly, Labor followed legislative intent by attempting to obtain jobs for domestic workers during the 1978 harvest.

Labor's Philadelphia regional office worked with the Virginia and West Virginia employment security agencies to obtain mainland U.S. workers through the Interstate Clearance System. When a State employment security agency anticipates specific occupational shortages, it requests other State employment security agencies to help recruit workers through that system.

In addition, Labor generally followed the procedures outlined in its alien labor certification program's implementing regulations that were revised just before the 1978 apple harvest. Although not a primary cause for the Puerto Rican recruiting problems, the revised regulations did cause some confusion during recruiting because several sections of the regulations were apparently unclear and subject to misinterpretation. Labor did not issue formal guidelines aimed at clarifying the new regulations until after the harvest.

Regarding recruiting and referring Puerto Rican workers to Virginia and West Virginia growers, our review showed that the effort was poorly managed and resulted in few workers completing the harvest primarily because many of them were apparently not qualified. The results, in terms of workers' contribution to the harvest, were not worth the expenses Labor incurred. The primary causes for this situation were:

- Planning and initiating the Puerto Rican recruiting effort were begun only several weeks before workers were to be placed with growers because of uncertainty over whether a Puerto Rican labor law, which requires employers to guarantee certain conditions of employment, would be waived for U.S. growers requesting workers.
- Recruiting in Puerto Rico generally did not focus on providing workers with a complete job orientation or obtaining workers who had agricultural experience.
- Recruited workers were not trained for picking apples.
- Labor attempted to place some workers in jobs before growers were ready to harvest the apples.
- Labor and State employment security agency staff were not fully oriented or prepared to handle the situation which arose during the placement of workers.

In addition, problems with eligibility determinations and the related uncertainty about which sources of Federal funds to use for the Puerto Rican workers' expenses caused further confusion and delays in the final accounting for expenditures.

REVISED REGULATIONS CAUSED SOME CONFUSION

Although not a primary reason for the problems encountered during the 1978 harvest, some confusion was caused by differences in interpretation of Labor's regulations for the labor certification process governing the temporary employment of alien agricultural workers in the United States. The 1978 apple harvest was Labor's first experience with these regulations, which became effective on April 10, 1978. Neither Labor's limited experience in implementing these regulations nor the narrow scope of our work permitted an indepth assessment of the issues and potential problems with these regulations. However, while Labor has since issued guidelines to clarify several significant areas of concern, these concerns should be given careful attention in the future to ensure that the problems do not continue.

Labor must certify that no domestic farmworkers are available in the United States before the Immigration and Naturalization Service permits alien workers to enter the country temporarily. Labor's regulations, which prescribe procedures for administering the alien labor certification program, changed very little from the program's inception in the mid-1960s until Labor issued revised regulations effective April 1978. The revisions--intended to more clearly define the respective roles of Labor, State employment security agencies, and employers in the certification process--included (1) more specific regulatory requirements for recruiting U.S. workers by employers and the employment service system and (2) more specific procedures for processing temporary labor certification applications. More than 1 year of public hearings, comment, and extensive discussion within Labor preceded the issuance of the revised regulations.

Notwithstanding Labor's efforts to improve the regulations governing the alien labor certification program, at the time of the harvest, growers, State and local employment security agency officials, and some Labor officials involved in this effort were not sure how certain provisions of the regulations should be interpreted. Some of the major areas on which the provisions were apparently unclear and subject to varying interpretations include:

- Time frame for commencing the 60-day period within which Labor must certify employers' petitions for alien workers.

- Terms and conditions of employment to be offered domestic workers by employers.
- Requirement that an employer perform recruiting activities specified by Labor's regional administrator.
- Requirement that employers offer and pay advance transportation and subsistence costs to U.S. workers if foreign workers receive such advances directly from the employer or indirectly from any person, agency, or other entity collaborating with the employer.
- Requirement that employers provide employment to any qualified U.S. worker who applies until 50 percent of the work contract period under which the foreign worker was hired has elapsed.

Concerns over revisions that were being made in the regulations caused growers problems as early as January 1978. At that time Labor's Philadelphia regional office advised Virginia and West Virginia growers to prepare and submit their job orders 1/ as soon as possible, in accordance with existing regulations. At the same time, the Deputy Administrator of the U.S. Employment Service told the growers at a meeting that job orders should be submitted at their convenience but they need not be submitted until the new regulations were published. Correspondence between the Virginia growers and the State employment security agency office shows that, at the time, the growers assumed the regulations would be published in early February, but they were not published until March 10 and did not become effective until April 10. Consequently, following the Deputy Administrator's advice, growers did not begin to submit job orders until late April, after the effective date of the new regulations, and Labor's Region III Administrator did not begin approvals for clearing the orders for distribution through the Interstate Clearance System to obtain U.S. workers until June.

1/ Growers who plan to offer work to temporary alien workers must also offer at least the same opportunity and benefits to U.S. workers. The growers must utilize the U.S. Employment Service to locate workers by submitting their job offers to a local employment security office. The job offers are commonly referred to as job orders. The job orders include such information as the number of workers needed, description of work requirements, rate of pay, and housing and meal arrangements.

In addition, growers expressed concerns over the ambiguity of some of the new regulations' provisions through an April 8, 1978, letter from their attorney to the Secretary of Labor. It was sent on behalf of the Farm Labor Executive Committee, an organization composed of individual apple growers and associations of apple growers in Virginia, New York, Maryland, West Virginia, and the six New England States. The letter identified 12 sections of the regulations which the Farm Labor Executive Committee believed needed clarification and requested that the Secretary direct the U.S. Employment Service to resolve the inconsistencies and ambiguities. Labor responded by letter on June 26, 1978. The growers' attorney told us, however, that he felt the response was unsatisfactory although some of his questions were answered.

In an October 5, 1978, memorandum summarizing the 1978 harvest activities, the Deputy Administrator of the U.S. Employment Service recommended to the Assistant Secretary of the Employment and Training Administration that the new regulations be clarified. On March 16, 1979, Labor issued guidelines to all State employment security agencies establishing clearer procedures for implementing the new regulations to prevent a recurrence of problems encountered during the 1978 harvest season. The guidelines also discussed Labor's plans (1) to monitor and provide technical assistance in conjunction with the 1979 harvest activities and (2) to issue further guidance on these matters in an operating instructions handbook later in 1979 for State employment security agencies.

RECRUITING EFFORTS ON MAINLAND
FAILED TO LOCATE ENOUGH WORKERS

After Labor's revised regulations became effective on April 10, 1978, growers in Virginia and West Virginia submitted job orders for apple pickers. Most job orders were filed in time to permit Labor 60 days to recruit domestic workers as required by Labor's regulations. The orders were cleared through the Interstate Clearance System, and the States made recruiting efforts required by the regulations. As in other years adequate numbers of mainland workers could not be recruited.

Labor's regulations require employers to file job orders with a local office of a State employment security agency a minimum of 80 days before the estimated date of need for the workers. The 80-day period allows sufficient time for (1) a

60-day recruiting period to determine if U.S. workers are available and (2) an additional 20 days to allow employers sufficient time to bring alien workers to the United States, if domestic workers are not available or to appeal if Labor denies the application for certification.

In late April 1978, 45 Virginia apple growers began submitting job orders requesting 1,525 apple pickers. Forty-two Virginia growers submitted job orders on April 28, 1978; the other three growers submitted job orders on June 30, July 24, and July 25. The stated dates of need for workers on the Virginia job orders were generally September 5.

West Virginia growers submitted job orders requesting 685 workers. Four job orders were submitted on June 16, and one on July 14, 1978. Three job orders had a September 10 date of need. The dates of need on the other two orders were September 5 and 12. Therefore, 46 of the 50 job orders were filed within the 80-day period prescribed by Labor's regulations.

Thereafter, Labor and the State employment security agencies attempted to locate domestic workers willing and able to work in the apple harvest. Labor's Philadelphia regional office distributed the orders to Labor regions and States, including Florida, North Carolina, and Texas, that were potential sources of domestic workers.

To locate potential workers the local Virginia employment security office, which processed the growers' job orders, conducted a mail survey during February and March 1978 of 530 active clients registered as agricultural, unskilled, or long-term unemployed workers. Twenty-nine people expressed an interest in picking apples, and their names were given to the apple growers' association. According to a local employment security agency official, his office mailed an additional 400 letters in July, but only two people accepted the job offer. He said that past years' experiences have shown that very few people accept job offers as a result of mail surveys.

Virginia growers complied with Labor regulations to actively recruit by using brochures, posters, newspaper advertisements, and radio announcements. Recruiting efforts were intense because of the nonavailability of seasonal farmworkers.

Virginia State employment security agency representatives performed recruiting activities for the anticipated

job orders at group interviews in Florida from April 24 until May 10, 1978. The job orders were also taken to the North Carolina group interviews, held from July 10 until July 14. In addition, potential workers were interviewed by Virginia rural services personnel from two local employment security offices on Virginia's eastern shore during the week of August 14. The Virginia State employment security agency discussed the jobs with about 1,150 persons, of whom 230 were recruited.

In West Virginia, the local employment security office official who processed growers' job orders said his office recruited apple pickers in the area by contacting civic groups, schools, and veterans organizations; displaying posters; and checking its job files for potential workers. The West Virginia State employment security agency also placed job orders in the Job Bank 1/ in an attempt to locate workers. The local official added that West Virginia growers posted notices at the orchards, used radio announcements, and advertised in newspapers for apple pickers. As of August 8, 1978, no workers had accepted employment.

According to a West Virginia State employment security agency official, there were no job orders on file when the group interviews were taking place in Florida; however, a representative from the West Virginia State employment security office attended the North Carolina group interviews.

Notwithstanding the efforts of Labor and the Virginia and West Virginia State employment security agencies, as in other years, adequate numbers of mainland workers could not be recruited. While Puerto Rico is also a potential source of domestic workers, its prior years' recruiting problems caused uncertainty as to whether job orders would be distributed to Puerto Rico in 1978.

PUERTO RICAN LABOR LAW DELAYED
PLANNING AND START OF RECRUITING

Puerto Rican labor law (Public Law 87), enacted in June 1962, was conceived as a protective instrument against discriminatory and abusive treatment by employers. The Puerto Rican government recognized that U.S. job opportunities were increasing and, therefore, it was striving to provide maximum protection for its workers, especially agricultural workers.

1/A consolidated list of job openings from all local employment security offices in a specific area.

The law requires that employers who are interested in recruiting workers for employment outside Puerto Rico formalize a written contract with the persons they seek to hire. The contract must be approved by the Secretary of Labor and Human Resources of Puerto Rico, who is obligated to protect the rights of the workers in accordance with the terms of the contract and the minimum employment standards set by the Secretary's regulations.

Since the 1976 apple harvest, Labor has attempted to place domestic workers from Puerto Rico in jobs with mainland apple growers. In a 1976 agreement between growers and Puerto Rico, grower representatives from Virginia, West Virginia, and New York recruited about 600 workers in Puerto Rico. However, most of these workers remained on the job for only a short time. A Labor official stated that the low retention rate was as much attributable to grower representatives' poor selection of workers and growers' negative attitudes toward the workers as to any other factors. However, a grower representative who participated in the 1976 recruiting effort said that, although he wanted to interview workers who had agricultural experience, the Puerto Rico employment service required him to interview workers in the order they arrived and to hire them unless they were handicapped.

In 1977, the U.S. District Court for the District of Puerto Rico ruled that alien workers could not be offered employment unless (1) job offers satisfying Public Law 87 were made to Puerto Rican workers and (2) the number of workers agreeing to work on those terms proved insufficient to meet the growers' needs. However, the Court of Appeals for the First Circuit in December 1977 reversed the ruling and held that Puerto Rican law may not impose restrictions on the Secretary of Labor in carrying out his responsibility under Federal statutes.

Consequently, problems and litigation during prior years made it uncertain as to whether Puerto Rican workers would be recruited for the 1978 harvest. In March 1978, Labor's Philadelphia regional office advised the Virginia and West Virginia State employment security agencies that job orders for agricultural workers would not be extended to Puerto Rico until further notice "due to confusion" over Public Law 87. This was to preclude the possibility of litigation against employers who chose to use the employment service.

Later in March Labor notified the States that it was the Solicitor of Labor's opinion that voluntary acceptance by growers of a contract negotiated pursuant to Public Law 87 would not necessarily interfere with the Interstate Clearance System. Therefore, job orders could be sent to Puerto Rico if the State employment security agencies were satisfied that the growers had agreed to a separate contract with Puerto Rico. However, job orders were not distributed to Puerto Rico until after Public Law 87 was amended. In commenting on our report Labor stated "Job orders were not sent to Puerto Rico before the amendment because it was quite clear that growers were not willing to negotiate a contract under Public Law 87."

Public Law 87 amended

Puerto Rico recognized in 1978 that prior years' experiences necessitated a change in Public Law 87. In considering an amendment, the Puerto Rico legislature cited the following reasons:

- The Wagner-Peyser Act (29 U.S.C. 49), approved in 1933, created a national employment system which provided for recruiting and contracting available workers in other States, including Puerto Rico. Workers recruited through the employment service system are already protected by minimum conditions of employment security and living quarters.
- Employers who traditionally recruited in Puerto Rico have in recent years preferred to contract foreign workers.
- Courts have questioned the availability of Puerto Rican workers for jobs with growers.

Therefore, Public Law 87 was amended to allow recruiting migrant workers through the Federal Interstate Employment Service System by authorizing the Puerto Rican Secretary of Labor and Human Resources to exempt employers from complying with Public Law 87 if the minimum guarantees provided by U.S. law are met. The amendment was approved by the Governor of Puerto Rico on July 13, 1978.

CRASH RECRUITING IN PUERTO RICO RESULTED IN FEW QUALIFIED WORKERS

On July 26, 1978, the Puerto Rican Secretary of Labor and Human Resources provided the U.S. Department of Labor with

assurance that the amendment to Public Law 87 exempted growers' job orders received through the Interstate Clearance System from compliance with Public Law 87. Labor then decided to recruit through the Puerto Rican employment security agency many Puerto Rican workers even though only a few weeks remained in which to locate, recruit, orient, and transport workers to mainland growers. Accordingly, the results indicated that many recruited workers lacked agricultural experience and that they received little job orientation and no on-the-job training.

Recruiting activities in Puerto Rico

While Labor sent staff to monitor the Puerto Rican employment security agency's recruiting effort, neither Virginia nor West Virginia State and local employment security staff and growers participated in the activity. Labor noted in its comments on our report that the apple growers declined an invitation to participate in recruiting efforts in Puerto Rico because they did not have time to participate or expressed concern about exemption from Public Law 87. It also noted that State agencies did not participate because the growers did not provide them with delegated hiring authority.

On August 3, 1978, two Labor headquarters and one Philadelphia regional office staff member arrived in Puerto Rico to monitor recruiting of workers. They hand carried the job orders for Maryland, Virginia, and West Virginia. According to a Labor headquarters official, a New York regional office Labor official also hand carried the New York job orders to Puerto Rico and participated in the monitoring activities. The stated dates of need for workers in Virginia and West Virginia were between September 5 and September 15, 1978. Some New York job orders had a stated date of need as early as August 15.

A Labor official who had monitored the recruiting in Puerto Rico said that on August 9, 1978, all local employment security office managers in Puerto Rico were briefed on the planned recruiting effort and informed that all workers had to be physically qualified. The official also believed that security office managers required potential workers to carry a ladder to test their physical abilities for the job, and that the workers were told what was expected of them.

Labor officials stated that the only formal orientation of workers was showing a film on apple picking. However, they said that the film was not available during recruiting,

and it was shown at the airport just before the workers' departure for the mainland.

We viewed the 7-minute film and noted that it did not inform workers of weather or living conditions, how many bushels of apples they were expected to pick, how much money they could expect to earn, type of food and mess facilities, or local town life. In addition, the film did not stress that apple picking is strenuous work.

Labor, State and local employment security office staff, CETA grantees, and growers we interviewed said that the workers should be made aware of these types of conditions before they are recruited. In addition, we believe that the film should be available at the time workers are recruited at the local employment security offices.

Growers' need for workers changed

Recruiting was further complicated because some growers' need for workers on the initial job orders changed as more accurate estimates of the crop size became available and as mainland workers accepted employment. In addition, changing weather conditions affected the growers' dates of need for workers.

Labor's New York regional office, which has jurisdiction over Labor operations in Puerto Rico, sent an August 18, 1978, letter to the Puerto Rico Secretary of Labor and Human Resources indicating revised numbers of workers for New York, Virginia, and Maryland and the original numbers for West Virginia. However, that letter did not include the largest West Virginia grower's job order or the three largest Virginia growers' orders. The table below shows the number of workers originally requested by Virginia and West Virginia growers who planned to use temporary alien labor, the revised estimates of numbers of workers forwarded to Puerto Rico by Labor's New York regional office, and the number of workers actually transported to mainland growers.

	Workers requested on growers' <u>orders</u>	Workers requested in Labor's <u>letter</u>	Workers sent to <u>mainland</u>
Virginia	1,525	857	421
West Virginia	<u>685</u>	<u>177</u>	<u>133</u>
Total	<u>2,210</u>	<u>1,034</u>	<u>554</u>

On August 23, 1978, the Puerto Rico Secretary of Labor and Human Resources sent Labor's New York regional office a letter listing the growers' job orders for which workers were recruited and also exempted those growers from Public Law 87. That letter, like Labor's August 18 letter, did not include the largest West Virginia job order or the three largest Virginia orders. In addition, the letter accepted job orders that had been canceled by Labor's August 18 letter. According to a Labor official who was in Puerto Rico during the recruiting, the Secretary of Labor and Human Resources was concerned about filling all the job orders in the short time frame in which the recruiting had to be done. In fact, the Puerto Rican Secretary stated in an August 14, 1978, letter to the U.S. Secretary of Labor the following:

"The clearance orders (job orders) for apple pickers, from the states of New York, Maryland, Virginia and West Virginia were brought to Puerto Rico on August 3, 1978, by officers of the United States Department of Labor. Nevertheless to say, only 7 working days for the screening and recruitment of qualified workers before the first certifications for foreign labor would be issued by the corresponding Regional offices.

"While we wholeheartedly tried to avoid that the negative results of past years be repeated in the referral of Puerto Rican workers to the apple harvest, the United States Department of Labor promoted, by its action, the disposal of scarce time for the Puerto Rican Employment Service to prove the availability of qualified workers before certification."

Overall, Labor staff involved in the actual recruiting, Labor staff assigned to monitor activities at growers' orchards, State and local employment security staff, CETA title III grantees, and growers we interviewed believed that an inadequate recruiting job was done in Puerto Rico. Most believed that some type of training would have been beneficial. Furthermore, workers, in statements to State employment security officials and in formal complaints, indicated that they had little knowledge of what was expected of apple pickers and were not accustomed to strenuous labor.

WORKERS ARRIVED BEFORE NEEDED AND
FEW STAYED TO COMPLETE THE HARVEST

Of the 992 workers recruited in Puerto Rico, 554 were transported to Virginia and West Virginia. However, many

workers were not accepted by growers, and only 47 of those who were hired stayed 15 consecutive calendar days or longer. These results were caused not only by the previously discussed poor recruiting but also by inadequate communication between Labor and the growers about the dates of need for workers, the status of the growers' exemptions under Puerto Rican Public Law 87, and the shortage of space in growers' labor camps where alien workers were being housed. The situation was further aggravated because Labor did not properly orient its staff or State and CETA title III grantees helping to place workers with growers.

Because of the large numbers of persons involved and the confusion during attempts to place Puerto Rican workers with growers, all the facts will probably never be determined. Accordingly, the following reconstructs the events, using what we believe to be the best sources available.

Last minute planning by Labor

Labor headquarters and Philadelphia regional staff, Virginia and West Virginia employment security agency staff, and CETA title III grantees were not satisfied with their involvement in planning for the arrival and placement of workers. Several Labor headquarters and Philadelphia regional staff who met workers at the airport and observed work and living conditions at the orchards told us that they were assigned to handle this effort only 1 or 2 days before the workers arrived. Two said they were not properly prepared for the assignment, and two stated that they did not have copies of the job orders which indicated the employer and basic terms of employment. Another added that "nobody knew what was going on."

According to the staff of the State employment security agency and CETA title III grantee in one State, they were notified on August 24, 1978, of a meeting the next day in Labor's Philadelphia regional office to discuss the harvest and were not able to attend on such short notice. The State official involved added that this was the beginning of a pattern of last minute notifications by the regional office to State officials. The CETA title III grantee representatives said that plans for financing and handling the arrival of workers were also relayed on short notice and the resulting problems demonstrated the poor planning. A State employment security agency official in the other State we visited told us that Labor's Philadelphia regional office practiced almost non-planning and that the program remained in a state of flux most of the time.

When workers arrived in West Virginia and Virginia, few were the ones expected by growers. Labor's Philadelphia regional office notified the States' employment security agencies of the names and social security numbers of workers recruited for each grower before their arrival. The growers were then given this information by the States' employment security agencies. Before the workers were sent to the mainland, an airline manifest was prepared indicating the workers' names, social security numbers, and grower assignments. However, when the workers arrived the growers found that many listed on the manifest were not the ones originally assigned to them. In West Virginia the problem was not serious because workers arrived too early for the harvest and were relocated. However, in Virginia this problem added to the growers' concern about their liability under Public Law 97.

Labor headquarters and Philadelphia regional office officials told us that this situation resulted from last minute changes regarding the number of workers needed and the dates needed. As previously discussed, documentation indicates that growers did make some adjustments, but the changes may have been justified on the basis of crop size, weather conditions, and mainland workers accepting employment.

Our review of this documentation showed that the growers' changes to the job orders should not have been great enough to cause this situation. For example, very few workers who arrived in West Virginia were those on the original list although the growers in West Virginia did not change their orders. Furthermore, some of the changes recorded in the Philadelphia regional office telephone log during September for Virginia growers had previously been sent to Puerto Rico by the New York regional office in its August 18 letter. The remaining changes do not appear to be substantial enough to cause the large variance between workers who were expected and those who actually arrived.

Workers arrived in West Virginia too early

Although five West Virginia growers submitted job orders, only four growers were on the list submitted to Puerto Rico on August 18 by Labor's New York regional office. The largest job order was not listed. (See p. 12.)

The five West Virginia growers originally requested 685 workers, but only 133 workers were recruited in Puerto Rico and transported to the mainland for three growers. The stated date of need for workers on those three job orders

APPENDIX I

APPENDIX I

was September 10. Forty workers arrived on September 9, and 93 workers arrived on September 10. However, the three growers did not accept any workers.

West Virginia State employment security agency documentation shows that the growers were still concerned about their exemption under Public Law 87. In addition, the growers were still harvesting peaches, the apple harvest was late, and the labor camps were filled with domestic crews and other Puerto Rican workers contracted for through a private agency to pick peaches.

Regarding exemption from Public Law 87, on August 23, 1978, Puerto Rico sent Labor's New York regional office a letter which exempted two of the West Virginia growers and stated that workers were being recruited. Not until September 1 (8 days before the first workers arrived) were the third and fourth growers exempted by telegram to the regional office. On September 12 (after the workers arrived) the fifth grower was exempted.

As for the growers who were scheduled to receive workers actually being informed of their exemption, local employment security office files indicated that West Virginia growers were notified by letter on September 13, 1978 (after the workers had arrived). Labor officials responsible for the alien labor certification program told us there was no requirement for Labor to notify growers of the exemption.

The 40 workers arriving in West Virginia on September 9 were scheduled for one grower. The stated date of need on the original job order for the workers was September 10. However, a July 25 memorandum in the local employment security office files changed the date of need to September 23, 1978.

A Labor Philadelphia regional office official told us that he believes the memorandum arrived at the regional office shortly after July 25 although the date it was received was not stamped on the memorandum. No changes were made in recruiting for the grower who changed the date of need.

The other 93 workers who were scheduled for two growers arrived on September 10. Those growers also said they could not accept the workers at that time.

APPENDIX I

APPENDIX I

All 133 workers were lodged in West Virginia hotels until other arrangements were made for them. West Virginia State employment security agency's and CETA title III grantee's records show the following:

<u>Workers</u>	<u>Activity</u>	<u>Date</u>
38	Returned to Puerto Rico	9/14/78
67	Sent to New York growers	9/15/78
a/17	Sent to Virginia hotel	9/15/78
<u>11</u>	Unknown	-
<u>133</u>		

a/Of the 17 workers who were sent to Virginia, 14 returned on September 16 to work for one West Virginia grower.

West Virginia local employment security agency records show that, on September 14, two of the three growers who did not accept the workers when they first arrived indicated they would accept 90 Puerto Rican workers on September 17. However, other arrangements had already been made for the 133 workers who were recruited for West Virginia. State employment and Philadelphia regional office officials told us that they could find only 24 workers to fill the 90 positions because of the problems which had occurred. On September 16, one grower was sent the 24 workers who were being housed in Virginia hotels. Of these, 14 had originally been sent to West Virginia and then transferred to the Virginia hotel when work was not available. The other 10 workers were originally sent to Virginia and also lodged at the Virginia hotel because the growers' labor camp was full. Only 6 of these 24 workers stayed 15 consecutive days or longer, and only 3 completed the season.

Workers in Virginia remained
on the job a short time

Virginia growers' stated date of need for workers was generally September 5, with a few as late as September 15. Workers arrived as follows:

<u>Date</u>	<u>Workers</u>	<u>Lodging</u>
Sept. 6	54	Labor camp
" 7	77	Labor camp
" 8	52	Labor camp
" 11	<u>238</u>	84 at labor camp/ 154 in hotels
Total	<u>421</u>	

Virginia State employment security agency records show that during the first 3 days (Sept. 6, 7, and 8) the 183 workers who arrived were housed by the growers at their labor camp. Labor scheduled 250 workers to arrive on September 11 and 150 on September 12. On September 9 the growers' association notified the local employment security agency and Labor that there was only enough room in the camp for 126 additional workers because foreign workers from Jamaica had already arrived. According to Virginia State employment security agency documentation, the date of need for most growers (September 5) had passed without Labor informing the agency of the arrival date for Puerto Rican workers, and Jamaican workers had arrived in their place. A Philadelphia regional office official told us that a growers' association official requested that the workers' arrival be staggered so that all of them would not arrive on September 5.

Two flights arrived on September 11 with 238 workers. The growers housed 84 workers at the labor camp; the other 154 workers were housed at hotels. Some workers housed in hotels were later hired by the growers as room at the labor camp became available. Based on the best available information, the following table shows the approximate number of Puerto Rican workers who arrived in Virginia, were hired by growers, remained 15 consecutive calendar days or longer, and completed the harvest.

Activities of Workers in Virginia

Number arrived	421
Hired by grower	332
Number remaining 15 consecutive calendar days or longer	41
Completed harvest	16

While the State employment security agency was not able to obtain information on each worker, available documentation indicated that 289 workers quit and 24 were fired. Labor, State and local employment security agency, and CETA title III grantee staff, as well as growers we interviewed, attributed this situation to poor recruiting in Puerto Rico. The reasons varied for quitting, but the major reasons were:

- Wages, picking method, and job description were not what they expected.
- Bag lunch, consisting of three sandwiches, was not satisfactory.
- Living conditions at labor camp were not satisfactory.
- There was not enough or no work available.
- Work was too hard. Ladders were too heavy, and trees were too tall.

According to the Virginia State employment security agency, the major reasons growers fired workers were low productivity and lack of motivation. Labor headquarters established a task force to determine the problems Puerto Rican workers' encountered during the 1978 apple harvest. Although Labor has some reservations about the accuracy of the data it gathered, these data show that the workers' impressions on whether they were fired or quit are similar to those cited by the Virginia State employment security agency. Given the overall similarity of data from various sources, it appears that many workers did quit in Virginia.

Workers filed many complaints

Puerto Rican workers filed 26 complaints at the local employment security agency in Virginia. The complaints generally related to rate of pay, meals, and meal charges. Twenty-two of these were filed against the Puerto Rican Department of Labor and Human Resources and were forwarded to Labor's Philadelphia regional office on September 22, 26, and 29, 1978, for appropriate referral to Puerto Rico. The Department of Labor and Human Resources has responded to the 22 complaints, saying that the allegations were not valid and were due to the workers' misunderstanding during recruiting.

The four remaining complaints filed against the Virginia employers were investigated by the Virginia State Monitor/Advocate's Office. A determination was made that employment service regulations were not violated, and the complainants were so notified on October 6 and November 16, 1978.

After returning to Puerto Rico, according to the Virginia State employment security agency, workers filed 142 complaints against growers which the Puerto Rican Department of Labor

and Human Resources forwarded to the Virginia State employment security agency. The complaints generally related to pay rates, poor food, inadequate housing, and hot temperatures in the orchard. The Puerto Rican workers also complained about not being reimbursed for the cab fare from their home to the airport in Puerto Rico.

In West Virginia 34 complaints were filed against growers. Twenty-eight of these were filed by workers who returned to Puerto Rico within a few days after their arrival in West Virginia. They wanted to be paid for the time they would have worked had they been hired and for transportation expenses. The West Virginia State Monitor Advocate in charge of handling worker complaints stated that it was determined that, since the growers' camps were full and the harvest was late, the workers were not entitled to payment. Six complaints, which were filed at a later date against two West Virginia growers, alleged that workers were fired unfairly. However, only one of these workers had ever been employed in West Virginia.

HANDLING OF FUNDS FOR 1978 APPLE HARVEST

Labor used CETA title III grantees in Puerto Rico, New York, Virginia, West Virginia, and Maryland to make transportation, lodging, and meal arrangements. Labor extended a \$250,000 letter of credit to the CETA title III grantee in Puerto Rico and notified the State CETA title III grantees to use their title III grant funds.

The Puerto Rican CETA grantee primarily used the funds to transport workers to the mainland. CETA title III grantees in the States also incurred costs for Puerto Rican workers. Their expenses were mainly for food, lodging, and return transportation to Puerto Rico. We found no evidence that workers were paid salaries with CETA funds while they waited in hotels for job assignments.

CETA title III section 303 was designed to help migrant and seasonal farmworkers find employment and receive training. Labor's regulations implementing that section state that eligibility for participation in title III section 303 programs is limited to farmworkers and their dependents who have, during the 18 months preceding their application for enrollment: (1) received at least 50 percent of their total earned income as agricultural workers during any consecutive 12-month period, (2) been employed in agriculture on a seasonal basis, and (3) been identified as economically disadvantaged.

Labor anticipated that some workers recruited for the harvest would not meet the eligibility requirements of its title III regulations. Therefore, Labor planned and authorized the use of CETA title I discretionary funds to reimburse the Puerto Rican and State CETA grantees for expenses incurred for workers ineligible under CETA title III.

As the recruiting effort turned out, only about one-third of the Puerto Rican workers were eligible for CETA title III benefits. Labor required the grantees to determine the amount of funds spent on workers eligible and on those ineligible under title III and to submit notarized statements showing these costs. However, the number of workers State grantees reported as being eligible for title III did not agree with the Puerto Rican grantee's data. Labor decided that the Puerto Rican grantee's data were more accurate and required State grantees to resubmit adjusted notarized statements which allocated costs based on the Puerto Rican grantee's list of eligible and ineligible workers. The following table shows the final allocation of costs under titles III and I of CETA.

<u>Grantee</u>	<u>Total costs</u>	<u>Title III costs</u>	<u>Title I costs</u>
Puerto Rico	\$134,627	\$42,402	\$92,225
Virginia	54,924	16,480	38,444
West Virginia	26,654	7,582	19,072
New York	48,089	11,450	a/36,639
Maryland	<u>11,145</u>	<u>1,440</u>	<u>9,705</u>
Total	<u>\$275,439</u>	<u>\$79,354</u>	<u>\$196,085</u>

a/The grantee told us that this figure includes \$10,573 of title I funds which the New York Department of Labor gave to the title III grantee to help pay transportation expenses for the return trip to Puerto Rico.

In addition to the above costs, West Virginia employment security agency records show that the State spent \$1,037 to transport workers by bus and \$54 to transport staff, both of which were reimbursed by Labor. Virginia employment security agency officials reported that no additional expenses were incurred for workers.

We also requested Virginia, West Virginia, and Labor to supply us with cost estimates of staff time spent on the 1978 apple harvest and any other costs resulting from the harvest. West Virginia employment security agency officials told us that

about \$8,400 was attributable to the harvest. However, a State employment official said that the work is considered part of the job.

According to Virginia State employment security agency officials, they incurred no additional costs beyond normal staff salaries. Labor officials also felt that no additional costs were incurred beyond normal staff salaries which would have been paid regardless of what the employees were working on. However, we believe that a considerable amount of staff time was spent monitoring the placement activities, working on the Labor task force which accumulated information on the harvest problems, and resolving worker complaints that might have been avoided had the effort been properly planned and managed.

Labor planned to recoup from the growers some of the costs for transporting workers to the mainland and back to Puerto Rico. Labor's regulations state that employers must offer U.S. workers at least the same benefits they are offering temporary alien workers. In accordance with the regulations, the growers' job orders offered to reimburse domestic workers for transportation expenses to the place of employment if the workers stayed 15 consecutive calendar days or longer, and to provide or pay return transportation costs if the workers completed the contract period.

Because the Puerto Rican effort was of limited success in retaining workers for 15 days or longer, Labor expects that little of the transportation costs will be recouped from the growers.

As requested, we gathered data and compared the cost of transporting, feeding, and housing the workers to the wages earned by the workers. In Virginia and West Virginia, the CETA funds spent far exceeded the wages earned by the workers. In Virginia and West Virginia, \$153,066 1/ of CETA titles I

1/This figure includes \$71,488 which was incurred by the Puerto Rican CETA title III grantee to transport workers from Puerto Rico to mainland growers. To estimate this cost, we computed the average transportation cost (\$129.04) for each worker by dividing the total transportation cost (\$128,007) the Puerto Rican CETA grantee incurred by the total number of workers (992) sent to east coast growers and then multiplying the average cost by the number of workers (554) who were transported to Virginia and West Virginia growers.

and III funds was spent, while according to the growers, the workers earned only an estimated \$48,484. It should be noted that the gross wages do not include any wages of 67 workers transported from West Virginia to New York to work for apple growers in that State. Although we do not know how much these 67 workers earned in New York, it should not be much since, according to Labor's data, only 37 of the 448 workers hired in New York stayed 15 days or longer. Furthermore, our CETA cost figures for West Virginia do not include transportation costs of those 67 workers going back to Puerto Rico because the New York State CETA title III grantee would have incurred that cost.

LABOR COMMENTS AND OUR EVALUATION

In a November 1, 1979, letter (see app. II), Labor took no exception to the report recommendations and in fact stated that the Secretary of Labor had initiated actions in planning a Puerto Rican recruiting effort for the 1979 harvest which closely paralleled our recommendations.

Labor also made general and specific comments that for the most part are not pertinent to the report's findings and recommendations. The comments basically reflect Labor's opinion on our presentation of the events related to the 1978 Puerto Rican recruiting effort. Some of the specific comments are self-explanatory in that Labor restated facts presented in the report and then added further explanation and/or its interpretation of those facts. (See app. II, page 36, comments 1 and 3; page 37, comment 1; and page 39, comment 2.) However, we inserted Labor's specific comments in the report where we felt this would help clarify events. (See app. I, pages 10 and 11.) Following our assessment of Labor's general comments, we discuss the specific comments we believe require additional explanation.

General comments

Labor believes the expenditure of about \$275,000 was justified and that it acted prudently and responsibly under the circumstances to protect the interests of U.S. workers. Labor stated that the report (1) did not provide relevant information on why Labor paid the Puerto Rican workers' transportation costs, (2) ignores completely the actions of the U.S. District Court for the Western District of Virginia, and (3) grossly underestimates the disruptive effects of the actions of certain growers.

With respect to the first comment, Labor gave some background on the transportation issue which generally indicated that, because of growers' concerted actions in 1977 to not advance transportation to U.S. workers as they had done in the past and other considerations, Labor decided to pay for transporting workers from Puerto Rico. Labor also said that it was carrying out its responsibilities under immigration statutes. We agree that Labor was carrying out its responsibilities. Our concerns relate to the way Labor managed the unsuccessful Puerto Rican recruitment effort.

Labor in its second comment brought up an August 31, 1978, court action directing Labor to certify all foreign workers requested by Northeast apple growers as a significant factor affecting the 1978 harvest events. The effect of the court action to which Labor refers was to ensure that growers would have an adequate work force if Labor could not provide enough domestic workers. First, we do not believe the court order could have had a major impact on the planning for and recruiting of Puerto Rican workers because the order was issued well after the period when these efforts should have been accomplished. Second, as a cause for the problems that occurred after the Puerto Rican workers arrived, this point was not mentioned to us by Labor during our review, nor was it mentioned by Labor in the May 17, 1979, hearings on the 1978 harvest events held by the Subcommittee on Labor and Health, Education, and Welfare of the Senate Committee on Appropriations. Consequently, we did not evaluate the impact of the court's action. We do believe, however, if Labor felt the court action significantly complicated the Puerto Rican effort, it should have acted to reduce the numbers of workers being transported to mainland growers in an effort to avoid the problems that later occurred.

Regarding Labor's final comment on underestimating the disruptive effects of certain growers, we believe growers' actions are fairly characterized in the report. While we recognize that the Puerto Rican effort was difficult to administer, the results of our work show that Labor could have done a better job managing the effort.

Specific comments

The remainder of this section includes a discussion of some of Labor's specific comments and our evaluation.

- 1) Labor comment. "It is stated on these pages (3 and 11) that the workers were not qualified and not trained in how to pick apples. * * * It is a long standing DOL [Department of Labor] policy that the only qualification for agricultural field and orchard workers is that the person be physically capable of performing the job in keeping with the definition of "non-immigrant alien" contained in Section 101(a) (15) (H) (ii) of the Immigration and Nationality Act. Agricultural employers do commonly provide a few days' on-the-job training for inexperienced workers. For example, some New York growers did specify on-the-job training in their job orders. Although the DOL may not limit recruitment of workers for unskilled jobs as suggested, one-third of those recruited had enough agricultural experience to qualify for CETA 303 support."

Our evaluation. Our review did not address the qualifications of each Puerto Rican worker recruited by Labor. Our statements about the Puerto Rican workers apparently not being qualified are based on both the unfavorable results of the effort (only 97 of 992 workers still working after 15 consecutive calendar days) and assessments of those involved in the actual recruitment and later monitoring at growers' orchards. (See app. I, pages 1 and 13.)

Regarding Labor's comment on training, the results of the 1978 Puerto Rican effort do indicate a need for the Department to consider providing training in future efforts of this nature. In fact, recent testimony shows that Labor has considered this matter.

In May 17, 1979, hearings before the Subcommittee on Labor and Health, Education, and Welfare of the Senate Committee on Appropriations, Labor's Assistant Secretary for Employment and Training said for the 1979 harvest the Department had identified workers who were interested in picking apples and then described the training that would be given these workers. He said:

"Well, as I understand it--the picking, the climbing the ladder, carrying the bag, being able to climb up and down the ladder, picking the fruit carefully, putting it in the bins; and being able to do it in a timely fashion, is the type of training that would be involved."

In addition, Labor, in its response to our report recommendation dealing with implementing an effective recruitment program, stated that in 1979 it established an orientation center in Puerto Rico and workers received 2 days of orientation on apple picking jobs, including simulated apple picking experience.

- 2) Labor comment. "Grower representatives were extensively briefed on the new regulations at meetings as early as March and April, and DOL did issue formal operational guidelines prior to the 1978 apple harvest season (GAL No. 41-78 on June 29, 1978). Prior to the transportation or employment of any workers a joint meeting was held at INS [the Immigration and Naturalization Service], attended by representatives of DOL and the growers, to inform the growers of the procedures for replacing any domestic workers who failed to appear or quit."

Our evaluation. Our report points out that growers, State and local employment security agency officials, and the growers' attorney were not certain as to the new regulations' requirements. The guidelines referred to were interim only and, as our report states, final guidelines were not issued until March 16, 1979. Even so, the interim guidelines issued on June 29 did not assist growers, most of whom were preparing their job orders during the March through June period to meet Labor's requirement for orders to be filed 80 days in advance of need for workers.

- 3) Labor comment. "From the beginning it was planned to use both CETA Title I and III funds depending on eligibility of recruited workers. It then became a matter of determining which workers would be covered under the provisions of Title III which is restricted to workers whose recent work background is primarily agricultural. Those not meeting this criterion were covered by Title I funds. There was some uncertainty when some 303 grantees on the mainland made different eligibility determinations but this was quickly resolved by DOL."

Our evaluation. We do not agree that this problem was quickly resolved. The final eligibility determinations by CETA title III grantees were not completed until several months after the 1978 harvest. Also, the final reimbursement, which was based on the eligibility determinations, was not made until April 1979.

While Labor anticipated that some recruited workers would not be eligible for CETA title III funds, it appeared that Labor expected more than one-third of the workers to be eligible for that title since it extended, using title III funds, a \$250,000 letter of credit to the Puerto Rican title III grantee. In providing a response to a question raised during the May 1979 hearings before the Senate Subcommittee on Labor and Health, Education, and Welfare, Labor stated that:

"Considerable difficulty was encountered by the mainland 303 grantees in securing itemized statements from motels and then breaking down the statements to determine costs charged to eligible 303 workers and noneligible workers. Puerto Rico was reimbursed on April 5, 1979. Reimbursement to the grantees from Maryland, Virginia, West Virginia, and New York was authorized on April 17, 1979."

- 4) Labor comment. "It is inferred that DOL encountered a problem with the 'time frame for commencing the 60-day period within which Labor must certify an employer's petition for alien workers.' * * * The submission of applications by employers was not a problem for DOL as only a few employers submitted them late. It is not clear why this and other items on page 4 of app. I are included as issues in the report. They are not substantiated and don't appear to relate to the disposition of the 554 Puerto Rican workers referred to Virginia and West Virginia growers."

Our evaluation. Labor's reference in this comment is to the five areas of concern (see p. 4 of app. I) which relate to provisions of the regulations governing the alien labor certification program which were issued before the 1978 apple harvest. The concerns are discussed because growers, State and local employment security agency officials, and even some Labor officials we interviewed told us that these provisions were unclear and subject to varying interpretations. While our report states that the scope of our work did not permit an indepth assessment of these issues and the potential problems with these regulations, we believe that Labor should be concerned when the parties responsible for implementing its regulations express such confusion.

As our report notes, the growers' attorney sent a letter to the Secretary of Labor before the harvest delineating

growers' concerns with the regulations. In addition, Labor's Deputy Administrator of the U.S. Employment Service recommended in an October 5, 1978, memorandum (after the Puerto Rican recruitment problems) that the regulations should be clarified.

Notwithstanding the fact that in March 1979 Labor issued guidelines to all State employment security agencies to clarify aspects of the new regulations, we believe Labor should give careful attention in the future to these concerns to ensure that affected parties clearly understand the regulations' provisions.

- 5) Labor comment. "The letter of August 18 transmitted changes concerning New York employers only. In any event, the largest West Virginia grower's job order and the three largest Virginia growers' orders would not have been included in any letter because those orders were not accepted by the Puerto Rican Employment Service. When an order is extended, the receiving State has the option of accepting or refusing it. For example, the West Virginia order was not accepted because the employer had in his camp Puerto Rican contract workers (under PL 87) who were working in the peach harvest. The Puerto Rican agency chose not to mix contract and noncontract workers."

Our evaluation. The letter Labor refers to is discussed on page 12 of app. I. Copies of that letter with enclosures were provided to us by a Labor official. The document transmitted revised job order openings for New York, Virginia, and Maryland and the original numbers for West Virginia.

Regarding Labor's assertion that the three largest Virginia job orders and largest West Virginia job order were not accepted by Puerto Rico, we found no documentation substantiating that claim. The Puerto Rican Secretary of Labor and Human Resources did not send the letter which accepted growers' job orders and exempted them from Public Law 87 requirements until August 23, 1978. We found no other documentation on this subject.

- 6) Labor comment. " * * * and the proposed report generally fail to address the lack of cooperation from the growers in DOL's efforts to place Puerto Rican workers. It does not mention the impact of the court order by the Fourth Circuit under general comments. Also, information obtained by DOL from the Immigration and Naturalization

Service indicates that beds were available at the Frederick County Fruit Growers Camp at the time Puerto Rican workers were refused on September 11. From September 14 through September 22, 423 alien workers were admitted for members of the Association."

Our evaluation. As mentioned earlier, we believe the report fairly characterizes the growers' actions. We also addressed in an earlier comment Labor's point on the court action which, if it was that significant, should have affected Labor's decision on the number of Puerto Rican workers transported to mainland growers.

Regarding the availability of beds when Puerto Rican workers arrived, a State employment security agency official told us that space was not available. As for the September 14 through September 22 period, it is not surprising that space was available since most of the Puerto Rican workers accepted by growers had left their job during this period.

- 7) Labor comment. "Only two West Virginia growers, who were exempted on September 1, were notified on September 13, 1978. However, a copy of the exemption letter dated August 23, 1978, which included specific exemptions for all Virginia growers and two of the four West Virginia growers whose orders had been accepted, was given by the Department's Solicitor's Office to the attorney for the growers, Mr. Karalekas, on or about August 24, 1978. It was also entered into the court record in the U.S. District Court for Western Virginia on September 5, 1978."

Our evaluation. Our report noted that two growers were exempted from Public Law 87 on September 1 but, according to local employment security office files, not notified until September 13. Considering the concerns over Public Law 87, it appears reasonable that Labor officials responsible for the Puerto Rican recruitment effort should have ensured that each grower was notified at the earliest date of their exemptions rather than relying on the growers' attorney or assuming that each grower would obtain the information from court records.

APPENDIX II

APPENDIX II

U. S. Department of Labor

Inspector General
Washington, D C 20210



NOV 1 1979

Mr. Gregory J. Ahart
Director
Human Resources Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Ahart:

This is in reply to your letter to the Secretary of Labor requesting comments on the draft GAO report entitled, "Efforts to Recruit and Place Puerto Rican Workers With Growers During the 1978 Apple Harvest Were Unsuccessful."

The Department's response is enclosed.

The Department appreciates the opportunity to comment on this report.

Sincerely,

Majorie Fine Knowles

MAJORIE FINE KNOWLES
Inspector General

Enclosure

GAO note: Page references have been changed to agree with the final report.

U. S. Department of Labor Response To
The Draft General Accounting Office Report
Entitled --

Efforts To Recruit and Place
Puerto Rican Workers With
Growers During the 1978 Apple
Harvest Were Unsuccessful

The Department of Labor (DOL) comments on the proposed report on the 1978 apple harvest are divided into three categories--general (Appendix I), comments on GAO recommendations (Appendix II), and comments on specific statements (Appendix III). The general comments refer to the proposed report as a whole while comments on GAO recommendations refer to the four recommendations on page 5 of the summary background attachment to the drafted letter to Senator Byrd.

GENERAL COMMENTS

In the capsule "cover summary" of the report, it is stated that the report explains the causes of the situation in which the expenditure of \$275,000 by DOL was not justified.

DOL believes certain significant factors overlooked by the report justify this expenditure.

DOL believes that it acted prudently and responsibly under the circumstances to carry out its legal obligation to protect the interests of U.S. workers and that:

a. The report fails to provide relevant background to explain why DOL decided to provide transportation to the Puerto Rican workers;

b. The report ignores completely the actions of the U.S. District Court for Western District Virginia at the commencement of the harvest, and

c. The report grossly underestimates the disruptive effects of the actions by certain growers.

The transportation issue

The apple growers in a concerted action in 1977 refused to advance transportation to available U.S. workers as they had customarily done for many years. The U.S. District Court for Western Virginia upheld this action and ordered the Department to certify all foreign workers who had been requested by the growers.

Over 1,000 workers in Florida, most of whom had worked in the apple harvest in 1976, had indicated an interest in working in 1977 but had no means of reaching the work site. DOL, therefore, provided \$17,000 of CETA funds for the transportation of such workers to jobs with Northeast apple growers. In 1978, the issue of Puerto Rican Public Law 87 was resolved so that workers from Puerto Rico could be referred to apple picking jobs. The Department, in consideration of the following, decided to provide transportation to workers from Puerto Rico:

(a) The Immigration statute prohibits the admission of foreign workers unless unemployed domestic workers "cannot be found in this country."

(b) Puerto Rico, with an overall unemployment rate of about 20 percent (much higher in rural areas), had an abundance of unemployed workers.

(c) These workers had no means of reaching the orchards in the Northeast.

(d) Growers were obliged under our regulations to reimburse the cost of transportation to workers who completed half of the offered work period.

Court activity

On August 31, 1978, the U.S. District Court for Western Virginia entered a Mandatory Temporary Restraining Order directing the Labor Department to certify all foreign workers requested by the Northeast apple growers. It should be noted that this order was entered 1 day prior to the first of 20 flights that were scheduled to transport a total of 2,077 Puerto Ricans to the mainland during the next several weeks. On September 8, 1978, an emergency appeal was resolved by order of the Fourth Circuit Court of Appeals in Richmond and visas were ordered to be issued to foreign workers in accordance with a procedure set forth by the Court. The effect of these actions on the situation described in the report must not be underestimated. The admission of aliens was authorized for jobs to which Puerto Rican workers had been referred.

Grower actions

The report does not recognize the direct and significant impact of grower action. The report acknowledges that some growers did not change the dates of need on their job orders, and that when workers were delivered in accordance with these job orders they were refused employment because the harvest had been delayed. As a result, the Department was forced to provide room and board for the workers and to seek alternate employment, and ultimately to provide return transportation for many of them. The report also ignores the impact of last minute changes in dates of need by some growers, mostly called into the Regional Offices and not formally submitted by amendment to the job order. In an effort to accommodate these growers, the Department rescheduled flights and reassigned workers, many of whom had already departed their homes for the airport in San Juan or could not be reached prior to their departure, only to hear the growers contend in court proceedings several days later that the dates of need had not been changed and the Puerto Rican workers were overdue.

The contradiction between some growers' testimony in court that workers requested were needed on September 5, 1978, and statements of other growers in contiguous counties that workers were not needed until late September should be noted.

GAO RECOMMENDATIONS

GAO's recommendations to the Secretary of Labor on safeguards and actions to take in implementing a recruitment plan for Puerto Rican workers closely parallel the steps which DOL initiated in planning for the 1979 harvest.

Recommendation

Ensure that a Puerto Rican recruitment effort is not undertaken unless growers' exemptions from the Puerto Rican labor law occur in time to permit an adequate recruitment period.

Response

Growers' exemptions from PL 87 were granted by the Secretary of Labor of Puerto Rico by early June of 1979, and job orders from apple growers in the ten east coast States were delivered to Puerto Rico the last week in June and the first week in July. This permitted a period of at least 6 weeks for recruitment before the first significant certification date and almost 2 months before the first major date of need.

Recommendation

Adequately plan for and implement a recruitment program which includes growers, State Employment Security Agency officials, and CETA Title III grantees in pertinent areas. Recruitment efforts should place emphasis on (1) obtaining qualified workers with work experience and attributes acceptable to employers, (2) providing comprehensive orientation on working and living conditions as well as all aspects of the job, and (3) training workers when appropriate before arriving at their place of employment.

Response

DOL's planning for the recruitment effort began in February of 1979. It involved the establishment of an orientation center on the island for a group of approximately 600 CETA 303 eligible Puerto Rican workers who received 2 days of orientation on apple picking jobs on the U.S. mainland. The orientation consisted of the following key elements: (a) simulated apple picking experience; (b) working and living conditions on the mainland, including detailed explanations of job orders; (c) the risk and benefits of taking the jobs; (d) cultural differences between the island and the mainland; (e) rights and protections available to workers by DOL; and (f) the process of getting to the mainland and settling on the job.

Plans for this orientation center and the recruitment and placement process were discussed in great detail with growers and their representatives (one grower participated as a trainer in the orientation center), SESA officials, and CETA 303 Grantees in Puerto Rico and the Labor demand States. Individual 1-day briefing sessions were conducted in May and June in Washington for these individuals as well as for staff of congressional representatives of the States involved and organizations representing farmworkers, such as the National Association of Farmworker Organizations. Elaborate informational packets describing the entire process in great detail were provided each person attending the briefings.

Recommendation

Select and brief State and local employment security agency and Labor staff participating in the placement effort before the workers arrive. In this regard, emphasize the need for frequent communication with growers to ensure workers arrive when needed and to facilitate an orderly acceptance of workers.

Response

Growers, SESA and CETA 303 Grantee staff were provided briefings on the process designed by DOL to insure the orderly referral and acceptance of workers when they arrived on the mainland. DOL planned for extensive monitoring and technical assistance, emphasizing the need for frequent communication between growers, workers, SESA personnel, CETA 303 Grantees and DOL outstationed field staff, as an effort to resolve differences and disputes before they became escalated into formal complaints or terminations.

Recommendation

Ensure that CETA Title III Grantees are adequately prepared to account for the expenditure of funds if Labor plans to use more than one source of funds. This would eliminate the confusion in accounting for expenditures which was encountered after the 1978 apple harvest.

Response

CETA 303 Grantees from Puerto Rico and the mainland were involved early in the planning phases for 1979 and were thoroughly briefed on their responsibilities and resource availability.

COMMENTS ON SPECIFIC STATEMENTS

Page 1. It is stated that "more than 17,200 workers were referred to and/or employed by growers in ten east coast States during the 1978 apple harvest. Of these workers, 5,345 (31 percent) were aliens and about 11,882 (69 percent) were domestic workers, of which 992 were Puerto Ricans who were referred to growers in four east coast States."

Comment. Since the report is focused on Virginia and West Virginia, it should be stated that in those two States the proportion of alien workers was much higher (1,595 or 58.8 percent aliens and 1,118 or 41.2 percent domestics).

Pages 3 and 11. It is stated on these pages that the workers were not qualified and not trained in how to pick apples.

Comment. It is a longstanding DOL policy that the only qualification for agricultural field and orchard workers is that the person be physically capable of performing the job in keeping with the definition of "non-immigrant alien" contained in Section 101(a) (15)(H)(ii) of the Immigration and Nationality Act. Agricultural employers do commonly provide a few days' on-the-job training for inexperienced workers. For example, some New York growers did specify on-the-job training in their job orders. Although the DOL may not limit recruitment of workers for unskilled jobs as suggested, one-third of those recruited had enough agricultural experience to qualify for CETA 303 support.

Page 3. It is stated that "referral of Puerto Rican workers to Virginia and West Virginia growers was poorly managed."

Comment. Referrals were made based upon stated dates of need of the growers. Although West Virginia growers were given advance notice that 133 workers would be sent from Puerto Rico to arrive on the dates specified on their job orders (September 9 and 10), they refused to hire them when they arrived at the orchards. On September 11, Virginia growers refused to hire 137 Puerto Rican workers who had been referred in accordance with specifications in their job orders.

Page 3. "Labor did not issue formal guidelines aimed at clarifying the new regulations until after the 1978 apple harvest."

Comment. Grower representatives were extensively briefed on the new regulations at meetings as early as March and April, and DOL did issue formal operational guidelines prior to the 1978 apple harvest season (GAL No. 41-78 on June 29, 1978). Prior to the transportation or employment of any workers a joint meeting was held at INS, attended by representatives of DOL and the growers, to inform the growers of the procedures for replacing any domestic workers who failed to appear or quit.

Pages 3 and 14. It is indicated that DOL planning was minimal and not adequate for the situation which arose in 1978.

Comment. DOL planning was for normal experiences occurring before the 1978 harvest. It would have been near impossible to anticipate for the unexpected actions that occurred in 1978. Meetings were held with Federal and State staffs in March and April to plan for recruitment of U.S. workers for the 1978 apple harvest. In those early months, specific plans for the referral of Puerto Rican workers were not included because of uncertainty about the participation of Puerto Rico in the interstate clearance system. As early as April 1978, the DOL prepared an "Outline of Plan" for the 1978 harvest. This outline was later expanded to cover the recruitment and referral of Puerto Rican workers. The expanded outline provided specific instructions for facilitating the movement of workers to the job site. Several meetings involving DOL and State ES staffs were held in July and August to finalize plans for referral of Puerto Rican workers. A conference with representatives from Regions II and III was held in Washington on August 28, 1978, in which the comprehensive plan for the participation of Federal, State, CETA 303 Grantees, and the Puerto Rican Migration Division in the movement of workers from Puerto Rico to the orchards was reviewed. Growers were advised at least 3 days in advance of workers' scheduled arrival. Federal staff persons were sent to Puerto Rico to assist in planning the recruitment effort and to insure the smooth referral of workers to the mainland. Federal staff were present at the airport in San Juan for the departure of all flights and all flights were met at mainland airports. Workers were accompanied to the orchards by Federal, State, and/or 303 staff. The Department could not have anticipated that growers would refuse to hire or terminate the workers with impunity.

Page 3. "Uncertainty regarding which sources of Federal funds to use for the Puerto Rican workers' expenses caused further confusion in handling funds."

Comment. From the beginning it was planned to use both CETA Title I and III funds depending on eligibility of recruited workers. It then became a matter of determining which workers would be covered under the provisions of Title III which is restricted to workers whose recent work background is primarily agricultural. Those not meeting this criterion were covered by Title I funds. There was some uncertainty when some 303 grantees on the mainland made different eligibility determinations but this was quickly resolved by DOL.

Pages 4 and 5. It is inferred that DOL encountered a problem with the "time frame for commencing the 60-day period within which Labor must certify an employer's petition for alien workers."

Comment. The submission of applications by employers was not a problem for DOL as only a few employers submitted them late. It is not clear why this and other items on pages 4 and 5 are included as issues in the report. They are not substantiated and don't appear to relate to the disposition of the 554 Puerto Rican workers referred to Virginia and West Virginia growers.

Page 10. "Later in March, Labor notified the States that it was the Solicitor of Labor's opinion that voluntary acceptance by growers of a contract negotiated pursuant to Public Law 87 would not necessarily interfere with the Interstate Clearance System. Therefore, job orders could be sent to Puerto Rico if the State employment security agencies were satisfied that the growers had agreed to a separate contract with Puerto Rico. However, job orders were not distributed to Puerto Rico until after Public Law 87 was amended."

Comment. Job orders were not sent to Puerto Rico before the amendment because it was quite clear that growers were not willing to negotiate a contract under Public Law 87.

Page 11. "While Labor sent staff to monitor the Puerto Rican employment security agency's recruitment effort, neither Virginia nor West Virginia State and local employment security staff and growers participated in the activity."

Comment. It should be noted that the apple growers declined an invitation to participate in recruitment efforts in Puerto Rico. When they were invited to participate, they indicated that they did not have time to participate or express concern about the legality of exemptions. The State agencies did not participate because the growers did not provide them delegated hiring authority.

Page 12. "Labor's New York Regional Office, which has jurisdiction over Labor operations in Puerto Rico, sent a letter to the Secretary of Labor and Human Resources in Puerto Rico dated August 18, 1978, indicating revised numbers of workers for New York, Virginia, West Virginia and Maryland. However, that letter did not include the largest West Virginia grower's job order or the three largest Virginia growers' orders."

Comment. The letter of August 18 transmitted changes concerning New York employers only. In any event, the largest West Virginia grower's job order and the three largest Virginia growers' orders would not have been included in any letter because those orders were not accepted by the Puerto Rican Employment Service. When an order is extended, the receiving State has the option of accepting or refusing it. For example, the West Virginia order was not accepted because the employer had in his camp Puerto Rican contract workers (under PL 87) who were working in the peach harvest. The Puerto Rican agency chose not to mix contract and noncontract workers.

Page 13. It is stated that "of the 992 workers recruited in Puerto Rico, 554 were transported to Virginia and West Virginia. However, many workers were not accepted by growers, and of those who were hired, only 47 stayed 15 consecutive calendar days or longer. These results were caused not only by the previously discussed poor recruitment effort, but also by inadequate communication between Labor and the growers concerning dates of need for workers and the status of growers' exemptions under Puerto Rican Public Law 87, and the shortage of space in growers' labor camps where alien workers were being housed."

Comment. The above paragraph and the proposed report generally fail to address the lack of cooperation from the growers in DOL's efforts to place Puerto Rican workers. It does not mention the impact of the court order by the Fourth Circuit mentioned under general comments. Also, information obtained by DOL from the Immigration and Naturalization Service indicates that beds were available at the Frederick County Fruit Growers Camp at the time Puerto Rican workers were refused on September 11. From September 14 through September 22, 423 alien workers were admitted for members of the Association.

Page 15. "Before the workers were sent to the mainland, an airline manifest was prepared indicating the workers' names, social security numbers, and grower assignments. However, when the workers arrived, the growers found that many of the workers listed on the manifest were not the ones originally assigned to them."

Comment. Although it is minimized in the report, the widespread and unexpected last minute changes in the dates of need plus other unexpected reasons for delaying referrals had a direct impact on the distribution of the U.S. workers. Frequently, for these reasons it was necessary to switch the workers from one employer to another at the last minute prior to their boarding the plane in Puerto Rico. The provision of names and social security numbers is not required by DOL regulations, but was provided as a convenience to growers in case they desired to interview workers who had been referred to them prior to arrival of the workers. (No grower did this.)

Page 16. "As for growers who were scheduled to receive workers actually being informed of their exemption, local employment security office files indicated that West Virginia growers were notified by letter on September 13, 1978 (after the workers had arrived)."

Comment. Only two West Virginia growers, who were exempted on September 1, were notified on September 13, 1978. However, a copy of the exemption letter dated August 23, 1978, which included specific exemptions for all Virginia growers and two of the four West Virginia growers whose orders had been accepted, was given by the Department's Solicitor's Office to the attorney for the growers, Mr. Karalekas, on or about August 24, 1978. It was also entered into the court record in the U.S. District Court for Western Virginia on September 5, 1978.

DEPARTMENT OF EMPLOYMENT SECURITY

JOHN D. ROCKEFELLER IV
Governor

September 19, 1979

MICHAEL R. WENGER
Commissioner

Mr. Gregory J. Ahart, Director
Human Resources Division
U. S. General Accounting Office
Washington, D. C. 20548

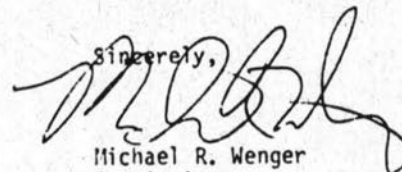
Dear Mr. Ahart:

We greatly appreciated the opportunity to review your proposed report draft on the Department of Labor's efforts to recruit and refer Puerto Rican workers to east coast apple growers. We have reviewed the draft and found it to be factual and responsible. We, therefore, have no specific comments on the draft that would enhance or clarify the presentation.

We would like to take this opportunity to express our gratitude to your staff, Mr. Charles McCreery and Ms. Judith Searcy, for their professional and courteous conduct during their visits with our staff.

If we can be of any further assistance in this matter, please feel free to contact us.

Sincerely,



Michael R. Wenger
Commissioner



COMMONWEALTH of VIRGINIA

Virginia Employment Commission

703 East Main Street

Arthur L. Lane, Jr., DPA
Commissioner

P. O. Box 1358
Richmond, Virginia 23211

September 26, 1979

Mr. Gregory J. Ahart
Director
U. S. General Accounting Office
Human Resources Division
Washington, D. C. 20548

Dear Mr. Ahart:

The GAO report on the Department of Labor's effort to recruit and refer Puerto Rican workers to the 1978 East Coast apple harvest is, for the most part, a fair and objective summation of the events as they transpired. It is also true, as your report states, that due to the confusion and great numbers of people involved, all of the facts will probably never be known.

Sincerely,

Arthur L. Lane, Jr., DPA
Commissioner



(203050)





UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

October 2, 1980

15763
15764

HUMAN RESOURCES
DIVISION

B-146842

The Honorable Robert E. Bauman
House of Representatives

Dear Mr. Bauman:

Subject: Review to Determine Whether the Davis-Bacon
Act Has an Inflationary Impact and Increases
Costs on METRO Construction (HRD-81-11)

By letter dated April 27, 1980, you and John M. Ashbrook, Ranking Minority Member, House Committee on Education and Labor, asked us to review the effect of using wage rates issued by the Department of Labor under the Davis-Bacon Act (40 U.S.C. 27(a)) on construction of the Washington Regional Rapid Rail Transit System (METRO).

In accordance with Representative Ashbrook's September 18, 1980, request, this interim report discusses our preliminary findings.

We found that setting prevailing wages for METRO construction--as required by the Davis-Bacon Act--may increase the construction costs by about 6.8 percent. We estimate that, as a result of Labor establishing wages at higher rates than those actually prevailing in the area of METRO projects, METRO construction costs could be increased by about \$149 million.

THE DAVIS-BACON ACT

The Davis-Bacon Act requires that each contract over \$2,000 to which the United States is a party--for construction, alteration, or repair of public buildings or public works--state the minimum wages to be paid to various classes of laborers and mechanics. The act provides that the minimum wages be based on wages determined by the Secretary of Labor to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the city, town, village, or other civil subdivision of the State in which the work is to be performed. The minimum wage determination includes the basic hourly rates of pay and any fringe benefits.

B-146842

The wages and benefits are set forth in wage determinations issued by Labor. The Wage and Hour Division in Labor's Employment Standards Administration is responsible for making wage surveys and issuing wage determinations under the Davis-Bacon Act.

Extension of Davis-Bacon Act to METRO

Initially, the Davis-Bacon Act applied only to construction projects procured directly by Federal agencies. Since 1937, however, the Congress has enacted statutes--which involve federally assisted construction projects such as METRO--that require the payment of wages at rates determined by Labor under the Davis-Bacon Act. This requirement was included in the National Capital Transportation Act of 1965 (Sec. 3(b)(4), 79 Stat. 644; 40 U.S.C. 682(b)(4)), ^{1/} which authorized development of a rapid rail transit system for the Washington metropolitan area.

METRO is being constructed by the Washington Metropolitan Area Transit Authority, which was created on February 20, 1967, by an interstate compact among Maryland, Virginia, and the District of Columbia pursuant to Public Law 89-744, ^{1/} approved on November 6, 1966. METRO, when completed, will include a 100-mile rapid rail system with an interconnecting feeder bus system to serve the Washington metropolitan area transit zone. The zone includes the District of Columbia; the cities of Alexandria, Fairfax, and Falls Church and the counties of Arlington and Fairfax in Virginia; and the counties of Montgomery and Prince George's in Maryland.

The Transit Authority's initial cost estimate for building the full 100-mile rail system was \$2.5 billion in 1969. This estimate was increased to \$5 billion in 1976. The Authority's latest estimate is \$8.2 billion for a completed system by the late 1980s. About 34 miles of the 100-mile system are currently operational.

^{1/}The Davis-Bacon Act requirements were deleted from this act in December 1969; however, they were included in Public Law 89-774, approved on November 6, 1966.

B-146842

GAO WAGE RATE SURVEY

To determine the effect of using Davis-Bacon wage rates on METRO construction contracts, we made a wage rate survey in Montgomery County. We intended to make a similar wage survey in Virginia; however, Labor is making wage rate surveys in the city of Alexandria and Fairfax County. To avoid duplicating Labor's effort and possibly interfering with its survey or antagonizing contractors with two requests for the same data, we deferred our survey in Virginia. We plan to review the results of Labor's surveys when they are completed.

On current METRO construction contracts, the Transit Authority is required to use Labor's Davis-Bacon rates published in an area decision covering jurisdictions in the metropolitan area transit zone. Labor issues two types of Davis-Bacon wage determinations--project determinations and area wage determinations. 1/ The area decision in effect at the time of our review was DC 80-3040, published in the Federal Register on May 16, 1980, and modifications 1 and 2, published in the Register on May 30 and June 6, 1980, respectively. According to Labor officials, some of the wage rates were based on wage surveys made in the Virginia counties. However, they said Labor has not made a wage survey in Montgomery County in 6 to 10 years.

Survey procedures

Labor's area decision DC 80-3040 lists wage rates to be paid for about 155 classifications of workers in various types of construction; e.g., building, heavy, highway, and water and sewer line construction. According to a Transit Authority official, 13 craft or worker classifications--listed for building and heavy construction--account for about 90 percent of the labor costs on METRO construction projects. Therefore,

1/Labor issues project determinations for a specific project; they are effective for 120 days from the date issued. Labor issues area determinations, which apply to geographical areas (such as counties or States); these are required to be used on all Federal projects to be constructed in the covered area. They are published in the Federal Register and are in effect until superseded.

B-146842

during our survey in Montgomery County, we obtained data on wages paid to the corresponding 13 classes of crafts or workers on similar private construction projects in Montgomery County, from July 1, 1979, through June 30, 1980.

In collecting the data and determining rates, we generally used Labor's regulations and procedures. However, we surveyed wage rates paid on private construction only (eliminating Federal projects with Davis-Bacon Act rates) and eliminated duplicate counting of workers where contractors had worked on more than one project during the survey period.

We excluded federally funded projects because the legislative history of the act indicated that the wage rate should be based on wages that prevailed on private construction. This exclusion also eliminated any influence of incorrect rates that may have been issued on earlier Davis-Bacon projects. We considered including the same employees working on different projects--multiple counting--to be a questionable practice which distorts survey results.

Survey statistics

Our universe of construction projects in Montgomery County was identified from Dodge Reports, a publication that lists projects and their contractors by county. We also asked prime contractors to identify their subcontractors and other construction projects in progress. During the wage rate survey, we identified 153 construction projects and 97 prime contractors and 256 subcontractors working on the projects. We were able to contact 80 prime contractors and 211 subcontractors. Of them, we obtained data from 58 prime contractors and 180 subcontractors covering 93 construction projects.

PRELIMINARY FINDINGS

Most of the wage rates prevailing on private construction in Montgomery County for the 13 crafts are substantially lower than those required by Labor.

B-146842

For 11 of the 13 classifications, the prevailing wage rates prescribed by Labor were higher than those we found to prevail on similar private construction in the county. For example:

- For a laborer, the prevailing rate was \$6.05, while Labor's prescribed rate was \$10.95--\$4.90 higher.
- For a carpenter, the prevailing rate was \$9.24, while Labor's rate was \$13.56--\$4.32 higher.
- For a power equipment operator (bulldozer), the prevailing rate was \$8.99, while Labor's rate was \$13.72--\$4.73 higher.

For the other two crafts, our wage rates and Labor's were the same.

Overall, the higher wage rates established by Labor resulted in significantly higher wage costs--an average of 33.9 percent--for the METRO construction contracts.

Impact on METRO construction

Setting prevailing wages for METRO construction, as required by the Davis-Bacon Act, may increase the construction cost by about 6.8 percent. We estimate that, as a result of wages being established at higher rates than those actually prevailing in the area of METRO projects, METRO construction costs could be increased by about \$149 million.

To illustrate, a Transit Authority official told us that labor accounts for about 22.4 percent of a METRO construction project and that the 13 craft classifications we surveyed accounted for 90 percent of the labor used on a project. A Transit Authority official also estimated that future construction costs for METRO will total about \$2.18 billion. On the basis of the above, the potential impact of Davis-Bacon wage determinations on future METRO construction costs is shown in the following table.

B-146842

	<u>Total system</u> (millions)
Estimated construction cost	\$2,180.0
Percentage of costs for labor	<u>22.4%</u>
Total estimated labor costs	\$488.3
Percentage of METRO labor for crafts we surveyed	<u>90.0%</u>
Total estimated labor costs for crafts we surveyed	\$439.5
Average percentage labor costs increased because of the Davis-Bacon Act	<u>33.9%</u>
Estimated increase in labor costs because of the Davis-Bacon Act	<u>\$149.0</u>

We recognize that the wage rate difference found in Montgomery County may not be the same (1) in all jurisdictions where METRO is being constructed or (2) for all types of construction; we also recognize that the proportion of labor provided by a particular craft classification may vary. However, we believe that the wage rates within the different counties in the Washington metropolitan area transit zone should be reasonably close to those in Montgomery County, and that our cost estimates are a useful indicator of the potential magnitude of the increased construction costs resulting from the Davis-Bacon wage determinations.

- - - -

B-146842

At the request of your office, we did not follow our normal practice of obtaining agency comments on this report.

A report on our findings is also being sent to Representative Ashbrook. We hope to complete our remaining fieldwork and issue the final report to you in early 1981.

Sincerely yours,

Edward C. Jensen

for Gregory J. Ahart
Director

This is a list compiled from a GAO search, reading all the Reports we have so far and from Appendix I located at Page 39 in the report HRD 81-111 entitled "Other GAO Reports on ONP" The GAO search and Appendix I are attached hereto.

YEAR	Document #	DATE
1977 *	HRD 77-59	3/22/77
1977 *	HRD 77-84	9/8/77
1978 *	HRD 78-4	4/10/78
1978 *	HRD 78-83	3/9/78
1978 *	HRD 79-28	12/8/78
1979 *	HRD 79-30	1/15/79
1979 *	HRD 79-127	10/2/79
1979 **	HRD 80-13	11/8/79
1980 **	HRD 80-45	2/14/80
1980 #	HRD 80-109	9/18/80
1980 #	HRD 81-11	10/2/80
1981 *	HRD 81-66	7/1/81
1981 #	HRD 81-108	6/15/81
1981 #	HRD 81-109	6/15/81
*1981 #	HRD 81-111	8/28/81
1981 #	HRD 81-145	8/31/81
*1981 #	HRD 81-146	8/31/81
1982 #	HRD 82-125	9/26/82

* Report from Appendix I, HRD 81-111. # Report from GAO search.
 ** mentioned in another Report.

NOTE: The Government Manual for 1978/1979 and 1979/1980 list Lamond Godwin as Administrator of The Office of National Programs.

* Repts
 you had
 that you
 read up
 + I'm
 returning

OTHER GAO REPORTS ON ONP

1. "Labor Needs to Better Manage Migrant Grants in Virginia and Improve the Process for Selecting Grantees" (July 1, 1981, HRD-81-66).
2. "The Distribution of Senior Community Service Employment Program Positions" (Nov. 8, 1979, HRD-80-13).
3. "Evaluation of the Secretary of Labor's Comments on 'The Award of Funds to the National Farm Workers Service Center, Inc., Was Poorly Managed'" (Oct. 2, 1979, HRD-79-127).
4. "The Award Of Funds To The National Farm Workers Service Center, Inc., Was Poorly Managed" (Jan. 15, 1979, HRD-79-30).
5. Letter report to Senator Henry Bellmon on Indian employment and training programs authorized by CETA (Dec. 8, 1978, HRD-79-28).
6. "Questionable Need for Some Department of Labor Training Programs" (Apr. 10, 1978, HRD-78-4).
7. Letter report to Congressman John Conyers on the implementation and progress of the Help through Industry Retraining and Employment (HIRE) program (Mar. 9, 1978, HRD-78-83).
8. "Stronger Controls Needed Over the Migrant and Seasonal Farmworkers Association Programs in North Carolina" (Sept. 8, 1977, HRD-77-84).
9. Letter report to Senator William Proxmire on allegations that ineligible applicants were enrolled in programs administered by the United Migrant Opportunity Service, Milwaukee, Wisconsin (Mar. 22, 1977, HRD-77-59).
10. Letter report to Labor's Assistant Secretary for Administration and Management on inadequate oversight of program to provide assistance to nonreservation Indians under title III-A of CETA (July 28, 1976).

EXECUTIVE OFFICE OF THE PRESIDENT

07-Jan-1997 01:42pm

TO: smith_sn
FROM: davisk.isc
SUBJECT: GAO Request

PAGE 1
01/07/97

GAO DOCUMENTS DATA BASE

TITLE: [Protest of Proposal Rejection]
ACCESSION NUMBER: 117004 BNUMBER: B-204948
DOCUMENT DATE: 12/09/81 DOCUMENT TYPE: Decision
ORGANIZATION CONCERNED:
Policy Analysis Inc.
Department of Labor: Employment and Training Administration: Office of
National Programs
BACKGROUND:
A firm protested the rejection of its proposal as late, asserting that its proposal was delivered in a timely fashion to the mailroom of the facility in question, and its late receipt in the room specified in the request for proposals (RFP) was due to Government mishandling. Since an exception provision in the RFP referring to Government mishandling applied only to proposals that were submitted by mail, and the protester's proposal was submitted through a commercial carrier, GAO held that consideration of the proposal would not be permissible and that rejection of the proposal was proper. Accordingly, the protest was denied.

TITLE: [Department of Labor's Office of National Programs' Administration of
Employment and Training Awards]
ACCESSION NUMBER: 116663 DOCUMENT DATE: 10/20/81
DOCUMENT TYPE: Testimony
ORGANIZATION CONCERNED:
Department of Labor
Department of Labor: Employment and Training Administration: Office of
National Programs
Department of Labor: Employment and Training Administration: Office of
Youth Programs
DESCRIPTIVE NOTE: *None*
None Refer to HRD-81-11, October 2, 1980, Accession Number 113889; and
HRD-81-145, August 31, 1981, Accession Number 116302.

BACKGROUND:
The Department of Labor needs to better select, monitor, and evaluate contract awards made by the Employment and Training Administration's Office of National Programs (ONP). In a review of the procedures and practices used by ONP in its award process, GAO found that ONP: often used sole-source awards without adequately justifying them; rarely evaluated or

negotiated award proposals sufficiently before funding them; sometimes authorized, without adequate safeguards, awardees to start work before the award was finalized; did not consistently and adequately monitor awardee performance to insure that award terms were met; and seldom evaluated awardees before renewing their awards. Most of the problems of ONP stemmed from Labor's failure to separate grant and contract management responsibilities from program responsibilities. The ONP officials charged with insuring that good award management practices were followed were also responsible for accomplishing program objectives. Labor specialists in grant and contract management were seldom involved in ONP award activities. Most of the award activities were handled by program staff who placed little emphasis on following good grant and contracting practices. A followup analysis of a selected sample of awards substantiated the findings contained in the earlier GAO report. A special departmental committee was established to review grant and contract proposals. However, GAO found no written criteria to explain why these individuals were appointed, no dates for their terms of appointments, and no written operating procedures detailing how they were supposed to carry out their responsibilities.

PAGE 2
01/07/97

GAO DOCUMENTS DATA BASE

TITLE: Information on Funding Commitments From Comprehensive Employment and Training Act Titles III and IV During Fiscal Year 1981
None
ACCESSION NUMBER: 116302 **RPTNO:** HRD-81-145
BNUMBER: B-203535 **DOCUMENT DATE:** 08/31/81
DOCUMENT TYPE: Chapter Report

ORGANIZATION CONCERNED:
Department of Labor
Department of Labor: Employment and Training Administration: Office of National Programs

DESCRIPTIVE NOTE: *None*
Refer to HRD-81-108, June 15, 1981, Accession Number 115568;
HRD-82-125, September 29, 1982, Accession Number 119692; and
Testimony, October 20, 1981, Accession Number 116663.

BACKGROUND: *None*
GAO was requested to answer questions pertaining to grants and contracts awarded by the Department of Labor from September 1, 1980, to late January 1981, using the Comprehensive Employment and Training Act (CETA) titles III and IV discretionary funds.

FINDINGS:
According to Labor officials, in January 1981, Labor's projected funding commitments for both titles exceeded the funds available for the fiscal year. However, officials said that Labor had not incurred obligations in excess of its fiscal year 1981 budget authority for these titles. Data on the awards reviewed showed that prudent grant/contract procedures were not always followed during the award process. During the review of the award files, GAO found: (1) few formal records of negotiations relating to the awards process; (2) a lack of comprehensive evaluations of awardees' past performance before award renewal; and (3) little evidence of site monitoring visits. In making and renewing awards, Labor's Office of National Programs (ONP) relied heavily on sole-source awards for special projects without demonstrating the need to use such awards to obtain employment and training services. Furthermore, the lack of justification in the files for specific sole-source actions made it impossible to determine the bases for many of these decisions. ONP limited competition in other cases when it decided to make sole-source awards based on its administrative definition of demonstrated effectiveness, and this did not

always seem justified. ONP continued to fund awardees that performed poorly. In addition, most of the ONP awards were renewals of previous awards to the same organizations. However, formal assessments of the awardees' performance, which would contribute to more informed refunding decisions, were rarely made.

line
TITLE: Information on Funding Commitments From Comprehensive Employment and Training Act Titles III and IV During Fiscal Year 1981
ACCESSION NUMBER: 116396 RPTNO: HRD-81-146
BNUMBER: B-203535 DOCUMENT DATE: 08/31/81
DOCUMENT TYPE: Chapter Report
ORGANIZATION CONCERNED:
Department of Labor
Department of Labor: Employment and Training Administration: Office of National Programs
DESCRIPTIVE NOTE: *None*
Refer to HRD-81-109, June 15, 1981, Accession Number 115605.

PAGE 3
01/07/97

GAO DOCUMENTS DATA BASE

BACKGROUND:

In its final report to a Senate committee, GAO reviewed a sample of the Comprehensive Employment and Training Act titles III and IV discretionary awards made by the Department of Labor. The title III awards are administered by Labor's Office of National Programs (ONP) and title IV awards are administered by the Office of Youth Programs. The committee was concerned about the possibility of overcommitment of the discretionary funds and poor contract administration.

FINDINGS:

GAO found that prudent grant/contract procedures were not always followed during the award process. In reviewing the award files, GAO found: (1) few formal records of negotiations, (2) a lack of comprehensive evaluations of awardees' past performance before award renewal, and (3) little evidence of site monitoring visits. In making and renewing awards, ONP relied heavily on sole-source awards for special projects without demonstrating the need to use such awards to obtain employment and training services. Many of the problems with the ONP preaward activities occurred because these functions were not independent and ONP officials functioned both as grant and contracting officers and as persons charged with accomplishing program objectives. ONP needs to strengthen such areas as: (1) evaluating proposals, (2) negotiating with applicants, and (3) authorizing preaward work. In some cases, ONP officials actively monitored awardees' activities, but in many cases they did not. Therefore, because of the limited monitoring of awardees' performance, ONP did not know whether awardees met the terms of their awards or whether they used Federal funds prudently. In addition, ONP did not always identify problems with awardees' performance, and when they did, ONP did not always act on and resolve those problems. ONP often failed to request required financial and performance reports, and it failed to visit many awardees. ONP informed GAO that a task force was being set up to prepare materials for implementing previous GAO recommendations.

None
TITLE: Labor Needs To Better Select, Monitor, and Evaluate Its Employment and Training Awardees
ACCESSION NUMBER: 116301 RPTNO: HRD-81-111
BNUMBER: B-203219 DOCUMENT DATE: 08/28/81
DOCUMENT TYPE: Chapter Report
ORGANIZATION CONCERNED:

Department of Labor

Department of Labor: Employment and Training Administration: Office of National Programs

DESCRIPTIVE NOTE:

Refer to HRD-82-125, September 29, 1982, Accession Number 119692.

BACKGROUND:

The Department of Labor's Office of National Programs administers about \$600 million each fiscal year in grant and contract awards under the Comprehensive Employment and Training Act and the Older Americans Act. GAO reviewed the activities of the Office to assess how well it carried out its administrative processes.

FINDINGS:

The Office often used sole-source awards for special projects and, for most of the awards reviewed, did not adequately consider the awardee's prior performance when making a renewal award. Because of the potential for better work agreements and lower costs resulting from competition, the Office should justify each instance when it considers only one organization for a special project award. For 140 of the sole-source awards reviewed,

PAGE 4
01/07/97

GAO DOCUMENTS DATA BASE

GAO found little evidence supporting the award decisions. The Office did not separate grant and contract management from program responsibilities. Consequently, most of the award activities, such as evaluating and negotiating proposals, were handled by program staff who placed little emphasis on following proper grant and contracting practices. More than two-thirds of the awards which GAO studied were not fully reviewed and negotiated. Many contained vague statements of the proposed work, questionable or unjustified costs, and budget errors. Some awardees were authorized to begin work before the awards were made without the Government's interests being protected by specifying the terms of the work authorizations. Many awardees were placed on a letter-of-credit payment system without adequate documentation that they met the system's requirements. The effective date of the award was frequently predated. The Office has not adequately monitored its awardees. When Office representatives identified awardee problems, they did not always attempt to resolve them. Also, GAO found many problems that had not been identified.

TITLE: [The Employment and Training Administration Should Stop Using State Agencies To Pass Funds Through to Contractors]

ACCESSION NUMBER: 113331

RPTNO: HRD-80-109

BNUMBER: B-195620

DOCUMENT DATE: 09/18/80

DOCUMENT TYPE: Chapter Report

ORGANIZATION CONCERNED:

Department of Labor

Nevada: Department of Employment Security

Department of Labor: Employment and Training Administration: Office of National Programs

Department of Labor: Employment and Training Administration

BACKGROUND:

Offices in the Department of Labor's Employment and Training Administration (ETA) arranged with the State of Nevada for nine pass through agreements to obtain services for several Labor activities. A pass through agreement is a procurement initiated and principally carried out by ETA, but entered into by a state and a contractor using federal funds granted to the state. The work to be performed under the nine agreements varied, but it was to be utilized primarily at the regional or national level, rather than primarily benefiting Nevada's activities. Labor selected the contractors, negotiated

the substantive aspects of the agreements, asked Nevada to enter into the agreements with the contractors, monitored work progress, and certified invoices submitted by the contractors.

FINDINGS:

For six of the agreements, Labor officials stated that they used the pass through arrangement because there were insufficient funds available, which they could obligate directly, to spend for the work. Instead, funds available under the Grants to States for Unemployment Insurance and Employment Services appropriation were used. According to Labor officials, under law these funds must be granted to states; Labor cannot obligate these funds directly to contractors. Therefore Labor used the funds by using the pass through arrangement. For two projects, Labor used the pass through arrangement because they lacked the staff and time to go through a formal procurement process. The remaining project used Comprehensive Employment and Training Act funds, which Labor could have used to contract directly for the work. Labor's view was that the pass through contracting method was justified because the work benefited the employment security system rather than merely affecting federal operations. Although GAO does not question the legal basis for these awards, Labor should procure these

PAGE 5
01/07/97

GAO DOCUMENTS DATA BASE

services, when needed, directly. Labor's use of pass through agreements for achieving ETA goals does not ensure that the federal government's interests are protected. These agreements effectively circumvent the procurement standards and safeguards set forth to ensure effective use of federal monies.

TITLE: [The Distribution of Senior Community Service Employment Program Positions]

None **ACCESSION NUMBER:** 110826

RPTNO: HRD-80-13

BNUMBER: B-165430

DOCUMENT DATE: 11/08/79

DOCUMENT TYPE: Chapter Report

ORGANIZATION CONCERNED:

Department of Labor: Employment and Training Administration: Office of National Programs

Department of Health, Education, and Welfare: Administration on Aging

BACKGROUND:

The Senior Community Service Employment Program (SCSEP) was established to offer part-time employment opportunities for unemployed, low-income persons, aged 55 or older, who have poor employment prospects. The Department of Labor administers SCSEP through its Office of National Programs, Employment and Training Administration. Local involvement in decisions concerning the establishment of SCSEP projects is obtained through state and area agencies on aging that are responsible for developing plans for providing services to the elderly. As a result of two appropriation acts, about 80 percent of the funds for 1978 SCSEP activities were given to organizations already funded. Most existing activities were carried out by five national grantees; consequently, they received most of the funds for program year 1978. The remainder of the 1978 funds, about 20 percent, were not earmarked for any specific group by the legislative acts. Labor made these funds available to all state governments to carry out SCSEP programs in addition to any SCSEP activity established in their state by any of the national grantees. In awarding funds to maintain the existing level of activities, the Secretary of Labor is required to ensure an equitable distribution of activities among the states. When awarding funds not required to maintain the existing level of activity, the Secretary is to provide funds to states in proportion to the number of persons aged 55

or over in each state, with minimum amounts established for the states and other jurisdictions. GAO examined the procedures used to select project sites for the SCSEP, after it was suggested that SCSEP projects and positions, especially in Iowa, were not being distributed evenly throughout the state.

FINDINGS:

Resources under SCSEP are not sufficient to realistically achieve an equitable distribution of positions throughout a state. In program year 1979, funds were available to support about 47,500 SCSEP positions; however, over 5 million individuals met SCSEP eligibility requirements. A similar situation existed in Iowa, where over 155,000 individuals were estimated to meet SCSEP eligibility requirements. During the program years 1977 and 1978, the total number of SCSEP positions funded in Iowa amounted to 139 and 449, respectively. Although the grantees' distribution of SCSEP positions has left many geographical areas unserved by the program, their efforts to enhance administrative economy have merit when considered in relation to limited program resources and the significance of the program's administrative requirements. A potential for controversy exists regarding the criteria used in distributing SCSEP positions. Each area agency on aging desires services for its clientele, and the state agency on aging

PAGE 6
01/07/97

GAO DOCUMENTS DATA BASE

would like to have services available throughout the state. Recent legislation could improve the situation; however, unless state and local agencies on aging can work cooperatively with national program grantees, the potential for controversy regarding the equitable distribution of SCSEP positions within the states could still exist.





13331 14926
UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

HUMAN RESOURCES
DIVISION

B-195620

SEPTEMBER 18, 1980

The Honorable Ray Marshall
The Secretary of Labor

Dear Mr. Secretary:

Subject: The Employment And Training Administration
Should Stop Using State Agencies To Pass
Funds Through To Contractors (HRD-80-109)

Offices in Labor's Employment and Training Administration (ETA), by arranging for "pass through" agreements to obtain services for several of their activities, have effectively circumvented procurement and award administration safeguards designed to ensure that Federal moneys are properly and effectively spent and that agencies are accountable for their procurement actions. A pass through agreement is a procurement initiated and principally carried out by ETA, but entered into by a State and a contractor using Federal funds granted to the State. The results of the work have nationwide or regional application rather than primarily accruing to the State.

We discussed with Labor headquarters and region IX officials and with Nevada Employment Security Department officials the origin of and contractual responsibilities for nine pass through agreements in Nevada. In addition, ETA officials identified nine other possible pass through agreements (nationwide) for us. We limited our work to the Nevada agreements since at the time the agreements were identified for us the nine Nevada agreements comprised half the number of agreements and \$2,161,737 (60 percent) of the \$3,606,419 nationwide total. The Nevada agreements ranged from \$14,840 to \$1,350,000 and spanned several fiscal years. These nine agreements were scheduled to terminate prior to 1980, although one agreement is now handled through the State of Michigan and is scheduled to end in 1981.

(203060)

PURPOSE OF WORK PERFORMED

The work to be performed under the nine agreements varied, but all were to increase knowledge of or provide assistance to employment service, unemployment insurance, labor market information, or work incentive activities. The work was to be utilized primarily at the regional or national level, rather than primarily benefiting Nevada's activities. For example, at Labor's request Nevada's Employment Security Department signed agreements with:

- Basics Information Systems, Inc., an Alexandria, Virginia, firm, to process Job Openings Bank information submitted by States. This information is the basis for periodic and special reports on the extent and kinds of jobs available throughout the Nation.
- Evaluation Techniques Consortium, a Northridge, California, firm, to assess labor market information programs in State employment security agencies and recommend needed changes.
- The Orkand Corporation, a Silver Spring, Maryland, firm, to improve existing materials that provide an analytical approach to financial management for the Work Incentive program. A Labor official told that the materials were distributed to Labor headquarters and its 10 regional offices, Nevada, and to other States.
- Management Engineers, Inc., a Reston, Virginia, firm, to assist Labor headquarters with analyzing data and generating reports on the Unemployment Insurance Services' appraisals of States' performance.

LABOR'S AND NEVADA'S CONTRACTUAL
ROLES IN AGREEMENTS

Labor and Nevada officials told us that Labor selected the contractors to do the work, negotiated the substantive aspects of the agreements, asked Nevada to enter into the agreements with the contractors, monitored work progress, and certified invoices submitted by the contractors. Nevada's contractual role was limited to ensuring that the draft agreements were in proper form, obtaining State officials' and contractors' signatures, and paying bills from Labor-certified invoices. Nevada officials told us that they did not monitor

work progress to ensure contractual obligations were met; however, for several of the agreements Nevada officials told us that they kept apprised of the progress of the work because they were interested in it.

REASONS FOR PASS THROUGH AGREEMENTS

For six of the agreements, Labor officials told us that they used the pass through arrangement because there were insufficient funds, which they could obligate directly, available to spend for the work. Instead, they used funds available under the Grants to States for Unemployment Insurance and Employment Services appropriation. According to Labor officials, under law these funds must be granted to States; Labor cannot obligate these funds directly to contractors for activities, such as those discussed in this report. Therefore, Labor used these funds by using the pass through arrangement. For the seventh project using Grants to States funds, a Labor official told us that the pass through arrangement was used because they lacked staff to go through a formal procurement process and that sufficient funds which could be directly obligated for the work were probably not available.

One project was funded with Work Incentive funds which Labor could have used to contract directly for the work. Labor officials told us that they used the pass through arrangement because they lacked the time to go through a formal procurement process. The remaining project used Comprehensive Employment and Training Act (CETA) funds, which Labor also could have used to contract directly for the work. We could not obtain the reason for using the pass through arrangement because the key Labor official had retired.

Labor officials felt that the pass through contracting method was justified because the work benefited the employment security system rather than merely affecting Federal operations. They felt that the work was needed and that results from the pass through agreements improved the employment security system. One Labor official told us that accountability for expenditures was present because Labor officials monitor the work and assure themselves that work has been done before invoices are forwarded to Nevada for payment.

Nevada officials told us that they agreed to act as paying agent for the agreements to cooperate with Labor in the Federal-State employment security partnership. They also told us that while the work does not primarily benefit Nevada activities, Nevada benefits by being aware of the progress of the work and results earlier than others. Thus, they will be in a good position to take advantage of the results, if appropriate.

A Labor official told us that as of July 1980 pass through agreements are being used minimally. He stated that as a result of our inquiries regarding pass through agreements Labor officials are being informally advised to use other methods to accomplish the work.

PASS THROUGH BYPASS
PROCUREMENT SAFEGUARDS

Although we do not question the legal basis for these awards, we believe that Labor should procure these services, when needed, directly. Labor is much more heavily involved than Nevada in these pass through agreements. Although Labor initiates the work and performs the major portion of award administration, Labor is not a party to the agreements. Nevada signs the agreements, but does so only at Labor's request; and the work is not done to directly improve Nevada's employment security activities. Under these conditions it would seem logical that Labor should contract directly for the work.

Since Labor is not a party to these pass through agreements, the agreements are not subject to Federal procurement procedures, which are designed to protect the Federal Government's interests. Nevada's role is minimal--it obtains signatures on the agreements and pays bills from invoices certified by Labor--therefore, it cannot be counted on to protect the Government's interests. These conditions also argue for direct procurement by Labor.

AGENCY COMMENTS AND OUR EVALUATION

We asked the Department of Labor whether using grant moneys for pass through agreements was within the purpose for which the funds were appropriated. Labor's response (see encl. I) stated that the pass through method was an economical way to improve the management and operations at each of the State employment security agencies.

For the employment service projects funded from the grants to States appropriation, Labor stated that the pass through method appeared to be the sole available method for obtaining studies and conducting projects that are beneficial to the entire employment service system. Labor also stated that the alternative would be the inefficient and costly method of giving piece-meal grants to each State agency for studies and projects. We would also point out that the Department receives program administration appropriations which it can obligate directly and which could have been used for these studies and projects.

For the unemployment insurance projects, Labor stressed the benefits of these projects and stated that the Congress was well aware of the pass through method citing a brief passage from appropriation hearings in January 1962. Labor stated that no legislative restriction on such grant procedures was placed into the Social Security Act or appropriation acts as a result. First, we are not questioning the benefits of these activities but the methods used to procure them. Second, we believe the appropriate congressional committees should be made aware of the practices used to procure such activities on a current basis.

For the projects funded with CETA and work incentive funds (which Labor could have obligated directly instead of using the pass through arrangement) Labor stated that the efficiency of channeling funds through one State agency for the benefit of all is readily apparent. In our view, Labor's justification for using pass through agreements is not readily apparent. Since Labor could have been a party to the contract rather than using the pass through arrangement, it appears that expediency--and not efficiency--was the motivating factor.

CONCLUSIONS AND RECOMMENDATIONS

Labor's use of pass through agreements for achieving ETA goals does not ensure that the Federal Government's interests are protected. These agreements effectively circumvent the procurement standards and safeguards set forth to ensure effective use of Federal moneys. Accordingly, we recommend that the Secretary of Labor

- discontinue using State agencies to enter into agreements that pass through funds to contractors for work having regional or nationwide application; and
 - where Labor has a continuing need to obtain the services for the kinds of activities discussed in this report, request sufficient funds from the Congress to allow Labor to procure these services directly.
- - - -

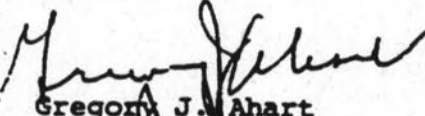
As you know, section 236 of the Legislative Reorganization Act of 1970 requires the head of a Federal agency to submit a written statement on actions taken on our recommendations to the Senate Committee on Governmental Affairs and the House Committee on Government Operations not later than 60 days after

B-195620

the date of the report and to the House and Senate Committees on Appropriations with the agency's first request for appropriations made more than 60 days after the date of the report.

We are sending copies of this report to the House and Senate authorizing and appropriations committees for the activities discussed in this report, Director, Office of Management and Budget, and other interested parties.

Sincerely yours,


Gregory J. Ahart
Director

Enclosure

ENCLOSURE I

ENCLOSURE I

U. S. DEPARTMENT OF LABOR
OFFICE OF THE SOLICITOR
WASHINGTON, D. C. 20210



MAR 4 1980

Henry R. Wray, Esq.
Assistant General Counsel
U. S. General Accounting Office
Washington, D. C. 20548

Your reference: B-195620

Dear Mr. Wray:

Your inquiry to the Secretary of Labor regarding several agreements with the Nevada Employment Security Department (NESD) has been referred to this office for a response.

You stated that eighteen so-called "pass-through" agreements were identified in a recent GAO audit of federal agreements with the State of Nevada. The funds for the grants in question derive from Federal employment service and unemployment insurance administrative sources, and from monies appropriated for work incentive and Comprehensive Employment and Training Act programs.

In your letter, you ask for an explanation of the legal basis for the making of nine of those grants. You also raise the question of whether the nine grants further Federal, rather than State, operations.

As shown below, the purpose of the grants is to enhance, and to make more efficient, the employment security and training activities of all States. This method of making grants provides an economical way to improve management and operations at each of the individual State employment security agencies, including the NESD. Set forth below are descriptions of the general program areas under which the nine grants were made, along with a description of the Secretary of Labor's grantmaking authority for each program.

The Congress established the Federal-State cooperative unemployment compensation system in 1935, by passage

of the Social Security Act. 49 Stat. 626. Under Title III of that Act, States which pass unemployment compensation laws meeting specific requirements may receive grants for the administration of their unemployment compensation program. 42 U.S.C. 501 et seq. The Federal-State cooperative system of employment service offices was permitted to receive funds for administration under Title III of the Social Security Act (as well as separate appropriations). 29 U.S.C. 49d.

It has been the position of the Department of Labor and other agencies that have administered the Title III grant program (e.g., the Social Security Board and the Federal Security Agency) that there is a broad discretion in the Federal administering agency, as to both the amount and the purpose of the grants. The Comptroller General has recognized this broad discretion for many years. See 21 Comp. Gen. 1119, 1124-1125 (June 19, 1942). The Comptroller General stated in that opinion that payments under Title III of the Social Security Act may be disallowed only when "clearly beyond the scope and purposes of the statute". Id. This longstanding approach is discussed more fully in a September 15, 1960, Solicitor of Labor's opinion, a copy of which is enclosed.

The Secretary of Labor certifies to the Secretary of the Treasury that Title III funds may be paid out, in such amounts and for such purposes as he determines to be necessary. 42 U.S.C. 502(a), 503(a)(8) and (9); and 29 U.S.C. 49g. The standard followed by the Secretary of Labor is that the funds must be used by the States for "the proper and efficient administration" of the State unemployment compensation law and employment service offices. Id. As the Federal Security Administrator (who then administered Title III) stated in a September 27, 1949, letter to the Comptroller General (who did not except to the statement):

It is respectfully submitted that by virtue of the provisions of Title III of the Social Security Act, particularly sections 302(a), 303(a)(8), and 303(a)(9), the responsibility for determination

of the amounts necessary for the proper and efficient administration of State unemployment compensation laws, and the purposes for which such funds may be expended by the States, is vested solely in the Social Security Board [and now in the Secretary of Labor].

See also Solicitor of Labor's opinion, supra, at 8.

"[P]roper and efficient administration" of the State unemployment compensation and employment service activities is the basis for all of the Social Security Act Title III grants to the NESD which were questioned in your letter. Rather than giving individual grants to each State agency for studies and development of model management programs, grants were given to one agency to inure to the benefit of all. States given "pass-through" grants generally are chosen for their relatively low personnel and other management costs. This results in a larger proportion of each grant dollar going for non-administrative costs.

The NESD did not receive any less money than was necessary for the proper administration of its programs. The grants questioned are in addition to the normal administrative costs of the NESD. Nevertheless, we have been told that the granting officer has found that the grants involved add to the efficient administration of the NESD and other States' employment security agencies.

In the case of employment service activities, this method of procurement appears to be the sole available means of obtaining studies and conducting projects that are beneficial to the entire employment service system. The alternative would be the inefficient and costly method of giving piece-meal grants to each individual State agency for such studies and projects. Thus, pass-through grants act to the benefit of the individual States and of the United States, by saving grant money and by more efficiently advancing the purposes of Title III.

To point up the added efficiency due to these grants, refer to the four NESD grants funded with unemployment

insurance monies. These grants relate to the development and perfection of Unemployment Insurance Cost Models. Similar projects in the past have saved the Federal Government millions of dollars, by improving the efficiency and performance of State employment security agencies. See Labor-HEW Appropriations Act, 1976: Hearings Before a Subcommittee of the House Committee on Appropriations, Part 5, 94th Cong., 1st Sess. 323-324 (testimony of Dr. Ben Burdetsky, Deputy Assistant Secretary of Labor for Manpower) (May 5, 1975).

The Congress is well aware of the "pass-through" approach to funding projects benefiting all State employment security agencies. In 1962, the following exchange, relating to unemployment insurance programs, took place before a subcommittee of the House Committee on Appropriations:

MR. DENTON: What I am talking about and trying to get at, you make contracts.

MR. LEVINE: Oh, we make contracts. We have a request for \$135,000 for contract research. Hitherto, all of our research has been handled through either Federal staff, directly doing types of things, or, and by far the vast preponderance, has been by grants through Title III of the Social Security Act. [Emphasis added.]

Labor-HEW Appropriations Act, 1963: Hearings Before a Subcommittee of the House Committee on Appropriations, 87th Cong., 2d Sess. 432 (discussion between Mr. Louis Levine, Deputy Director for Program and Policy, Bureau of Employment Security, U. S. Department of Labor; and Congressman Winfield K. Denton) (January 23, 1962).

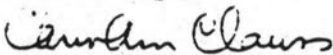
No legislative restriction on such grant procedures was placed into the Act or appropriations Acts as a result of this exchange.

The Comprehensive Employment and Training Act (CETA) and Work Incentive (WIN) Program grants mentioned in your letter derive from funds appropriated for the Secretary of Labor's discretionary use. See 29 U.S.C. 881-885 (1975 supp.); and 42 U.S.C. 641-642.

The CETA grants in question include agreements relating to the development and evaluation of labor market statistics and job opportunities bank systems. These purposes are set forth specifically in 29 U.S.C. 862 (1974 supp.). As with the employment service and unemployment compensation grants described above, the grant officer determined that it was consistent with the statutory purposes, and inured to the benefit of all the participating States, as well as the Federal Government, to expend program funds in this manner. The efficiency of channeling funds through one State agency for the benefit of all, rather than on a piece-meal basis to each agency, is readily apparent. The State agency is not prejudiced by being awarded such pass-through grants, since these grants in no way dilute its fair share of funds for the administration of its State laws, and it, along with all the other States, becomes the beneficiary of these expenditures. Funds could have been granted to another State's employment security agency to oversee the projects involved. Of course, withdrawal of such grants from the NESD might result in a net loss in job slots for the agency, reflecting its lowered workload.

The WIN grant referenced in your letter derives from discretionary funds allocated to the Secretary of Labor by 42 U.S.C. 641-642 and 29 CFR § 56.14(b). The grant funded development of a revised WIN Financial Management Seminar package to provide technical assistance to WIN program sponsors in operating WIN programs in the States. In the exercise of the Secretary's lawful discretion, his designee determined that it best served the Congressionally-mandated objectives of the WIN Program to make the grant at issue which under the terms of the discretionary authority of 42 U.S.C. 641-642 is available for such technical assistance. The efficiencies and benefits to the Federal Government cited for the various grant programs discussed above apply as well to the WIN grant.

Sincerely,



Carin Ann Clauss
Solicitor of Labor

Enclosure

cc: Ernest G. Green, Assistant Secretary, ETA
Marjorie Fine Knowles, Inspector General