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Divider Title: _____ **C**

CONGRESSIONAL OVERSIGHT

In an exercise of oversight authority, the 104th Congress -- primarily the House of Representatives -- made 125 separate investigative requests to the Department of Labor over the course of less than two years. Representative Hoekstra initiated the vast majority of these investigative letters as Chair of the Subcommittee on Oversight and Investigations, Committee on Economic and Educational Opportunities. Representative Clinger, Chair of the Committee on Government Reform and Oversight, also made numerous inquiries, as did Representatives Ballenger, Shays and Mica. Some inquiries pursued specific topics that were already the focus of Congressional or media attention. Other letters cast a wide net, apparently to uncover new matters of potential interest. The nature of some of the letters received, as well as their specificity, triggered concern over unofficial disclosure of information to members of Congress and their staffs.

Unlike typical oversight, which monitors the Department's fulfillment of its various statutory missions, many of these letters sought to uncover evidence that both the Department and the Secretary had systematically engaged in partisan activities with public funds. For example, the Department received repeated inquiries into the preparation of a group of purportedly "political" documents; the alleged involvement of senior officials in one of DOL's enforcement agencies in an ongoing agency investigation; the Department's creation of a toll-free number that allowed minimum wage workers to express their views about an increase in the minimum wage; the Department's research with respect to economically targeted investments, along with the phone and travel logs of the affected assistant secretary; funds allegedly expended on "focus groups"; grants to labor unions; and the identity of a group within the agency that allegedly coordinated political activities. The Department was asked to provide current resumes for all Schedule C appointees, detailed information about particular consultants and their work products, and DOL employees detailed to the Hill. Representative Hoekstra's staff conducted unilateral interviews with DOL employees by phone and in person, after the Office of the Solicitor tried unsuccessfully to negotiate procedures that would have provided certain safeguards to the affected employees.

As the pace and complexity of these letters intensified through late 1995 and 1996, the process of responding became extremely time-consuming, and required the concerted efforts of many DOL employees at all levels throughout the Department. The scope of specific inquiries required the drafting of comprehensive answers. Thousands of pages of documents were retrieved, reviewed, indexed, and turned over to the Hill in order to respond fully and accurately. While Congress did not conduct any hearings based on these inquiries or their responses, the press nonetheless focused some attention on this activity.

We have every reason to believe that these inquiries will not abate during the next Congress. In fact, while oversight activity waned during the summer and early Fall, the Department has once again begun to receive a flow of inquiries in the past several weeks, and the work of responding is underway.

CONGRESSIONAL INQUIRIES

Revised 12/23/96

Signatory	Addressee	Description	Date	Received	Due Date	Response (signatory listed if different from addressee) (I indicates interim response)	# pages
1. Shuster + 1	Reich	13(c) (Nevada)	11/3/94			11/20/94	2
2. Mack	Reich	Central Oversight Group; effect on BLS	1/13/95	1/17/95	1/17/95	1/23/95	7
3. Kassebaum	Reich	Job Corps	1/30/95			2/3/95; 3/20/95	2;3
4. Saxton	Reich	Central Oversight Committee; effect on PWBA	2/3/95	2/7/95	none	5/3/95	1
5. Saxton	Abraham	Central Oversight Committee; effect on BLS	2/22/95	2/22/95	none	3/3/95 Abraham	29
6. Istook	Villareal	OK Davis-Bacon	2/23/95			3/10/95 (Villareal) 4/25/95 (Echaveste)	11
7. Saxton	Reich	disbanding of Central Oversight Group; ETIs	3/1/95	3/3/95	no reply req	5/3/95	1
8. Clinger	Reich	13(c)	3/7/95		3/24/95	3/31/95 Smith	1 plus 1/2" - 1" of documents
9. Livingston	Reich	grants by DOL within last 3 years	3/9/95	3/10/95	3/31/95	3/31/95 materials provided to Appropriations Committee by OCIA	53
10. Saxton	Berg	ETIs	3/13/95	3/16/95	3/23/95	3/31/95	4
11. Hoekstra	Reich	DOL retreats	3/21/95	3/22/95	4/17/95	4/17/95 (I) Metzler; 5/12/95 Williamson	1; 8 & diskette

Signatory	Addressee	Description	Date	Received	Due Date	Response (signatory listed if different from addressee) (I indicates interim response)	# pages
12. Hoekstra	Dear	OSHA "rapid response team"	3/28/95	3/28/95?	4/20/95	4/19/95 (I); 5/5/95	1; 35
13. Hoekstra	Reich	Central Oversight Committee	3/28/95	3/28/95?	4/24/95	4/24/95 (I); 6/9/95 Williamson	1; 2000
14. Fawell	Masten	DOL resources spent on MEWAs, health care reform	4/7/95	5/2/95	none	6/8/95	2
15. Saxton + 17	Clinton	lack of agencies' responsiveness to Congressional requests	4/7/95	none		5/4/95 Mikva to Armey	3
16. Reneau (OK Labor)	Reich	Davis-Bacon wage survey determinations	4/10/95	4/17/95	none	4/25; 7/14	2; 2
17. Hoekstra	Reich	preparation of "political" material; private copying services	4/17/95	4/17/95?	4/24/95	4/24/95 (I); 6/14/95 Williamson	1; 1400
18. Reneau	Villareal	FOIA re: wage surveys	5/1/95	5/2/95	none	7/14/95 Gross	2 plus
19. Fawell	Berg	ETIs	6/6/95	6/7/95	?	6/13/95	21
20. Saxton	Reich	P.T. Barnum Award for ETIs	6/14/95	6/15/95	no reply req.		
21. Hoekstra	Reich	request for add'l info. on retreats	6/14/95	6/15/95	6/22/95	6/2/95 Williamson	3 w/ enc. & diskette

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22. Petri (+1)	Reich	13(c)	6/14/95	6/14/95	6/28/95	7/5/95; 8/2/95; 9/18/95 Smith	?; ?; 4 very large boxes
23. Hoekstra	Reich	Anti-Lobbying Act; allegations of violations in MSHA	6/20/95	6/20/95	no reply req.	?	1
24. Clinger	Reich	Davis-Bacon	6/25/95	7/21/95??	??	10/11/95	?
25. Hoekstra	Reich	Sec'y's awareness of DOL responses to inquiries	6/26/95	6/27/95	no reply req.	6/28/95 (RBR testimony); 6/29/95 McAteer to Hoekstra, Owens re: referral of matters to OIG; 7/20/95 RBR letters to Hoekstra, Ballenger	5 3 3
26. Shays	Reich	grants to job development brokers	6/30/95	7/3/95	7/17/95	7/28/95	
27. Reneau	Reich; Echaveste	2d request re: Oklahoma wage surveys	7/7/95	7/10/95	7/24/95	see reply to 5/1/95 letter	see reply to 5/1/95 letter
28. Hoekstra	Dear	Marthe Kent	7/10/95	7/10/95	8/14/95	8/16/95	28
29. Goodling (+2)	Reich	OK Davis-Bacon investigation	7/11/95	7/11/95	7/14/95	7/14/95 (1) Williamson; 8/2; 10/12 Echaveste	2;
30. Shays	Reich	sole-source contracts; noncompetitive discretionary grants	7/19/95	7/19/95??	8/23/95	??	

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31. Shays	Reich	2d request for info. re: grants to job development brokers	7/26/95			7/28/95 (Barnicle)	1 +
32. Fawell	Berg	Contract with Hamilton Securities	8/1/95			8/14/95	2 + encl
33. Kassebaum	Reich	Information about Boston district office, OFCCP	8/4/95	8/14/95	none	10/17/95 Anderson	2 + 3
34. Hoekstra	McAteer	Subcommittee unable to provide information on MSHA inspector	8/7/95	8/9/95	none	N/A	
35. Hoekstra	Dear	Follow-up to July 10 letter on Silversteins, Burt, Perry	8/15/95	8/15/95	8/23/95	8/23/95	13
36. Petri (+1)	Reich	Request for documents relating to Committee on Transportation and Infrastructure review of Section 13(c) guidelines	8/23/95	9/6/95	9/29/95	9/29/95	500
37. Hoekstra	Reich	Follow-up to record requests dated 3/28 and 4/17 about Central Oversight Group/Committee	9/14/95	10/3/95	prompt	9/29/95 Williamson	2
38. Hoekstra	Echaveste	Notification of meeting scheduled for October 19 regarding the Oklahoma investigation	10/5/95		none	none yet	
39. Graham	Wilcher	affirmative action plan for OFCCP	10/12/95	10/31/95		4/30/96 (McAteer) (1); 6/28/96	1; 3 + 31
40. Hoekstra	Dear	Silverstein, Kent	10/24/95	?	11/17/95	1/17/96	1 + 9
41. Hoekstra	Reich	Request for information about new Board to review ALJ decisions	10/25/95	10/25/95	11/2/95	11/30/95 (1) Glynn; 12/15/95 (Glynn); 1/2/96 (Glynn)	2 + 25 2 + xerox box 1 + 4
42. Shays	Dear	17 egregious cases in FY '95	11/1/95	?	12/4/95	1/17/96	1 + 6
43. Clinger	Reich	Toll-free number	11/8/95	11/8/95	11/13/95	11/28/95 (1) Palast; 12/5/95 Williamson	14

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44. Hoekstra	Reich	Subcommittee on Oversight and Investigations request for information about the toll-free number	11/14/95	11/20/95	11/29/95	11/28/95 (1) Palast; 12/5/95 Williamson	1 4 plus 286
45. Hoekstra	Dear	Rabinowitz contract	11/15/95	?	11/30/95	1/17/96	1 + note- book
46. Hoekstra	Reich	Follow-up on 10/25 request for information about the new Board	11/21/95	11/21/95	11/29/95	11/30/95 (1) (Glynn); 12/16/95 (Glynn); 1/2/96 (Glynn) (see # 41)	2 + 25; 2 + xerox box; 1 + 4
47. Reneau	Reich	Request for information on Oklahoma construction surveys	11/22/95	11/22/95	timely	12/14/95 (1) (Gross); 4/11/96 (Gross)	3; 3 +
48. Clinger	Reich	Request for copies of all letters, etc. issued by ESA/OSHA concerning shutdown	11/28/95	11/30/95	12/4/95	12/5/95 Glynn	87
49. Ballenger	Dear	OSHA's data collection system	?	11/30/95	12/6/95	1/29/96	7 + 2"
50. Hoekstra (+1)	Echaveste	Request for information following 10/19 briefing to Committee on Economic and Educational Opportunities	11/28/95	11/28/95	12/5/95	12/7/95	2
51. Goodling (+2)	Reich	Request for information about OSHA, ESA, and OWCP activities during the shutdown	11/29/95	11/29/95	12/5/95	12/5/95 (Williamson); 12/20/95 (Williamson)	7 2 + 1 1/2"
52. Mica	Reich	401(k)/Treasury use of gov't retirement funds	11/31/95	?	None	response by Treasury 1/2/96	

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53. Clinger	Reich	Questions from Committee on Government Reform and Oversight for 12/6/95 hearing	12/1/95	12/1/95	12/4/95	12/5/95 Glynn	6
54. Hoekstra	Williamson	use of material from 800 #	12/11/95				
55. Hoekstra	Reich	add'l request re: Admin. Review Bd. (follow-up to 10/25 letter)	12/13/95			12/15/95	4
56. Hoekstra	Reich	funds expended on rating of news media	12/13/95	12/11/95	12/29/95	12/15/95 (Williamson)	1
57. Hoekstra	Reich	Somers Bldg Maintenance	12/14/95	12/14/95	briefing 1/8/95	12/21/95 (I) (Williamson)	2
58. Kassebaum	Dear	OSHA Reform	12/12/95	12/16/95	1/10/96	1/29/96	?
59. Inglis	Reich	information to Reneau	12/14/95	12/19/95	none	1/29/96 (Gloss)	1 +
60. Hoekstra	Reich	untimely responses; definition of "draft"	12/19/95	12/19/95	none required		
61. Shays	Reich	Schedule C appointees since 1/3/95	12/20/95	12/20/95	1/25/95	2/12/96 (Glynn)	1 + 3 + 101 resumes
62. Clinger + I	Reich	DOL training activities since 1/1/93	12/20/95	12/21/95	12/29/96	12/22/95 (I) (Glynn); [12/26/95 memo to agency recipients from Koskinen]; 12/29/95 (I) (Glynn); 6/6/96 (Metzler)	1 agency 1 + 160 2 + 1000
63. Mica	Reich	annual safety inspection, furlough, leave statistics during last 5 years	12/20/95	12/21/95	12/29/95	12/22/95 (I) (Glynn); 12/29/95 (I) (Glynn); 1/25/96 (Glynn)	2 2 + 5 1 + 24

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64. Ballenger + I	Reich	DOL funds to PhilaPOSH, NCOSH, APHA during last 12 mos; during FY 1975 - present	12/22/95	12/22/95	1/17/95; 2/7/95	1/26/96 (Dear)	2 + 1/2" (200?)
65. Clinger	Baily	Restricted use of government aircraft	12/22/95	12/22/95	1/8/96	1/24/96	3 + 52
66. Mica	Glynn	comparison of Nov. & Dec./Jan. shutdowns	1/18/96	1/22/96	2/2/96	2/12/96 (I); 5/6 (I) (Metzler)	1; 5 + 400
67. Duncan	Baily	use of gov't aircraft	1/19/96	1/23/96	2/16/96	2/2/96	2 + 54
68. Hoekstra	Reich	toll-free #: flyer	1/23/96	1/23/96	none	1/8/96 (McAteer)	3 + 66
69. Hoekstra	Reich	resubmission of documents re: Central Oversight Group	1/23/96	1/23/96	none required		
70. Hoekstra	Reich	agency "hit lists"	1/23/96	1/26/96	as needed	2/12/96 (Glynn)	1
71. Horn	Reich	executive branch travel	1/24/96	1/26/96	2/9/96 (2/2 -- designate staff contact)	2/23/96 (Glynn)	2 + 4
72. Hoekstra	Reich	clarification of 6/14/95 letter (SOL.) re: Central Oversight Group	1/24/96	1/24/96	2/20/96	2/1/96 (I) (Williamson); 3/15/96 (McAteer)	213
73. Hoekstra	Reich	shutdown recording in San Francisco office	1/24/96	1/24/96	1/30/96	1/31/96 (Metzler)	1 + 12
74. Davis	Reich	payment of outstanding Kinko's bill	1/30/96	2/1/96	none	2/22/96 (Metzler)	2 + 6
75. Hoekstra	Reich/McAteer	allegations of illegality re: Central Oversight (response to DOL 2/1/96 letter (see # 72))	2/5/96	2/5/96	request meeting 2/6/96	2/16/96 (McAteer) interview procedures for DOL employees	2
76. Clinger	Reich	IG reports re: use of gov't credit cards by DOL employees	2/6/96	2/9/96	none	3/26/96 Koskinen memo; 4/17/96 (Gonzales)	1 + 2

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77. Hoekstra	Reich	Sawyer	2/7/96	2/8/96	2/16/96	2/22/96 (Metzler) (Schedule C resumes forthcoming)	2 + 240
78. Abercrombie	Reich	status of Sawyer investigation	2/8/96	2/10/96	none	4/4/96 (Glynn)	1
79. Hoekstra	Reich, Glynn	results of IG investigation	3/1/96	3/1/96	none		
80. Horn	Reich	DOL response to 1/24 executive travel letter	3/1/96	3/1/96	3/8/96 (meeting)	3/5/96 (Glynn)	2
81. Saxton, Hoekstra ¹	Berg	follow-up to Wash. Post ETI column	3/4/96	?	3/22/96	6/7/96 (McAteer)	9 + 2500
82. Hoekstra, Ballenger	Reich	follow-up to 12/22 letter re: PhilaPOSH, NCOSH, APIHA	3/5/96	3/5/96	3/28/96	4/23/96 (Dear)	3
82a.		Daily Labor Report: Gingrich press conference re: Davis-Bacon fraud allegations	3/7/96			3/13/96 McAteer to Gingrich	3 + 3
83. Hoekstra	Reich	personal services agreements	3/7/96	3/7/96	3/11/96	3/15/96 (Metzler)	1
84. Grassley	Reich	ETI's Berg speeches	3/7/96	3/14/96	none	4/4/96 (I) (McAteer)	1
85. Hoekstra	Reich	DOL Partnership Council	3/7/96	3/7/96	4/4/96	3/25/96 (Glynn)	3 + 6
86. Horn	Reich	travel by political appointees	3/7/96	3/10/96	3/26/96	4/17/96 (Metzler)	2 + 250
87. Hoekstra	Reich	late responses (Schedule C's, Cent'l Oversight)	3/15/96	3/15/96	none		

¹ This entry also includes 4/30/96 letter from Emilia DiSanto to Mary Ann Richardson re: Hoekstra's signature.

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88. McIntosh	Reich	senior community service employment grants	3/19/96	3/19/96	3/26/96	4/12/96 (Barnicle); 4/24/96 (Lattimore) (responding to telephonic follow-up); 5/10/96 (Barnicle) (incl. response to 4/26 follow-up from McIntosh)	1 + ? -1 Mc-1
89. Horn	Reich	clarification of 3/7/96 letter re: political travel	3/19/96	3/19/96	3/29/96	4/17/96 (Metzler)	3 + 7 encl.
90. McIntosh	Reich	compliance with taxpayer fund notification requirements re: grants	3/21/96	3/21/96	3/29/96	5/10/96 (Latimore)	2
91. Hoekstra	Reich	employee interview procedures	3/26/96	3/26/96	none	4/12/96 (incl. 4/3 memo to DeSanto)	2 + 1
92. Hoekstra	Reich	Sawyer	3/26/96	3/26/96	3/29/96	4/1/96 (McAteer)	2 + 5
93. Clinger	Reich	"FAX on Better Jobs and Higher Incomes"	4/4/96	4/5/96	4/15/96	4/24/96 (McAteer) (1); 5/13/96 (McAteer)	3 + 47 4 + 81
94. Hoekstra	Reich	OK Davis-Bacon wage surveys	4/10/96	4/11/96	4/26/96	5/10/96 (Echaveste)	4 + 10 boxes
95. Hoekstra	Reich	documents re: W & H Somers investigation	4/17/96	4/17/96	5/1/96	5/6/96 (McAteer)	2 + ...
96. Horn, Maloney	Reich	Year 2000	4/29/96	4/29/96	5/24/96	5/31/96 (Lattimore)	2
97. Horn	Metzler	invitation to testify at 5/16 hearing on Executive branch travel	4/29/96	?	(written testimony due 5/14)		
98. Hoekstra	Reich	1994 training event in Las Vegas	5/2/96	5/2/96	5/16/96	5/16/96	3 + 3
99. Hoekstra	Reich	personal services contracts (follow up to # 83)	5/2/96	5/2/96	5/17/96	5/17/96 (Lattimore)	2 + ?

Signatory	Addressee	Description	Date	Received	Due Date	Response (signatory listed if different from addressee) (1 indicates interim response)	# pages
100. Clinger	Reich	invitation to testify at hearing on proposed Anti-Lobbying Act	5/3/96	5/3/96	(written testimony due 5/10)		
101. Horn	Reich	Dep Sec travel	5/15/96	5/23/96	6/7/96	6/24/96 (Metzler)	4 + 101
102. Hoekstra	Reich	recipients of Middle Class Bill of Rights	5/20/96	5/21/96	5/30/96	7/3/96 (McAteer)	2
103. Hoekstra	Reich	Title VII settlements (OSHA)	5/21/96	5/21/96	6/5/96	7/19/96 (Latimore)	6
104. Clinger	McAteer	Anti-Lobbying Act: follow-up questions re: FAX on Jobs	5/23/96	?	6/19/96	6/21/96	4
105. Shays	Reich	"new age" training	5/29/96	5/30/96	6/14/96	6/28/96 (Lattimore); 7/25/96 (Lattimore)	2 + 750 2 + 200
106. Mica	Reich	federal contractor workforce	6/4/96	6/4/96	6/7/96	6/27/96 (Metzler)	2 + 125
107. Shays	Reich	labor racketeering hearing	6/5/96	6/5/96	6/11/96 (submitted testimony)		
108. McIntosh	Barnicle	follow-up on Senior Community Service Grants	6/6/96	6/6/96	6/18/96	7/3/96 (Barnicle)	1 + 21
109. McIntosh	Reich	grants to Meany Center, Human Resources Development Inst.	6/6/96	6/6/96	6/14/96	6/28/96 (Lattimore)	1 + 1500
110. Hoekstra	Reich	follow-up to response on Somers Building Maintenance	6/11/96	6/12/96	7/17/96	7/16/96 (McAteer)	3
111. Hoekstra	Reich	Women's Bureau contracts & printing costs	6/12/96	6/12/96	6/17/96 (contracts); 6/27/96 (printing)	6/28/96 (Lattimore) (1); 8/7/96 (Lattimore)	(1); 1; 1 + 35
112. Shays	Reich	DOL criminal enforcement (for racketeering hearing)	6/14/96	6/14/96	6/26/96	6/28/96 (1) (Lattimore); 7/3/96 (Metzler)	1 + 500 7 + 250

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113. McCollum	Reich	LIUNA settlement	6/14/96	6/14/96	6/21/96	7/19/96 (McAteer) 7/24/96 (McAteer) 8/12/96 (McAteer)	1 + 2 + 2000; 1 + 7 1 + 96
114. McCollum	Reich	LIUNA grants	6/14/96	6/17/96	6/20/96	7/3/96 (PWL)	5 + 21
115. Fawell	McAteer	OFCCP affirmative action plan	6/18/96	6/18/96	6/28/96	6/28/96 (Wilcher)	3 + 31
116. Hoekstra	Reich	official time	6/18/96	6/20/96	none	7/25/96 (Lattimore)	4
117. Hoekstra	Reich	Smith	6/24/96	6/24/96	7/9/96	7/12/96 (Lattimore)	2 + 17
118. McIntosh	Reich	grants to Meany Center, Human Resources Devel. Institute	6/24/96	6/24/96	6/25/96		
119. Hoekstra	Reich	late responses to Title VII settlements; Middle Class B/R	6/28/96	6/28/96	none required		
120. Hoekstra	Reich	Eisenbrey detail	6/28/96	6/28/96	7/10/96	8/5/96 (Palast)	2 +
121. Stevens	Reich	privacy of investigation files	7/8/96	7/15/96	8/15/96	8/15/96 (Lattimore)	4 +
122. Hoekstra	Reich	Lake Research	7/12/96	7/12/96	7/30/96	8/2/96 (Lattimore) (partial); 8/8/96 Lattimore	2 + 1 + 50
123. Mica	Reich	DOL unions	8/22/96	8/23/96	9/4/96	10/1/96 (Lattimore)	5 + 2 labor contracts
124. Hoekstra	PHONE CALL FROM STAFF TO TO OCIA (clarification of scope of No. 103)	Title VII settlements across the Department	9/18/96			10/1/96 (Interim) (Lattimore)	1
125. Ballenger	Reich	AFL-CIO Union Summer	10/3/96	10/10/96	10/25/96	10/18/96 (interim) (Echaveste)	1

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126. Hoekstra, Ballenger	Reich	Davis-Bacon wage improvements	11/13/96	11/13/96	12/2/96 (12/9-briefing)	12/9/96 (Anderson)	5 + 119
127. Goodling	Reich	Service Contract Act - postal pilots	11/14/96	11/14/96	12/10/96	12/23/96 (Echaveste)	3 + 50
128. McIntosh	Reich	Simpson-Craig Amendment	11/21/96	11/21/96	12/10/96	12/12/96 (Lattimore) (interim); 12/23/96 (Lattimore)	3 + 3 3 + 718
129. Ballenger	Reich	MSHA	11/25/96	11/25/96	12/20/96		
130. Hoekstra	(by phone to OCIA)	DOL Management Reports	11/26/96 (12/3 follow-up letter)				
131. Faircloth	Reich	Executive Dining Services	12/2/96				
132. Goodling	Reich	FMLA Statistics	12/12/96	12/12/96	12/12/96	12/12/96 (unsigned compilation of statistics)	3

The Legal Environment: Trends and Issues in DOL Litigation

Civil Rights

Affirmative Action. The constitutionality and legality of affirmative action continues to be a hot-button issue, with courts upholding “reverse discrimination” challenges to various non-Department of Labor affirmative action programs that use government contract set-asides and school admission and scholarship preferences. Not all affirmative action programs are the same, though, and courts must examine the specifics of each program. To pass muster under current case law, an affirmative action program must serve a compelling government interest and be narrowly tailored to serve that interest if it employs racial, ethnic, or national origin criteria as a basis for making decisions. If it uses gender as a basis for decision making, the program must serve important government objectives and use means that are substantially related to achieving those objectives.

The Department is prepared for a legal challenge to an OFCCP-administered affirmative action program, conducted pursuant to Executive Order 11246, which requires Federal contractors and subcontractors to take affirmative action to ensure that employees and job applicants are treated without regard to their race, color, religion, sex or national origin. OFCCP does not require quotas and preferences under this program, focusing instead on flexible goals and good faith efforts to expand the pool of qualified job applicants. As a result, the agency contends that the Executive Order program is not governed by the courts’ “strict scrutiny test” or by court decisions that have struck down aspects of other affirmative action programs. The Department of Justice agrees with this position. In addition to the expected court challenges, the agency expects that legislation will be introduced again to curtail Federal affirmative action programs.

OFCCP Selection Criteria Federal contractors have begun to claim that OFCCP’s method for selecting them for compliance reviews violates the Fourth Amendment search and seizure clause. They assert that OFCCP’s system, known as the Equal Employment Data System, does not contain specific neutral criteria and so, under Supreme Court case law, may not be substituted for a search warrant. The agency is not yet faced with any adverse court decisions, but a challenge is pending in a North Carolina Federal court. If a court were to invalidate OFCCP’s method of choosing contractors for review, the agency would effectively be forced to end its compliance proceedings across the country, at least until a new method could be developed. Because the agency conducts more than 3000 onsite inspections each year, an adverse court decision would severely disrupt enforcement of laws that require nondiscrimination and affirmative action on the basis of race, color, religion, sex, national origin, disability, and status as a disabled or Vietnam-era veteran.

Disabilities Discrimination. OFCCP is following closely a trend in which courts are taking a narrow view of what constitutes a disability under the Americans With Disabilities Act. To meet the ADA’s definition of “disabled,” an individual must have a disability that substantially limits a major life activity. By requiring individuals to show that their prospective employers considered them to be unable to perform a wide array of jobs, courts are effectively limiting that law’s protections. Although OFCCP does not administer the ADA, it is concerned about this

trend. This is because OFCCP administers § 503 of the Rehabilitation Act, which also protects qualified individuals from disability-based employment discrimination, and because the ADA and amendments to § 503 require OFCCP to apply legal standards that are consistent with the ADA's substantive legal standards. Administrative decisions under § 503 broadly interpret the definition of disability, and these decisions take precedence over ADA case law. Even so, administrative law judges and the Department's Administrative Review Board may have trouble ignoring the growing body of restrictive ADA case law.

Wage and Hour Laws

Garment Industry Initiative. The Department has made the eradication of sweatshops in the garment industry a top priority. This initiative is a multi-pronged strategy of enforcement, education, and recognition. One key to successful enforcement is to involve retailers and manufacturers in the compliance effort. The FLSA's "hot goods" provision, which bars the shipment in interstate commerce of illegally-produced goods, is an important enforcement tool. The agency commonly uses the possibility of a "hot goods" injunction to encourage the owners and purchasers of goods that are produced in violation of the law to take proactive steps -- like monitoring their contractors' workplaces -- to decrease the possibility that such violations will continue. The agency also encourages manufacturers to assume responsibility for back wages that are owed to garment workers. Wage and Hour's garment initiative has been one of the most visible and lauded undertakings of this Administration. Many manufacturers and retailers are now agreeing to monitor their contractors, and that monitoring may be causing the number of violations to diminish.

Salaried Workers. The Fair Labor Standards Act exempts any employee who is employed in a bona fide executive, administrative, or professional capacity. The Department's regulations provide that to be exempt, such an employee must meet certain tests relating to job duties, be compensated on a "salary basis," and be compensated at not less than stated salary levels. These regulations, parts of which were published as long ago as 1954, need to be revised because several disparate court rulings interpreting the phrase "salary basis" have caused confusion in the regulated community. The Supreme Court will decide a case this Term that involves the "salary basis" test.

The Department's regulations, which affect almost every covered employer, have sparked controversy among state and local governments, public-sector employees, and private-sector employers and employees. The currently-applicable salary levels do not reflect today's pay levels and allow employers to apply the exemption to workers who, it would appear, were not intended to be exempt. Current rules provide little guidance to public-sector employers, because the rules largely were written before the FLSA applied to public employers. Uncertainty over the meaning of the phrase "salary basis" has led to calls for action by Governors, OMB and members of Congress.

Preemption. With certain stated exceptions, ERISA preempts all state laws relating to employee benefit plans. Until recently, the Supreme Court interpreted preemption broadly. Recent cases, however, have set limits on preemption. The Department has recently filed a number of *amicus* briefs in the federal courts on preemption issues. We have argued that a state law imposing a tax on hospital receipts, including a hospital owned by an employee benefit plan, is not preempted. We have also argued against preemption of state malpractice law as applied to HMOs. We have also argued against preemption of state laws setting professional standards for accountants, actuaries, and others who provide services to ERISA-covered plans. The development of the law in this area will determine whether states can sponsor and finance health care reform, whether plan participants who are members of HMOs and other managed care arrangements will be protected against medical malpractice, and whether plans can function effectively by holding service providers to professional standards of care.

OSHA

General Duty Clause. OSHA's general duty clause requires each employer to provide each of its employees a workplace that is free from recognized hazards. Over the past several years, administrative law judges of the independent Occupational Safety and Health Review Commission have become increasingly unsympathetic to use of the general duty clause to deal with "cutting edge" safety and health issues in areas where no specific standard has yet been promulgated. Restrictive legal interpretations of the general duty clause hamper the Secretary's ability to address newly-recognized workplace hazards. This has been particularly evident in the ergonomics area where ALJs have refused to sustain general duty violations for such reasons as failure to demonstrate the existence of a recognized hazard or the existence of a feasible means to eliminate or materially reduce the hazard.

The relationship between OSHA's "egregious policy" and the OSH Act's general duty clause is currently facing its first judicial test. OSHA's egregious policy involves citing an employer separately for each instance that it commits a particularly flagrant willful violation, and proposing separate penalties for each instance. OSHA has taken the position that, because an employer's duty under this clause runs to each of its employees, the employer may be cited separately for each employee that it exposes to a recognized hazard. The Review Commission has held that each employee *is not* an appropriate unit of violation under the clause, and that OSHA may therefore assess only a single penalty for each hazardous condition at a workplace, regardless of how many employees are exposed to the condition. The issue is now before the Court of Appeals for the Fifth Circuit.

Double Jeopardy. The Court of Appeals for the Seventh Circuit recently ruled that OSHA's assessment of \$318,500 in civil money penalties was punitive and therefore violated the Double Jeopardy Clause of the U.S. Constitution where the government had already successfully prosecuted the employer for criminal violations and the court had imposed a criminal fine of \$750,000. The decision conflicts with rulings of other circuits, including the Sixth Circuit, which

have held that the assessment of MSHA civil money penalties following a criminal conviction does not constitute double jeopardy. A petition for *certiorari* is being considered by the Solicitor General.

This issue is significant because a broad interpretation of the Seventh Circuit's holding could affect the Secretary's ability to seek civil enforcement concerning any willful violation in which a criminal referral is also contemplated.

Liability of Defunct Employers. In a number of recent cases, administrative law judges have ruled that OSHA enforcement proceedings become moot when an employer ceases business or terminates all of its employees and is not likely to resume the employment relationship. By simply ceasing its operations, these employers have escaped OSHA responsibility for a number of fatalities and several hundred thousand dollars in proposed penalties. These cases are now on appeal.

Mine Safety and Health

Multiple Operator Litigation. Responding to changes in the coal industry, MSHA is pursuing a number of cases seeking to impose Mine Act liability on business entities that meet the statutory definition of a mine "operator," although they are not directly engaged in mining coal. In recent years, large companies that own or lease mineral rights have increasingly hired smaller "production contractors" to mine the coal. As a practical matter, the large companies continue to control mining and working conditions -- and thus should bear responsibility for safety and health violations. Case law in this area is evolving as the result of MSHA's efforts.

Challenge to Ventilation Rule. A small number of MSHA's underground coal mine ventilation standards have been challenged by both labor and management. Those standards incorporate several important improvements that should help to control methane gas and coal dust. Briefing will be completed in mid-January, oral argument will follow, and a decision will likely be issued next Spring.

Black Lung

Duplicate Claims. For several years, we have faced a coal industry challenge to the Secretary's "duplicate claims" regulation. This regulation allows a miner whose earlier claim for black lung benefits has been denied to file a subsequent ("duplicate") claim on the ground that he has suffered a material change in conditions. During the most recent fiscal year, 45% of claims filed by miners fell into this category. The industry has challenged this regulation and DOL's interpretation of the rule, arguing that it offends notions of finality of litigation. Our regulatory interpretation has prevailed in the Third, Fourth and Sixth Circuits, but not in the Seventh or Tenth Circuits.

While we have defended a miner's right to file a subsequent claim, we have consistently maintained that a duplicate claim filed after March 31, 1980, is governed by the regulations issued on that date, even if the miner's earlier claim was adjudicated under the older, more claimant-friendly criteria. Although we prevailed on this issue before the Eighth Circuit, a panel of the Seventh Circuit recently rejected our position and held that any miner who filed a claim before April 1, 1980, and who refiles (even today) gains the benefit of the earlier regulations. Because the claims approval rate is dramatically higher under those regulations, the Black Lung Disability Trust Fund could incur additional liability estimated to exceed \$1 billion if the Seventh Circuit's approach is adopted by the remaining circuits. The Seventh Circuit, however, has granted our petition for rehearing *en banc* and vacated the panel decision pending review by the full court.

Longshore and Harbor Workers' Compensation Act

The Role of the Department in Longshore Litigation. In 1995, the Supreme Court held that the Director of the Office of Workers' Compensation Programs generally does not have a statutory right under the Longshore and Harbor Workers' Compensation Act to seek review in the courts of appeals of decisions of the Benefits Review Board (BRB) with which he disagrees. The Court expressly refrained from deciding whether the Director could appeal a decision that adversely affected the Special Fund, which the Director administers, or where the decision directly affects the Director's administration of the Act. The Court also refrained from deciding whether the Director may be a party respondent in an appeal brought by another party. The Supreme Court recently heard argument in a case which presents the latter question. Cases presenting questions regarding the Director's right to appeal from, or to participate in appeals from, decisions concerning the Director's administrative duties and the Special Fund are now pending in the courts of appeals.

Settlement of Claims Against Third Parties. Currently pending before the Supreme Court is the issue of whether a claimant's widow who settled her potential wrongful death action against a third party while her husband was still alive thereby forfeited her right to death benefits under the Longshore Act to which she became entitled only when her husband died. The BRB and court of appeals held that since the wife was entitled to no benefits at the time of the settlement, she was not required to secure the employer's approval in order to avoid forfeiture. Affirmance by the Supreme Court would likely support the argument that workers who were injured as a result of their exposure to asbestos, but not yet disabled and therefore entitled to no compensation under the Longshore Act, were not required to secure their Longshore employers' approval before accepting amounts in settlement of their tort actions against various asbestos manufacturers. Approximately 3,000 such cases are now pending at various stages of the adjudicative process.

Contingent Workers

With the growth in recent years of non-traditional employment relationships, issues of coverage have arisen under a number of statutes enforced by the Department. Employers may attempt to classify their employees as independent contractors, leased employees or partners to avoid coverage of these statutes. Coverage issues are certain to arise under the welfare reform legislation enacted by the last Congress. HHS has consulted the Department about the applicability of various federal labor standards to state workfare programs. Many of the new jobs programs may involve non-traditional compensation, such as a support check in lieu of wages.

Fair Labor Standards Act. The FLSA, the Migrant and Seasonal Agricultural Worker Protection Act, and the Family and Medical Leave Act look to the "economic realities" of the employment situation to determine whether an employment relationship exists. The Department is pursuing a number of cases in which the economic realities conflict with an employer's characterization of workers as independent contractors, rather than as employees. The Department also is seeking to hold "joint" employers liable, particularly under the migrant worker law. The Department recently transmitted to OMB a final rule that clarifies that law's joint employment rules.

ERISA. Prompted by a recent Ninth Circuit case, an increasing number of cases raise allegations that workers are, in fact, employees -- thereby meeting the definition of an eligible participant under a company's pension or welfare plan -- even though they are called independent contractors or leased employees. The Secretary has identified this as an area of emphasis.

OSHA. Enforcement in the logging and commercial seafood diving industries, investigations of chemical accidents at multi-employer refinery sites, and OSHA's proposal to make general contractors responsible for collecting subcontractor injury data, are examples of the agency's evolving interpretation of the Act's coverage provisions. In addition, publication of OSHA's standard addressing employee exposure to blood borne pathogens triggered considerable public discussion of its potential applicability to volunteer fire, rescue, and emergency response personnel.

OFCCP. Reported decisions tend to treat workers who are placed by temporary help agencies either as employees of the companies with which they are placed or, more often, as independent contractors, leaving the workers largely unprotected against discrimination, and the temporary agencies unaccountable for bias in their referral process. The host employers, with whom the employees are placed, are increasingly selecting permanent hires from among the pool of temporary employees, thereby insulating themselves from review of their affirmative action efforts.

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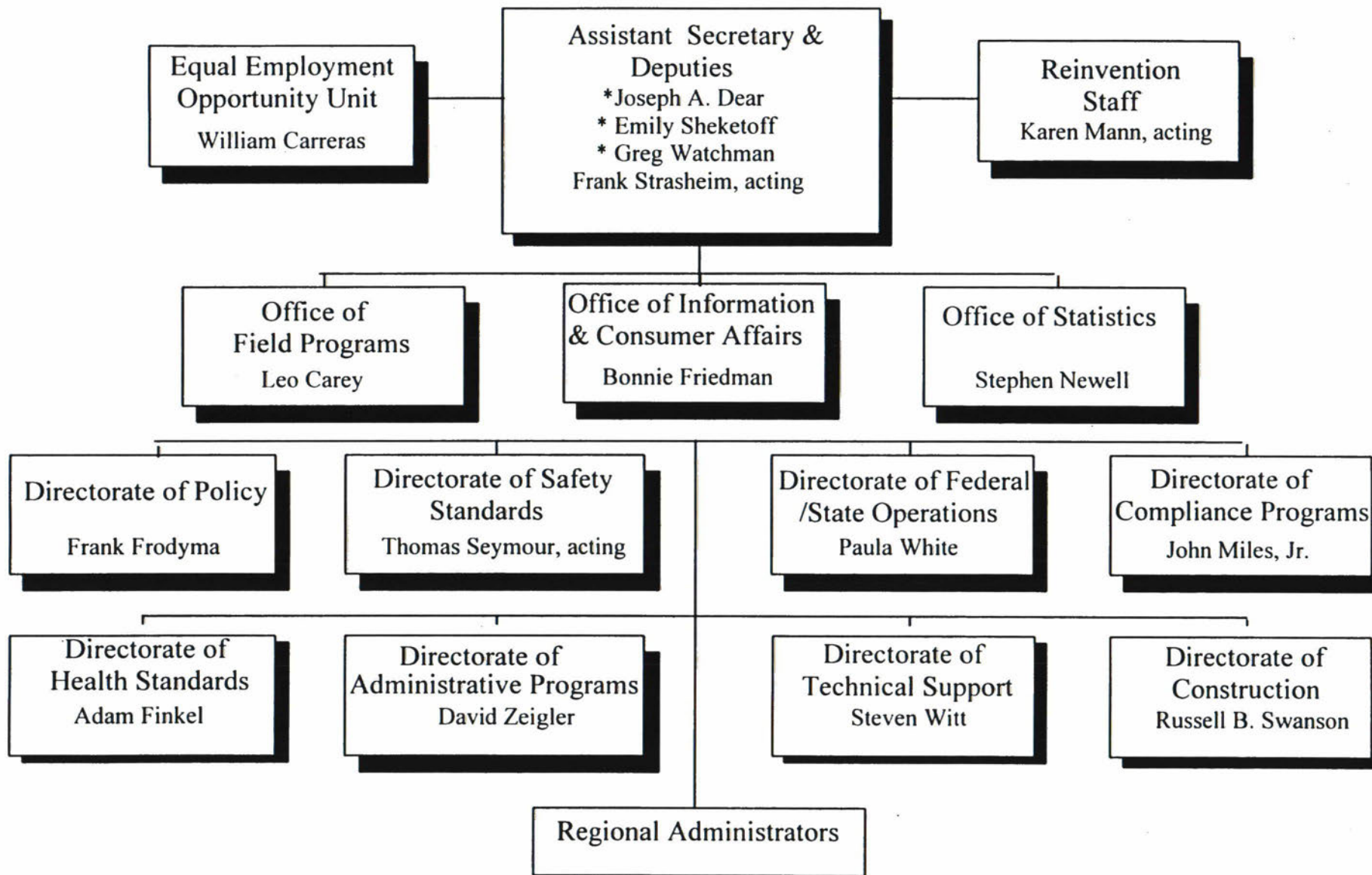
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OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION



NOTE: * Political Appointees

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

MISSION STATEMENT

The Occupational Safety and Health Administration (OSHA) helps save lives, prevents injuries and illnesses and protects the health of America's workers through cooperative compliance, common sense enforcement, strategic partnerships, and leveraging resources to protect more workers with fewer dollars all with a focus on measurable program outcomes.

OSHA will continue to stress the strategic theme of a common sense approach to occupational safety and health. The multiplier effects of leveraging resources, and the value of strategic partnerships, which also demonstrate effectiveness, will be emphasized. Overall, OSHA will continue to develop a sharpened focus on measurable program outcomes and tighter alignment and integration of multiple program and management initiatives.

BUDGET

(dollars in thousands)

FISCAL YEAR	DISCRETIONARY \$	MANDATORY \$	FTE
1997	\$327,734	0	2,241
1998	\$388,983	0	2,657

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

MAJOR POLICY AND PROGRAM INITIATIVES

COOPERATIVE COMPLIANCE PROGRAMS

OSHA's award-winning pilot program, Maine 200 has gone national as state Cooperative Compliance Programs (CCPs). By January 1997, approved CCPs should be implemented in all 29 Federal enforcement States. CCPs are a National Performance Review (NPR) *New OSHA* initiative. Within each State, the CCPs identify worksites, companies or industry-sector employers with the highest number/rate of compensable injuries/illnesses. OSHA then offers the employers with high injury rates the choice of partnering with OSHA in improving their worksite safety and health conditions, or of facing traditional enforcement. This has been a success. In Maine, for example, this initiative identified 14 times as many hazards as the agency could have done on its own, and reduced injury and illness rates in high-hazard businesses.

The AFL-CIO and some businesses in the program have concerns about the efficacy of CCPs. OSHA is working to allay them, and gain AFL-CIO support, and is gradually overcoming business resistance through outreach efforts. OSHA is also working to convince the other states (with State Plans) to develop similar programs.

NEW PENALTY SYSTEM.

OSHA has piloted a new penalty system, also designed in line with NPR *New OSHA* report initiatives. The system will increase base penalties for serious violations, but reduce penalties for other-than-serious violations for most employers with fewer than 250 workers. It will evaluate employers' safety and health programs, using the Program Evaluation Profile (PEP). Employers who have implemented effective programs will receive penalty reductions of up to 80 percent. This system rewards companies' good faith efforts at making their workplaces safer and healthier, and will encourage companies to have effective safety and health programs to make their workplaces safer and healthier.

OSHA plans to implement this system after compliance officers have been trained and we have evaluated the pilot. We still must consider how to apply the system to the construction industry, and ensure fairness to small employers.

SAFETY AND HEALTH PROGRAMS.

OSHA believes that effective workplace safety and health programs make worksites safer and healthier. When management makes worker safety and health as high a priority as traditional goals like productivity and profits, accident and injury rates fall dramatically, based on the

experience of companies with such programs and states that require them. Performance-based safety and health programs are a centerpiece of *New OSHA* initiatives. They will integrate the new penalty policy, the Voluntary Protection Program, CCPs, and the Consultation program. OSHA is developing and promulgating a safety and health program rule that will require employers who have not already done so to implement effective safety and health programs. It is continuing to meet with stakeholders, and plans to issue the proposed regulation in FY 1997.

ERGONOMICS

Eliminating repetitive stress injuries (RSIs) through ergonomic redesign of jobs, worksites and tasks is an OSHA priority. RSIs are the fastest growing illness in America's workplaces, increasing 1000 percent in a decade, and draining \$20 billion from the economy in Workers' Compensation costs and another \$100 billion in lost productivity and other indirect costs. This major safety and health problem has prompted OSHA to initiate an ergonomics rulemaking, which the last Congress had specifically prevented the agency from doing (Congress has now lifted the ban) OSHA and NIOSH will hold a joint ergonomics conference, with labor and business participation, January 8-9 in Chicago, to help build support for ergonomics rulemaking. It will provide a forum to share practical experience and information on workplace ergonomics programs.

OSHA's nursing home safety and health initiative, announced last August, addresses a leading source of RSIs, such as back injuries associated with patient handling. Significant outreach activities have been undertaken, with partnership from labor and industry. However, the largest nursing home association, the American Health Care Association, which represents 11,000 for-profit nursing homes, has raised concerns. A nursing home enforcement and targeting strategy is being refined for implementation in March 1997. OSHA's closely-watched case against Beverly Enterprises, the largest U.S. nursing home employer, for many ergonomic deficiencies, was not upheld by an administrative law judge. The Department has appealed to the OSHA Review Commission.

REDESIGN/REINVENTION

OSHA is one of the Vice President's reinvention laboratories. Reinvention is changing the institutional culture of our front-line workers and improving our service to the public. OSHA is redesigning its 69 area offices, under the *Getting Results and Improving Performance* (GRIP) initiative, to encourage partnerships in developing safety and health programs, work with business and labor to identify priorities, streamline procedures to concentrate on the most serious hazards and most dangerous workplaces, and to focus on measurable results. Over the past two years, OSHA has achieved breakthrough improvements in complaint response time; in the time it takes from hazard identification to abatement (the Quick Fix initiative), and in expediting informal settlement agreements. These improvements are being realized nationwide.

Seventeen offices already have been redesigned. Another 12 are to be rolled-out in FY 1997. Completion of field office redesign is expected in December, 1999. While labor is wary of reinvention efforts as undermining the balance between cooperation and enforcement, cooperative efforts are necessary to close the gap between OSHA's mission -- of helping to safeguard more than 100 million working Americans -- and its resources -- \$326 million and 1,100 inspectors.

HOT ISSUES

OSHA Reform/Regulatory Reform Legislation

The 104th Congress worked on three pieces of "reform" legislation that would have seriously weakened OSHA's ability to protect working Americans. Comprehensive regulatory reform bills were also in play, with the support of some small-business groups. These would have required that standards be based on cost-benefit analyses; prohibited OSHA from issuing first-instance citations and penalties unless workers were killed or injured, and diminished employees' rights to file complaints. OSHA is on record as opposed to quantifying the value of human life for cost-benefit analyses.

The 105th Congress have signaled their intention to introduce similar legislative proposals dealing with OSHA reform, cost-benefit analysis, or the periodic review and sunseting of regulations. If bills are introduced, the Department should review and respond, to influence the legislative language to reflect OSHA's mandate and goals.

Indoor Air Quality Rulemaking

OSHA is in the midst of the regulatory process for indoor air quality (IAQ), including second-hand smoke. We held very well-attended public hearings beginning in April 1994 and finally closed the administrative record in February 1996. That record, our largest, includes more than 120,000 comments. Given the controversy, OSHA intends to complete analysis of the hearing record, and, based on its preliminary conclusions, announce whether additional proceedings will be conducted before a final standard is issued. Action on Smoking and Health (ASH) sued to separate the second-hand smoke provision from a comprehensive IAQ rule and to promulgate that section of the standard based on OSHA's Cancer Policy, but recently lost in court.

OSHA will develop options, including a limited re-opening of the record (e.g., refining the risk assessment, and addressing concerns of hospitality industry).

Workplace violence non-regulatory guidelines for night retail establishments

OSHA has proposed workplace violence guidelines for night retail establishments. The intent is to educate employers by providing "best practices." They do not create requirements for business, and are not enforceable as standards. However, employers can still be cited for recognized, unabated hazards under the General Duty Clause of the OSH Act. Many affected businesses are very opposed to issuing these voluntary guidelines, fearing that their existence could help victims in tort cases, and force them into more expensive practices. We plan to work separately with groups in the convenience store and chain restaurant industries. A decision on whether to proceed with issuing guidelines will be required early in 1997. The need for decisions on whether to develop similar sets of guidelines for other sectors will follow. OSHA will recommend that the Secretary issue voluntary guidelines.

Methylene Chloride Rulemaking

A final rule recently has been approved by OMB and will be published in December or early January to better protect workers in the foam manufacturing and assembly industries, furniture stripping, metal degreasing, and other industries. OSHA expects that the rule will prevent approximately 35 cancer deaths and acute fatalities per year. The Halogenated Solvents Industry Alliance (HSIA) created a roadblock by getting Congressional report language requiring full compliance with the Small Business Regulatory Enforcement Fairness Act (SBREFA) and EPA-consistent risk assessment. HSIA is expected to take legal action when the rule is promulgated; they may also attempt to get Congress to use veto authority under SBREFA.

Hexavalent Chromium Rulemaking

Petitioners, including the Oil, Chemical and Atomic Workers and Public Citizen Health Research Group, may sue for perceived OSHA inaction on Hexavalent chromium occupational exposures. These affect a half million workers in welding, electroplating, automobile and aircraft manufacture, chemical production, tannin and other industries, and are associated with lung cancer, nasal septum perforations, chrome ulcerations, and dermatoses. OSHA needs an update of the major epidemiological study, being done by John Hopkins University and financed by EPA, for risk assessment.

Tuberculosis Rulemaking

Based on the preliminary conclusion that a significant risk of occupational transmission of tuberculosis exists for some health care workers, prison officials and homeless shelter workers, OSHA has developed a proposed rule requiring that employers minimize or eliminate exposure for these workers. These employers often operate with low or zero profit margins. The proposal is under OMB review. Upon approval, it would be published in the Federal Register, followed by the public comment/informal public hearing process.

Department of Energy (DOE) Government Owned Contractor Operated (GOCO) Worksites

The transfer of jurisdiction from DOE to OSHA for the safety and health of more than 100,000 workers at nuclear weapons sites and labs was recommended in a draft report by the National Association for Public Administration (NAPA). The report accurately assesses OSHA's capability, and the agency has transmitted final comments to NAPA. However, without adequate resources for this transfer and a change in legislation, OSHA will be unable to assume this responsibility. NAPA will formally submit their final report to Secretary O'Leary on December 18. DOE and OSHA will need to examine the recommendations, and establish a future plan of action.

Federal agency contractors

The GAO recommended in September that, before Federal contracts are awarded, agencies should consider whether prospective contractors are in compliance with safety and health standards. Because of disputes over the accuracy of GAO reports that three companies were OSHA violators -- based on the agency's IMIS database -- it was determined that the database needs to be improved. In order to implement this GAO recommendation, OSHA would need to develop rules of practice, as well as procedures for OSHA enforcement and contractors' appeals of debarment. The Department's response is due in March 1997.

The Solicitor suggests that OSHA could pursue debarment on a "trial" basis, allowing it to take enforcement action against an egregious violator. OSHA's experience with this trial case, in terms of impact on agency resources and stakeholder reaction, would help whether debarment is viable as a permanent part of the OSHA enforcement program.

California Hazard Communication/Proposition Standard

An Appropriations conference report required OSHA to review and report by January 1, 1997, on the disposition of California's Safe Drinking Water and Toxic Enforcement Act (Proposition 65). The California initiative includes a private right of action allowing citizens to collect 25 percent of any penalty imposed for manufacturers' failure to warn workers of their exposure to carcinogens or teratogens in the manner prescribed. This differs from Federal hazard communication requirements. Chemical manufacturers object to this provision, and want OSHA either to reject the standard as an undue burden on interstate commerce, or to decide quickly so that they can challenge the standard in court. Labor and environmental groups support the standard. OSHA's comment period ended November 26. Review and legal evaluation cannot be completed by January 1. We expect continuing Congressional pressure to act quickly.

A decision must be made on these issues: 1) is the State standard, including the supplemental enforcement mechanism, at least as effective as the Federal standard; 2) is the standard applicable to products which are distributed or used in interstate commerce, and, if so, does it

unduly burdens interstate commerce; 3) is the standard required by compelling local conditions. (OSHA has never approved third-party or private right of action enforcement except as part of discrimination procedures and in cases where the State has entered into interagency agreements with other State agencies to enforce its standards using OSHA enforcement mechanisms.) The Department can approve the State's standard, which would constitute final agency action, or propose rejection of the standard, which would initiate a longer rejection process.

The agency has received 197 comments and two requests for a hearing. The State has not yet indicated whether it intends to respond to the comments, but must be given time to do so if it chooses. Any decision must be made on the basis of the record. It would be premature to recommend a course of action until all comments are reviewed and analyzed by program, legal, and technical staff.

Firefighters (2-in/2-out)

Local and volunteer fire officials object to a recent OSHA standards interpretation that might require more personnel than they have to initiate an "interior attack on an interior structural fire." The interpretation -- that two firefighters must be outside to support two-man teams inside -- is largely applicable to the public sector and enforceable only by the 25 States with OSHA-approved State plans. There, the International Association of Fire Fighters (IAFF) is an active proponent. Local governments view it as an unfunded mandate, arguing that many do not have the resources to support four firefighters at a fire.

Rather than issue a new standard, OSHA's Respiratory Protection standard, to be promulgated in 1997, will address this by mandating State plan adoption of this policy. Competing pressures, including Congressional interest/intervention, can be anticipated.

OSHA has committed to requiring State adoption of the 2-in/2-out policy. States can be pressured to adopt the interpretation now, or allowed the 6 months after the Respiratory Protection standard is promulgated, before OSHA takes any action. As alternative State policies and standards are developed, decisions will need to be made on how much variation will be allowed - especially in response to complaints filed by the IAFF.

Allow the States 6 months to respond to the Respiratory Protection standard before taking action on any alternative policies.

OTHER INITIATIVES/ISSUES

- **Special emphasis programs** are being developed or planned for nursing home ergonomics, silicosis prevention, lead in construction, machine guarding, scaffolding and trenching.
- OSHA is finalizing a memorandum of understanding with EPA regarding joint investigations of major **chemical accidents** --an effort that is being closely monitored by industry, labor, Congress and OMB. The MOU will be followed by a protocol detailing how OSHA and EPA will conduct joint investigations, in accordance with OMB request and the negotiation of separate supplemental agreements with State OSHA programs.

OSHA is promulgating a final rule on **abatement verification**, codifying procedures requiring employers to verify abatement for all cited hazards unless immediately abated, and requiring evidence of abatement for willful, repeat and failure-to-abate violations.

OSHA plans to increase **Voluntary Protection Program** participation by over 30 per cent, from 266 (in Federal jurisdiction States) to 356.

OSHA is continuing to eliminate 1049 pages of obsolete and confusing regulations from the Code of Federal Regulations as part of the President's **Regulatory Reinvention Initiative**.

OSHA's first "**plain language**" standard, Means of Egress (now "Exit Routes"), was proposed in September.

OSHA is continuing to **collect injury and illness data** from employers for a wide variety of purposes, including results-oriented performance measurement, injury/illness surveillance, and program activities such as workplace inspection targeting, Cooperative Compliance Program site identification, and targeted mailings of safety and health information. The agency is working to gather more precise and useful information.

OSHA plans to develop a broad range of **performance measures** that will provide a "balanced scorecard" on the agency's performance, partly in response to requirements of the Government Performance and Results Act, but also to improve its management operations and facilitate discussion about national safety and health objectives.

OSHA plans to complete development of, and implement a redesigned **performance appraisal system** for Senior Executives, as well as a team-based appraisal for OSHA offices that are moved to the redesigned team structure.

The **Steel Erection Negotiated Rulemaking Advisory Committee** soon will transmit a Consensus draft proposal and preamble for publication in the Federal Register. The Committee expects to complete an additional portion of the rule -- on slippery metal surfaces -- about which it had not felt sufficiently informed to address, and which now will be handled as a secondary rulemaking.

Most **Nationally Recognized Testing Laboratories** (NRTLs) demand that OSHA require that products approved for the workplace include a "NRTL" mark. Underwriters Laboratories (UL) is strongly opposed.

ADD TO "OTHER INITIATIVES/ISSUES" IN THE AGENCY REPORTS FOR OSHA:

- OSHA is currently revising its existing respiratory protection standard which was adopted from a voluntary consensus standard in 1971. OSHA estimates in the proposal that 3.6 million workers, in about 600,000 workplaces, will be affected. A major issue in the development of the final standard is assigned protection factors (APF) for classes of respirators. It is OSHA's intention to publish the final programmatic elements of the standard in June 1997, while holding APFs in

abeyance; publish OSHA-derived APFs in a separate Federal Register announcement in the summer of 1997; seek public comment by reopening the record; prepare final APFs based on comments; and publish final APFs soon after the closing of the record.

- OSHA will work on a proposal for approximately ten to twelve substances for Permissible Exposure Limits (PELs). Controversial policy issues will include quantitative risk assessment for non-carcinogens and selection of substances to be regulated. A coalition of some industry groups have approached the agency with a plan to establish a process for updating PELs that relies on heavy utilization of advisory committees.
- OSHA will amend the rule for Permit-Required Confined Spaces with regard to rescue services. In particular, OSHA plans to clarify the criteria employers must satisfy when preparing for the rescue of incapacitated permit space entrants. Also, the agency will add an appendix with examples of factors that employers could take into account when arranging for rescue services, and revise the requirements for evaluation of permit space conditions and the preparation of entry permits.
- OSHA proposes to make corrections and technical amendments to the final rule on Process Safety Management of Highly Hazardous Chemicals. These would include adding certain chemicals from EPA's Risk Management Programs (RMP) and requesting information from the public regarding issues that have surfaced since the standard became effective in 1992.
- OSHA will propose final rules on marine cargo handling, including longshoring. It will update standards from 1960. The shipyard industry is in the top two most hazardous industries in the US.
- OSHA intends to complete the investigations and to issue the determination on 95% of all worker OSHA discrimination complaints received within the statutory time frame of 90 days.
- The Small Business Regulatory Enforcement Fairness Act of 1996 requires OSHA to evaluate the effectiveness of the agency's existing standards. In FY 1996, we will review Ethylene Oxide, a carcinogenic substance that also has reproductive effects. It is used to sterilize medical devices and to make other chemical products. We will also review lockout/tagout, a safety standard which requires that machines and equipment that could become energized (start up inadvertently) have their controls locked out or be tagged out (with a red tag saying work is being done on the system) before a worker begins to repair or do maintenance on the equipment.
- OSHA is preparing a final regulation to require employers to send in injury and illness data reports when OSHA sends them a written request for information. This regulation will support the data initiative, which is being used to target the

most dangerous workplaces for inspection, support our new CCP, and create new performance measurements.

- OSHA plans to renew the three pilot State performance agreements which establish an alternative means of measuring their effectiveness.
- OSHA will facilitate the development of at least 10 State agreements with EPA on Chemical Accident Investigations.

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Divider Title: _____ **B**

EMPLOYMENT AND TRAINING ADMINISTRATION

Office of the Assistant
Secretary for
Employment and Training
* Timothy M. Barnicle

Deputy Assistant
Secretaries
* John M. Robinson
Raymond J. Uhalde

Office of Policy
and Research
* Gerard F. Fiala

Office of Job
Training Programs
Josephine Nieves

Office of Work-
Based Learning
Grace A. Kilbane

Bureau of Apprenticeship
and Training
Anthony J. Swoope

Office of Financial and
Administrative Management
Bryan T. Keilty

U.S. Employment
Service
* John M. Robinson

Unemployment
Insurance Service
Mary Ann Wyrsh

Office of Regional
Management
Barbara A. Farmer

EMPLOYMENT AND TRAINING ADMINISTRATION

MISSION STATEMENT

The **Employment and Training Administration (ETA)** assists all Americans in gaining access to the information and other resources they need to successfully manage their connection with good jobs at decent wages, and to ensure that U. S. businesses have access to the skilled and secure workers they need to successfully compete in a global economy.

To achieve its mission, ETA underwrites a wide range of employment and training services that enable both individuals and employers to participate effectively in a robust labor market environment. As the Federal steward of a highly decentralized employment and training system, ETA is reliant upon its partners in state/local government, as well as in the private sector, for quality management and service delivery.

BUDGET

(dollars in thousands)

FISCAL YEAR	DISCRETIONARY \$	MANDATORY \$	FTE
1997	\$8,619,201	\$24,112,932	1,328
1998	\$10,139,109	\$25,551,491	1,423

EMPLOYMENT AND TRAINING ADMINISTRATION

I. MAJOR INITIATIVES

WORKFORCE DEVELOPMENT SYSTEM LEGISLATION

The 104th Congress considered the consolidation of job training programs and reform of the nation's employment and training system. While both Houses initially advanced legislation on a bipartisan basis, no consensus was reached. A conference bill was reported along partisan lines which failed to incorporate key elements of the President's proposal, and the bill did not receive floor action. We are proceeding to administratively implement some aspects of the GI Bill for America's Workers through waivers and system-building grants, underscoring the Administration's commitment to reform. ETA is helping States and localities implement job training system reforms using the new waiver provisions in the FY 1997 omnibus appropriations act that go into effect July 1, 1997. Oregon is pioneering the way and recently submitted its formal waiver request under the FY 1996 appropriations law.

New legislation is needed to implement essential elements of the GI Bill proposal. While no decisions have been made about a new Administration proposal to be submitted to the next Congress, we anticipate that a proposal will be submitted that will at least include the many features in the GI Bill on which there was a bipartisan consensus.

During the December Republican Governors' meeting, Congressman Goodling, Chairman of the House Committee on Economic and Educational Opportunities, indicated that he believed that new workforce development legislation would be introduced. Mr. McKeon who chaired the subcommittee that authored the House job training reform bill during the 104th Congress, also stated that job training reform was needed and that to be successful, it would need to be bipartisan.

CREATING A 21st CENTURY REEMPLOYMENT SYSTEM

ETA proposes to invest in an improved reemployment and career development system that builds on the framework put in place over the past three and one-half years around the "One-Stop" concept. One-Stop Career Centers make quality information and services available for individuals who want to find their own jobs, those who need sufficient information and guidance to decide their career tracks, those who need access to training so that they can move into high-wage jobs, and those who need to learn basic work requirements. Welfare recipients who need to meet new work requirements also can access information and services through One-Stop systems.

Implementation of One-Stop continues on a path that ensures that the workforce development system envisioned by the Administration will offer services and information needed by job seekers and employers. The One-Stop initiative is up and running in 16 States awarded implementation grants; 17 additional States will receive such grants; and One-Stop will be in all States in 1998. A significant part of the One-Stop investment also has been made in improved technology -- e.g., America's Job Bank (AJB) and America's Talent Bank -- and data -- e.g., occupational projections through America's Labor Market Information System. ETA also is seeking to strengthen the labor exchange and UI systems to help dislocated and unemployed workers to move into new and better jobs. The **AJB** lists job openings supplied by employers around the country and is on the Internet. (We have gone from a quarter of a million "hits" to 8.5 million in just one year.) **America's Talent Bank** lists resumes on the Internet and is winding up its field tests in 7 States and expected to grow to two million resumes on line in 1997. **O*NET** is a data base that describes the knowledge, skills and abilities required to perform today's jobs -- a common language that links job seekers and employers and informs teachers and career counselors about the skills needed for careers. ETA is piloting applications in five states and collaborating with companies in developing a range of products.

UNEMPLOYMENT INSURANCE

As the pressure for larger cuts in the discretionary side of the budget grows, the ability of the Department to meet its legal mandate to **provide adequate funds to States to operate their Unemployment Insurance programs** that pay UI benefits to eligible unemployed workers is at risk. FY 1996 and FY 1997 Congressional reductions to the UI request have been so large that they impose an unfunded mandate on States. Some States have already imposed separate taxes on employers to generate revenue for UI administrative financing.

UI funding has historically been driven by inflation and workload levels. ETA has requested OMB to include a fully-funded request for UI administration in the President's FY 1998 budget and over the longer-term, to commit to help the Department develop a solution to assure adequate funding for UI. ETA is working with OMB, labor unions, employers, and States to address this issue, which would require Congressional action. Unless ETA can prevent the erosion of funding, States will be forced to undertake cost-cutting measures or seek non-federal funding, and Congress may move next year to devolve elements of the UI system to the States.

UI -- working with the Office of the Assistant Secretary for Policy -- also is beginning to address the need to improve **access to the UI program** -- particularly by low-wage and part-time workers. Less than a third of the unemployed are currently receiving UI benefits. Our review is based on work done by the Advisory Council on

Unemployment Compensation. Organized labor is interested in the coverage of low-wage and part-time workers. A possible result of this work would be to determine whether to move forward with a legislative proposal to enhance UI equity.

SCHOOL-TO-WORK

ETA wants to enlarge the learning and employment experiences of young people as they prepare for jobs of the 21st century by helping States develop and implement **School-to-Work systems** within the mainstream education system -- encompassing alternative systems for youth who have already or are on the verge of dropping out of school. On November 21, the Education and Labor Departments announced the award of \$50 million in School-to-Work (STW) grants to 10 States -- bringing the total to 37 States that have received STW implementation grants. States will use these grants to implement statewide plans and help States get STW systems underway at the local level.

The problems facing impoverished youth are enormous in scope and cost to society. The Department currently administers the Job Corps and Summer Jobs and year-round programs for disadvantaged youth under the Job Training Partnership Act (JTPA) to enhance their educational and employment opportunities. However, in some high-poverty urban neighborhoods, dropout rates exceed 60 percent and less than half of all out-of-school youth are employed. To address these problems, the President requested \$250 million in FY 1997 to increase employment among out-of-school young people living in high poverty urban and rural areas. ETA proposed that this initiative be included in the President's FY 1998 budget. Three communities were awarded demonstration grants under a competition in 1996 to be pilot sites for this broader initiative, and one or two additional pilot sites may be funded in 1997.

WELFARE-TO-JOBS

Last summer President Clinton signed into law welfare reform legislation designed to move people from welfare to work. ETA is working with its Federal partners on a number of fronts to implement the new law. For example, we are working with the Department of Health and Human Services/Child Support Enforcement on data systems for locating absent parents. We are implementing the new **Work Opportunities Tax Credit (WOTC)**, which provides a tax credit to employers who hire members of certain targeted groups, including qualified welfare and Food Stamp recipients. This credit expires September 30, 1997, and ETA, working with the Department of the Treasury, may have a proposal for extended and expanding the credit. A complementary initiative announced by the President would build on the WOTC and establish a new Welfare-to-Work Tax Credit.

The President has announced a **Welfare-to-Work Jobs** initiative funded at \$3 billion over three years to help communities move one million of the hardest-to-employ welfare recipients into jobs by year 2000. A portion of grant funds would be paid as a bonus to communities for each long-term recipient who is placed and retained in a private sector job for at least nine months. While it has not yet been determined whether the Department of Health and Human Services (HHS) or Labor would administer this initiative, both Departments have been working closely with OMB to develop the proposal. We believe that strong arguments can be made for the job training and employment system to administer this system, but HHS very much wants to administer it. We believe that the Welfare-to-Work initiative design should be guided by the GI Bill principles, including individual opportunity and informed choice, strong private sector roles, greater accountability, streamlined systems, and State and local flexibility. We also believe that it (a) should be targeted on the harder-to-serve of the employable welfare recipients; (b) focus on placements into "real" private sector jobs; and (c) include strong local and private sector roles. We think that our job training and employment system -- with JTPA's documented success in placing women on welfare in on-the-job training with private employers -- should play a key part in helping recipients become economically self-sufficient.

INCUMBENT WORKERS

We need to raise the skills of incumbent workers, particularly those most vulnerable to layoffs or boxed into low-paying jobs. To do so we must stimulate investments in this area -- particularly since Congress directed the closure of the Office of the American Workplace. Although the 104th Congress did not fund the President's request for an incumbent worker training initiative, both the House and Senate workforce development bills included provisions on incumbent worker training. ETA has used Program Year 1995 discretionary funds to engage States in a dialogue on the most effective uses of public funds to stimulate training investments for incumbent workers and to fund State-based studies on the effectiveness of alternative approaches. It plans using Program Year 1996 funds to encourage private sector investment in incumbent worker training, including efforts that would avert layoffs or reduce the negative impact of layoffs.

To increase employer investment, the Department's FY 1998 budget request proposes to amend the JTPA dislocated worker program to (a) authorize States to create **flexible workforce development accounts** to retrain workers; and (b) use a modest portion of national reserve funds to "seed" creative employer-based training approaches and educate employers on the benefits of building workers' skills.

II. HOT ISSUES

BUDGET BATTLE

We need to ensure that the hard-fought victories in 1996 and 1997 budget negotiations are not lost. Funding for training and employment programs proposed in the President's GI Bill must be maintained. Administrative funding for UI program must be increased, and additional funding for the Employment Service also is important.

Although ETA had success in maintaining viable programs and moving ahead with new initiatives in last year's budget battle, it did not get the funding necessary for ETA staff and operations. We continue to be downsized beyond reasonable reductions -- experiencing a 22 percent cut in staffing since 1992. These reductions jeopardize adequate oversight of our programs, quality technical assistance, and successful implementation of such Presidential initiatives as One-Stop and School-to-Work, and UI profiling of unemployed workers. The Department's OIG pointed out in 1992 that our responsible stewardship of programs was in question because of staffing reductions. We expect that Congress will seek to further reduce ETA staff and program operations resources. We need OMB support for restoration of the FY 1997 staff and operations request, plus program management funds for apprenticeship and training innovations and expansion, Job Corps oversight, School-to-Work and to support other 1998 initiatives. If ETA is to help implement welfare reform, we must be provided the staff and other resources to do so. We also need resources to help us take better advantage of technology.

CONTRACTING OUT ES SERVICES

ETA is reviewing the issue of whether or when States can contract out ES functions that are traditionally performed only by State staff. State ES staff are generally hired and managed under State merit protection systems and frequently are represented by unions representing public employees. (States and local jurisdictions have broad flexibility to contract out functions under JTPA.) Massachusetts is contracting out some ES services under its One-Stop implementation grant. Texas, Colorado, and other States have raised this issue as they implement their One-Stop systems that unite ES labor exchange services with JTPA skill-building and other services in unprecedented ways.

WORKFORCE LEGISLATION

The Department and the Administration need to determine whether to develop and a legislative proposal to reform the job training and employment system and if so, the shape it would take as well as its relationship to education.

REORGANIZATION OF ETA

Restructuring of ETA must take place during FY 1997 and FY 1998 to meet a changed Federal role in a streamlined and consolidated workforce development system.

Currently, resources are aligned with the "old" job training system. We are now in the process of better aligning resources with responsibilities for systems and operations and new initiatives, including welfare.

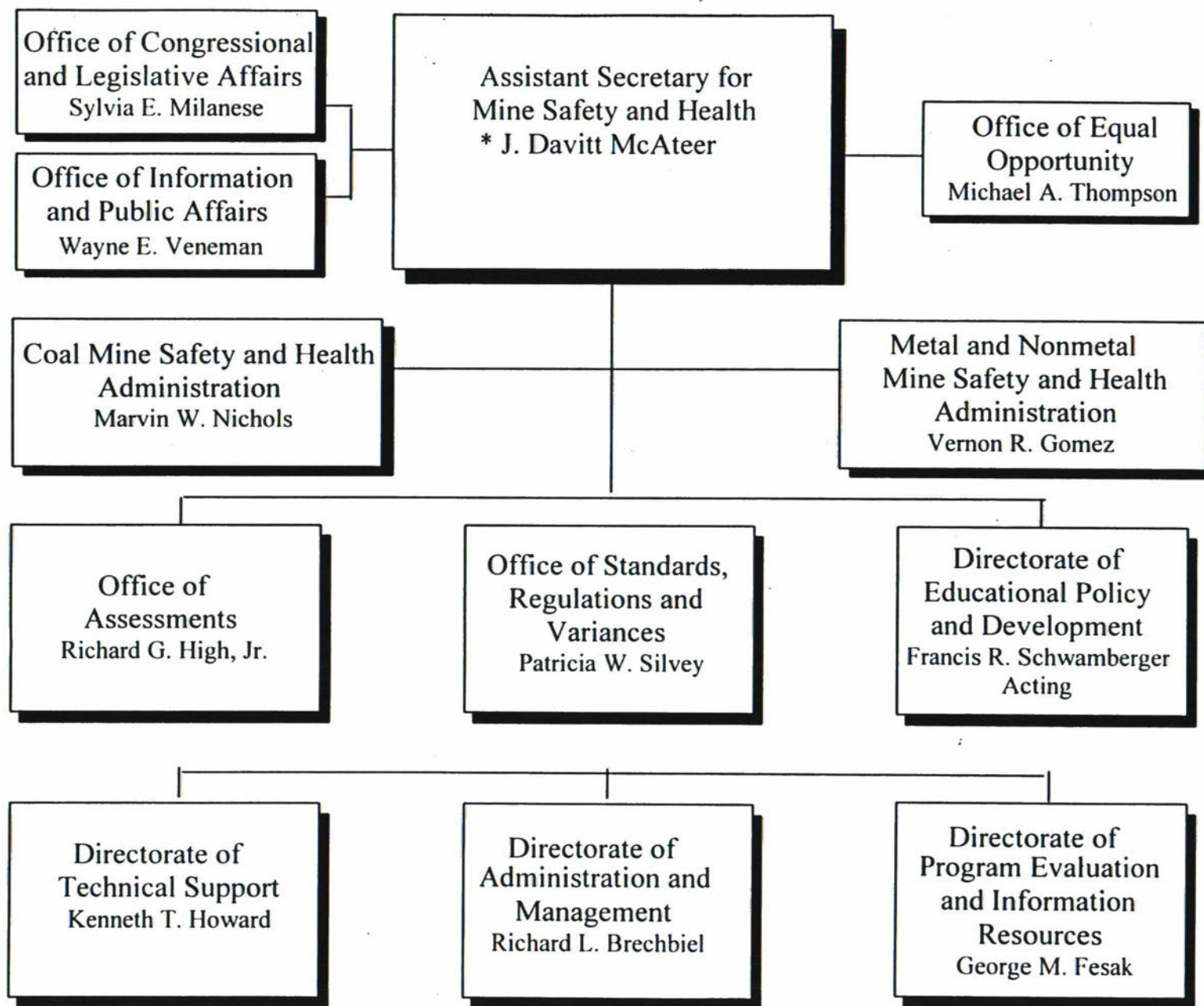
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Divider Title: _____ C _____

MINE SAFETY AND HEALTH ADMINISTRATION



NOTE: * Political Appointees

MINE SAFETY AND HEALTH ADMINISTRATION

MISSION STATEMENT

The Mine Safety and Health Administration (MSHA) works to make the first priority and concern of all in the mining community the health and safety of its most precious resource, the miner. In partnership with the American mining community, MSHA works to eliminate fatalities, reduce the frequency and severity of accidents, and minimize health hazards associated with the mining industry.

This country's miners are the most productive in the world and supply both U.S. industries and overseas markets with high-grade coal, metal and non-metal products. Yet along with this high productivity, many of these men and women daily face the dangers of death, injuries and occupational disease. MSHA will continue to work in partnership with the American mining community to reduce fatalities, reduce the frequency and severity of accidents, and minimize health hazards associated with the mining industry.

BUDGET

(dollars in thousands)

FISCAL YEAR	DISCRETIONARY \$	MANDATORY \$	FTE
1997	\$197,810	0	2,198
1998	\$227,559	0	2,418

MINE SAFETY AND HEALTH ADMINISTRATION

MAJOR POLICY/PROGRAM INITIATIVES

Health Initiatives

National Campaign to Eliminate Silicosis

In October, 1996, the Secretary of Labor launched a national campaign to eliminate silicosis, a preventable lung disease caused by workers breathing dust containing silica. The campaign combines outreach/education and more aggressive MSHA and OSHA enforcement. Participants in the campaign include MSHA, OSHA, the National Institute for Occupational Safety and Health (NIOSH), and the American Lung Association. Industry and labor representatives participated in the launch of the campaign. The campaign has been received positively and is an ongoing effort which will culminate in a national conference in the Spring.

Advisory Committee on the Elimination of Pneumoconiosis Among Coal Mine Workers

Twenty recommendations for eliminating "black lung" and silicosis were issued by this advisory committee appointed by the Secretary. "Black lung" and silicosis continue to be a serious risk for coal miners. In addition, widespread industry manipulation in MSHA's dust sampling program was found in the early 1990's. The Committee's recommendations include sweeping changes to MSHA's regulatory program, as well as consideration of lower exposure limits. MSHA also has been working with NIOSH researchers to develop a new generation of dust monitoring technology, scheduled to be field tested in early 1997.

Proposed Rule to Limit Noise in Mining Operations

In early December MSHA will publish a proposed rule to better protect miners from noise-induced hearing loss, a major health problem in the mining industry. The proposed rule would keep the current permissible exposure level, but would require all mine operators to use engineering controls instead of hearing protectors to protect miners. At the same time, the proposed rule would relieve coal mine operators of currently required paperwork. The rule would require all mine operators to offer annual hearing examinations to miners, a general industry requirement of OSHA's for more than a decade. MSHA will begin holding hearings on the proposed rule in early 1997.

Proposed Rule to Limit Diesel Exhaust Particulate Exposure

MSHA expects to publish in the Spring of 1997 a proposed rule to limit the concentration of diesel particulate matter in mines. Diesel particulate is a potential carcinogen, and miners are exposed to far higher concentrations than other workers. The National Mining Association and other industry groups are opposed to this effort; unions are strongly in favor.

Safety Initiatives

Compliance Analyst Program

This initiative is aimed at discrete hazards known to be causing serious injuries and illnesses among miners, such as silicosis and haulage equipment accidents. Senior-level mine inspectors are reassigned from their enforcement duties and equipped with practical educational information on proven technology to reduce the frequency of accidents, injuries, and illnesses. The information is delivered directly to miners and their employers, along with an informed discussion about how miners are being hurt and killed on the job, and recognized methods of prevention. MSHA is currently assessing experience from the pilot, and consulting with industry and labor. The next step is to determine the future direction of this initiative.

New Diesel-Powered Equipment Safety Rules

In October, 1996, MSHA issued final safety standards for diesel-powered equipment in underground coal mines. Increasing use of such equipment, coupled with the safety and health risks the internal combustion engines present in the confined, potentially explosive underground mine environment, highlighted the need for updated rules, which have the support of both labor and industry.

The new regulations include a phased-in compliance schedule ranging from April 25, 1997 to November 25, 1999. MSHA is currently engaged in concerted, nationwide educational efforts to inform industry and labor about the rules' requirements and how compliance can be achieved. Thus far, the new rules have been well-received. Under the Federal Mine Safety and Health Act of 1977, affected parties may legally challenge the new diesel regulations until December 23, 1996.

Surface Haulage Accident Prevention Program

Started in 1996, this initiative is designed to eliminate surface haulage equipment accidents, which consistently account for some 20 percent of fatal mining accidents annually. MSHA inspectors are being systematically trained to focus on problem areas. Inspection procedures and an engineering and design manual also are being prepared. "Best practices" training materials have been disseminated.

Hot Issues

Notice on "Single Shift Sampling"

MSHA and NIOSH are planning to issue in December a joint Federal Register notice regarding the accuracy of coal mine dust sampling conducted over a single 8-hour work shift (rather than averaging samples over several 8-hour shifts). The notice is likely to provoke challenges from the coal mining industry.

Realignment of MSHA Technical Support Staff

At the request of the Colorado Congressional delegation, the General Accounting Office (GAO) is currently reviewing MSHA's plans to transfer fewer than 40 employees currently located in Denver, Colorado to a MSHA-owned facility in Tridelpia, West Virginia. After the realignment, scheduled to be completed by the end of FY 97, MSHA will still have approximately 180 employees stationed in Denver. The Colorado Congressional Delegation had received complaints from current and former MSHA technical support employees.

Health Sample Tampering Litigation

In April 1991, MSHA issued some 4700 citations to more than 500 coal companies at 847 mines for tampering with the results of samples taken in mines to evaluate compliance with dust standards for preventing "black lung" disease. In addition to more than 157 criminal convictions, civil penalty cases were prosecuted. The lead case is now on appeal in the D.C. Circuit. There have been discussions with industry representatives with no results.

Other Initiatives and Issues

Challenge to the Accuracy of MSHA's Laboratories

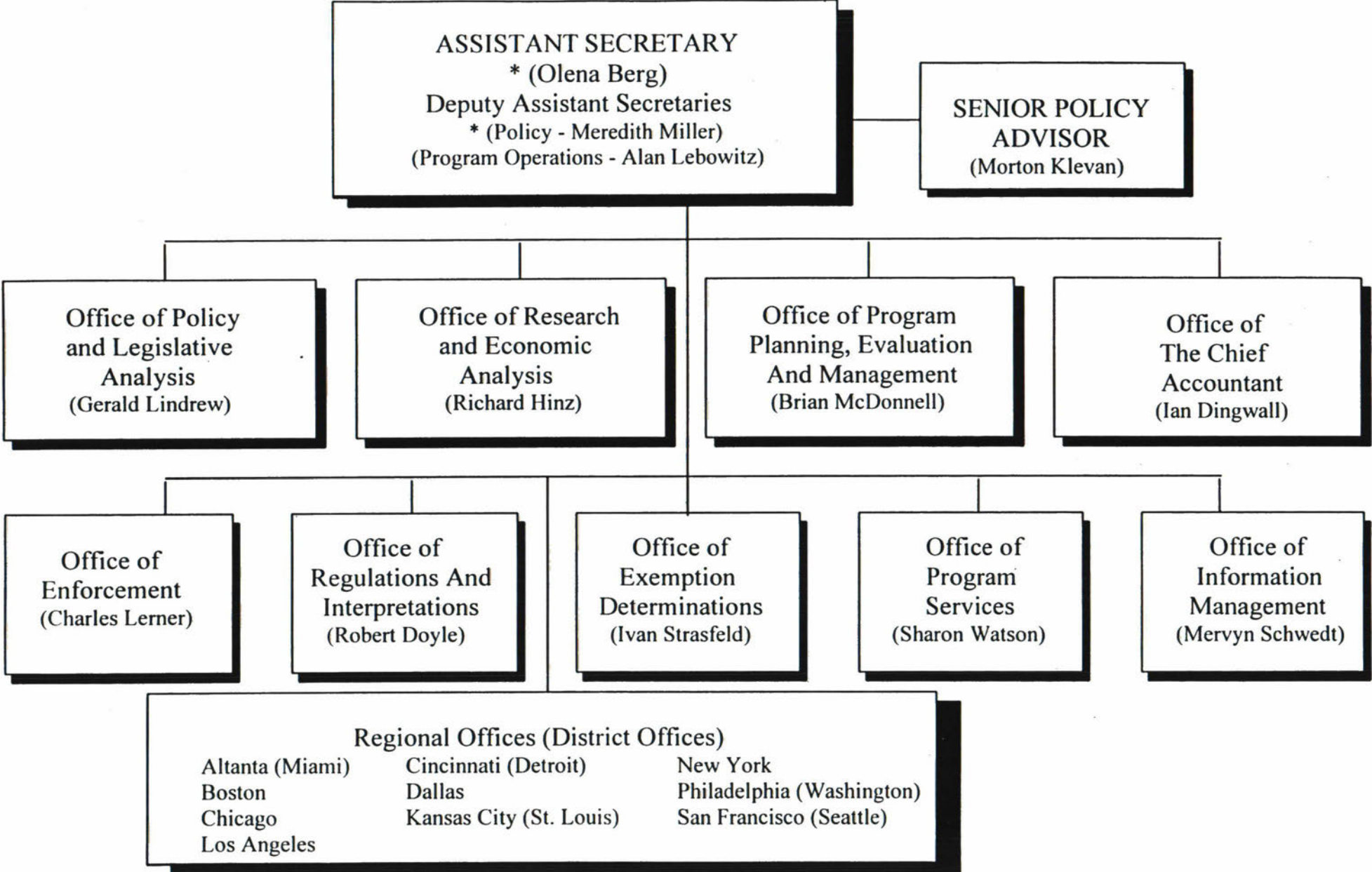
Questions about the accuracy of dust sample analyses performed by MSHA's two laboratories have been raised by some in the mining industry. The issue originated in enforcement litigation, and in June led to a letter from the National Mining Association to the Secretary calling for MSHA to close its laboratories. MSHA responded and remains convinced that its sampling and analytical capabilities are reliable. Except through the original litigation, the industry has not continued to press this issue.

Legislation to Merge MSHA and OSHA

During the 104th Congress, hearings were held by the Workforce Protections Subcommittee on legislation that would have merged MSHA with OSHA, and repealed many of the provisions of the Mine Act. The proponents cited the cost of maintaining a separate Agency for an industry that has experienced significant improvements in worker safety and health. DOL, through testimony by the Secretary and Assistant Secretaries for MSHA and OSHA, strongly opposed the legislation. Also opposing the bill were the United Mine Workers of America, as well as several industry groups and individual operators.

Divider Title: **D**

PENSION AND WELFARE BENEFITS ADMINISTRATION



NOTE: * Political Appointees

PENSION AND WELFARE BENEFITS ADMINISTRATION

MISSION STATEMENT

The Pension and Welfare Benefits Administration (PWBA) protects the integrity of pensions, health plans, and other employee benefits for over 200 million people. PWBA ensures that workers get the information they need to protect their benefit rights, assists plan officials to understand the requirements of the relevant statutes in order to meet their legal responsibilities, develops policies and laws that encourage the growth of employment-based benefits, and deters and corrects violations of the relevant statutes.

PWBA has enormous responsibilities to the majority of American workers and their families who are covered by private sector pension and health benefit and other employee benefit plans. There are over 6 million private employee benefit plans, which cover approximately 200 million people, including workers, their families, and retirees, and control of more than \$3.5 trillion in assets.

BUDGET

(dollars in thousands)

FISCAL YEAR	DISCRETIONARY \$	MANDATORY \$	FTE
1997	\$77,083	0	652
1998	\$92,651	0	879

PENSION WELFARE AND BENEFITS ADMINISTRATION

MAJOR INITIATIVES

PENSIONS

401 (k) Anti-fraud initiative

In 1995, PWBA was getting an increase in complaints that employers were failing to make employees contributions to their pension plans. As a result, PWBA initiated a nationwide program to protect workers' 401(k)s. The agency targeted employers that were diverting or delaying employee contributions to pension (and health) plans. PWBA has opened 1,559 cases (including 1,342 cases on 401(k) plans and 217 cases on health). So far, we have recovered \$14 million in worker contributions.

PWBA has promulgated a new rule for 401(k)s that will allow workers to earn an additional \$75 million in interest a year on their 401(k) investments. The rule, to become effective in February of next year, shortens the amount of time employers have to deposit their workers' 401(k) contributions into plan accounts -- from the current 90 days to no later than 15 business days after the end of the month after the contribution is made..

Promotion of pension portability, coverage and security

The National Economic Council has established an interagency, staff level pension working group to coordinate policy on pension issues. In the first term of the Administration, this group developed The President's Retirement Savings and Security Act of 1996, which included proposals to increase pension coverage, portability and security. Many of the provisions were included in the Small Business Job Protection Act, which was a part of the minimum wage bill that passed the Congress last summer. The NEC working group hopes to put together an additional pension proposal to advance next year, which will include some of the provisions that did not make it into the small business bill and some new ones-- including measures that would increase women's pension benefits. See "Hot Issues" section (see items 1 and 2 of that section). Some of these proposals may be introduced by various members of Congress with Administration support, while others may be introduced as Administration bills.

Streamlining employee benefit plan reports

Employee benefit plans (pension and health care) are required to file Form 5500 series of reports to provide information about plan operations to plan participants and the regulatory agencies, DOL, IRS, and PBGC. The agencies can no longer afford to pay the \$22 to \$24 million annually to process about one million forms, so the NPR recommended the

development of a new system operated by a private sector contractor to process the reports, saving \$50 million during the five-year life cycle of the system. The PWBA's FY 1997 budget contains \$6 million of two-year funding for a new system, the development of which will begin within six to eight months, which will take advantage of the latest proven information technology, including electronic filing. Completion of the system is dependent on receipt of additional funding in the FY 1998 budget.

Pension education

PWBA launched the retirement education campaign in July 1996 to raise public awareness about pensions and saving for retirement. Over 175 public and private partners are now involved in this effort. PWBA will continue this campaign in full force next year and will undertake a number of new initiatives to get the word out to the public.

HEALTH

Implementation of Kennedy-Kassebaum

Last year, the Congress passed the Kennedy/Kassebaum health reform bill, which ensures that workers who switch jobs or lose their jobs do not lose access to health insurance because of a pre-existing illness. It also includes requirements for minimum hospital stays for newborns and mothers and parity of benefits for mental health. DOL, together with HHS and Treasury, is working on implementation of this law. DOL has responsibility under ERISA to enforce the law for employer plans, and is expected to publish the first installment of regulations in early 1997.

Multiple Employer Welfare Arrangements (MEWAs)

Multiple Employer Welfare Arrangements (MEWAs) pool together groups of small employers to create a larger entity with stronger bargaining and purchasing power for the provision of health benefits. Although there can be legitimate MEWA arrangements, there are unscrupulous promoters that sell the promise of affordable group health insurance, but default on their obligations. PWBA's has cracked down on these entities and has recovered \$54 million, affecting over 300,000 participants. A proposed regulation to distinguish legitimate health benefit plans from these sham promoters is under review. PWBA proposes to finalize the regulation in late 1997.

Administrative Service Only Arrangement (ASO) discount initiative.

Administrative Service Only Arrangements exist where a sponsor self insures the health plan and hires an administrator to administer the plan and pay benefits. DOL received complaints that discounts negotiated by the administrator from hospitals and other medical service providers were not passed through to plans and

participants. PWBA has examined Blue Cross and Blue Shield (BC/B.S.) associations nationwide and twenty other administrators. This project has resulted in numerous voluntary compliance settlements and civil complaints involving local BC/BS entities and recovered \$28 million, affecting over 200,000 individuals in over 900 ERISA plans.

Retiree Health

A legislative proposal is being developed to ensure that employers deliver on the health care benefits they promise for retirees. (See item 5 of "Hot Issues.")

Health care coverage

ASP, in coordination with PWBA and ETA, is working with the Administration and Congress (Senator Kennedy) to develop several incremental health care coverage initiatives. Proposals currently under consideration would provide subsidies to unemployed workers and children to finance health care. Another proposal on the table would make grants available to states to establish health care purchasing cooperatives to help small businesses gain access to insurance.

HOT ISSUES

The Daschle bill

Building on the accomplishments of the 104th Congress, Senator Daschle is developing an omnibus pension bill. The legislation will include many provisions from the President's Retirement Savings and Security Act proposal of April 1996 that were not included in The Small Business Job Protection Act -- including the audit bill, and a provision to increase the multiemployer PBGC guarantees. The NEC working group on pensions has provided assistance in the development of this legislation. The Secretary may be called upon to assist in the passage of components of the Daschle legislation. Senator Daschle, who has made retirement security a key part of his "Families First agenda, expects to make this measure one of his top five bills to be introduced in the first few weeks of the 105th Congress.

Erisa enforcement improvement act (audit bill)

There are \$950 billion worth of pension assets held by banks or insurance companies that are exempt from audit by outside plan auditors. There are no minimum standards for auditors of these plans, and no requirement of prompt

direct reporting to the DOL of likely criminal activities related to the plan. Both the Department's Inspector General and the GAO have warned of accounting weaknesses in employee benefit plans similar to the S&L crisis.

Last year, the Secretary of Labor proposed the ERISA Enforcement Improvement Act (audit bill), as a part of the President's Retirement Savings and Security Act, to correct these problems. Senator Simon and others introduced and vigorously promoted the audit bill in the last Congress, but the measure failed to achieve passage, in part because of the negative reaction by the business community to the direct reporting requirements in the bill.

The Secretary has the option of pursuing either the original audit package or a modified version of that bill that does not contain the direct reporting requirements. A new legislative proposal should be drafted and ready for submission to the Congress by January 20, 1997, if decisions have been made on the scope of the proposal. Senator Daschle is expected to address these issues as part of his omnibus pension bill.

Employer stock and employer real property to 401(k) PLANS

ERISA should be amended to establish limits on the use of employee contributions to 401(k) plans that are directed by the employer to purchase the securities and real property of the employer's company. Unlike traditional defined benefit pension plans, there are no restrictions on 401 (k) plan investments in employee stocks and real property. There have been instances where employees' have lost retirement savings because their employer's invested substantial portions of the pension funds in the companies securities or real property. For example, Color Tile's 401(k) plan invested over 80% of its assets in Color Tile stores before the company, a national retailer in 48 states, went into Chapter 11 bankruptcy. Carter, Hawley, Hale's 401(k) plan was nearly 100% invested in company stock, which was rendered worthless when the company went out of business.

These two examples have been the subject of several press articles and Senator Boxer, in reaction to the Color Tile situation, has introduced legislation to establish limits on the investment of 401(k) Plan assets in employer securities and real property. This fall, Secretary Reich sent a letter to Senator Boxer expressing the Administration's support in principle for legislative changes.

In response to a request from the Chairman of the House Ways and Means Committee Congressman Archer, the GAO has initiated a study of the issue. The DOL staff have provided technical assistance and guidance to Congressional staff in developing legislation. Senator Daschle, working with Sen. Boxer, is expected to introduce legislation in this area. The Department could develop its own legislative proposal or support the Daschle measure, which is expected to be introduced early in the next Congress.

Health Care Commission

The President recently signed an Executive Order creating an Advisory Commission on Consumer Protection and Quality in the Health Care Industry. The commission will review changes in the private and public health care system and make recommendations on how best to promote and assure consumer protection and health care quality. The Advisory committee will be appointed by the President and co-chaired by the Secretaries of Labor and HHS and will have a membership of 20 with representatives from health care professions, institutional health care providers, other health care workers, health care insurers, health care purchasers, state government, consumers and experts in health care quality.

The Secretary will coordinate with Secretary Shalala in giving direction about what types of issues the DOL is interested in having addressed by the commission. PWBA has prepared a set of policy issues to recommend as DOL priorities for the commission. These issues include disclosure by insurers and service providers of certain data related to quality measures.

Retiree Health

Many employees are induced to retire in part by what they believe are employer promises to provide lifetime retiree health benefits, only to find out later that the employer is able to reduce or eliminate retiree health benefits because there was a general clause in the company's plan and summary plan description that reserved the right to amend or terminate the plan.

The Department has filed amicus briefs in several high profile cases involving the reduction of retiree health benefits. Such cases are difficult to bring not only because the cases are generally fact intensive, but also because of the litigation cost involved.

We could let the courts delineate the law on a case by case basis, with the Department filing amicus briefs setting forth our view as to how the law should develop. However, this would be a time consuming process with no guarantee of the outcome.

As an alternative, we have developed a regulatory proposal and a full legislative package to deal with these issues and better protect retirees. The proposals are likely to be sensitive and DOL is vetting them with the appropriate outside parties in advance, and working internally to gain support of the administration's health care working group, including the White House, HHS and Treasury.

There have already been bills introduced in Congress on this subject, and there is interest on Capitol Hill among a number of Democrats including Senator Daschle and Rep. Klecka. PWBA would like to publish the regulations in the Federal Register by February 18, 1997, as this will be folded into the disclosure regulations required by HIPAA.

Executive Deferred Compensation Arrangements

Deferred compensation arrangements currently being offered by employers to key executives and management employees are benefiting those key executives and managers without providing any benefits to the rank and file workers.

There have been a number of high profile articles in the New York Times raising questions about the propriety and fairness of these executive compensation arrangements. These articles cite interpretations that these arrangements are exempt from Title I of ERISA. While there is an exemption from the participation, vesting, funding, and fiduciary provisions of Title I for plans that primarily provide deferred compensation to a "select group of management or highly compensated employees" (commonly called "top-hat" plans), the Department has not issued regulatory guidance setting forth criteria for determining whether a plan is a "top-hat" plan. Some companies may have extended coverage under these deferred compensation plans to employees who would not be considered part of a select group of management or highly compensated within the meaning of the exemptions, presumably for the purpose of giving tax benefits not available to top hat plans while still denying coverage to most of their workers.

The Department could treat this issue primarily as a tax and securities law issue because (1) tax limits on the provision of pension benefits under pension plans that qualify for tax benefits may be driving employers to extend the coverage of "top-hat" plans, and (2) the question of disclosure of executive compensation arrangements has been treated primarily under the securities laws.

Congress may consider executive compensation/deferred compensation issues when it convenes in January, 1997.

OTHER INITIATIVES

1. The Department is required by legislation to propose a regulation by June 30, 1997 to resolve ERISA issues surrounding insurance company general accounts arising from the Supreme Court's Harris Trust decision.

2. PWBA expects to publish in the near future for public review and comment a proposed policy not to reject multiemployer welfare plan annual reports (Form 5500) or assess civil penalties solely because they fail to comply with AICPA SOP 92-6, which requires health and welfare plans to calculate and disclose as a part of their financial statements the present value of their future post retirement obligations.
3. A nationwide Pension Abuse Project has been initiated by the Attorney General to increase emphasis on the investigation and prosecution of pension plan abuse. PWBA is one of the lead agencies in this project which also involves the Department's Office of Inspector General, FBI, IRS and the Securities and Exchange Commission. The initiative will likely produce a media event with the Attorney General and the Secretary of Labor in first quarter 1997 to announce the initiative and the filing and settlement of significant criminal prosecutions and civil enforcement actions.

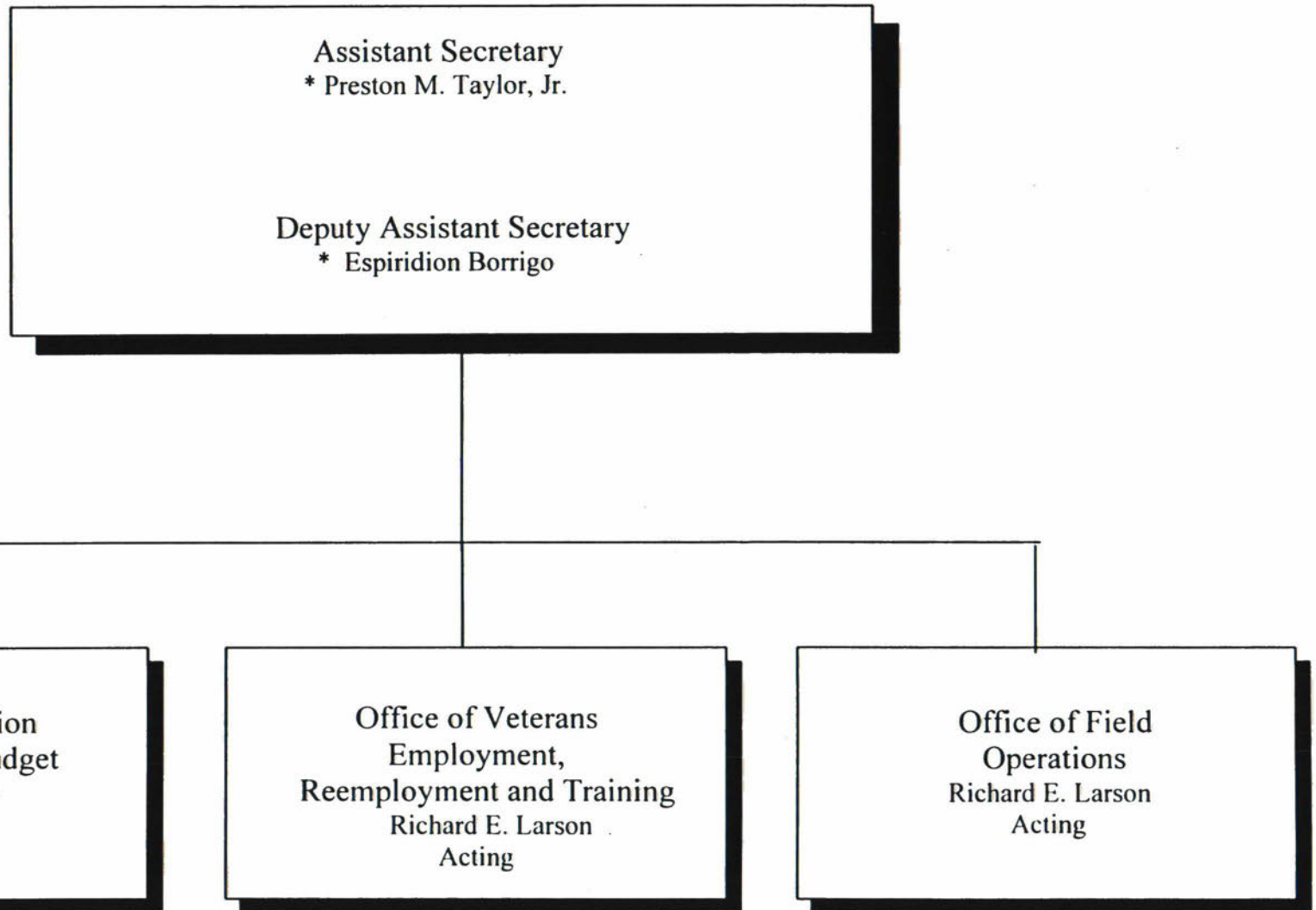
Clinton Presidential Records Digital Records Marker

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Divider Title: E

VETERANS' EMPLOYMENT AND TRAINING SERVICE



NOTE: * Political Appointees

VETERANS' EMPLOYMENT AND TRAINING SERVICE

MISSION STATEMENT

The Veterans' Employment and Training Service (VETS) helps veterans, Reservists, and National Guard members in securing employment and the rights and benefits associated with such, through existing programs, the coordination and merger of programs, and the implementation of new programs. Services provided are consistent with the changing needs of employers and the eligible veterans' population, with priority given to disabled veterans and other veterans with significant disadvantages in the labor market.

VETS ensures that veterans receive employment priority for services and training to which they are entitled by law, assists separating service members with employability training, and enforces veterans' reemployment rights laws.

BUDGET

(dollars in thousands)

FISCAL YEAR	DISCRETIONARY \$	MANDATORY \$	FTE
1997	\$181,949	0	260
1998	\$264,197	0	260

**OFFICE OF THE ASSISTANT SECRETARY
FOR
VETERANS EMPLOYMENT AND TRAINING SERVICES**

MAJOR POLICY/PROGRAM INITIATIVES

Reduce the Unemployment of female, minority, disabled and young veterans

Veterans' unemployment was reduced by about half, and now is about 3.8 %. But Bureau of Labor Statistics data show that significant segments of the veterans population still suffer unacceptably high unemployment. For examples, the unemployment rates of black and Hispanic male veterans aged 20 - 34 still are in the 10 to 16 % range; the rates for female veterans and for moderately disabled veterans are 20 to 50 percent higher than the national rate, and the rate for all veterans aged 20 -24 is still in double digits. The State Job Service agencies, with their cadres of Disabled Veterans' Outreach Program (DVOP) staff and Local Veterans' Employment Representatives (LVERs) funded by VETS grants, are about 50% more productive for registered veterans than they are for registered non-veterans, despite a steady decline in appropriated resources. But the most disadvantaged veterans are not receiving the assistance they need. Continued decline in DVOP and LVER staff resources will likely result in continuation or worsening of the status quo.

VETS is working with ETA on system building efforts to provide access to America's Job Bank (especially the federal contractors job listings), to develop the Talent Bank, electronic resume writers, and other job-finding tools. By assuring that the system is technologically sound and accessible to veterans who can help themselves, the veterans specialists can focus on veterans who need more labor-intensive services.

Assist Homeless Veterans in Becoming self-sufficient

Veterans comprise about one-third of the nation's homeless male population. On any given night, an estimated quarter-million veterans are homeless. This problem has national media attention. Until funding was rescinded during the 104th Congress, VETS administered homeless veterans reintegration projects that annually placed about 4,000 homeless veterans in jobs. The 104th Congress authorized VETS to administer the program, but the reauthorization came after the appropriation cycle, and no funding was requested for FY 1997. VETS expects to get \$2.5 million in FY'98 to support a jobs for homeless veterans initiatives similar to the program ended by the rescission. VETS would like to anchor the "continuum of care" where HUD provides housing, the VA provides supportive services, and DOL provides employment services.

Improve Veterans' Access to High Quality jobs

VETS surveyed veterans who had used the State Job Service agencies. The survey corroborated other studies of the Job Service system, i.e., that most of the jobs typically accessible through the system are relatively low-paying and unattractive to most veterans. Not having good job openings means good applicants don't go to the agency, and not having good applicants in file means employers don't use the agency as a recruitment source for higher level jobs. VETS is collaborating with the Employment and Training Administration in support of initiatives likely to break that vicious cycle, such as enabling federal contractors to satisfy their mandatory job-listing requirements by electronically listing job openings with America's Job Bank. The rapidly growing use of electronic means for labor exchange and related activities by both employers and job-seekers necessitates equipping the Job Service local offices and One Stop Service Centers with the technology to access, and be accessed by, employers directly from their computer workstations.

Improve the Quality and Timeliness of Enforcement of Veterans Reemployment Rights

Whenever a Reservist or National Guard member is called to active duty and must leave his or her civilian job, e.g., in support of the deployment of troops in Bosnia, or to assist in natural disaster relief efforts, each is entitled to return to that job with all attendant benefits as if he or she had never left. VETS enforces the statute that guarantees those rights, and the law covers almost all public and private sector employers. The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) added the Federal agencies to the purview of the VETS for the first time in the 50-plus year history of the statute. The added workload, conferred during a period of government downsizing, greatly raised the complexity of VETS' mission and its customers' expectations. VETS did not meet its FY 96 goal for timeliness of case processing, and experienced a few instances of widespread--unjustified-- negative publicity concerning the handling of Federal workers' reemployment rights claims. VETS has begun a training initiative to upgrade the investigative skills of its field staff. VETS has also begun an initiative to migrate program management functions from its severely downsized National Office to a Regional Lead Center.

Define "Veterans' Priority For Service To Clarify the Results expected Expected of the State Job Service and One Stop Service Center

For the past twenty-five years, DOL regulations applicable to the State Job Service agencies have defined "priority" for veterans as the entitlement to first referral to job openings and to receipt of all available, needed services ahead of non-veterans. The measure of compliance with the "priority" requirement has been comparison of the percentage of registered veterans provided key services to the percentage of registered non-veterans who received those services. The States are melding Job Service operations with other agencies to which the regulations do not

apply, and the priority definition and measure hamper the ability of the Federal-state service delivery system partners to evolve to "one stop" operations as efficiently and effectively as it might.

VETS and the ETA have a high level of agreement regarding the mechanics of the future delivery system, e.g., how service provider staff ought to be utilized in the local service centers, and the need to elevate the level of information technology available to customers and service provider staff. But deciding what are appropriate measures to reflect "priority" for veterans is a continuing struggle within the larger context of the Federal-state dialogue regarding appropriate measures of the Federally funded but state administered employment and training service system. VETS is collaborating with ETA and other stakeholders to solve this problem.

HOT ISSUES

Commission on Service members and Veterans Transition Service

Public Law 104-275 established this Commission to review the adequacy and effectiveness of veterans transition assistance and benefits programs. The Commission also will review the allocation of responsibility for the administration of those programs among the various departments and agencies of the government and determine the feasibility and desirability of consolidating that administration. The Assistant Secretary of Labor for Veterans' Employment and Training will be a non-voting member of the Commission.

In establishing the Transition Assistance Program (TAP) in 1990 as the joint responsibility of the Departments of Defense, Labor, and Veterans Affairs, Congress gave the lead for administering TAP to the Secretary of Labor. Commission inquiries and hearings are expected to begin in the spring of 1997.

Veterans Preference in Federal Employment

Certain veterans are entitled to preference in Federal government hiring and retention during reductions in force. Several years ago, because Congress did not believe the Office of Personnel Management (OPM) was aggressive enough in the protection of these veterans' rights, the statutory responsibilities of Department of Labor's Directors for Veterans' Employment and Training were amended to mandate that they and their assistants monitor the implementation of veterans preference in employment and job advancement opportunities within the Federal Government and report to the OPM any evidence of failure to provide such preference. After a hearing before the House Government Reform and Oversight Subcommittee on Civil Service, in July 1996 the House passed H.R. 3586, a bill that would expand the eligibility criteria for veterans preference and the means for a veteran's redress. Any preference eligible

alleging that an agency has violated his or her rights relating to veterans preference would be able to file a complaint with the Secretary of Labor. The Secretary would be required to process the complaint using the same labor-intensive investigative procedures now required in veterans reemployment rights cases. The bill died in the Senate.

The driving force for a veterans preference expansion is Chairman John Mica of the Civil Service Subcommittee and Chairman Steve Buyer of the House Veterans' Affairs Subcommittee on Education, Training, Employment and Housing (with oversight responsibility for VETS programs). Several of the major veterans organizations are actively working with Mr. Mica in his efforts to strengthen the veterans preference benefit. VETS expects that Chairman Mica will reintroduce his civil service reform legislation early in the 105th Congress and hold hearings in the spring of 1997. This time around there might be companion legislation in the Senate introduced by Senator Stevens (in line to become Chair of the Senate Governmental Affairs Committee).

OTHER INITIATIVES AND ISSUES IN THE AGENCY

Transition Assistance Program: TAP is a program conducted jointly with the Departments of Defense and Veterans Affairs to prepare transitioning service members to enter the civilian labor force; shrinking DVOP/LVER resources threatens the continuation of this highly successful program.

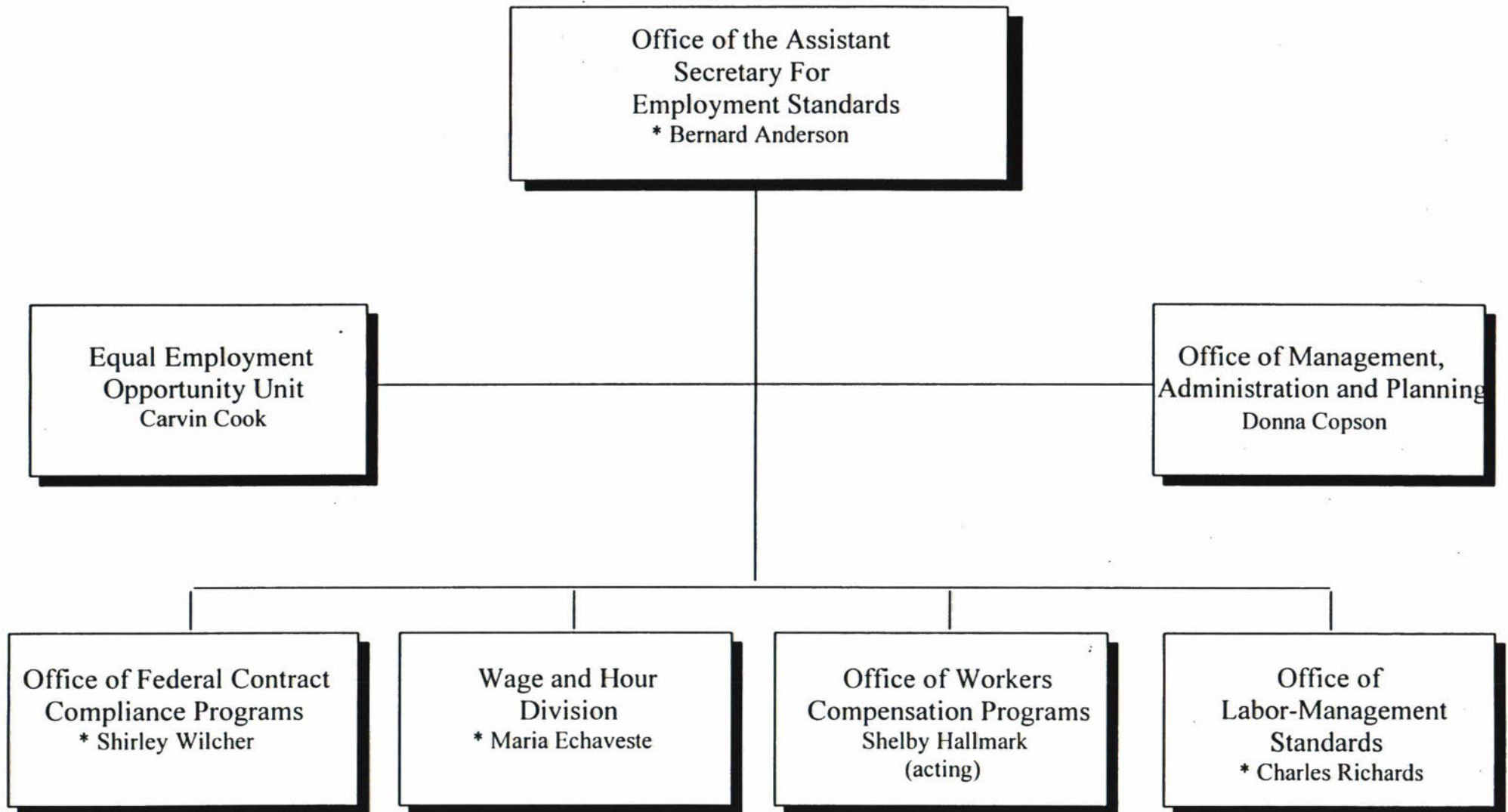
DOL's Preparedness to Respond to "Solomon Amendment" Requirement: Cong. Solomon attached to all appropriation bills a prohibition against giving contracts to applicants that have not complied with the annual requirement for Federal contractors to file an annual report regarding veterans hires with the VETS; this requirement poses a potentially major information management problem, and compliance with it may become the subject of a House Veterans Affairs Committee hearing.

Effectiveness of Job Service Agencies' Placement Efforts for Disabled Veterans Who Have Completed Vocational Rehabilitation Training: The House Veterans Affairs Committee is expected to hold a hearing regarding the results of the DOL-VA Memorandum of Agreement signed during this Administration under which the Job Service agencies are expected to increase the number of disabled veterans placed in suitable employment following completion of their vocational rehabilitation programs.

Military-to-Work Initiative: An issue that pre-dates this Administration is the non-acceptance by many occupational licensing and certification authorities of military education and experience to satisfy requirements for employment in those fields in civilian life; VETS has begun to address this problem by awarding a small research grant to examine a couple of occupations and rmine what could be done to facilitate the military-to-work transition in those career fields.

Divider Title: **F**

EMPLOYMENT STANDARDS ADMINISTRATION



NOTE: * Political Appointees

EMPLOYMENT STANDARDS ADMINISTRATION

MISSION STATEMENT

The **Employment Standards Administration (ESA)** protects the Nation's workers by achieving compliance with labor standards through enforcement, administrative, and educational programs; ensuring that Federal contractors have nondiscriminatory employment practices; promoting internal union democracy and fiscal integrity; and providing disability assistance to certain workers to resolve injuries, return to work, and receive appropriate benefits.

To achieve its mission, ESA administers a number of diverse programs designed to reflect the goals and priorities of the different divisions of ESA -- Wage Hour, Office of Federal Contract Compliance (OFCCP), Office of Workers Compensation Programs (OWCP), and Office of Labor Management Standards (OLMS).

BUDGET

(dollars in thousands)

FISCAL YEAR	DISCRETIONARY \$	MANDATORY \$	FTE
1997	\$321,276	\$1,324,682	3,942
1998	\$380,120	\$1,340,326	4,268

EMPLOYMENT STANDARDS ADMINISTRATION

I. WAGE AND HOUR DIVISION

MAJOR POLICY AND PROGRAM INITIATIVES

Davis-Bacon Wage Determination Reinvention

The Davis-Bacon Act – which requires payment of at least locally prevailing wages and fringe benefits to most workers on Federal and Federally-assisted construction projects – has long been the subject of controversy and efforts at repeal. These efforts have usually been based on arguments that the Act unnecessarily inflates public construction costs, favors union over open shop contractors in obtaining these contracts, and is discriminatory in design and operation. In the last two years, Davis-Bacon critics allege that Davis-Bacon prevailing wage determinations issued by the Department are inaccurate because, among others reasons, they are based on prevailing wage surveys that are vulnerable to fraud. A recent GAO examination of the wage survey system substantiated such vulnerability but supported the remedial actions that had been instituted by DOL. A soon-to-be-released OIG study of a sample of wage determinations is expected to lend further weight to this charge. The OIG is expected to find that the survey process does result in inaccurate wage determinations for several reasons, most importantly misreporting of data by participating employers.

There is general agreement that the current Davis-Bacon wage survey process is flawed and ineffective and at least needs to be substantially improved without adding significantly to its cost. Thus, for FY 1997 the Department sought and received an additional \$3.75 million to improve the process. An early decision must be made as to what approach (or approaches) should be pursued to this end, so that the additional resources can be effectively utilized during the fiscal year.

Consultations are currently taking place with interested parties to obtain feedback on possible methodological options and their viability and obtain “buy-in” on the best alternative.

Compensatory Time and FMLA Expansion

The President has proposed legislation to allow private sector employees to choose compensatory time (i.e., paid time-off) instead of overtime pay in certain circumstances, and to expand the Family and Medical Leave Act (FMLA) to provide additional time-off for certain additional reasons. In the closing days of the last Congress, the House passed legislation proposed by Congressman Ballenger (R-NC) which would authorize compensatory time-off but is significantly less protective of workers' rights than the President's proposal.

This issue, which is of great importance to the business community, and of great concern to worker advocates and women's organizations, was emphasized by the President during the campaign and will require significant cooperation and compromise between the Administration and the new Congress.

This matter is likely to be the subject of early action by either the Administration or Congress (or both) when the new Congress convenes. First steps will involve efforts to forge mutually acceptable legislative compromise. If legislation is enacted, this will have a huge, perhaps unprecedented, impact on Wage and Hour in the rulemaking, implementation and enforcement process.

Garment Industry Initiative

Sweatshops in the U.S. garment industry still exist today. Although there are signs of some modest improvements, there continue to be serious compliance problems and abuse of workers who are mostly immigrant women. They work long hours at subminimum wages with no overtime in often deplorable working conditions.

Wage and Hour will continue the "No Sweat" initiative that it initiated in the first term of the Clinton Administration. The project is an innovative three-prong strategy of **enforcement, recognition, and education** to eradicate sweatshops in the U.S. It was named a winner of the 1996 Innovations in America government awards program by the Ford Foundation and the John F. Kennedy School of Government at Harvard University for its accomplishments in this industry.

Enforcement will include targeted enforcement sweeps in major garment centers, the notification to manufacturers of “hot goods” produced by their contractors, and the identification of retailers where “hot goods” can be traced. Wage and Hour will continue to issue quarterly enforcement reports and will conduct a compliance survey in the New York City metropolitan area.

On the **education** front, Wage and Hour will conduct four more Compliance Monitoring Workshops to provide the industry with information on how to implement an effective monitoring program to ensure that goods are made in compliance with the Fair Labor Standards Act (FLSA).

We will also continue publicizing our activities to garner the public’s interest in our efforts to convince the industry to assume responsibility to help improve compliance. We will also continue our partnerships with socially responsible businesses and religious leaders that support “No Sweat”. The Apparel Task Force, which is comprised of representatives from all levels of the industry, is expected to make recommendations at the end of February to the industry on how to assure consumers’ confidence that the goods they purchase are made in compliance with the FLSA. In that regard, DOL may consider supporting legislation expected to be introduced by Senator Kennedy and Rep. Clay, which would encourage labeling of garments so that consumers can choose to buy clothes without supporting lawbreakers.

Thirdly, Wage and Hour will continue with its Trendsetters List, which **recognizes** retailers and manufacturers that have assumed responsibility for monitoring the labor practices of their contractors.

Child Labor

Several recent child labor cases have been the subject of negative stories in major newspapers (Chicago Tribune, San Francisco Chronicle, and the Wall Street Journal). These stories have painted Wage and Hour’s child labor enforcement efforts as excessive and misplaced.

Wage and Hour’s child labor enforcement and outreach have maintained a very high profile since the early 1990’s when enforcement sweeps were conducted to address a dramatic rise in the incidence of illegal child labor. Child labor violations have dropped significantly since that time (from a high of around 40,000 minors found illegally employed in 1990 to slightly more than 7,000 minors found illegally employed in 1996).

Wage and Hour is developing a new innovative approach to keeping working kids working and safe and protecting their educational opportunities. It is shifting from a paradigm focusing on enforcement to partnering with business in compliance. It is working to ensure that penalties are more reasonable and defensible. Wage and Hour also aims to deploy its resources to focus primarily on serious child labor offenses.

With respect to its regulatory agenda, Wage and Hour will implement the paper baler's legislation and consider a proposal to modify the hours and time standards in Reg 3 for 14 and 15 year olds. Also, under consideration are revisions to the rules that govern teenage driving and the employment of 14 and 15 year olds in certain prohibited occupations.

Agricultural Enforcement Initiative

The Agricultural industry has unacceptably high levels of violations in wages, terms and conditions of employment and other labor standards. This industry also has a disproportionately high number of undocumented workers who are particularly vulnerable to exploitation and who are unlikely to complain. For these reasons, Wage and Hour has designated agriculture as one of the industries targeted for special enforcement emphasis.

Where DOL has vigorously and consistently enforced labor standards, particularly the joint employment and responsibility standards, there has been marked improvement in housing, transportation, wages, and working conditions. However, in many parts of the country, the conditions continue to be bleak.

Wage and Hour will adopt the successful garment "No Sweat" strategy to the agricultural sector, using a mix of outreach, education, enforcement and publicity. It will place legal and moral responsibility for the substandard conditions created largely by farm labor contractors on the "asset holders" – the growers and processors who hire them and benefit from their services. It will vigorously apply "joint employment" standards under the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) and the Fair Labor Standards Act (FLSA). And it will expand the use of the "hot goods" provisions of the FLSA. To this end, we are currently seeking to find a regulatory modification to MSPA's joint employment standard to bring greater clarity and resolve inconsistent application by the courts (see "Hot Issues"). Wage and Hour is seeking to leverage available resources to have a greater impact on the industry and make long lasting changes for farmworkers.

HOT ISSUES

McNamara-O'Hara Service Contract Act Health & Welfare Benefits

We need to determine the appropriate methodology to be employed for establishing minimum health and welfare benefits (in addition to locally prevailing wages and other benefits) that must be provided to workers on Federal service contracts subject to the SCA. Since the inception of the SCA (in 1965) health and welfare benefit levels have been set nationally (rather than locally) due to data limitations and, in recent years, two levels have been set based largely on the nature of the contract services. The Service Employees International Union (SEIU) sued the Department a few years ago to challenge the existing health and welfare benefit setting methodology. When efforts to settle this litigation were unsuccessful, the Department published a Notice of Proposed Rulemaking putting forward eight options (including the current methodology) for public consideration/comment, and recently published an economic impact analysis of the estimated cost of each of these options. The public comment period closed on November 25, and the Department is under court order to complete the rulemaking by December 24.

The methodological options and related costs (estimated) are prescribed in the recent rulemaking.

Davis-Bacon - Helpers

Whether and under what circumstances to recognize "helpers" as a separate classification on projects covered the Davis-Bacon Act (DBA) have been the source of much controversy for 15 years.

Prior to 1982, the Department's policy permitted the use of helpers on DBA projects only under very limited circumstances. In 1982, the Reagan Administration amended the regulations to allow the use of a larger number of workers to be unskilled helpers and be paid at a wage rate lower than the journeyman rate on DBA projects. The AFL-CIO sued the Department over the regulations, which were enjoined and caught up in litigation for the rest of the decade.

A final rule was implemented in 1991, but subsequent appropriations riders barred the Department from implementing the regulation for most of the period since then. In November 1993, the Department suspended the regulations by notice in the Federal Register in light of the appropriations ban. The current appropriations act contains no such rider. The suspension remains in effect, however, pending the publication of a final rule on whether to extend the suspension while the Department considers amending the suspended helper regulations. The Department has been sued by the Associated Builders and Contractors (ABC) for failing to implement the suspended regulation given that there is no longer an appropriations rider banning implementation.

The Department is developing options to include in an NPRM proposing amendments to the suspended regulations. Options under consideration include changing the definition of "helper" and implementing a helper-to-journey person ratio. The final rule on continuing the suspended regulation is at OMB, as we hope to have it published in December, 1996. The Department expects to complete rulemaking on amending the regulations in August, 1997, and has so informed the court in the ABC lawsuit.

Joint Employment in Agriculture

Wage and Hour has drafted and forwarded to OMB a final regulation that would clarify the circumstances under which an agricultural grower or processor would be a "joint employer" -- along with the farm labor contractor employing the farm worker -- and be responsible for compliance with the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), which establishes basic protections to farm workers.

We are awaiting the response of OMB and the Department of agriculture. USDA has objected to the regulation as too broad, asserting that it imposes liability in every case in which a grower hires a farm labor contractor to provide workers. The controversy is current and not likely to abate until OMB clears the final rule for publication. Once the regulation becomes final, there may be an attempt by the agricultural lobby to seek legislative repeal of the regulation.

FLSA Exemption for Administrative, Executive and Professional Employees (541 Regulations)

These regulations -- which establish the criteria for exemption from Fair Labor Standards Act (FLSA) minimum wage and overtime requirements for "executive, administrative, professional and outside sales" employees -- need to be substantially modified because

they are embarrassingly out-of-date (for example, the salary-level test to qualify for the exemption is now less than the Federal minimum wage) and a source of continuing controversy and contention.

The 541 regulations implement Section 13(a)(1) of the FLSA and establish three tests for employees to qualify for minimum wage and overtime exemption: (1) the worker must be paid "on a salary basis"; (2) the salary paid must be at least a specified amount (as noted, now less than the minimum wage); and, (3) specified tests relating to job duties and responsibilities must be met. These regulations have not been updated since 1975, affect more than 20 million workers, and are very complex and highly controversial. This complexity and the wide range of interests affected (now including State/local governments and public sector employees since 1985) have combined to frustrate efforts to modify these regulations over the last two decades.

Over the years, a variety of options for rulemaking modifications have been developed. It is also possible that failure to address these regulations through rulemaking may lead to legislative changes that would be less palatable to worker advocates.

The issue of whether to proceed with a rulemaking initiative in this area should be made as soon as possible, but informed by likely developments on the comp time/FMLA front (which could well incapacitate Wage and Hour from being able to deal with the 541 issue simultaneously) and by the outcome of Auer v. Robbins, a 541 case currently before the Supreme Court. In Auer, the court will consider the application of the salary basis test to public employees and the circumstances under which the salary basis test converts an exempt employee to a non-exempt employee.

Immigration Reform

There may be a serious effort in the new Congress to reform the current legal immigration system — governing the admission of individuals for family-reunification and employment purposes, among others. If so, the Department will have to determine how it wants to influence the shape of reforms to the employment-based immigration system.

Immigration policy has again emerged as a major national issue, largely stemming from California politics (e.g. Prop. 187 in 1994). Comprehensive immigration reform legislation in the last Congress was unsuccessful; the Congress ended up splitting off legal immigration reforms (which were not then acted upon) from measures relating to illegal immigration control (enacted) largely because of controversy surrounding proposed changes in the family-based immigration system. Certain reforms to the employment-

based immigration system have been advocated by the Administration and some were included in early versions of the comprehensive legislation being considered. However, business supported reforms generally going in the opposite direction — i.e., easing restrictions on or expanding employment-based immigration — and it appeared that the business position would have prevailed had the legal immigration reform component of the legislation survived.

It remains unclear as to whether the new Congress will seriously consider legal immigration reform as important unfinished business, whether the Administration will want to push such reforms (even in the context of welfare changes, which could well become the magnet for other reform proposals), or whether the subject will be addressed through piecemeal, issue-specific legislation originating in the Congress or from the Administration.

Nevertheless, there are immigration-related issues dealing with possible regulatory and administrative changes, and perhaps even organizational issues, that will need to be addressed in coming months — but not likely in the next 100 days.)

II. OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

Major Policy/Program Initiatives

Three-Prong Fair Enforcement Strategy

OFCCP's existing methods for determining compliance are on-site compliance reviews or complaint investigations. Using these methods, only about four percent of the federal supply and service contractor universe can be monitored. OFCCP's strategic plan calls for an overhaul of its enforcement methods in such a way that would result in an ability to examine a larger share of the federal contractor universe each year. To accomplish this, a program increase of \$20 million was requested to implement OFCCP's three-prong Fair Enforcement Strategy along with a comprehensive technical assistance strategy.

OFCCP has been sandwiched by sharp criticism from Federal contractors and Congress about overly burdensome regulatory requirements, and from interest groups about its limited monitoring capacity. The first part of the three-prong enforcement strategy calls for simplifying the regulatory requirements for contractors' written affirmative action plans. The second prong is to adopt an affirmative action plan summary report that would be submitted annually to OFCCP. The database created by these reports will provide OFCCP with a more efficient way to select federal contractors for compliance reviews than the current selection system. The third prong is implementation of a "tiered review" approach. This would allow the agency alternatives to current procedures which require an on-site visit for every contractor selected for a compliance review.

Alliances and Public Education

The past two years have highlighted the need to educate Members of Congress, the media and the general public about the effectiveness and continuing need for Federal affirmative action programs. The Secretary of Labor has been asked to participate in a high profile conference with chief executive officers of eight corporations that have exemplary equal employment opportunity and affirmative action programs as a way of publicizing best practices and good corporate citizenship. This event is tentatively scheduled for January 1997.

HOT ISSUES

Affirmative Action

Affirmative action , in general, has been a hotly debated issue in recent years in the media, within the Administration, the Congress and the courts. Although the President's review concluded with a mandate to mend and not end affirmative action, the controversy is expected to continue.

There is potential for legislative activity on affirmative action in the next Congress. Legislation is expected to be reintroduced by Rep. Canady to prohibit the use of racial and gender preferences in federal contracts and employment and other programs. It would effectively prohibit the collection of data used by OFCCP to monitor compliance with the laws it administers.

The passage of Proposition 209 in California may inspire other states to enact AA/EEO restrictions. Proposition 209 and similar efforts may provide additional support for Representative Canady's legislative effort.

By February, the affirmative action debate will need to be confronted in the press and before the Congress to fight the enactment of crippling legislation such as the Canady bill as well as potential attacks through the appropriation riders that could destroy the mission of OFCCP.

Rehabilitation Act Reauthorization

The Rehabilitation Act of 1973 will be considered for reauthorization by the incoming Congress. OFCCP enforces Section 503 of the Act, which requires that federal contractors not discriminate against and take affirmative action with respect to individuals with disabilities. It is anticipated that reauthorization will be contentious.

Other Initiatives and Issues in the Agency

Undocumented Worker Executive Order

In February 1996, an Executive Order was issued that banned the hiring of undocumented workers by federal contractors. OFCCP and the Department of Justice's Office of Special Counsel have agreed to sign a Memorandum of Understanding that sets forth procedures

for the two agencies' coordination of enforcement efforts under the executive order.

III. OFFICE OF WORKERS' COMPENSATION

MAJOR PROGRAM/POLICY INITIATIVES

REGO II/FECA Assessment System

OWCP proposes to replace the current Federal workers' compensation chargeback system with a premium-like structure modeled on private industry insurance practices.

Despite extensive cost management successes, OWCP needs to continue to stabilize its budget and provide incentives to agencies that an insurance scheme provides in state workers' compensation.

Other changes in the law have been proposed by GAO which would yield significant savings in this \$2 billion benefit program that are not part of our planned REGO legislative proposal but may well be proposed in Congress since the REGO proposal requires the reopening of the legislation.

Budget proposals in FY 1997 and FY 1998 include language allowing the Department to transfer all costs associated with Federal workers' compensation into the Employees' Compensation Fund. Beginning with budget year 2000, the costs of administration would be billed to the agencies, to be paid just as benefits are now.

Other Initiatives and Issues in the Agency

FECA legislative reforms

DOD has attempted to get the Congress to pass legislation to convert DOD beneficiaries to a lower retirement benefit. The Congress narrowly rejected the measure, ordering a GAO study instead on overall FECA reform. The Congress also ordered OPM to study the issue and make recommendations by May 1997. The Administration has avoided taking a position on overall reform, but agency interest -- like that of DOD-- the OPM report, together with the REGO II proposal, could be catalysts for renewed proposals in this area and force the issue.

The options for DOL are: 1) continue to avoid taking any position or 2) take the lead in crafting FEC reform proposals that would balance the interest of federal agencies in saving money with the need to protect federal employees injured on the job.

Transfer of Part B Black Lung Claims from the Social Security Administration to the Department of Labor

In FY 1997 we hope to see legislation passed transferring authority for "Part B claims" from SSA to DOL or, in the alternative, an Interagency Agreement between DOL and SSA. The preferred of the two options is legislation or appropriations language, which Senator Byrd has an interest in.

New Regulations for the Black Lung Program

The Black Lung Program proposes to update and streamline the adjudication of its claims process by simplifying its regulations. At this time, the proposed rule is being reviewed by the OMB and final approval of the new regulations by OMB is expected in FY 1997.

Reinvented Regulations for the FECA Program

In keeping with the Administration's goal of streamlining administrative processes by amending regulations, the FECA program has completed a comprehensive review of its regulations, and expects to issue a proposed rule in the spring. A proposed rule will be submitted for comment in March, and a final rule in August.

IV. OFFICE OF LABOR-MANAGEMENT STANDARDS

MAJOR PROGRAM/POLICY INITIATIVES

Reauthorization of the Intermodal Surface Transportation Efficiency Act (ISTEA)

The Section 13(c) program, which is authorized by the ISTEA, requires arrangements to protect the rights of affected mass transit employees when Federal funds are used to acquire, improve, or operate a transit system. The ISTEA is required to be reauthorized by September 30, 1997.

The Section 13(c) program has long been the subject of Congressional criticism and its repeal is favored by those who view the protections as unnecessary restrictions on the right of management to obtain the most cost effective means of operating transit systems.

The Federal Transit Administration (FTA) is currently preparing its reauthorization proposal, which will include reauthorization of the Section 13(c) program.

After last year's unsuccessful legislative effort to repeal section 13(c), there will probably be attempts to "reform" 13 (c) to attain similar objectives. Such efforts could take the shape of restricting the types of grants for which certification is required, mandating that grants comply with the Administrative Procedures Act or subjecting certifications to strict time limits that restricts DOL's input.

The legislative changes enacted in 1995 have already created tight deadlines for processing 13 (c) cases. There have also been attempts by the Federal Transit Administration and the mass transit industry to sidestep 13 (c) obligations with new funding and contracting arrangements that have led to serious challenges to application of 13 (c). Several departmental policy decisions affecting 13 (c) coverage for transit workers may be quite controversial from the standpoints of the unions involved, especially the Amalgamated Transit Union (ATU).

Other Initiatives and Issues in the Agency

LMRDA Program

Members of the International Brotherhood of Teamsters (IBT) would be able to file a complaint with DOL under the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), as amended, concerning the court supervised union officer election to be conducted in December following exhaustion of complaint procedures established for the election.

The Office of Labor-Management Standards is investigating complaints that trusteeships imposed over subordinate locals by IBT President Ron Carey were not imposed in good faith for a legitimate purpose, and therefore in violation of the LMRDA, but rather were, imposed because the locals support Mr. Carey's opponent, James Hoffa, in the Teamsters' international union officer election.

A decision is pending concerning whether regulations implementing the consultant reporting provisions of the LMRDA should be amended to conform to the Eighth Circuit Court of Appeals decision.

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Divider Title: _____ **A**

WOMEN'S BUREAU

Acting Director
* Ida Castro

Deputy Director
Ida Castro

Office of Administrative
Management
Wynette Wilson

Office of Policy
Analysis
and Information
Collins N. Phillips

Regional Administrators
Boston Dallas
New York Kansas City
Philadelphia Denver
Atlanta San Fran.
Chicago Seattle

Division of
Statistical &
Econ. Analysis
Harriett Harper

Division of
Legislative
Analysis
Vacant

Division of
Information &
Publications
Vacant

NOTE: * Political Appointees

WOMEN'S BUREAU

MISSION STATEMENT

The **Women's Bureau** is the single unit at the Federal level exclusively concerned with serving and promoting the interests of working women. The Bureau formulates standards and policies which promote the welfare of wage-earning women, improve their working conditions, increase their efficiency, and advance their opportunity for profitable employment.

Central to its mission is the responsibility to advocate and inform women and the public of women's work rights and employment issues. The Women's Bureau must use many tools, including development and implementation of national programs and other initiatives to fully address the needs and concerns of the approximately 62 million women in this nation's labor force.

BUDGET

(dollars in thousands)

FISCAL YEAR	DISCRETIONARY \$	MANDATORY \$	FTE
1997	\$7,751	0	76
1998	\$16,642	0	72

WOMEN'S BUREAU

I. MAJOR INITIATIVES

Advocacy For Women Moving From Welfare to Work

Welfare Reform is the number one concern of women's organizations, unions, national and state legislatures, and special interest groups. Employment and training programs are key to the successful transition from welfare to work.

As the Department's primary source of information on working women, the Women's Bureau, in collaboration with ETA, can provide strategic planning with respect to DOL's efforts to educate and train women as they move from welfare to work.

The Women's Bureau intends to focus on educational outreach to help women make the transition from welfare to work. As the Department's primary source of information on working women, the Women's Bureau can utilize its resources, expertise and networks to ensure that employment and training initiatives on behalf of women reflect their real needs. For example, the WB can use its public education campaign, "*Don't Work in the Dark*," and the proposed **National Women's Working Summit** as a forum to reach thousands of women/advocates throughout the nation that provide information on welfare reform and other important issues. Building on the successful series of **Regional Working Women's Summits** held in September 1996 in 20 cities, the **National Summit** could play a vital role in a coordinated plan of action to help move women from welfare to meaningful and stable employment.

In conjunction with ETA, the issues that the Women's bureau intends to address will focus on the legislation's impact on the Department's Workforce Development System, as well as other significant policy issues, including: limitations on education, job training and vocational education; definition of work activities; the lack of jobs to meet the growing demand for work; lack of support services and workplace protections; implementation of the voluntary exemption for battered women in the family Violence Amendment, which recognizes the relationship between violence and poverty and the role welfare can play in saving battered women's lives; creaming and stereotyping; worker displacement; and legal immigrant women. We propose that the Secretary **co-sponsor the National Working Women Summit**, which will connect via satellite thousands of women advocates and leaders to discuss policy issues affecting women, as well as host a town hall meeting or open dialogue with key leaders or organizations.

The issues that the Women's Bureau intends to address will focus on the legislation's implications for the Department's **Workforce Development system** -- as well as other significant policy issues, including: limitations on education, job training and vocational education; definition of work activities; the lack of jobs to meet growing demand; lack of

support services; lack of workplace protections; implementation of the voluntary exemption for battered women (the Family Violence Amendment) which recognizes the relationship between violence and poverty and the role welfare can play in saving battered women's lives; creaming and stereotyping; worker displacement; and legal immigrant women.

Advocacy groups want their concerns to be heard by a Departmental principal with decision-making authority. To demonstrate commitment to working women and women who want to work, the **Secretary may want to consider co-sponsoring the National Working Women Summit** connecting via satellite thousands of women advocates and leaders to discuss policy issues affecting women. **In addition to the National Working Women Summit**, the Secretary could host a town hall meeting or open a dialogue with key leaders or organizations.

The Secretary can address these issues in the first public announcement on welfare-to-work from DOL.

Fair Pay

Although the wage gap between men and women has narrowed over the last 15 years, women working full-time **still earn only 71.4 cents on the dollar**. Working women have consistently identified the need for improved pay scales as their top priority for change. This was documented in the Women's Bureau's successful **Working Women Count survey** of more than 250,000 working women nationwide (1994-95) as well as in the new "Women's Voices '96" study by Linda Tarr-Whelan's Center for Policy Alternatives.

The WB, at the request of the White House, responded by recently launching **The Fair Pay Clearinghouse** providing the ultimate source of information to women and employers by offering: (1) a nationwide database of organizations working on fair pay issues; (2) wage and occupational information on women in traditionally female jobs, showing differences by age, education, race, ethnicity, and union representation status; (3) practical information on job evaluation systems and other methods used by hundreds of employers throughout the United States and Canada to ensure fair pay to working women.

In this rapidly changing work environment, research focusing on trends evolving in the high tech field could place DOL ahead of the curve by addressing issues as they develop preventing further inequities.

The Women's Bureau's **Fair Pay Clearinghouse** will require resources to grow beyond the 130 organizations that have now joined to be responsive to working women's varying

needs for fair pay information across the United States. This initiative would further the Administration's commitments to follow up on Beijing agreements.

Downsizing

Between 1993 and 1995 almost 4.1 million women lost their jobs as a result of corporate downsizing and displacement. Once displaced, women bear a disproportionate share of the costs of displacement, experience longer periods of unemployment, are significantly less likely to be re-employed, and their new jobs pay less than their former jobs.

Working women's wages are integral to the standard of living of American families. Given the impact of downsizing and displacement on working women, the Women's Bureau added downsizing to our research and publication portfolio. In addition to issuing a fact sheet entitled, *What Women Need to Know About Downsizing*, the Bureau commissioned extensive research hoping to publish a major report and updated fact sheets that monitor and analyze the impact of downsizing on working women and their families and offer strategies that women, unions, corporations, communities, and state and the federal government can take to mitigate the negative impact of economic restructuring for women. To stay on the cutting edge of the issue, the **Women's Bureau also proposes to host a conference that brings together researchers, policy makers, corporate managers, union officials and working women.**

To ensure that the DOL stays ahead of the curve on this issue, **the Secretary has a variety of options to demonstrate his/her support.** For example, he/she can support the research and publications efforts by the Bureau; include the Bureau in the decision making processes affecting the issue; co-host a conference on women and downsizing; encourage the analysis of corporate downsizing plans through OFCCP contract compliance monitoring to ensure that dismissals are not borne disproportionately by any group; strengthen retraining and job search programs so that all workers have equal access to them (including part-time workers, displaced homemakers, former AFDC recipients); and continue to encourage corporations to invest in workers rather than assuming that job elimination is a norm of corporate life through public education campaigns.

Don't Work in the Dark: Public Education Campaign

The Women's Bureau recently launched a public education campaign, "*Don't Work in the Dark!*" which consists of three components: (a) it encourages women to get the facts about women in the workforce; (b) it helps women to understand their rights on the job; and it increases their access to information about what works from employers, unions

and organizations nationwide who are making positive changes in their workplaces. Each of our major policy initiatives is supported through this campaign.

To further these goals, the Women's Bureau Director-designate, Ida L. Castro has traveled across the country to meet with groups of women to find out what their workplace concerns and recommendations for change.

The level of resources and internal support dedicated to *Don't Work in the Dark* will determine the breadth of the campaign and how many working women are reached and educated.

II. HOT ISSUES

Welfare Reform

The issue of **welfare reform** is the number one concerns of women's organizations, labor unions, national and state legislatures, special interest groups, and working women themselves. The Women's Bureau will undertake "major initiative to assist women as they move from welfare to work -- particularly through the **National Working Women Summit**. (See above for further discussion.)

Fair Pay

For full time year-round workers, women are **still paid only 71.4 percent of men's earnings**. Improving pay scales was identified by working women as a top priority for workplace change in the Women's Bureau's successful Working Women Count survey. To meet the needs of working women, the Women's Bureau -- with the support of the Secretary -- hopes to expand the **Fair Pay Clearinghouse** (see above for further discussion).

In addition to deciding about resources for the popular **Fair Pay Clearinghouse**, the Secretary will also likely **face potential conflict** with women's groups and labor unions over fair pay legislation. The White House did not support "**The Fair Pay Act**" as introduced in the 104th Congress and advocacy groups were not pleased. Given congressional composition of the 105th Congress, the Secretary and/or President may want to hit this issue head on as a messenger for women's pay equity. Surveys show that women would support leadership on behalf of fair pay. The President did issue the first Presidential Proclamation of National Pay Inequity Awareness Day last April.

The "Fair Pay Act" could be addressed in conjunction with a second proclamation by the

President of National Pay Inequity Awareness Day in April 1997.

III. OTHER INITIATIVES

Follow up to the Beijing Conference: Continued focus on US commitments will require adequate resources, if goals are to be met.

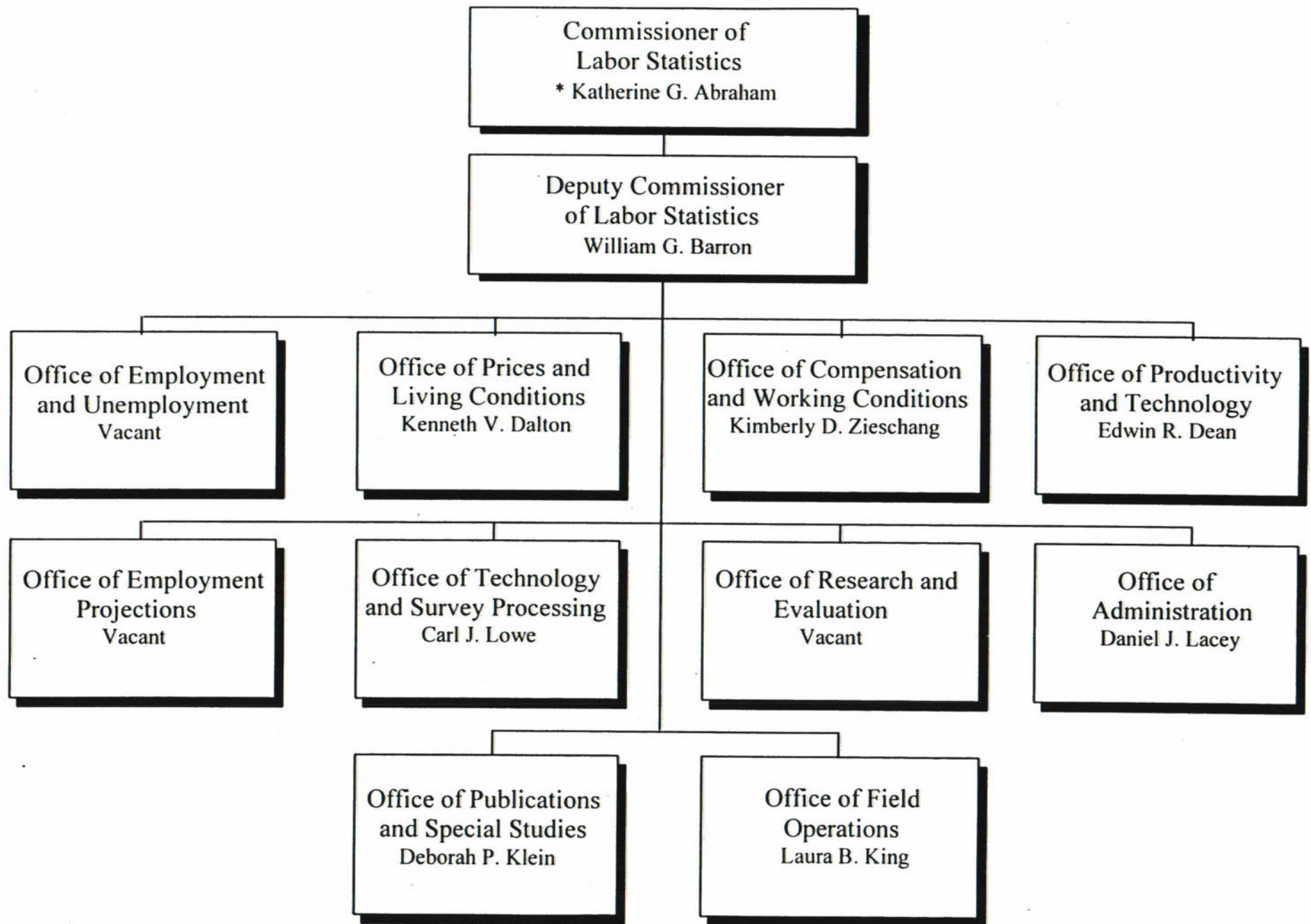
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BUREAU OF LABOR STATISTICS



NOTE: * Political Appointees

BUREAU OF LABOR STATISTICS

MISSION STATEMENT

The **Bureau of Labor Statistics (BLS)** is the principle fact-finding agency for the Federal government in the broad field of labor economics and statistics. BLS is an independent national statistical agency that collects, processes, analyzes and disseminates essential statistical data to the American public, Congress, other Federal agencies, State and local governments, business, and labor. BLS also serves as a statistical resource to the Department of Labor.

BLS data must satisfy a number of criteria, including relevance to current social and economic issues, timeliness in reflecting today's rapidly changing economic conditions, accuracy and consistently high statistical quality, and impartiality in both subject matter and presentation.

BUDGET

(dollars in thousands)

FISCAL YEAR	DISCRETIONARY \$	MANDATORY \$	FTE
1997	\$371,700	0	2,552
1998	\$391,421	0	2,645

BUREAU OF LABOR STATISTICS

MAJOR POLICY/PROGRAM INITIATIVES

Revision of the Consumer Price Index (CPI)

Fiscal Year 1997 is the third year -- and peak budget year -- of a six-year effort to revise the Consumer Price Index. Even though important milestones are scheduled in each remaining year of the project, much media and other attention is focused on the introduction of updated market basket weights in the CPI for the month of January 1998, which will be published in February 1998.

Redesign of the Current Employment Statistics (CES) Program

Few economic statistics receive as much media, analyst, and financial market attention as the monthly BLS business establishment employment data. These data are published each month in the closely-monitored BLS Employment Situation report, which also includes the unemployment rate and other labor force data from a second monthly survey, the Current Population Survey. BLS is in the process of redesigning the CES survey to incorporate modern probability sampling techniques -- a major improvement over current practice. At present, the monthly establishment employment data are derived from a very large but non-probability-based sample selected judgmentally by individual state agencies. BLS will be seeking State cooperation in striving to improve this survey sampling process, which on occasion has yielded results that later required dramatic, noticeable revision when data from the full universe of establishments became available.

Redesign of Compensation Measurement Programs ("COMP 2000")

For many years the BLS has conducted 3 separate surveys of employee compensation and benefits: the Employment Cost Index (a major economic indicator), the Employee Benefits Survey (which provides data on employer-provided benefits), and the Occupational Compensation Surveys (which are used by law to adjust Federal pay). Due to continuing budget reductions and a desire to produce a superior set of data products, BLS has embarked on an effort to integrate the 3 programs. The integrated set of surveys will be phased in over the 1997-1999 period. The use of these products for Federal pay-setting purposes is a sensitive issue to Federal employee union representatives.

HOT ISSUES

Consumer Price Index (CPI) measurement issues

Against the back-drop of the federal budget deficit, the widespread use of the Consumer Price Index for escalation purposes -- particularly for Social Security benefits and income tax brackets -- has produced a sudden renewed and intense interest in CPI measurement issues. Congressional interest in this topic has taken a variety of forms, including the appointment of a committee of economists headed by former Council of Economic Advisers chair Michael Boskin. This committee issued its report on December 4, which made short-term and long-term recommendations to BLS. Some of the recommendations concern activities BLS already has underway, while others are not justifiable at this time from the Bureau's perspective. There will be an intense and lively debate in the coming year involving CPI measurement issues.

Monthly Current Employment Report

Few Federal statistical releases are as eagerly anticipated and closely monitored as the monthly BLS report on the Employment Situation, which generally is issued the first Friday of each month. The process for release of these highly sensitive data is to some extent specified by the OMB Directive: the data are provided to the Council of Economic Advisers (for purposes of briefing the President) late in the afternoon prior to the day of public release; the press are briefed in a "lock-up" environment between 8 and 8:30 a.m. the morning of release; and the data are issued publicly at 8:30 a.m.; with policy officials not allowed to comment publicly until 9:30 am (the "one hour" rule). While the level of intensity surrounding the release of the data varies with the overall state of the economy, the political season, and other variables, release of the data each month is always a very serious, tightly controlled process which is closely monitored by the media and financial market representatives. Any deviation from the expected process can lead to an immediate strong negative reaction from the Congress, the press, and financial market representatives.

The BLS has briefed the Secretary of Labor on the Employment Situation report at 8:00 a.m. on release day for many years. Since the BLS Commissioner traditionally testifies before Congress or conducts a press conference at 9:30 a.m., there are some time constraints on the length and depth of this briefing. In addition, the focus of the briefing has varied with each Secretary and the overall economic and political environment of the time.

OTHER ISSUES

Federal Salary adjustments: BLS plays a (frequently misunderstood) role in the Federal pay-setting process by conducting surveys which allow for the comparison of private- and public-sector occupational compensation; the data are used by the Office of Personnel Management and ultimately the President's Pay Agent in making annual Federal salary determinations.

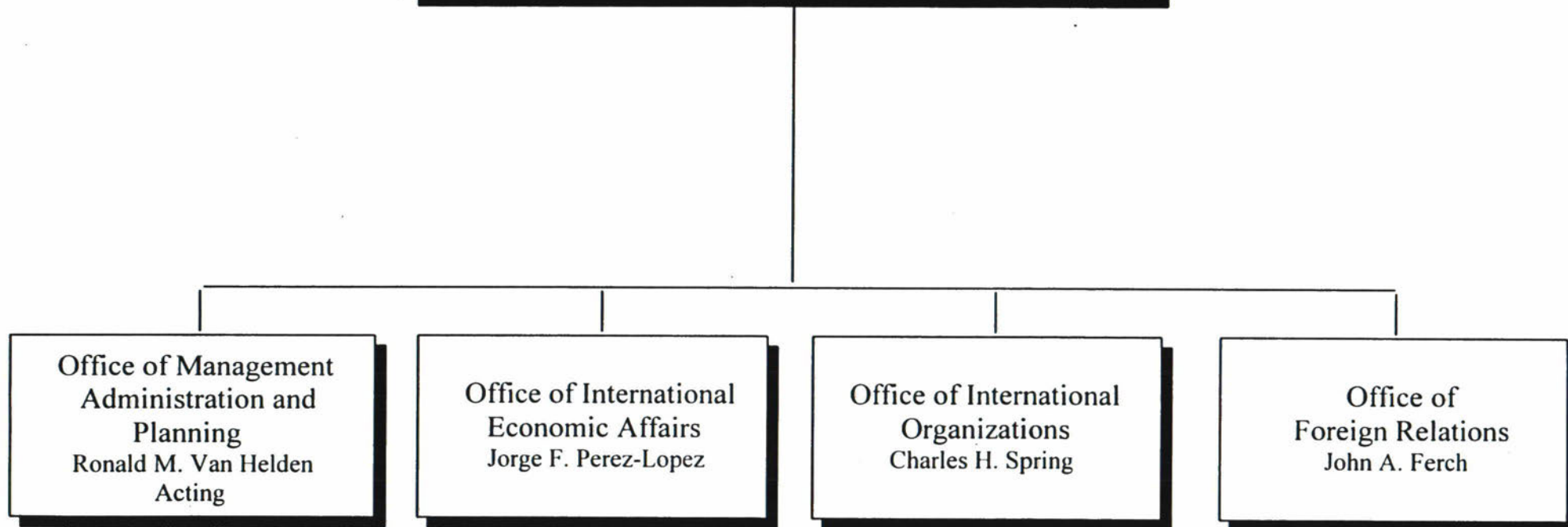
Effect of Welfare Reform on Employment : Depending on the final structure of welfare reform, BLS data on employment and unemployment will be carefully scrutinized in coming years to help measure outcome.

North American Industrial Classification System (NAICS): BLS and other U.S. statistical agencies are working with their Mexican and Canadian counterparts to implement over the next 3- 5 years a common classification system for industry statistics.

Divider Title: **B**

BUREAU OF INTERNATIONAL LABOR AFFAIRS

Acting Deputy/Under Secretary
Labor For
International Labor Affairs
* Andre Samet
Assoc. Deputy Under Secretary
Andrew Samet



NOTE: * Political Appointees

BUREAU OF INTERNATIONAL LABOR AFFAIRS

MISSION STATEMENT

The **Bureau of International Labor Affairs** (ILAB) carries out the Department's international responsibilities and assists in formulating U.S. international economic, social, trade and immigration policies affecting American workers.

ILAB also promotes respect for international labor standards to protect the economic and physical well-being of workers in the U.S. and around the world; and gathers and disseminates information on domestic and foreign labor markets and programs so that U.S. employment policy formulation might benefit from international experiences.

BUDGET

(dollars in thousands)

FISCAL YEAR	DISCRETIONARY \$	MANDATORY \$	FTE
1997	\$9,000	0	89
1998	\$12,000	0	120

BUREAU OF INTERNATIONAL LABOR AFFAIRS

I Major Policy Initiatives/Program Initiatives

Opposing Global Sweatshops and Child Labor

ILAB has undertaken a number of initiatives to respond to the growing concern about exploitative child labor. ILAB has established a special office on child labor, produced a series of child labor reports for Congress, and held a symposium. At the International Labor Organization (ILO), ILAB has supported the drafting of a new convention on exploitative child labor and has funded a number of ILO projects to eliminate child labor. In June 1996, the Secretary asked the ILO to undertake a report on the use of labeling as an approach to provide better information for consumers, and thereby lead to a reduction in the use of child labor. In addition, ILAB is providing technical assistance to a group of U.S. companies, labor and non-governmental groups, which, at the President's initiative, is working to develop and implement options to inform consumers about the labor conditions under which the products they buy are made.

Efforts in 1997 to continue to address these issues include: 1) arranging an event in early 1997 for the Secretary to formally recognize two or three apparel companies for their outstanding efforts against international child labor; 2) participating in international conferences on child labor scheduled for February 1997 in Amsterdam, and September 1997 in Oslo; 3) announcing in 1997 additional ILAB funding of ILO projects to eliminate child labor; 4) publishing a fourth Congressionally-mandated report on child labor in the footwear, sporting goods, mining and seafood processing sectors; and 5) initiating a nation-wide effort to involve school children, on a continuing basis, in educational campaigns on child labor.

Labor Standards and International Trade

ILAB has a lead role in pursuing the Administration's policy to improve the implementation of core labor standards. These core standards include (1) freedom of association, (2) the right to collective bargaining, (3) the prohibition on forced labor, (4) the prohibition on exploitative child labor, and (5) the prohibition on discrimination in employment.

There is significant public concern about exploitative working conditions abroad, and the failure to provide an adequate response to these concerns would erode support for further trade liberalization objectives.

ILAB held a symposium in 1994 on trade and labor standards at which the Secretary of Labor enunciated the policy that has guided Administration efforts on this subject.

As initial efforts to address these concerns, ILAB has (1) led the negotiation and implementing of

the labor supplemental to the NAFTA, which was the first international agreement to link trade objectives with labor law enforcement; (2) succeeded in establishing a working party in the ILO to consider the issues involved in the linkage of trade and labor standards, and (3) led the effort to get an OECD report completed which would neutralize the economic arguments against core labor standards.

Organized labor and human rights groups have supported the efforts to also establish a role for the World Trade Organization (WTO) in the effort to encourage more universal implementation of core labor standards. Most EU countries (except the UK) have also supported this objective; most developing countries have not. Opponents of the U.S. position have sought to decouple labor standards from any international trade linkage.

In addition to continuing the work in the ILO and other appropriate international fora to advance the objective of progress on core labor standards, ILAB will be involved in the following initiatives in 1997: 1) seeking fast-track trade negotiating authority from the Congress for the President -- the labor standards issue may be an important part of the debate on this legislation; 2) negotiating Chile's accession to the NAFTA labor agreement as part of the negotiations to bring Chile into NAFTA;

3) submitting ILO Convention 111 on discrimination in employment, and possibly other ILO conventions, to the Senate for ratification.

Labor Market Technical Assistance Programs

ILAB supports important foreign policy objectives through a range of labor market technical assistance programs. For example, ILAB coordinates assistance on employment services, pension plans, statistical data, and health and safety programs. ILAB uses both AID funds and funding from international financial institutions such as the World Bank.

ILAB continues to provide technical assistance programs in Central European countries in transition, including Poland, Hungary, Romania and Bulgaria.

In 1996, ILAB began to support the peace effort in Bosnia by implementing a World Bank-funded program to find jobs for demobilized militia members.

In 1997, ILAB hopes to begin an AID-funded technical assistance program in South Africa.

Working with AID and the Inter-American Development Bank, ILAB is also working on a large technical assistance program to strengthen labor ministries in Latin America. This development is of particular concern to ILAB because of the link between the initiative of the President to negotiate Hemispheric Free Trade by 2005, and the need to assure that countries in Latin America are able to adequately and effectively enforce their labor laws.

Labor Market Information: The Internationalization Process

In the last several years, there has been a growing international focus on labor market policy, and particularly what seems to be successful and what is not. In Europe, the primary domestic problem for most governments is high unemployment, and in the United States we have a concern about growing income disparities. Labor market policy is also of growing concern to developing countries -- as ideological confrontation has declined -- and the premium on labor market success has grown.

ILAB has found itself at the center of growing demands for exchanges of information on labor market policy in a wide variety of contexts.

ILAB played a central role in the G-7 Jobs Conferences in Detroit in 1994 and in Lille in 1996. Since the United States is the host of the G-7 in 1997, the question has been raised of whether the United States will want to host a G-7 labor ministers meeting. If we do not do so, the Japanese have indicated their desire to host a G-7 labor ministers meeting in September 1997.

Other scheduled labor ministerial meetings in 1997 include the OECD (Paris) in September and an APEC labor ministers meeting to be hosted by Korea in October.

In addition, ILAB is to coordinate a labor market program with the European Union in the Spring of 1997 under the President's New Transatlantic Agenda.

2) HOT ISSUES

Inclusion of Labor Standards in Fast Track Negotiating Authority

Renewal of fast track trade negotiating authority is expected to be an early legislative priority of the Administration in 1997. Such authority is necessary for the President to pursue new trade agreements, such as Chile's accession to NAFTA.

An important question is whether Congress will try to restrict the President's use of the fast track authority to negotiate labor (and environmental) elements to any future trade agreements.

ILO Convention 111 on Employment Discrimination

The Administration has committed itself to seek ratification of more ILO international labor standards. (To date, the U.S. has ratified only 12 of 177 ILO conventions). The most immediate prospect for U.S. ratification is Convention No. 111 concerning Employment Discrimination, one of the ILO's core human rights standards. We would hope to have the convention ready for submission to the Senate in early 1997.

Technical Assistance Programs

ILAB hopes to launch an AID-technical assistance program with South Africa's Labor Ministry in early 1997, potentially to be announced under the Gore-Mbeki Commission.

Together with the Veterans' Employment and Training Service (VETS), ILAB is involved in a World Bank-funded program to place demobilized militia members into job training and employment. If this program successfully establishes cooperation between Bosnians, Serbs and Croats in Bosnia-Herzegovina, there may be some event in early 1997 to recognize the progress.

ILAB has established an NGO-managed Reemployment Advisory Center for Women in Gdansk and the Silesian coal mining region of Poland. The center provides employment services, microenterprise training, credit access, and other social services for women. Poland's First Lady Yolanta Kwasniewski sent a letter in November inviting First Lady Hillary Clinton to attend the ribbon-cutting ceremony in March 1997.

International Child Labor

The Secretary of Labor is invited to address an international conference on child labor in the Netherlands on February 26. The conference is being convened by the Netherlands Minister of Social Affairs and Employment.

NAFTA Issues

ILAB has under review several submissions under the North American Agreement on Labor Cooperation (NAALC) alleging the non-enforcement of labor laws in Mexico. The Secretary may need to make some decisions related to these submissions in early 1997.

In addition, there is pending the commitment under NAFTA to open the U.S. border to truck traffic from Mexico. Opposition from the Teamsters Union and concern about Mexican truck safety led the Administration to delay opening the border to Mexican trucks as scheduled under the agreement in December 1995. Continued opposition from the Teamsters Union and issues about the application of U.S. labor law to Mexican drivers that might operate in the United States, indicate a role for the Secretary of Labor as the Administration relooks at this question in early 1997.

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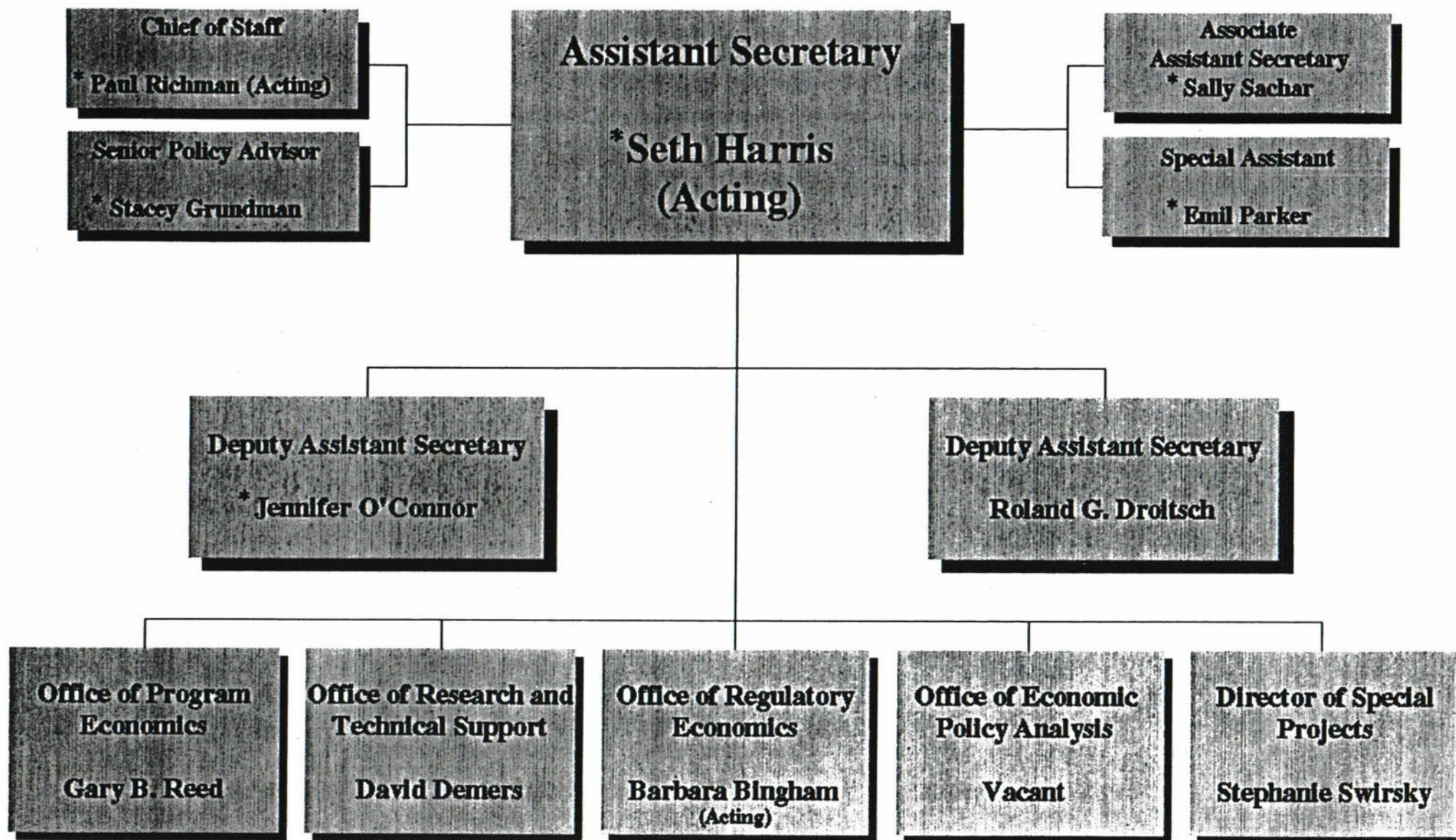
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OFFICE OF THE ASSISTANT SECRETARY FOR POLICY



* - Political Appointee

OFFICE OF THE ASSISTANT SECRETARY FOR POLICY

MAJOR POLICY INITIATIVES

OASP's MISSION

The Office of the Assistant Secretary for Policy (OASP) advises and assists the Secretary of Labor and coordinates and provides guidance to the Department's policy activities. OASP provides principal staff support to the Office of the Secretary on a wide range of policy and program areas with a principal focus on issues that cut across agency jurisdictions.

OASP coordinates several functions within the Department. These include the implementation of a National Agricultural Worker Survey, the development, implementation and oversight of workplace substance abuse programs and activities; the pilot testing of alternative dispute resolution procedures; and administering the Department's World Wide Web site on the Internet. OASP manages the policy review process for the Office of the Secretary and coordinates the regulatory program and agenda.

MAJOR POLICY/PROGRAM INITIATIVES

(in alphabetical order)

CORPORATE WELFARE

The purpose of this initiative is to identify "corporate welfare" items (i.e., questionable subsidies to corporations and wealthy individuals, in the form of direct spending programs or tax advantages); to track Administration and Congressional action on these items; and when possible, to press for elimination or reduction of such subsidies. Working with the Offices of the Counselor and the Chief Economist, OASP has prepared a corporate welfare "scorecard" and memoranda detailing the Administration's record in reducing corporate welfare.

E-LAWS

(EMPLOYMENT LAW ASSISTANCE FOR WORKERS AND SMALL BUSINESSES)

The objective of this initiative is to use information technology to improve DOL customer service by providing our clients, workers and small businesses, with better and more easily accessible information about their rights and responsibilities. It will also help to increase compliance with DOL laws and regulations and free up enforcement resources to be used in areas of more serious noncompliance. This project will also examine efficient and effective ways of applying technology to the filing of worker complaints; employer and union record keeping requirements; and filing of comments on regulatory proposals. Finally, this initiative will help the line enforcement agencies of the Department meet the requirements by the Small Business

Regulatory Enforcement and Fairness Act.

GARMENT

This multi-agency effort has used a three-pronged strategy of enforcement, recognition, and public education to carry out this initiative. This project is an example of an initiative being driven -- not by the routine enforcement agency -- but by the policy and public affairs offices. See ESA tab, Wage and Hour Division, for more information.

HEALTH CARE FOR THE UNEMPLOYED

The purpose of this White House-coordinated interagency effort is to refine the Administration's proposal to expand health insurance coverage of the unemployed that was originally introduced as part of the President's balanced budget plan in early 1996. Agencies involved in this initiative include DOL (OASP, PWBA and ETA), HHS and Treasury, as well as OMB and the Domestic Policy Council. OASP is working to develop the revised Administration proposal, now called the Worker Transition Insurance Program (WTIP). DOL has proposed a number of modifications to the proposal as currently structured. DOL is continuing to advocate with the White House-led group for these changes, which we believe will significantly improve the proposal.

The revised version of the health care for the unemployed proposal will be included in the President's FY 1998 budget.

IMMIGRATION

OASP works with OCIA, ESA and ETA, OASP to coordinate the Department's work on immigration legislation. During the upcoming Congressional session there may be an attempt at comprehensive legal immigration reform, or, failing that, reform of the H-1B Labor Condition Application (LCA) and Permanent Labor Certification (PLC) programs.

INTERNET

In September 1995, DOL established an Internet site on the World Wide Web. Usage of the site has steadily increased as information mounted on the system expanded to cover more information on DOL regulatory and non-regulatory programs. In addition, the Internet is increasingly being identified as the tool to provide the public with specialized information as in the case of the Government Information Locator System (GILS), the newly enacted FOIA requirements, the Small Business Regulatory Enforcement Fairness Act (SBREFA) and the Government Performance and Results Act (GPRA). These and other crosscutting efforts, combined with the vast array of information already mounted, have raised a variety of policy and technical issues. If the Internet is to become the primary communications tool for the Department's public information system, then careful planning as to its architecture and maintenance will be imperative.

OASP along with OASAM's Information Technology Center has been delegated the policy and technical leads on DOL's Internet effort. The system has grown to a point where critical decisions will need to be made with respect to the degree to which the Department integrates its efforts by establishing a common "architecture" (i.e., common operating systems, common "platforms", and common software). Since this involves investments in information technology, this issue should be submitted for deliberation to the newly established Capital Investment Board under the Chief Information Officer. OASP and ITC are planning to bring this issue before the Board early in 1997.

OTHER DEPARTMENT OF LABOR HEALTH CARE EFFORTS

The purpose of the "health care expansions" initiative, begun at the request of Secretary Reich, is to explore additional options to expand health coverage of the working poor and other under served populations (e.g., those moving from welfare to work). Working with PWBA, a number of options papers have been prepared. A meeting will be held shortly with HHS, in preparation for possible presentation of one or more of these options to the White House for further consideration.

OASP also assists PWBA in developing health care proposals falling under PWBA's direct jurisdiction (e.g., the retiree health legislative package).

POULTRY PROCESSING

An interagency team, led by the Counselor's Office, is working on this project. The objective of this project is to ensure that poultry processing firms are operating safely and in accordance with labor standards and secondly, to make sure that consumers are educated about the working conditions. Like in the garment industry, the poultry processing industry has been criticized for its poor working conditions, wages and benefits.

SUBCONTRACTING AND INDEPENDENT CONTRACTORS

OASP has directed a department wide effort to draw attention to need for enforcement strategies to adapt to changes in the economy and the structure of the workplace that have altered traditional workplace relationships and the way employers manage their businesses. Business is decentralizing and employers rely more on subcontractors to perform functions that, in the past, their own employees would have performed. New enforcement strategies are based on the idea that no matter how businesses change the way they do business, they still have an obligation to do everything possible to ensure that the workers involved in producing their goods or services are paid legal wages and afforded decent working conditions.

OASP has identified enforcement efforts that reflect this philosophy and incorporated them into a draft white paper that discusses this enforcement framework. We have discussed a variety of options for releasing this paper to launch an initiative focusing on the changing nature of work and its implications for workers. One favored option was to release the paper at a round table with business reporters.

In addition, we have been proceeding on a similar path regarding independent contractors -- who are generally excepted from labor law protections. We have drafted an enforcement policy statement indicating that the Department's position is to interpret definitions of "employee" broadly to cover as many workers as possible. As in the subcontracting process we have compiled examples of agency efforts in this area that are reflected in the draft.

Finally, OASP has contracted for research to document subcontracting trends (Houseman/Upjohn) and their implications for dislocated workers who find new jobs as independent contractors or in other alternative work arrangements (Farber).

UNEMPLOYMENT INSURANCE EQUITY REFORMS

OASP has assisted the UI Service to develop an expansive list of legislative and non-legislative reform proposals to increase access to UI benefits for involuntarily unemployed workers. See ETA tab for more information.

WELFARE REFORM AND LABOR PROTECTIONS

Currently OASP is analyzing how and when federal labor law protections apply to welfare participants under the recently enacted welfare reform law. In addition, OASP will review state welfare plans to determine if the plans themselves suggest potential violations; identify likely questions or problems about the state plans; and develop a plan for providing friendly and informal guidance on labor requirements to the states. Our hope is to reduce the likelihood of violations as states begin to carry out their plans and to reduce potential litigation to resolve these issues in the future.

Working with the Solicitor's office and representatives from each of the enforcement agencies, OASP has reviewed 32 state plans and identified a number of questions that states are likely to face in starting their plans. Our next steps are to complete the answers to the questions identified, develop material to provide information to the states, and determine an appropriate mechanism for communicating with states. We have been working with HHS on this effort.

WELFARE TO WORK JOBS INITIATIVE/CHALLENGE

OASP is providing assistance to ETA and the Chief Economist's Office on this Presidential initiative, announced in August 1996. The goal is to place one million hard-to-serve welfare recipients in jobs over three years, by providing funds for this purpose to States, cities and counties. See ETA tab for more information.

WORKPLACE OF THE FUTURE

The objective of this initiative is to characterize the "workplace of the future" and determine to what extent institutions, laws and regulations governing the workplace is relevant in this new construct of work. Technological, economic, and socio-cultural changes are revolutionizing the relationship of workers to their work. Increasingly individuals are not

connected physically to the worksite or economically to organizations the way they once were.

Telecommuting and the subcontracting of work are two distinct examples of the phenomena that characterize the decentralization of work -- the former is a tangible change in the workplace, the latter is a change in the employment relationship. This change in workers' relationship to their work presents many challenging questions for the Department, particularly regarding how it will continue to carry out its mission to protect workers under the laws and regulations it is charged with enforcing. For example, do the current workplace protections fit?; and how should they be enforced in an environment where workers are increasingly not at the employer's site?

This project is in its early stages. Some attention has been focussed on certain aspects, such as subcontracting. Currently we are assessing what research has already been completed that characterizes this transformation. Next we will identify the issues involved for institutions and policies governing the workplace (i.e., the laws and regulations that ensure fair labor standards, protect workers in their workplace, and the right to bargain collectively, etc.) that need to be evaluated. Finally, we will come forward with a series of recommendations. At each step, we will be calling upon policy experts and business and labor leaders to help us think through the issues involved.

Divider Title: **B**

OFFICE OF PUBLIC AFFAIRS

The Office of Public Affairs (OPA) is structured to be more than a support operation that "publicizes" activities for the department or clears press releases produced within the building. Under Secretary Reich, and Deputy Secretaries Tom Glynn and Cynthia Metzler OPA has offered a strategic perspective on DOL issues in an effort to build what the secretary has called "public capital".

OPA is run like a newsroom. Various "account executive" public affairs issue officers work with agencies to help craft their message. It's the job of OPA to get out the news. In the last 18 months, our valued-added strategy has called for discovering the news value in various programs and enforcement efforts at the department and to shape their public face.

We have found a receptive audience in reporters, network producers and national and regional columnists by working on the cutting edge of news stories and pitching appropriately. Those in the news business have responded to the news value of DOL initiatives and, in fact, have helped to build public capital for such programs like the 401(k) Fraud Campaign, the NO SWEAT garment initiative, Pension Education and the Glass Ceiling of Pensions for women, America's Job Bank, OSHA's "RSD's (Repetitive Stress Disorders) Are the Problem, Ergonomics the Solution", as well as specific enforcement actions.

During the shutdown in 1995, it was clear to us in OPA that the public needed to know what various government agencies did for them. We have used that premise to craft our advice for the Secretary and various Assistant Secretaries as they set their priorities. Before the public will care that taxpayers money is being spent to protect their health and safety, pensions, right to a promotion, family and medical leave, and equal pay they must understand what is at stake. Once taxpayers are aware that the department is about "their business", they are more likely to care about Department of Labor issues or stories. The major issues outlined by the department and led by the Secretary in late 1995 and 1996, by the way, won support in the budget process.

OPA's staff is built around news issue professionals and augmented by a strong marketing deputy and an extremely able audio visual staff. OPA creates the strategic plan for all DOL

announcements involving the Secretary. It is our belief that a particular agency can extend its reach with a Secretary's involvement and that the Department and the administration get "credit" when the Secretary is involved. We think regional roll out plans and lesser (if integral) follow ups to initial announcements benefit from the involvement of subcabinet officers.

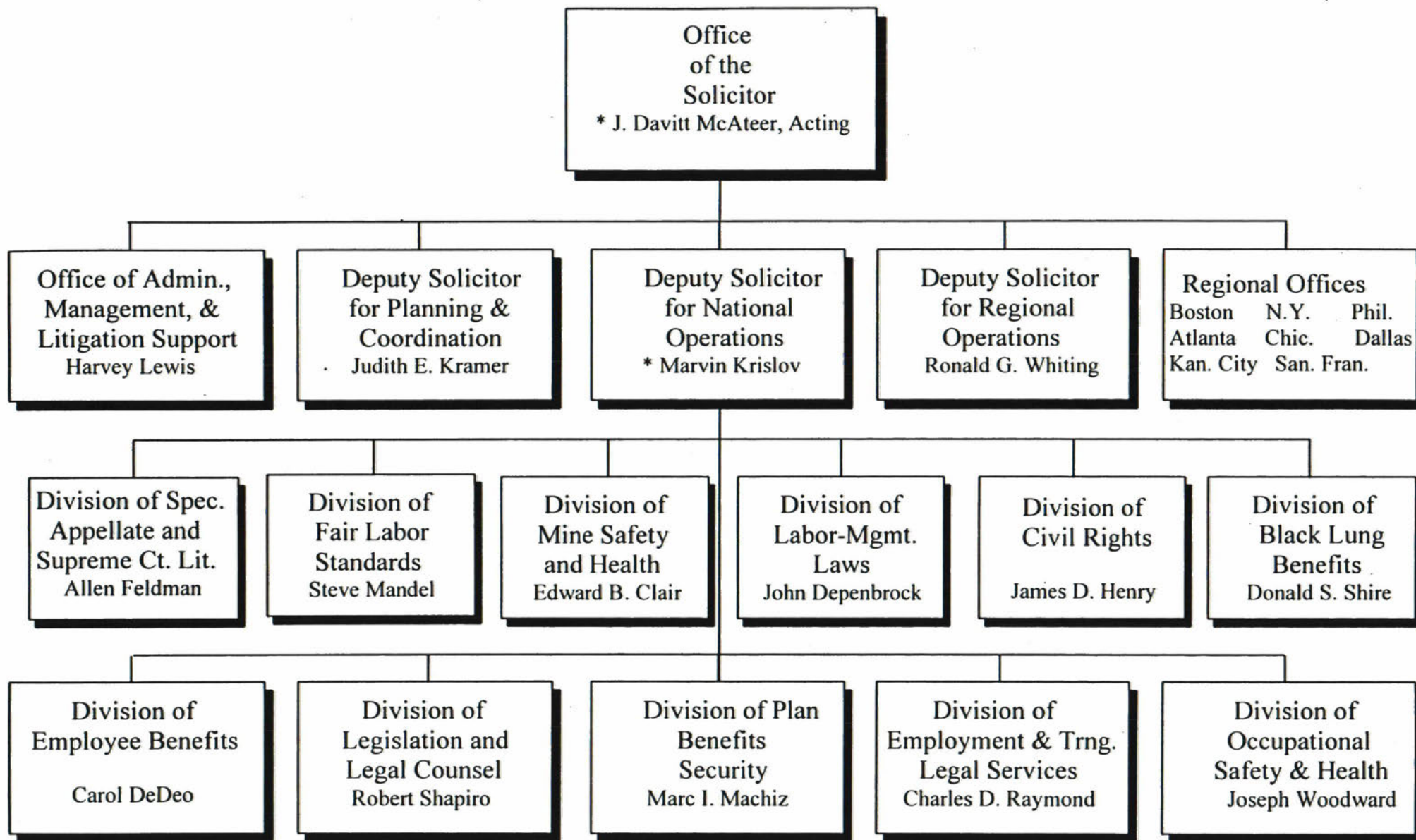
Our initial plans for DOL initiatives are built around national news pitches and same day regional opportunities which are carried out by our 10 nation-wide OPA offices.

Finally, I think you will find a very creative, talented and dedicated group of professionals in the OPA office who thrive on keeping the department on the news cutting edge. Our philosophy is to play offense, not defense (although we have a defense team); our system involves both a short term strategy to pro-actively involve the Secretary in today's news event and a long term one that crafts initiatives and "DOL products" for the future.

I believe strongly that the mission of the Labor department affects every American who works. OPA's mission is to make Americans know and support our work.

We would like to prepare a video that illustrates the success OPA has had when it is involved early in the "public capital" building process. The television coverage of initiatives and the opportunities for communicating here at DOL speak for themselves. The tapes, better than any memo, will reveal some of the successess the deparment has had with our two biggest initiatives: 401(k)Fraud and the NO SWEAT campaign. We will have the video ready the first week in January.

OFFICE OF THE SOLICITOR



NOTE: * Political Appointees

Clinton Presidential Records Digital Records Marker

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

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

Divider Title: _____ **C**

OFFICE OF THE SOLICITOR

MISSION STATEMENT

The **Office of the Solicitor (SOL)** is responsible for providing the Secretary and Departmental officials with the legal services required to accomplish the mission of the Department and the priority goals established by the Secretary. SOL is an integral part of the Department's enforcement strategy and the last step in the process. SOL is involved with prosecuting the worst actors and worst offenses, protecting vulnerable worker populations, and deterring future violations with significant penalties. Each year, SOL's activities produce and save revenues for the U. S. Treasury.

In fulfilling its mission, SOL not only supports enforcement, but promotes voluntary compliance with Departmental programs. SOL actions are a reminder that the Department can back up the work of its agencies and provide a level playing field for all American businesses.

BUDGET

(dollars in thousands)

FISCAL YEAR	DISCRETIONARY \$	MANDATORY \$	FTE
1997	\$60,000	0	683
1998	\$77,000	0	829

OFFICE OF THE SOLICITOR

MAJOR POLICY/PROGRAM INITIATIVES

Affirmative Action Regulations. SOL has worked with OFCCP to develop a proposal to update and streamline the regulations prescribing the content of affirmative action plans which federal contractors are required to write under Executive Order 11246. The regulations have not been revised in 18 years, and have been criticized as unduly burdensome. The proposed rule may rekindle the affirmative action debate, including debate over issues regarding the numerical aspects of the plans and whether they involve the use of preferences and quotas.

The proposed rule is undergoing Departmental clearance. The next step is to transmit the proposal to EEOC, followed by OMB clearance before publication in the Federal Register for public comment.

Garment Initiative. The Department is engaged in a high-visibility, multi-pronged strategy of enforcement, recognition and education to achieve compliance with the Fair Labor Standards Act in the garment industry, and SOL is working closely with Wage-Hour in this effort. The initiative has generated a great deal of positive publicity as well as mixed reviews from the industry. (See Wage and Hour)

Flex-time Amendments to the FLSA and Expansion of FMLA. The Fair Labor Standards Act requires that employees receive time-and-one-half cash wages for overtime worked. Compensatory time is allowed only for State and local government employees. Legislation was passed by the House of Representatives to allow compensatory time for the private sector under certain circumstances. The Administration developed legislation which would allow comp time (termed flex-time) under limited circumstances, with protections not afforded under the House bill. In addition, the Administration's bill would expand the Family and Medical Leave Act to allow additional unpaid leave for certain school activities and family doctor's appointments. This legislation has been publicly announced, but not introduced.

When Congress reconvenes, attention will need to be given to introducing the Administration bill. In addition, it is likely that Republican comp time bills will be re-introduced, and may move quickly, particularly in the House.

Black Lung Regulations. SOL, with OWCP, has drafted proposed amendments to the regulations implementing the Black Lung Benefits Act, which provides for the payment of benefits to coal miners who are totally disabled due to black lung disease arising out of their coal mine employment and to their dependent survivors in the event of death due to the disease. Most of the affected regulations govern the processing and adjudication of individual claims. The Department last amended these regulations almost fourteen years ago. Certain provisions

were considered onerous and unfair by claimants' organizations; the president of the National Black Lung Association met with Secretary Reich to express his organization's concern. The proposed amendments are intended to: (1) streamline the adjudication process and improve services; (2) "level the playing field" as between claimants and coal mine operators; (3) update and clarify the regulations; and (4) cease publication of unnecessary provisions.

OMB is currently reviewing the Department's proposal, having received it on October 1, 1996. The Solicitor's Office has heard informally that OMB will request a meeting to discuss the draft. The document will be published in the Federal Register for public comment after we receive OMB's concurrence.

ERISA Amicus Initiative. In January 1994, SOL instituted a program in which we monitor the thousands of private ERISA cases brought each year, and file amicus briefs expressing the views of the Department on issues raising significant policy concerns. We have filed briefs addressing retiree health benefits, benefit disputes and remedies, discrimination against people who assert ERISA rights, a fiduciary's duty to provide honest disclosure, the standard of care in investing employer stock, and a wide range of cases involving excessively broad ERISA preemption of state malpractice claims and labor laws.

During the next 100 days, we expect to file amicus briefs in a number of significant cases in the Supreme Court and courts of appeals on issues that include preemption of state taxes on, and regulation of, employee welfare benefit plans, preemption of state community property laws, and the standard of review of employer's benefit decisions.

Alternative Dispute Resolution Pilot Test. Federal agencies are increasingly turning to alternative dispute resolution (ADR) methods, primarily mediation, as an alternative to litigation. Agency use of ADR has been encouraged by President Clinton's February 1996 executive order on civil justice reform, by the National Performance Review and the (Dunlop) Commission on the Future of Worker-Management Relations, and by the Administrative Dispute Resolution Act of 1996. ADR is becoming more common in the workplace as well, although employer-mandated ADR remains controversial. The ideal system would prove cheaper and faster than litigation, while ensuring fair treatment of employees.

SOL, in cooperation with OASP, OSHA, and ESA, has developed a proposed pilot test of ADR in certain enforcement programs. The test would provide for voluntary mediation and/or arbitration by outside neutrals in selected cases. A draft Federal Register notice describing the test and seeking public comment is now under review by the Office of Management and Budget. In the next several months, the Department expects to publish the Federal Register notice, to evaluate public comments, and to determine how best to proceed with the pilot test.

HOT ISSUES

Teamsters Election. The International Brotherhood of Teamsters is currently conducting an election of International officers by mail ballot. This election is being conducted pursuant to a 1989 consent agreement that settled an action that the Justice Department brought against the union under the Racketeer Influenced and Corrupt Organizations Act. Ballots were mailed to union members on November 7, and will be tallied starting December 10. The election is being supervised by an Election Officer who was appointed by U.S. District Judge Edelstein of the Southern District of New York. It is possible that union members may challenge the election by filing a complaint with the Labor Department pursuant to the Labor-Management Reporting and Disclosure Act. If they do, the Department may investigate it and decide whether to file a Federal lawsuit to overturn the election.

Union Lobbying and Political Activities. Efforts will no doubt be revived on the Hill to ensure the practical implementation of the Supreme Court's Beck decision. The Court held in that case that nonunion workers in a union security clause workplace cannot be required to pay for union activities that are not related to collective bargaining activities. Campaign finance reform initiatives may include efforts to revive so-called "Worker Right to Know" legislation, which would require unions to notify their members of the percentage of their dues that are devoted to collective bargaining and allow them the option of paying for only those activities.

Davis-Bacon "Helpers" Regulations. The Department has advised a Federal court that it expects to issue a rule on or about December 2 on the controversial subject of whether "helpers" should be recognized on Davis-Bacon Act contracts. That law requires contractors to pay prevailing wages and fringe benefits to "classes of laborers and mechanics" who are employed on the project. The Labor Department traditionally has not recognized helpers as a separate class of workers unless they perform duties that are not performed by journeymen or laborers. Thus, in practice, helpers could rarely be used. In 1982, the Department amended its regulations to allow helpers to be used under certain circumstances, and, after significant litigation and modification, those regulations were implemented in 1991. For most of the period since that time, however, appropriations riders have barred their implementation. As a result, the regulations were suspended in 1993, and that suspension remains in effect.

The appropriations rider was lifted last April. The Department then issued a proposed rule to continue the suspension so that the agency could undertake rulemaking to consider whether the helper regulations should be changed. The Associated Builders and Contractors of America sued to require the Department to implement the suspended regulations. The December 2 rule will concern whether the suspension should continue. The Department also has advised the court that rulemaking on the substantive helper regulations will be completed by about August of 1997.

California OSHA Problem. Language in an appropriations conference report requires OSHA to report to Congress on a matter involving California's job safety and health plan. In a 1996 referendum, California voters enacted Proposition 65, which requires employers to provide certain warnings when they use products that are listed as carcinogens. That law provides fines of up to \$2500 per day, and it can be enforced by various State agencies and prosecutors, as well

as by citizen suits. Because this law applies to occupational hazards that are regulated under OSHA's hazard communication standard, it is subject to Federal preemption unless OSHA approves it as part of the State's job safety and health plan. Such approval may be granted only if OSHA finds that the State provision is "required by compelling local conditions and does not unduly burden interstate commerce." OSHA requested public comments on these issues this Fall and the public comment period closes on November 24.

Industry groups that represent chemical and other manufacturers urge OSHA to reject the California law because of the burden created by numerous citizens lawsuits. Environmental groups, on the other hand, urge OSHA to approve the law, thus immunizing it against preemption challenges that will be brought by suppliers. A number of U.S. Senators have recently become involved at the request of manufacturers and trade associations and they have requested action by OSHA by January 1. More specifically, they succeeded in including language in an appropriations conference report requiring the agency to report on its progress in resolving the matter. A decision by OSHA to disapprove the State law would set in motion a lengthy trial-type administrative proceeding that would be subject to judicial review. A decision to approve the law could be made final much sooner, but would probably be challenged in court by industry groups.

Contracting Out Employment Service and Unemployment Compensation Functions.

The Department is considering the extent to which Federal law allows States to contract out functions in their unemployment compensation and employment service agencies. Action on this issue is driven by requests from Michigan and Montana for approval to contract out functions in their UC agencies, and from Texas, which has requested approval to contract out ES local office functions. The United Auto Workers has objected to contracting out in Michigan, and the American Federation of State, County, and Municipal Employees has done the same in Texas. ETA believes that Michigan, Montana, and Texas are not the only States that are considering contracting out. If ETA is correct, the Department should consider whether to communicate general DOL policy to the States. The Secretary of Labor has considerable discretion in making determination on these issues.

The Labor Department, through ETA, is the agency with primary administrative responsibility for these programs. (Jurisdiction also rests partly with the Office of Personnel Management. That agency has statutory authority to decide whether contracting out is consistent with a Federal requirement that States must use merit systems in the administering their UC and ES programs.) In addition, ETA has the authority to determine whether contracting out a UC function is consistent with a Federal requirement that States must use administrative methods that are reasonably calculated to ensure full payment of unemployment compensation.

Unemployment Compensation for Ex-Servicemembers Who are Discharged for Homosexual-Related Reasons.

The Department is in the process of defining the statutory term "inaptitude" so as to allow some ex-service members to receive unemployment compensation after they are discharged from the military for reasons that are related to homosexuality. This issue arises under the agency's Unemployment Compensation for Ex-servicemembers program, which is administered by the States under agreements with the Secretary of Labor. One way for certain ex-service members to become eligible for this program is if the reason for their discharge is their "inaptitude." The military uses a large number of reasons for discharging servicemembers but, at least for the last several years, has not used "inaptitude" as one of them. The Department is planning to issue instructions to the States that would classify a number of the military's reasons as "inaptitude," including discharges for homosexual acts, homosexual marriages, and homosexual admissions.

The need to define the term "inaptitude" arose in a Louisiana claim in which the State awarded benefits to a claimant who had been discharged for homosexual acts. After the Labor Department notified the State that it planned to take action against the State for awarding benefits contrary to the Federal agency's instructions, the State requested reconsideration. The Department, in consultation with the Defense Department, then began to consider whether various reasons for discharge, including those relating to homosexuality, could be classified as inaptitude. The Department also has been sued by four ex-servicemembers who were discharged for reasons related to homosexuality, and who were denied compensation.

The Secretary has considerable statutory discretion to define inaptitude and could exclude from this definition discharges that are related to homosexuality. The planned instructions to the States, which would classify most such discharges as inaptitude, may resolve the Louisiana issue and might moot the claims of at least two of the plaintiffs in the court case. However, one or possibly both of the other two plaintiffs might not qualify for benefits because they apparently failed to meet other statutory eligibility criteria.

OTHER INITIATIVES AND ISSUES IN THE AGENCY

Amendments to Child Labor Regulations. The Department is drafting proposed regulations to deal with such controversial issues as whether the restrictions on the hours that 14- and 15-year olds may work should be loosened and under what circumstances 16- and 17-year olds should be permitted to drive on the job.

Overtime Pay Exemption for Salaried Workers. The Supreme Court is considering a closely-watched Fair Labor Standards Act case, Auer v. Robbins, involving the validity and interpretation of part of Wage-Hour's "salary basis" regulations.

Challenge to OFCCP Compliance review Procedure. NationsBank has sued DOL, alleging that OFCCP's method of selecting contractors for compliance reviews under E.O. 11246 violates the Fourth Amendment.

Exxon Litigation. Exxon will seek judicial review of DOL's ruling that the policy of excluding persons treated for alcoholism from "safety sensitive" jobs violated the Rehabilitation Act.

Single Shift Sampling. MSHA and NIOSH will issue a controversial joint Federal Register notice on the accuracy of coal mine dust sampling conducted over a single shift, which is likely to provoke a legal challenge from the industry.

Ventilation Rule Challenge. MSHA's underground coal mine ventilation standards were challenged by labor and management, and SOL will brief and argue the case early next year, with a decision from the D.C. Circuit expected in the spring.

401(k) Litigation and Legislation. SOL is pursuing cases involving delinquencies by employers in transmitting employee contributions to 401(k) plans.

Health Plan Litigation. SOL is pursuing cases involving the failure of insurance companies to pass on to group health plans discounts that the insurers negotiated with service providers.

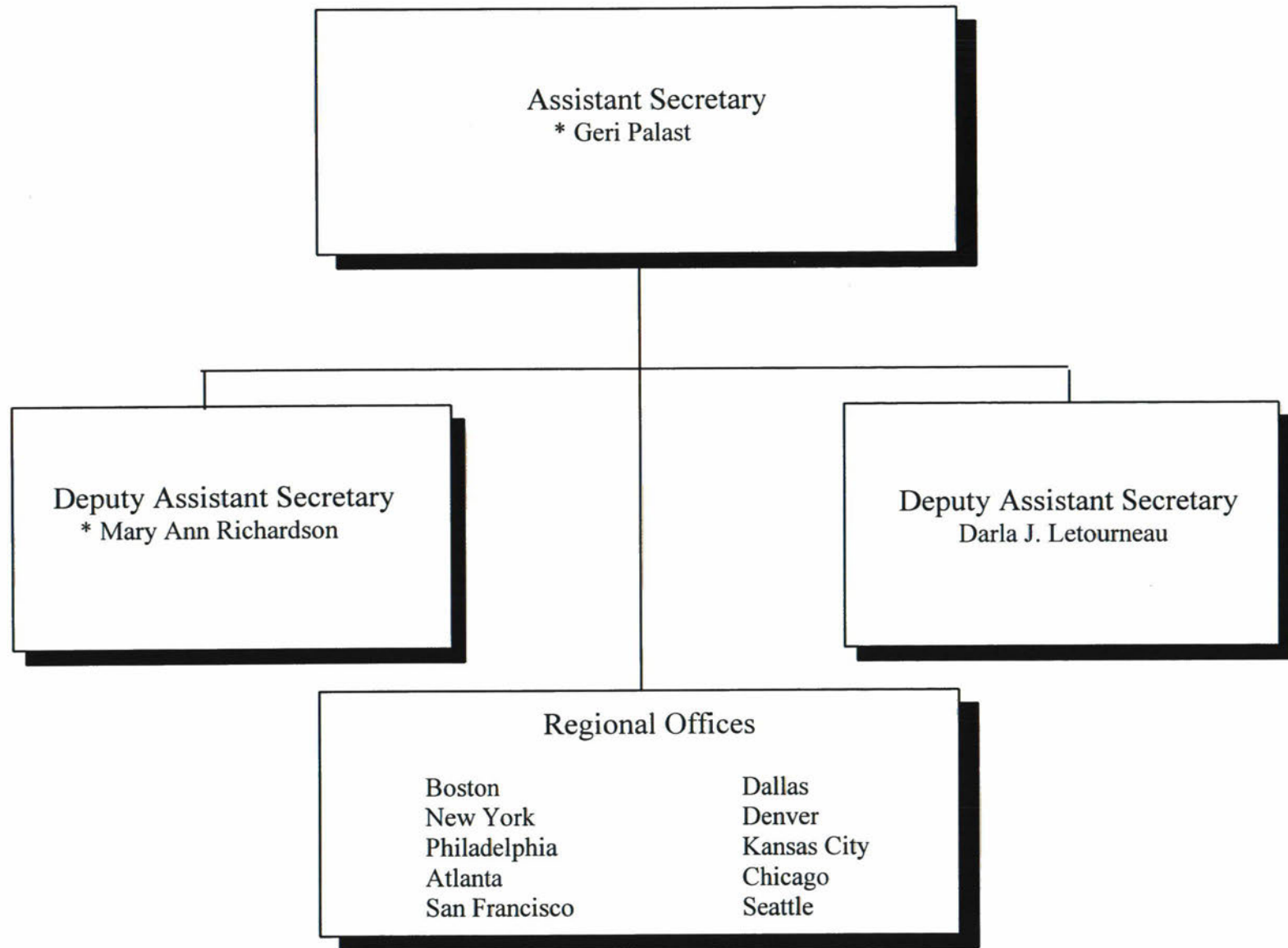
Revisions to OSHA Recordkeeping Regulations. The rule, to be issued in 1997, will put in place new requirements regarding the kinds of injuries and illnesses that must be recorded, and will be challenged in the courts and Congress.

DeCoster Egg Farm Litigation. Litigation is pending in this high-profile "sweatshop" case.

Legal Immigration Reform. Reducing legal immigration, placing limits on political asylum seekers and on the admission of relatives, and the status of children born in the U.S. to illegal alien will be considered.

Divider Title: **D**

Office of Congressional and Intergovernmental Affairs



NOTE: * Political Appointees

OFFICE OF CONGRESSIONAL AND INTERGOVERNMENTAL AFFAIRS

The Office of Congressional and Intergovernmental Affairs (OCIA) provides direction and support for all legislative and intergovernmental programs of the Department of Labor and implements decisions by and for the Secretary and Deputy Secretary for all policy and operation matters which affect legislative programs, proposals and priorities. OCIA acts as the liaison between the Department of Labor and the groups on the outside that have an interest in the Department's overall goals and objectives. This primarily relates to State and Local government, labor unions, the business community, and community based organizations. The Assistant Secretary is the principal Congressional and Intergovernmental spokeswoman and chief and legislative strategist for the Department of Labor. The Assistant Secretary provides overall guidance, supervision, and coordination of the work of the Department of Labor Secretary's Regional Representatives.

An overview of the 105th Congress and expected hot legislative issues has been provided to you by OCIA under tab number 4A . The document that follows, the Intergovernmental Affairs and Regional Operations paper, provides you with a summary of the structure and purpose of the intergovernmental section of OCIA as well as an overview of its relationship with state and local constituents.

INTERGOVERNMENTAL AFFAIRS AND REGIONAL OPERATIONS

Draft 12/13

The Office of Intergovernmental Affairs (IGA) at the Department of Labor includes both Washington based staff and the Secretary's Regional Representatives in the Regional DOL Offices. In the Washington Office, IGA interacts with the major organizations representing elected officials in Washington, conducts outreach to state and local officials on DOL legislative priorities and major initiatives, represents DOL on the implementation of key Presidential initiatives, facilitates grant notification and announcement and coordinates DOL public liaison activities. In the regions, the Secretary's Representatives work closely with all of the regional DOL staff, serve as the eyes and ears for the Secretary, travel and speak on behalf of the Department and remain an initial link to the Department for many elected and appointed officials as well as key constituency groups.

In general, state and local officials have seen a significant increase in their roles in developing legislative and Presidential priorities during the past four years. The major organizations who represent elected officials in Washington generally agree that their access to officials and increased involvement in the development of legislation beginning with the Unfunded Mandates Act marked a new era in federal, state, local partnerships. These organizations now work more closely together and on December 19, 1996, an unprecedented event is scheduled to occur in Chicago, a meeting of state and local elected leaders selected by each of the major interest groups to develop a coordinated legislative and priority issues agenda.

This memorandum will provide you with an overview of DOL IGA efforts to interact with and serve state and local officials and will describe the anticipated intergovernmental environment with respect to DOL issues at this point.

STATE OFFICIALS AND ORGANIZATIONS

Governors

Currently, there are 32 Republicans, 17 Democrats and one independent serving as governors. IGA communicates regularly with the Washington directors for these Governors and well as maintaining close working relationships with the organizations that represent the Governors. In 1997, IGA expects the Governors to continue their interaction with Washington through several organizations, primarily the Republican Governors Association (RGA), the Democratic Governors Association (DGA), and the bipartisan National Governors Association (NGA).

National Governors Association

The National Governors Association is currently chaired by Nevada Governor Bob Miller (D), a governor known for his hands-off management style and his good working relationship with other governors. Governor George Voinovich of Ohio serves as vice chair. Structurally, the NGA has several working committees. The key committees of the NGA with jurisdiction over DOL issues are the Human Resources Committee chaired by Governor Tom Carper (D) from Delaware and the Economic Development Committee chaired by Governor Paul Patton (D) from Kentucky.

The NGA will have a full legislative agenda during the 105th Congress and it is expected that ISTE and other transportation related issues will be centerpiece priorities. Workforce legislation will also be a priority and IGA expects the Governors to use their February meeting in Washington to call for action on the Hill. Governors are all focused on implementing welfare reform -- in a significant number of states the Governors are looking to the job training system to integrate their programs and to become the primary delivery system for training welfare recipients and moving them into the workforce. In addition, IGA anticipates action and involvement on comp time and related FLSA issues, devolution of UI, the gas tax, and clean water.

In addition, the NGA recently created a semi-independent entity -- "Achieve" -- as a follow-up to an education summit of business leaders and Governors. Co-chaired by Governor Tommy Thompson (WI) and Lew Gerstner, CEO of IBM, Achieve provides a new forum for basic education issues to be given priority focus. Included on their list of education issues are many that directly impact DOL.

Republican Governors Association

Governor Terry Branstad of Iowa is the newly elected chair of the 32 member RGA.

During the 104th Congress, the RGA served a leadership role in the legislative battle over welfare reform and also provided an effective forum for the governors on workforce development issues. During a recent meeting, the RGA once again defined workforce development as a key priority for the 105th Congress. A workforce development taskforce was created to work with congressional staff.

Democratic Governors Association

Governor Howard Dean of Vermont will chair the 17 member DGA.

The Democratic Governors Association meets regularly with Administration officials to discuss priorities. It is expected that workforce development legislation will also be a major priority for the DGA. As in the 104th Congress, the DGA is expected to agree with the RGA on the outline of the workforce development legislation.

State Legislators

Currently, 20 state legislatures are controlled by Democrats, 19 by Republicans and 10 are split. There are now only 17 states where the same party controls both houses of the state legislature and the Governorship. IGA communicates directly with the individual legislative leadership in each state as well as through the Committee Chairs and leadership of the National Conference of State Legislatures.

National Conference of State Legislatures

The National Conference of State Legislatures (NCSL) is a key mechanism through which IGA communicates and interacts with state legislators. Representative Michael Box of Alabama is the current Chair of NCSL. The NCSL (AFI) Committee on Education, Labor and Job Training has jurisdiction over DOL issues and has current policy positions on workforce development and FLSA reform, but not many other DOL issues. Delegate Tamara Petit of West Virginia chairs the Committee on Education, Labor and Job Training and Representative Linda Furney of Ohio and Senator Rodney Ellis of Texas serve as co-chairs.

State legislators do not have jurisdiction over many of DOL programs. In the past, the NCSL had a Labor issues caucus which provided IGA with another forum to discuss DOL issues, however that is not the case today. IGA will keep apprised of the NCSL's 105th agenda as it develops.

State Labor Commissioners

The responsibilities of labor departments vary significantly from state to state. As a result, the stature and involvement of the state labor commissioners in state and federal initiatives has little consistency. IGA communicates directly with all 50 labor commissioners and as more responsibility has been returned to the states, it has been committed to strengthening relationships with its direct state partners. This direct contact complements IGA's contact with the states through state labor commissioner's organizational forum, the National Association of Government Labor Officials (NAGLO), and the Secretary's Representatives.

National Association of Government Labor Officials

The National Association of Government Labor Officials (NAGLO) is an affiliate of the Council of State Governments and provides a forum for State Labor Commissioners to meet and discuss issues of mutual interest as well as to initiate involvement and provide input into DOL and Congressional initiatives. The current President of NAGLO is Fred Kneisler, Deputy Labor Commissioner of New Jersey. In general, the bi-partisan organization has remained neutral on many labor legislative issues. In 1997, IGA expects NAGLO to remain a forum for discussion and planning, but does not anticipate that NAGLO will become significantly more active on legislative issues.

LOCAL OFFICIALS AND ORGANIZATIONS

Mayors and City Council Members

There are over 1000 cities in the U.S. with populations of over 30,000. On occasion, IGA communicates directly with these Mayors and City Council Members. For the smaller cities, it is likely that most of IGA's interaction will be through national organizations. IGA often works through the US Conference of Mayors and the National League of Cities in order to insure it is effectively reaching a diverse group of elected officials. In addition, the Secretary's Representatives regularly visit with local officials when they are traveling.

United States Conference of Mayors

Mayor Richard Daley (D-Chicago) is the current president and recently has established 4 new task forces within the USCM to deal with his priorities -- public schools, drug control, job creation and training, and unfunded mandates. He has also established a "super" task force on welfare reform, which is chaired by Seattle Mayor Norm Rice. In addition, Mayor Paul Helmke (R), mayor of Fort Wayne, Indiana, and the first vice-president of the USCM, serves on the National School to Work Advisory Council. The Conference also has several committees which affect DOL priorities, most notably the Jobs, Education and Workforce Development Committee (chaired by Mayor Bruce Todd, D-Austin) and the Urban Economic Policy Committee (chaired by Mayor Wellington Webb, D-Denver), and a long-standing Task Force on the FLSA, a subject of great interest to a number of Mayors because of the provisions affecting public sector employees (chaired by Mayor Paul Soglin, D-Madison).

There is one issue to note in the mayors involvement with future job training legislation. During the appropriations debate in the 104th Congress, numerous conference calls occurred between the Secretary and Mayors around the country to discuss the impact that proposed cuts in job training (particularly the elimination of the Summer Jobs program) would have on their cities. As a result of those conversations, many Mayors now associate job training with Summer Youth and only think of talking to the Secretary about summer jobs or youth training and little else.

National League of Cities

The National League of Cities (NLC) is the country's oldest, largest and most representative organization serving municipal governments representing a diverse membership including Mayors, city/town councilors, and municipal officials from various occupations. More than 75 percent of NLC's direct members have populations less than 50,000 and small cities, towns and villages play an equal and key part in the activities of the NLC.

Oklahoma City Councilor Mark Schwartz was elected the 1997 President of the National League of Cities, Philadelphia City Councilor Brian O'Neill was elected First Vice

President and South Bay (Florida) Mayor Clarence Anthony was elected as the Second Vice President in the new leadership team. IGA worked closely with the immediate Past President of the NLC and Columbus Mayor Greg Lushutka and the 1996 Chair of the Human Development Committee and New Haven Mayor John DeStefano on workforce development issues and expects to continue such strong relations with the new leadership.

IGA staff recently attended the annual meeting of the National League of Cities and addressed the Human Development Committee on workforce development issues and will continue this dialogue with follow up to the relevant committees and members. In addition, the Women's Bureau with IGA assistance signed an MOU with the NLC around the Working Women's Count initiative. This MOU allowed DOL to more directly involve cities in the priority initiatives of the Bureau and educate more local elected officials and their constituents about workplace issues.

COUNTY EXECUTIVES AND COMMISSIONERS

With respect to the counties, IGA communicates regularly with county officials and works with organizations as well both at the national and regional level.

National Association of Counties

IGA maintains an excellent working relationship the National Association of Counties (NACo), the national organization for counties, and with the National Association of County Employment and Training Professionals (NACTEP), the NACo affiliate for the job training system.

NACo's overall agenda for the 105th Congress includes many labor issues. NACo's current President, Commissioner Michael Hightower (D-Fulton County), and the President-elect, Commissioner Randy Johnson (R-Hennepin County), have both stated that a priority for the organization next year is to remain visible on a number of legislative fronts, particularly with appropriations and job training consolidation. NACo was active in last year's workforce debate and we can anticipate them remaining vocal on Capitol Hill regarding the design of a workforce bill. The current Chair of the Employment Steering Committee, Commissioner Peter McLaughlin (D-Hennepin County), is very knowledgeable about workforce development issues and has made them a priority for the organization as a whole.

In 1997, the major struggle for counties will be how to make up the differences where there is no more welfare money -- this simple fact already has them scrambling. Currently, counties are totally responsible for welfare in 13 States (including California, Ohio and New York), and at least partially responsible in 10 additional States. "Fixes" to the welfare reform legislation is expected as their top legislative priority.

National Council of Elected County Executives

The National Council of Elected County Executives (NCECE) is a relatively new organization formed to provide county executives with a forum to work together. The current chair is Rick Phelps, the Dane County, Wisconsin County Executive.

NCECE has chosen to become involved in several legislative battles. For instance, In 1996, the members of NCECE spoke out forcefully during the budget discussions. IGA expects this new organization to continue to build its legislative involvement and will make itself available to education efforts on DOL issues.

CONCLUSION

As state and local officials increasingly play a larger role in the national debate on such issues as welfare and job training, IGA's relationships with those officials and the organizations that represent them will become even more crucial. This memo is a working draft designed by IGA to provide an overall summary of the intergovernmental organization as it currently exists and is to serve as the first step in ascertaining the issue agendas of the various intergovernmental groups as they exist at this time. As they develop, IGA will keep you informed of the latest developments with the intergovernmental organizations and officials and how they impact DOL initiatives.