

Outcome Goal 4.2 – Promote Workplace Flexibility and Minimize Regulatory Burden

A competitive economic environment features a regulatory structure with benefits that exceed their costs. Many employment laws and regulations were written long ago; the applicable context for them has changed considerably, yet the rules themselves have not. DOL is systematically reviewing the regulations it is responsible for enforcing, to ensure they do not unnecessarily pose barriers. In addition, DOL is conducting reviews pursuant to the Regulatory Flexibility Act of 1980 to determine if regulations have or will have a significant economic impact on a substantial number of small entities. These reviews also examine the effect on employers' compliance costs and whether the regulatory burdens of all employers, both large and small, are reduced.

Outcome Goal 4.2 indicators measure DOL's success in creating a more competitive economic environment through promotion and development of a regulatory structure that is congruent with the modern workplace. Comprehensive reviews are under way or planned for key laws and regulations governing labor standards, pensions, health care, and worker safety to determine their appropriateness. Wherever possible, DOL will follow up with changes to reduce regulatory burden to improve productivity and competitiveness, while simultaneously protecting worker rights, benefits, and safety. DOL has already made strides in modernizing its regulatory approach by 1) reinvigorating and emphasizing compliance assistance through outreach, education, and innovative programs designed to prevent violations; 2) targeting our enforcement efforts to address the most egregious problems; and 3) expanding electronic options for employers to meet their reporting obligations.

Goal (Agency) and Statement	Performance Summary	FY 2005 Costs (millions)
<p align="center">05-4.2A (OASP)</p> <p>Maximize regulatory flexibility and benefits and promote flexible workplace programs</p>	Goal achieved. Four targets reached.	See Net Cost of Programs below

Results Summary

In FY 2005, DOL reached targets associated with regulatory flexibility, flexible workplaces and cost-effective practices. DOL did not have an opportunity to pursue its goal of increasing access to health care benefit plans.

DOL published milestones for 19 regulatory initiatives that address Goal 4.2 purposes during FY 2005. Highlights include:

- ESA's Wage and Hour Division published a final rule to clarify and update child labor regulations and reflect changes in the workplace and recent amendments to the law which will eliminate confusion for employers, youths and their parents;
- ESA's Office of Federal Contract Compliance published final rules that eliminate requirements to visit employers when conducting compliance checks;
- ETA proposed changes to regulations that will greatly streamline procedures for applying for H-1B Visas in Specialty Occupations; and
- OSHA is currently conducting reviews on standards regulating excavations, methylene chloride, and occupational exposure to lead in the construction industry.

OASP developed a plan that will be used to identify DOL regulatory practices that are not cost effective and establish a baseline unit cost measure for DOL program agencies. The first part of this plan is a literature review of external studies of the cost of DOL regulatory programs. An initial assessment of several of these studies has been made.

Net Cost of Programs

The costs of achieving DOL's results in maximizing regulatory flexibility are distributed throughout the department's regulatory agencies, as it is part of their costs of operations.

Promote Flexible Workplace Programs

Performance Goal 05-4.2A (ASP) – FY 2005*Maximize regulatory flexibility and benefits and promote flexible workplace programs*

Indicators, Targets and Results	FY 2004 Result	FY 2005 Target	FY 2005 Result	Target Reached*
Develop plan to review significant regulations for maximum flexibility	N	Develop plan	Y	Y
Establish criteria and timeline for regulatory reviews	N/A	Establish criteria and timeline	Y	Y
Baseline unit cost. Develop plan to identify practices that are not cost-effective	N/A	Develop plan	Y	Y
Identify and publicize best practices for, and models of, flexible workplace practices	N/A	Develop Studies	Y	Y
Increase the percent of small employers with access to health care benefit plans ³⁴	N/A	N/A	N/A	N/A
FY 2005 Costs ³⁵			–	
			Goal Achieved	

*Indicator target reached (Y), substantially reached (S) or not reached (N)

Program Perspective

The Office of the Assistant Secretary for Policy (OASP) coordinates and tracks DOL's achievement of this goal in part through its role in directing the compilation and publication of the Department's Annual Regulatory Plan and Semi-Annual Regulatory Agenda. With OASP's assistance, DOL regulatory agencies have established plans and procedures they use to prioritize their regulatory initiatives to ensure they support this strategic goal. It is important to note, however, that most of the items on the Agenda are either not discretionary (i.e., they are required to implement new statutory requirements or court decisions) or implement policy and program priorities related to the Department's other strategic goals. During the reporting period, the Department had 22 items on its regulatory agenda that were relevant for goal 4.2 purposes and took action on 19 of them. Actions included publishing notices of proposed rulemaking, final rules, interim final rules, etc. In each case, DOL agencies ensured that these actions maximized net benefits, promoted regulatory flexibility, and replaced obsolete provisions with ones that reflect current technology and market conditions and address current business practices.

Each indicator for this performance goal measures DOL's progress in promoting flexibility in ways that are crucial to a competitive workforce: regulatory flexibility and workplace flexibility. The regulatory flexibility indicators ensure that DOL's regulation review plan emphasizes flexibility, is based on meaningful criteria that, where feasible, reflect public input, and corrects current regulatory practices that are duplicative, obsolete or not cost-effective. The workplace flexibility indicators ensure that DOL highlights and publicizes best practices of flexible workplaces and model flexibility practices and that an increasing number of small employers are able to provide their employees with access to health care benefits plans. Regulatory flexibility indicators are not typically impacted by external factors. Performance of the workplace flexibility indicator of small employer access to affordable health care plans is dependent upon passage of Association Health Plan legislation.

³⁴ This target did not come into play, as its measurement was contingent upon passage of Association Health Plan legislation, which did not occur.

³⁵ The costs of achieving DOL's results in maximizing regulatory flexibility are distributed throughout the department's regulatory agencies, as it is part of their costs of operations.

Analysis and Future Plans

DOL agencies continue to apply their regulatory review methodologies to make progress on their regulatory Agendas. Their review processes allow opportunities for public input, where appropriate, on both the selection of regulations for review and the outcomes of reviews. In the course of promulgating revised regulations, agencies conduct cost benefit analyses to help assure that the regulations maximize net benefits. DOL published milestones for 19 regulatory initiatives during the fiscal year that address Goal 4.2 purposes. What follows are four examples of these regulatory projects. OSHA is continuing its long-term effort to update standards that either reference or include language from outdated standards developed by industry or professional consensus groups. By eliminating this outdated language, DOL clarifies employer obligations and reduces administrative burdens for both employers and OSHA. EBSA is engaged in reviews of the relative benefits and burdens of existing regulations that govern application and evaluation procedures associated with its granting of prohibited transaction exemptions. Also, EBSA issued a proposed rule that would establish a procedure to allow financial institutions to distribute the assets of abandoned individual account plans to participants and beneficiaries. ESA's WHD published final rules that implement an interactive web based system for disseminating wage rates applicable for work done on contracts covered by the Service Contract and Davis-Bacon Acts.

In the fourth quarter, OASP initiated a regulatory review and clean-up project that will update references in the Code of Federal Regulations. Also in the fourth quarter, OASP began reviewing external studies of the cost of DOL regulations in order to help its analysts develop a baseline unit cost measure for DOL regulatory agencies. An initial review has focused on studies done between 1978 and 2005 that examine the cost of OSHA regulations in particular. Analysts are examining the methodology used in the studies to facilitate OASP's development of a methodology that can be applied to all DOL agencies. Plans are to develop a prototype methodology by the second quarter of FY 2006.

The Women's Bureau's (WB) Flex-Options for Women demonstration project is designed for the WB to partner with employers, including corporate executives, and business owners to mentor other employers in the development of flexible workplace practices. At the conclusion of FY 2005, this project had met 100 percent of its intermediate and outcome measures.

Management Issues

The data used for this performance goal are qualitative. These data are accurate and reliable and are collected as part of OASP's regular management processes. In accordance with the FY 2000 Treasury and General Government Appropriations Act, the Office of Management and Budget (OMB) publishes an annual Report to Congress on the Costs and Benefits of Federal Regulations. For the last several years, the reports have included lists of regulations nominated by the public for reform. DOL obtained public input on how to prioritize its regulatory initiatives in response to OMB's solicitation for nominations for regulatory reform. DOL has considered the public's nominations and has identified those items upon which it will act. Examples of nominated regulations in the 2005 report on the manufacturing sector include ESA's Family and Medical Leave Act regulations and OSHA's Flammable Liquids standard. DOL has completed action on one nomination (Permanent Labor Certification) and has established plans and schedules for taking action on the remaining nominations. The OMB report includes each agency's response to the nominations and the Assistant Secretary for Policy testified before House subcommittees twice during FY 2005 on the Department's progress in responding to the nominations and action plans.