

**STATEMENT OF
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BEFORE THE SUBCOMMITTEE ON LABOR, HEALTH AND HUMAN SERVICES,
EDUCATION, AND RELATED AGENCIES
COMMITTEE ON APPROPRIATIONS
U.S. HOUSE OF REPRESENTATIVES
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Good Morning, Mr. Chairman and Members of the Subcommittee. Thank you for inviting the Office of Inspector General (OIG) to discuss our appropriations request for Fiscal Year 1998, as well as management and programmatic issues and challenges facing both the Department of Labor (DOL) and the OIG. I am here today in my capacity as the Inspector General and my views may not necessarily reflect the official positions of the Department.

As you are aware, Mr. Chairman, Congress created the Offices of Inspector General in 1978 as independent entities within Federal agencies to conduct oversight, primarily through audits and investigations. However, the OIG within the Department of Labor is unique since we were given an additional criminal enforcement mission to identify and combat organized crime and labor racketeering in the workplace. Therefore, our Office of Investigations includes both Program Fraud and Labor Racketeering units.

My office is in the process of drafting a strategic plan which outlines some very ambitious goals for the next few years. In the context of our appropriations request for Fiscal Year 1998, there are several major components within this plan which will require sufficient resources to be implemented effectively:

- < We intend to ensure that our audit and investigative activities help the Department's programs and services reach and maintain an optimum level of performance, address key issues of interest to the Congress, and ensure that taxpayer interests are served. In doing so, we intend to expand our traditional audit and investigative functions to increase our focus on improving program performance by, among other services, providing consultation and technical assistance to the program agencies within the Department.

- < We intend to use our expertise and experience to assist the Department in its efforts to comply with the Government Performance and Results Act (GPRA). Performance accountability and results is something that we in the IG community, and certainly this OIG, have promoted for a number of years. Over the years, OIG audits and investigations of key DOL programs and operations have identified areas where performance could be improved and cost efficiencies achieved. The OIG is in a prime position to help achieve the spirit and intent of GPRA.

- < We intend to maintain, if not increase, our level of effort in combating labor racketeering. This responsibility was given to our office in 1978 because Congress recognized the need for an aggressive criminal investigative program carried out by Federal investigators who possessed a high degree of labor expertise and were shielded from political interference. We intend to utilize "industry probes," civil RICO cases, and other innovative strategies to detect and investigate a new generation of racketeers.

- < We intend, through our evaluations and inspections program, to conduct quick, objective and reliable reviews of Department programs and operations.

Our ability to achieve these goals will be largely determined by the support we receive from Congress. To this end, the OIG's Fiscal Year 1998 budget request totals \$47,046,000 and 450 full-time equivalent (FTE) positions. This request is a decrease of \$222,000 from our Fiscal Year 1997 resource level. Any reductions in audit and investigative resources will result in our having to curtail our level of effort in the areas I just mentioned.

I will now address the GPRA component of this plan in greater detail because this is a new and evolving goal.

THE ROLE OF THE OIG IN A PERFORMANCE RESULTS ENVIRONMENT

Mr. Chairman, I know that Congress, and this Subcommittee in particular, are very concerned and committed to ensuring that the programs of the Department of Labor are effective in meeting their mission. And I share that concern and commitment. As you are aware, the Department of Labor faces numerous challenges in carrying out its mission over the next several years. Chief among these challenges will be the Department's ability to comply with the GPRA, which becomes effective this October.

Implementation of the Government Performance and Results Act

With passage of GPRA, there is a new era of accountability for Government programs and services. The fundamental purpose of the law is to increase the performance of Government programs and services by identifying their impact and cost, and then measuring their return on the taxpayers' investment. GPRA will require that all Government agencies establish strategic plans with clear goals, align budgeted resources with those goals, measure performance in achieving those goals, and report the results to the Congress.

There is no question that meeting the intent of GPRA is a challenge to all of us in Government. It is my opinion, Mr. Chairman, that the Department has been making an initial good faith effort to meet this challenge. For example, the Department has been educating its various components as to the requirements of the law and has been coordinating the development of agency-specific strategic plans. The Department has also been coordinating with the Office of Management and Budget, which has overall responsibility for the implementation of the GPRA.

Nonetheless, much remains to be accomplished before DOL can effectively meet the intent of the law. First, the Department needs to ensure that all of its program agencies develop outcomes-based performance measures. It is through these types of measures that the impact of DOL programs and services can be assessed and a determination made as to where to place decreasing resources. This is particularly critical for the Department's employment and training system.

The Department also needs to continue improving its financial systems. Since the OIG began auditing DOL's financial statements, as required under the CFO Act, the Department has made significant strides in improving its financial systems and structure. For example, as a result of your Subcommittee's work, the Department is in the final stages of implementing a centralized financial management structure under the supervision of the CFO. The Department now needs to transition from financial accounting to cost accounting and needs to improve its agency-level financial systems. These two changes will be needed to ensure the Department's ability in generating the financial and cost information that will be necessary to determine the return on investment of agency programs and services. Absent these improvements, the Department will likely be limited in its ability to assess the impact of their programs, make decisions on allocation of resources, and report to Congress as required by GPRA.

Technical Assistance and Special Reviews

As part of our commitment to help the Department improve its effectiveness, and in support of the intent of GPRA, we have been expanding our efforts to provide technical assistance to the agencies of the Department, in addition to our comprehensive audit and investigative programs. We are also providing quick and objective reviews of Department programs and operations, largely in response to requests from the Department or the Congress.

For example, we have begun to provide technical assistance to various programs of the Department, as they transition to performance accountability. This includes providing recommendations on ways to maximize and measure the impact of their programs, particularly with respect to various aspects of the Department's employment and training programs. The OIG is also working with the Department in identifying and preventing overpayments to medical providers in the FECA program.

Through our evaluations and inspections program, the OIG just completed a review of a nurse visitation program being piloted in Boston for the FECA program. We found the program to be useful in facilitating the earlier and more stable return to work of able Federal employees that had been injured on the job. We also identified and communicated ways to strengthen the success of the program, including expediting second medical opinions. Our evaluations and inspections office also recently reviewed a \$344,000 training contract before it was awarded to the United Mine Workers of America (UMWA). We found that there was no bona fide reason to award the Federal money because that training was required under the UMWA collective bargaining agreement to be jointly funded by the union and management.

We intend to use a significant part of our FY 1998 resources to continue to provide these types of services to the Department and Congress. I will now turn to specific programmatic issues.

ISSUES FACING THE DEPARTMENT OF LABOR AND THE OIG

CARRYING OUT AN EFFECTIVE LABOR RACKETEERING PROGRAM

As I mentioned before, this OIG is unique because we were given the additional criminal enforcement mission to identify and combat organized crime and labor racketeering in the workplace. Our Labor Racketeering Program has been very effective over the past 20 years and has been instrumental in removing members and associates of organized crime syndicates from some of the Nation's largest labor unions. Our work has been most recently used to establish patterns of racketeering in several Civil RICO filings by the Department of Justice against corrupt unions and their officers. The OIG also works closely with court-appointed monitors in these cases to remove corrupt officials from unions and help restore democratic representation for their membership.

While the Civil RICO process has had an impact on traditional organized crime groups, our investigations are showing that the labor racketeering arena is changing. Over the past few years, we have seen a significant increase in labor racketeering activities by non-traditional organized crime groups (e.g., Russian, Asian, etc.) and by a new generation of "white-collar racketeers" such as lawyers, accountants, and brokers, who utilize complex financial schemes to defraud the public. In particular, we have seen an increase in the activities of these non-traditional criminal elements in the employee benefit plan arena.

The influence and control by traditional and non-traditional organized crime figures in the workplace continues to have an adverse impact on the economy and results in reduced competitiveness in industries, thereby creating additional costs being borne by American workers, businesses, and consumers. The strategy developed by OIG to combat this influence has been to conduct "industry probes." During these probes, all segments of a particular industry are examined to expose the corrupt relationships which form the core of the criminal enterprise. It is our opinion that this strategy will have a long-term impact by addressing the underlying causal factors of the criminal activity within the industry, and will restore stability and competition.

We have conducted large-scale industry probes in the garment, newspaper and magazine publishing, painting, and gambling industries. For example, our painting industry probe exposed the collusion between painting contractors, union officials, and organized crime. Through a pattern of bribery, kickbacks, and extortion during an 18-month period, organized crime was responsible for adding a tax of more than 10% to municipal painting contracts (totaling \$40 million) which were awarded by the local government.

Through our Labor Racketeering Program, we have also identified serious criminal activity in the employee benefits arena, particularly in health insurance and pension plans. We identified the problem of fraudulent Multiple Employer Welfare Arrangements (MEWAs) and, more recently, we have focused on the problem of "bogus unions," which are often a ruse for selling fraudulent health plans.

In the pension plan arena, we have been very successful in identifying abuses by service providers, administrators, and others, with respect to union pension funds and

investment activities. The OIG is currently conducting investigations of more than \$200 million in pension assets that are suspected of being misused or defrauded.

Mr. Chairman, the OIG Labor Racketeering Program is a “program” function, which is distinguishable from the more traditional Inspector General “oversight” functions related to audits, evaluations, and program investigations. Further, we believe that our request for budget funds to support this function needs to be reviewed from this “program” perspective. It is important to note that the nature of these investigations has changed drastically because the crooks are more sophisticated and the schemes are more complex. Therefore, these types of investigations have become more resource-intensive and require more specialized training for agents, particularly in the area of investments and securities regulations.

However, while the costs for carrying out this program have increased, our funding levels and our authorized FTE have decreased substantially. Moreover, in the past few years, the OIG has not been able to fund all of our authorized investigative FTEs or to continue to fill vacant positions due to across-the-board cuts, pay raises, and inflation. This problem has been compounded by the high costs of law enforcement geographic pay and availability pay (compensation given to criminal investigators over and above their base salary) which are mandated by law. The labor racketeering program has also experienced a steady loss of investigative expertise due to mandatory law enforcement retirements. However, we have not been able to re-build that lost expertise because we have been forced to use reductions in FTE levels to absorb the cuts and mandatory pay increases.

Mr. Chairman, we have reached a point where we are restricted in how many large-scale, in-depth, labor racketeering investigations can be initiated. Any further reductions in resources for this function will result in our having to prioritize our cases based on location and not on investigative merit, in order to keep travel-related costs at a minimum. Just as I have been concerned in the past with the effectiveness of some of the Department’s programs, I am becoming more concerned as to how my office will be able to fulfill its mission in this area and meet our performance responsibilities to Congress, given our resource limitations.

**ENSURING THE EMPLOYMENT AND TRAINING SYSTEM IS EFFECTIVE AND EFFICIENT
AND MEETS NEW LEGISLATIVE MANDATES**

With respect to employment and training, Mr. Chairman, this is a critical time for the Department to make performance and financial accountability of its job training programs a top priority. This includes establishing performance measures that are outcomes oriented, improving oversight of job training grants, and ensuring that misspent funds are promptly recovered. This issue has taken on even greater importance with the implementation of GPRA and the welfare reform legislation that was enacted in the last Congress. First, as I mentioned, the Department has a statutory requirement under GPRA to report to Congress the impact of these programs. Second, with the advent of welfare reform implementation, it is expected that the Department’s job training programs will be a major component of the strategy to train and place welfare recipients into jobs and remove them from the welfare rolls. In addition to existing programs, the Administration is proposing the creation of new DOL programs and services for this purpose, programs which will significantly add to the costs of job training.

Over the years, the OIG has conducted numerous audits and investigations of various aspects of the job training programs administered by the Department and has made numerous recommendations on ways to improve program accountability and performance. A number of these recommendations were accepted and implemented by DOL management, and others were codified when the Job Training Partnership Act (JTPA) was amended in 1992. As a result, some weaknesses of the program were addressed, particularly with respect to procurement, contracts, and accounting.

However, OIG audits of DOL employment and training programs continue to identify recurring problems, especially with respect to program performance and grant management. Our most significant finding continues to be that participants are generally placed in short-term, low wage jobs. We have consistently found this to be the case during performance audits of various programs administered under the JTPA. For example, an audit of the Puerto Rico Seasonal and Farmworker Program found that a Federal investment of \$5 million in classroom training resulted in the placement of only 17 individuals in training-related employment that lasted over 90 days, and that was at an average starting wage of \$3.90 per hour. Moreover, we found that an investment of \$1.4 million in on-the-job training (OJT) funds was of virtually no value to participants because they were trained in ordinary agricultural tasks that many had performed before and that did not enhance their employment opportunities.

We are also concerned that too many program graduates from the Job Corps Program are placed in short-term, minimum wage jobs, that are often not even related to the occupational training received. Moreover, in JTPA's dislocated worker program, where the participant pool is comprised of people with prior work experience and demonstrated skills, we have also found wages to be an issue. In an audit issued just last month, we found that the initial re-employment wage rate for former dislocated workers who were retrained was lower than that of a comparable group who had never participated in a retraining program and had obtained jobs. ETA needs to do a better job of ensuring that its programs to retrain dislocated workers result in placements in jobs that pay suitable living wages.

Improving Performance Accountability

Paramount to improving performance accountability will be the need to measure the long-term impact of employment and training services on job retention and wages of program participants. As you may recall from prior testimony before this Subcommittee, we have been concerned that the Department's performance measures in this area are largely based on inputs and outputs and not on long-term outcomes. For example, we may know how many people were trained and how many were placed in a job after completing a training program and at what wage. This is very important output information. However, what we often do not know is the more critical outcome information -- what actually happened to that program participant in the long run? Did that person keep the job? Is that person making an adequate living wage? Is that person self-sufficient?

Our own experience has been that this is very difficult to track, especially if agencies cannot access UI and Social Security Administration (SSA) wage records. While ETA has access to the UI records for UI purposes, they do not always have access to UI records for program

evaluation purposes. To effectively measure the outcomes of program participants, ETA needs consistent authority to access UI records and Social Security wage data. By the same token, as part of our oversight role, the OIG often needs to have access to both UI and SSA wage records. Not having this authority has been a problem for us in the past, and it proved to be a major impediment in our ability to assess the long-term impact of the Job Corps program on participants because we could not locate a substantial number of the individuals in our audit sample.

Improving Grant Management and Financial Accountability

As part of ensuring a successful program impact, ETA needs to place greater emphasis on grant management to ensure that funds are spent properly. Our grant audits continue to identify instances of poor grant management by grantees and poor oversight by the Department. Moreover, our investigations continue to disclose instances where funds are misused or embezzled, or where the Government has been charged for training and placement services that were not provided.

An important component of grant management is a meaningful audit program. The OIG believes a false sense of security is created by audits conducted under the Single Audit Act and OMB Circular A-133. Single audits, which are the types of audits performed for a great many of the Department's grant programs, are notorious for their lack of significant findings. Our 1991 audit report on the effectiveness of the Single Audit Act raised serious concerns about the extent of single audit coverage with respect to DOL programs, especially those administered under the JTPA.

The shortcomings of single audits as applied to JTPA, coupled with the nature of the relationship that exists between the Federal Government and its grantees, in which the Governors in effect have the primary responsibility to administer training funds, have combined to create a gap in accountability in the JTPA program. The OIG does its best to fill this gap by conducting audits and investigations within our limited resources, however more needs to be done.

Recovering Misspent Funds More Efficiently

Part of ensuring accountability in the job training system is the need to recover funds in a timely manner. While we have not conducted an in-depth review of the audit resolution process, our practical experience often demonstrates that it does not meet its primary objective of recovering misspent funds from grantees. The current process is slow and cumbersome resulting, at best, in delayed recoveries. The system needs to be streamlined to ensure that funds are recovered and utilized to serve those in need of employment and training services.

Mr. Chairman, it is our opinion that employment and training services and accountability will not be maximized nor costs minimized, as envisioned under GPRA, without adequate performance measurement and financial reporting, effective Federal oversight, and an effective recovery mechanism for misspent funds.

ENSURING PENSION ASSETS ARE SAFEGUARDED

Another programmatic issue that continues to require major departmental and congressional attention is that of ensuring the safety of pension assets. As you may be aware, current pension plan assets now total close to \$3.5 trillion. Because of the nature of these assets -- large sums of dollars, entrusted for deposit and long-term investment for a future benefit -- the potential for serious abuses exists. My office's most significant concerns in this area are that the Department effectively ensure that pension funds are deposited fully to workers' accounts in a prompt manner and that funds be safe while held in trust.

Ensuring Pension Funds are Fully and Appropriately Deposited

The Department has taken steps to help ensure that pension funds are fully and appropriately deposited by making regulatory changes which reduce the time from which contributions are withheld or paid by the employee and received by the employer and the time the contribution is considered a plan asset. However, while these regulations reduce the time in which someone could temporarily use the pension funds inappropriately and then deposit the funds without being detected, they will not prevent individuals inclined to do so from converting funds for their own use. That type of activity needs to be addressed through an aggressive criminal enforcement program. The Government continues to identify instances of employee pension contributions not being deposited properly or funds diverted for the personal use of those administering the assets. Therefore, enforcement and oversight of this area needs to remain a priority of the Department.

Last month, my office issued an audit of a project that was initiated by PWBA in May 1995 to address plan administrators' failure to remit employee contributions to 401(k) pension plans and health plans. We found that PWBA's efforts in this project had a positive impact in protecting plan assets, particularly with respect to increasing enforcement in this area as well as participant awareness of the problem. However, we also found that improvements were needed in the targeting of this enforcement initiative as well as in the accuracy and completeness of their Case Management Information data.

The audit found that PWBA had not focused its investigative resources on plans with the most serious potential for abuse. We attributed this ineffective targeting to the fact that PWBA left the development of enforcement strategies to the discretion of regional directors, but did not conduct a timely evaluation of project results. As a result, enforcement results varied from region to region. We also found inaccurate data, particularly with respect to information on the sources of cases and occurrences of fiduciary violations. The accuracy of this data is essential in enforcement planning and, when correlated with case results, crucial in assessing the success of the project.

Ensuring Pension Assets are Safeguarded While in Trust

The OIG also has long-standing concerns with respect to ensuring that funds are safeguarded while they are held in trust by plan administrators, service providers, or trustees. Chief among our recommendations in this area is the need to repeal ERISA's limited scope audit provision, which results in inadequate auditing of pension plan assets. This provision exempts

from audit all pension plan funds that have been invested in institutions such as savings and loans, banks or insurance companies already regulated by Federal or State Governments. At the time ERISA was passed two decades ago, it was assumed that all of the funds invested in those regulated industries were being adequately reviewed. Unfortunately, as we have found from the savings and loan crisis, that is not always the case.

According to PWBA, more than \$950 billion in pension plan assets (out of approximately \$2 trillion subject to audit requirements under ERISA) are not examined because of the limited scope audit provision. Currently, because of this provision, independent public accountants (IPAs) conducting audits of pension plans cannot render an opinion on the plan's financial statements in accordance with professional auditing standards. It is important to note that the disclaimer of any opinion on the financial statements includes even those assets that are not held by financial institutions. These "no opinion" audits provide no substantive assurance of asset integrity to benefit participants or the Department. Our concerns in this area have been raised in two OIG audits and have subsequently been supported by PWBA, the General Accounting Office, and the American Institute of Certified Public Accountants.

The OIG has also recommended that IPAs and plan administrators be required to report serious ERISA violations directly to the Department. This requirement will enhance oversight of pension plan assets, ensure the timely reporting of violations, and involve accountants in the kind of active role that they are supposed to play in the safeguarding of pension assets, by providing a first line of defense to plan participants through their timely and direct reporting of potential problems with employee benefit plans.

Mr. Chairman, the failure to adequately audit pension plans opens the door for many forms of fraud and abuse, including understating required contributions or degrees of risk, and overstating plan investments and valuations. Obviously, these factors can potentially lead to pension plan failures. While legislation to address these concerns has been proposed in past years, a legislative fix has yet to be enacted. It is my understanding that the Administration is working on introducing a proposal that would address both of these recommendations.

From an investigative perspective, through the OIG's labor racketeering program, we continue to identify abuses by service providers, administrators, and others, with respect to union pension funds and investment activities.

Mr. Chairman, ensuring that pension assets are safeguarded is of such importance that the OIG has prepared a 5-year audit plan of potential areas we will be exploring in the pension area.

ENSURING THE INTEGRITY OF THE UNEMPLOYMENT INSURANCE SYSTEM

Another programmatic area in which we have concerns is that of ensuring the integrity of the Unemployment Insurance (UI) system. UI benefits are the initial financial support provided to workers who lose their job through no fault of their own. Its mission, coupled with the fact that this is a multi-billion dollar program, makes monitoring and efficient operation of the UI system extremely important. Thus, we are devoting a fair amount of resources to this area.

We are very concerned about the level of fraud activity related to this program. As with any multi-billion dollar Federal benefit program, there are those, both claimants and those responsible for administering the program, who would attempt to defraud it. We continue to identify fraudulent claims for benefits by individuals and embezzlement by employees of the program (particularly at the state level). We are particularly concerned with what seems to be a rise in fictitious employer schemes perpetrated against the UI system in which individuals set up fictitious employer accounts and, after establishing themselves as a liable employer and making minimal tax payments, file numerous fraudulent claims under assumed names and social security numbers. Many of these schemes are carried out in multiple states. My office will continue to address these cases to the extent allowed by our resources.

A second major concern will be the Department's ability to assist State Employment Security Agencies in converting their computer systems to be ready for the year 2000. Failure to upgrade the computer systems to be year 2000 ready can result in inaccuracies in the calculations of length and amount of benefits, worker eligibility, and employer tax rates. The Department is aware of the need for this upgrade and is working on a plan to address this issue.

We are also concerned about DOL's recent policy that essentially permits the states to provide electronic access, for a fee, to state UI wage record information for the purpose of consumer credit verification. This "service," provided by states to private interests, is sanctioned by ETA's Unemployment Insurance Service, which issued a Program Letter in June 1996 that allows the disclosure of wage record information if certain conditions are met. The OIG is concerned about this policy and the effect it may have on program operations. The Program Letter creates a major exception to the long-standing policy of confidentiality of UI wage records.

The policy also raises questions as to whether UI administrative funds, which are federally appropriated, are being used for non-program purposes. Finally, the protection of both employer and employee confidentiality is of great concern. We will be conducting an audit in which we will examine states' contracts with the private credit services as well as their arrangements with subscribers, and will also look at controls in place to protect confidentiality and account for UI funds used for this purpose.

INEFFECTIVENESS OF DOL'S FOREIGN LABOR CERTIFICATION PROGRAMS

An important issue facing the DOL is the Department's role in the foreign labor certification process under two of its programs: the employment-based permanent program and the temporary H-1B Labor Condition Application immigration program. These programs, which cost the Government some \$50 million in appropriated funds, were found in an OIG audit to be ineffective in meeting their legislative intent of protecting U.S. workers' jobs or wages.

With respect to the permanent program, we projected that virtually all aliens who were certified during our audit period (Fiscal Year 1993) and who eventually obtained permanent resident status, were in the U.S. at the time the employer filed the application, of which three quarters were already working for the petitioning employer. We also found that, despite a costly and time-consuming recruitment process, the required test of the labor market did not result in the hiring of U.S. workers over foreign labor.

The H-1B program for temporary employment, which is intended to provide U.S. businesses with timely access to “the best and the brightest,” does not always supply highly skilled, unique individuals. Instead, we concluded it serves as a probationary try-out employment program for illegal aliens, foreign students, and foreign visitors to determine if they will be sponsored for permanent status.

Moreover, while the only protection the H-1B program provides the U.S. worker is that the employer is required to pay the prevailing wage (to protect the erosion of wages of U.S. workers), we found this was not the case. We projected that over three quarters of the H-1B employers could not document that the wage specified in their Labor Condition Application was the wage actually paid. Even where the employer adequately documented the actual wage paid, we found that 19 percent of the aliens were paid less than the wage the employer specified on the Labor Condition Application would be paid to the alien.

Overall, we concluded that while ETA was doing all it could within its authority, the permanent program was little more than a paper exercise and that the H-1B program amounted to a rubber stamp of employers’ applications. We recommended these two DOL programs be eliminated as they currently exist and, if a decision is made to continue such programs, replaced with ones that truly protect American workers’ jobs and wages. We also recommended that, if DOL has a continuing role in the redesigned program, the costs of DOL’s activities be fully recovered by charging user fees to the employers who benefit from the program.

The President’s balanced budget proposal would amend the Immigration and Nationality Act to require that employers pay user fees to cover the Department’s costs of administering these programs. While the OIG supports this provision as long as DOL is involved in the labor certification programs, we continue to believe DOL should be removed from the process unless a more meaningful role is defined.

ENSURING THE ACCURACY AND RELIABILITY OF PREVAILING WAGE DATA

The Davis-Bacon Act requires that each contractor and subcontractor involved in construction of Federal property pay its employees no less than “locally prevailing” wages and fringe benefits. The Department is responsible for determining the prevailing wage and fringe benefit rates for particular geographic areas. Labor’s Employment Standards Administration (ESA), Wage and Hour Division (WH) establishes prevailing rates through data voluntarily provided by employers and third parties, including union and trade associations.

In 1995, allegations were made that fraudulent wage data were submitted to WH and used in making a prevailing wage determination. In light of this incident and in response to a Congressional request, the OIG recently conducted an audit to assess the accuracy of wage and fringe benefit data used by the Department in prevailing wage surveys. Though the OIG did not find evidence of fraud, we discovered that much of the data was inaccurate.

Our audit found significant errors in nearly 15 percent of the survey forms submitted by employers and third parties. Significant errors were those that involved numeric values of wage

rates or fringe benefits that differed by more than 10 percent from the correct values or incorrectly reported number of workers for any crafts.

These errors were attributed to data reported by employers and third parties in 84 percent of the instances while the remaining 16 percent were attributed to errors in WH's compilation of the data. Our audit also found significant inaccuracies in 65 percent of all payroll examinations we conducted either by on-site review of employers' records or from payroll records mailed by employers.

In addition, other significant inconsistencies found resulted in wage decisions needing revisions in five states. Among these decisions, wages or fringe benefits for certain crafts were overstated by as much as \$1.08 per hour and understated by as much as \$1.29 per hour.

Mr. Chairman, erroneous data poses a threat to the reliability of prevailing wage decisions. Moreover, the survey process WH uses captures data that may not be representative of locally prevailing conditions. In order to offer the greatest assurance of obtaining accurate information, the OIG recommends that the survey process be revised to include on-site collection of the data from employers' payroll records. Additionally, the selection of contractors for participation using statistical or other independent means would prevent outcomes from being skewed by groups who more frequently respond to WH survey requests, thereby not leaving open the possibility for certain employers and third parties to exert greater influence over the wage levels that are established.

IMPLEMENTING THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996

In the next year, the Department and this OIG will be responsible for implementing and complying with the Health Insurance Portability and Accountability Act (HIPAA) of 1996. The fundamental purpose of this law is to provide greater security in workers' health care coverage and to address the issue of health care fraud. With the passage of this Act, the Department of Labor was given significant additional regulatory, disclosure, and enforcement responsibilities related to their administration of ERISA, and the Department will have enhanced authorities in the Government's effort to combat health care fraud.

Under HIPAA, the Department will have shared responsibilities with the Departments of Health and Human Services and Treasury with respect to portability, access, and renewability of health plans and for enforcement, as related to health care fraud. The Department will also have sole responsibilities for certain disclosure and enforcement activities. PWBA will be responsible for drafting regulations, providing interpretations and customer service, and conducting civil enforcement.

A challenge to the Department in implementing this law is the fact that Congress intended this to be a rapid process and built into the new law a compressed timetable for the development of regulations. In fact, plans will be subject to the portability provisions as soon as new plan years start after June 30, 1997. The Department will need to quickly educate the public on the many new requirements and protections afforded under the law and then begin enforcing those provisions. The OIG, in turn, will have additional oversight responsibilities for these new

mandates of the Department and enhanced criminal investigative responsibilities with respect to labor-related health care fraud. This includes certain ERISA-covered health care plans such as union-affiliated health plans, MEWAs, and single employer plans, as well as Federal health care programs administered by the Department of Labor, which include the Federal Employees' Compensation Act, Black Lung, and Longshore and Harbor Workers' Compensation Act programs. HIPAA provides Federal agencies involved in combating health care fraud against the Government, including this OIG, with significant new tools, such as the creation of a series of criminal violations and greater authority to utilize existing civil monetary penalties. Clearly, it is the intent of Congress that we intensify our investigative programs in this area.

The main challenge for the OIG in meeting our oversight and investigative responsibilities under this law will be allocating resources to this area, while providing adequate coverage in other priority areas, as our resources continue to erode.

FLSA INVESTIGATIONS: SELECTION AND RESOURCE ALLOCATION

At the request of this Subcommittee, the OIG conducted an audit of the Department's targeting of its investigations under the Fair Labor Standards Act (FLSA). Enforcement of this statute, which establishes minimum wage, overtime pay, equal pay and child labor requirements, is the responsibility of the Department's Employment Standards Administration, Wage and Hour Division (WH). Specifically, it was requested that we determine: 1) how WH selects individual employers for investigation under the FLSA; and 2) how decisions are made concerning the amount of time and resources devoted to an investigation.

Mr. Chairman, we determined that WH's policies with respect to the selection of employers for investigation adequately safeguards the investigation process and are consistently adhered to by staff. It is the policy of WH to investigate and resolve all legitimate complaints. Our audit found that approximately 70 percent of all WH investigations result from complaints. In order to determine which complaints get looked at first, priority is given to investigations which may yield the greatest benefit to affected employees or to those alleging potentially dangerous violations affecting employees and children safety or welfare. Consequently, once a complaint is filed and accepted, it is either assigned to an investigator for immediate action, put on the regular complaint list, or held for a directed industry initiative.

Our audit determined that the remaining 30 percent of WH's investigations are directed to industries in which problems have been identified in the past but which employ low wage workers who generally do not file complaints. In developing a directed program, national and regional WH managers meet to develop a strategic plan for the fiscal year. This broad, general framework for industry-specific initiatives is then passed to the regions and to each district and local office. A universe of employers in the directed industry is then developed by using a variety of sources including telephone directories, business and trade association listings, Standard Industrial Code listings, and local staff knowledge of employers with prior histories of

violations. From the universe of employers in the directed industry, individual employers are randomly selected for inclusion on a shorter list of employers for potential review.

With respect to how WH allocates its resources to an individual investigation, our audit found that these decisions are made initially by the individual investigator based on experience, with frequent review and approval by the District Director. It is our opinion that the policies in place with respect to the allocation of resources are effective in ensuring that resource allocations are reasonable and efficient.

Mr. Chairman, this concludes my prepared statement, I would be pleased to answer any questions that you or other Subcommittee Members may have regarding our appropriations request or the programmatic issues I have raised.