

## Top Management Challenges Facing the U.S. Department of Labor

The following are the areas the Office of Inspector General (OIG) considers to be the most serious management and performance challenges facing the Department of Labor (DOL).

- Unemployment Insurance: Overpayments, Identity Theft Fraud, and Funding
- Integrity of Foreign Labor Certification Programs
- Financial and Performance Accountability
- Information Technology and Electronic Government
- Security of Pension Assets
- Workforce Investment Act Reauthorization
- Grant Accountability, Performance, and Effectiveness
- Effectiveness of Mine Safety and Health Programs
- Addressing Issues that Require Joint Action with Other Federal Entities in the Areas of:
  - Unemployment Insurance Administrative Charges
  - Cash Balance Pension Plans
  - Black Lung Disability Trust Fund Indebtedness
  - Human Capital Management

### Unemployment Insurance: Overpayments, Identity Theft Fraud, and Funding

Enhancing the integrity and solvency of the Unemployment Insurance (UI) system is a challenge to DOL given the program's scope and vulnerabilities. The UI program paid over \$41 billion in income maintenance benefits to workers during the first three quarters of FY 2003. These benefits were financed by employer taxes and paid out by states under a Federal framework. Among the OIG's continued concerns about the UI program are its financial stability and susceptibility to fraud schemes involving identity theft. We believe that reducing overpayments, whether inadvertent or the result of fraud, and ensuring the unemployment trust fund (UTF) has adequate reserves are key to safeguarding this program for American workers.

**Overpayments and the BAM system.** DOL's Benefit Accuracy Measurement (BAM) system, which uses sampling techniques to estimate total improper payments in the UI system, projected approximately \$4 billion in overpayments for calendar year 2002. A recent OIG audit of the BAM system found that the system accurately detected and reported overpayments. However, we found that the Employment and Training Administration (ETA) did not use BAM information to strengthen internal controls over benefit payments, costing the UI program millions of dollars every year. We concluded that changes must be made to policies and procedures that will make overpayment prevention a top priority by ETA. For example, based on our best practices analysis of state UI operations, we concluded that ETA working with states to expedite the implementation of new hire database con-

nectivity in 10 states, and increasing its usage in another eight states, could save the UTF an estimated \$428 million annually.

#### **Identity Theft and Organized Crime Activity in Unemployment Insurance Fraud.**

OIG investigations have identified several methods used to defraud the UI system that have resulted in substantial losses to the UTF. Of greatest concern are identity theft schemes, which involve the use of stolen identities to apply for UI benefits. Recent OIG investigations have demonstrated both the scope and potential monetary losses associated with identity theft fraud. In two California cases the OIG identified a total of over \$11 million in losses. One of those cases involved 3,000 stolen identities. In both investigations, non-traditional organized crime groups were involved. The OIG is seeing more of these “hybrid” cases, which involve extensive program fraud against DOL programs coupled with the involvement of non-traditional organized crime groups.

The OIG also continues to uncover UI check counterfeiting schemes and fictitious employer fraud, wherein an individual or group creates a fictitious company and obtains UI benefits for alleged former employees. We are extremely concerned that telephone and electronic claims, which eliminate the need for applicants to appear in person, will enhance the program’s vulnerability to these abuses. To better combat UI fraud, the OIG has recommended enhanced investigative training for state UI personnel, which focuses on fraud prevention and detection, sharing information about common fraud schemes, and best practices used by the states. The OIG and ETA continue to work together to provide state employees training of this type.

**UI Trust Fund Solvency.** The national unemployment rate has increased over the last three years from 4% in FY 2000 to a rate of 6.1% as of August 2003. As of September 30, 2002, the Department estimated that, should a severe recession occur, net UTF assets would decline by \$71.1 billion from FY 2003 to FY 2005, possibly requiring borrowing from the Treasury to meet projected needs. As of September 30, 2003, 32 states were reported by DOL as not minimally solvent. The OIG remains concerned that states may not have adequate reserves to meet the UI compensation demands on their trust funds.

#### **Integrity of Foreign Labor Certification Programs**

The Department is challenged with ensuring the integrity of its foreign labor certification programs. These programs enable U.S. employers to hire foreign workers when qualified American workers are not available or when admitting foreign workers does not adversely impact the job opportunities, wages, and working conditions of U.S. workers and legal residents. Before hiring foreign laborers, participating employers must apply to DOL for certification that the conditions of these programs are being met. Once the labor certification is granted, the foreign workers involved may obtain visas to live and work in this country.

The OIG is concerned about demonstrated fraud against DOL labor certification programs and the integrity of the foreign labor certification process itself. The abuse of labor certification programs may result in economic hardship for American workers or the abuse of foreign workers, and the admission of aliens by fraudulent means invites possible national security risks.

**Problems with the Labor Certification Process.** ETA is responsible for approving employers' applications that ultimately allow aliens to work in the United States. However, its role in the labor certification process continues to be perfunctory in the Permanent Alien Labor Certification (PLC) program, H-1B Specialty Workers program for highly qualified individuals in specialty occupations, and H-2A Temporary Seasonal Agricultural programs.

- **The Permanent Labor Certification:** Under a new ETA system called Program Electronic Review Management, employer applications would be electronically submitted and processed. A recent OIG assessment concluded that, while the system will significantly reduce the time required to process applications, it will eliminate most human screening of certification applications received. The OIG is concerned that this automated approval system may lead to an increase in program fraud due to fewer controls over application information.
- **H-1B Specialty Workers:** On labor condition applications for the H1-B program, employers declare they will pay foreign specialty workers appropriate wages and follow workplace guidelines. Under current law, DOL must approve the application if it is complete and free of obvious errors. Without the authority to validate information on the application, the DOL's role in this program does little to add value to the process of protecting American jobs and wages.
- **H-2B Temporary Nonagricultural Program:** Although DOL must certify or deny employers' applications for the H-2B program, its certification is only advisory to the Bureau of Citizenship and Immigration Service (BCIS). The BCIS may grant visas to foreign workers despite DOL's denial of the application. In our view, DOL resources expended on this program have little benefit to the U.S. worker.

**Labor Certification Fraud.** The OIG continues to identify fraud against DOL foreign labor certification programs. These cases involve fraudulent labor certification applications that are filed with DOL on behalf of fictitious companies or that use the names of legitimate companies without their knowledge or permission. ETA has worked with OIG by providing access to its databases and developing revised applications that would assist in automated fraud detection, among other things.

OIG work has shown that corrupt immigration attorneys and labor brokers collect hefty fees from foreign workers for the certifications. For example, the owner of Central Migration, Inc. pled guilty in April 2003 to visa fraud for conspiring with others to forge alien employment certifications. A joint investigation of this case led by the OIG revealed that the owner falsely claimed to be an attorney and filed over 900 fraudulent certification applications, charging foreign workers between \$4,500 and \$8,000 per certification.

Moreover, the OIG is concerned about the vulnerability of the DOL's Foreign Labor Certification programs to fraud by non-traditional, transnational organized crime groups, including Eastern Block and Asian groups. These groups engage not only in activities traditionally associated with organized crime such as extortion, but also in immigration fraud and fraud against DOL programs.

### Financial and Performance Accountability

In order to manage DOL programs for results and fully integrate budget and performance as envisioned by the President's Management Agenda (PMA), the Department needs timely financial data, a managerial cost accounting system that matches cost information with program outcomes, and quality performance data. In addition, the Department is challenged to obtain quality information from audits conducted under the Single Audit Act, which cover over 90% of the Department's expenditures, and to strengthen internal controls on the Federal Employee Compensation Act (FECA) program. While DOL has received top marks for progress on the PMA scorecard for financial performance and budget and performance integration, the Department faces challenges in each of these areas.

**Financial Accounting.** The Department faces a major challenge as it develops a new core accounting system to replace the existing 14-year old Department of Labor Accounting and Related Systems (DOLARS). Like DOLARS, the new system will serve as the central repository for all DOL financial data. As such, it will be the foundation for all financial management activity, including production of DOL's Standard General Ledger, preparation of the Department's financial statements, and maintenance of various accounting subsystems. Among the challenges the Department will encounter are: fully testing the system before, during, and after launch; performing validation and verification of data transferring from the old to the replacement system; and ensuring that the system fully meets Federal financial system requirements and users' needs. The Department will need to take full advantage of lessons learned from recent system implementations as it seeks to meet the challenges of the new accounting system. The OIG stands ready to consult with the Department as appropriate, and will provide audit oversight as the system is implemented.

**Managerial Cost Accounting.** The OIG's report on the Department's FY 2002 financial statements included our opinion that DOL was not in substantial compliance with the Federal Financial Management Improvement Act (FFMIA) because DOL had not complied with managerial cost accounting requirements in Federal accounting standards. While the Department subsequently determined that DOL was in substantial compliance with the FFMIA, as allowed by the Act, we maintained that DOL had not implemented managerial cost accounting in accordance with Federal standards. This was because costs were not reported at the required level, and there was no integrated system DOL could use to manage programs on a day-to-day basis. We recommended that the Chief Financial Officer ensure the development of a comprehensive Department-wide managerial cost accounting system.

In May 2003, the Department issued its Managerial Cost Accounting Plan of Action that called for a 14-month timeframe to implement initial managerial cost accounting capability across DOL. Among the Plan's objectives are to make progress toward demonstrating substantial compliance with Federal financial reporting requirements, to complete initial DOL-wide implementation by the July 2004, and to support the Department's FY 2006 budget process. We will continue to monitor and assess the Chief Financial Officer's implementation of DOL's managerial cost accounting plan to determine its effect on financial and performance reporting.

**Quality Performance Data.** Most program results data required by DOL to measure attainment of its strategic plan goals is generated by states and other sources below the Federal level. This presents challenges for ensuring data quality and evaluating program effectiveness. Past OIG audit work has disclosed high error rates in grantee-reported performance data, which hamper the Department's ability to gauge the success of programs. Obtaining statutory authority to access the National Directory of New Hires and the Social Security Administration wage record database would also enhance the Department's ability to evaluate programs particularly in the area of employment and training programs.

ETA initiated a data validation project to create more precise programming specifications and standards for use in validating that grantee-reported data on the Workforce Investment Act, Trade Adjustment Assistance Act, and other ETA programs are correctly reported. A timeline published by ETA anticipates that states/grantees will finish validating 2002 data for some programs and begin submitting validation output reports to ETA in April 2004. The OIG will continue to follow ETA's progress in implementing the data validation project to assure the reliability of program data.

**Single Audit.** The Department relies on the Single Audit Act to provide audits for over 90% of its expenditures, including grant costs and UI benefit costs. The OIG is concerned about the adequacy of information being provided to the Department in these audits, which are conducted by public accountants or state auditors and procured with DOL grant funds. Quality control reviews we conducted found serious deficiencies in single audits, including inadequate sampling, which would make the audits unreliable. As a result, the OIG continues to monitor and evaluate single audits, and will work with DOL's grantor agencies to improve their monitoring and evaluation activities. The OIG will continue our multi-year review of single audit reports to determine the adequacy of the audit coverage and whether DOL can continue relying on single audits for financial management purposes. Further, we are working with the National Single Audit Sampling Plan project to assess the quality of Single Audits government-wide. We believe this will improve the quality and usefulness of single audits, to the benefit of DOL and other Federal agencies. However, the Department through its monitoring should also ensure that grantees procure quality audits and that the results of these audits are fully utilized by the grantees and the Department to improve programs.

**Internal Controls on the Federal Employee's Compensation Act Program.**

Internal control weaknesses relative to medical evidence used to determine eligibility in the Federal Employees Compensation Act (FECA) program increase the risk of improper payments to FECA claimants across the Federal government. An FY 2003 OIG audit concluded that the primary control ensuring that claimants submit medical evidence to support continuing eligibility for compensation and medical benefits is not effective, increasing the susceptibility of this multi-billion dollar program to fraud and overpayments.

Claims Examiners (CE) are required to obtain and review medical evidence on a periodic basis in order to determine claimants' continuing eligibility for compensation payments. Our audit found that in 18 percent of sampled cases where current-year medical evidence was required, the case file did not have current medical evidence. In most of these cases, it

appeared the claimant did not seek medical treatment during the current fiscal year as no medical bills had been processed. Our audit found that the lack of current medical evidence appeared to be due to OWCP's failure to comply with its procedures, which require the CE to obtain and review medical reports and, if such reports are not received, to direct the claimant to undergo a medical examination. We determined that this was a procedural issue rather than a lack of responsiveness on the part of the claimant. Absent medical evidence, OWCP could not make a determination as to whether benefits should be suspended or terminated. Without adequate procedures for obtaining and reviewing current medical evidence, the risk of improper payments increases.

### Information Technology and Electronic Government

Maintaining the security of DOL information technology (IT) systems and data is vital, because it relates to key economic indicators and the payment of billions of dollars to workers. The Department will be challenged to prevent unauthorized access to its systems and networks in an expanding electronic government environment. Likewise, DOL must take care to adequately plan and manage IT system initiatives that use new technologies as it strives to deliver high quality services to the public. Continued improvements to IT security policies and correction of security weaknesses identified through the audit process will be key to this effort.

**Computer Systems Security.** Threats to the Department's information systems from unauthorized access remain a concern for the DOL. This is especially true as web-based technologies and wireless networking proliferate. DOL's implementation of E-Government merited a "yellow" rating on the President's Management Agenda scorecard and a "green" score for progress. The open environment characterized by new technologies and increased public access through E-Government lends itself to increasingly sophisticated attacks on IT systems.

**Information Systems Planning and Implementation.** DOL continues to stress the importance of acquiring and developing the best computing power to deliver high quality services to the public, while at the same time lowering overall life cycle and program costs. Because of this, the Department must adequately plan and manage systems projects that implement new technologies. Two problems OIG identified in DOL systems development activities were a lack of effective planning for major system initiatives, and failure to ensure that experienced and qualified project management was hired. The Administration is now tasking all Federal organizations to ensure that qualified Project Managers are hired for IT systems related projects. We view this as a positive step toward DOL's continued development and improvement of sound, cost-effective, IT systems.

**DOL Security Efforts.** During FY 2003, the OIG performed audits of 23 of the DOL's 82 sensitive systems in accordance with the Federal Information Security Management Act (FISMA), and followed up on actions by DOL agencies to address security weaknesses. We concluded that, in FY 2003, the Department maintained consistent focus on improving its information security program through use of its Plans of Action and Milestones (POA&Ms) process. The Department made notable progress in the areas of security training and awareness, physical security, and system security integration. Our



system audits also identified weaknesses in system security control areas including Certification and Accreditation of systems, Contingency Plans, and Risk Assessment, which the Department plans to address with a new model for risk assessments.

Overall, we consider DOL's information systems to be reliable and adequately safeguarded. However, with advances in e-Government and technology, implementing and improving upon security policies and guidance to DOL programs will remain critical. The OIG continues to recommend that this could be best accomplished by a Chief Information Officer (CIO) who is organizationally independent within DOL and focuses solely on IT issues, much as the Chief Financial Officer is organizationally independent. The Department holds that its current organizational structure, in which the CIO is also the Assistant Secretary of Administration and Management, is working.

### Security of Pension Assets

Protecting the pensions of American workers remains a significant challenge to the Department. DOL administers and enforces Title I of the Employee Retirement Income Security Act of 1974 (ERISA), which aims to protect the interests of participants in employee benefit plans. The Employee Benefits Security Administration (EBSA) administers the program, overseeing about 730,000 private pension plans and millions of health and welfare plans covered by ERISA. These pension plans hold over \$4 trillion in assets and cover more than 45 million workers. Enhancing their security will involve expanding existing safeguards and enforcing pension protections.

**Safeguards to Protect Pension Assets.** The OIG has long advocated that ERISA be amended in order to increase protections for pension plan participants. In particular, we have recommended that Section 103(a)(3)(C) of ERISA be repealed. This section contains a "limited-scope" provision that results in inadequate auditing of pension plan assets, because it exempts from audit all pension plan funds invested in banks, insurance companies and other entities regulated by Federal or state governments. Between 1991 and 1997, the Department submitted legislative proposals calling for the repeal of the limited-scope audit provision and calling for reforms to strengthen plan audits. DOL also proposed legislative changes to require direct reporting of certain criminal violations relating to employee benefit plans. These proposals were not enacted. While EBSA has taken steps to improve the audit process through ongoing program initiatives, the problem of limited scope audits remains. We urge the DOL to continue to push for legislative change in order to adequately protect pension assets.

**Pension Plan Enforcement.** Also of concern is the security of assets in pension plans, which are an attractive target to organized crime groups, corrupt pension plan officials, and those who influence the investment of plan assets. OIG labor racketeering investigations consistently show that assets in Taft-Hartley plans, which are jointly administered by labor union and management representatives, are at risk. In 1997, the OIG identified the risk posed by corrupt financial investment and service providers who employ complex financial schemes to conceal their crimes against employee benefit plans. Abuses by these providers are of particular concern because their activities may impact more than one plan. Our investigations continue to identify multi-million dollar losses due to this

type of crime. One such case recently led to the indictment of an attorney, a real estate agent, and a former pension plan trustee who received illegal payoffs in connection with a \$10 million land purchase by the pension fund of the Northwest District Council of Carpenters. This joint investigation with EBSA is one of 54 current joint OIG and EBSA pension investigations.

In addition, the OIG has renewed concern about the security of the assets in employer-sponsored 401(k) plans that are collectively bargained. Within our jurisdiction, the OIG is developing investigative casework on the growing number of these 401(k) plans.

### Workforce Investment Act Reauthorization

Seeking revisions to the Workforce Investment Act (WIA) during the reauthorization process so that it can better achieve its goals poses challenges for the Department. In particular, WIA needs improvement in areas such as the eligible training provider system, sequence of services, financial reporting, and youth and dislocated worker activities. While legislation has been proposed that addresses some of the concerns we have identified in our work on the WIA program, such as burdensome performance reporting and eligibility requirements imposed on training providers that make some providers unwilling to serve WIA participants, OIG audits offer further lessons and insights that should be considered during reauthorization.

**Increase Training Provider Participation.** An assessment of training activities for adults and dislocated workers in six states found that the number of WIA participants trained has declined when compared to the proportion trained under Job Training Partnership Act (JTPA). We also found that some of WIA's training provisions were burdensome and therefore discouraged eligible training provider participation. ETA should endorse changes to reduce the burden associated with reporting data on non-WIA students, and encourage states to periodically review training courses to ensure that fee and time restrictions do not lower program quality.

**Improve Dislocated Worker Program Services and Outcomes.** An audit of WIA's Dislocated Worker program found that the services provided had positive effects. However, we also determined ETA should place additional focus on ensuring the program serves only eligible individuals, that participants return to the workforce as quickly as possible, and that reported performance outcomes are complete and meaningful.

**Youth Program Improvements.** WIA shifted the youth program's focus from short-term training and job placement to long-term, comprehensive youth services that provide the education, skills, work and experience needed for youth to obtain jobs. An evaluation of WIA's youth programs operated by Local Workforce Investment Boards found that recorded performance measures and reported activities of youth participants were often inadequately documented, making it difficult to accurately evaluate program outcomes. ETA should ensure that the services provided and their outcomes are better documented to ensure that programs are accurately evaluated, as well as encouraging revisions to WIA that improve the youth program, such as allowing summer employment as a stand-alone activity for particular participants.



**State and Local Reporting of WIA Obligations.** The amount of WIA funding available at the state level has been an issue of contention between the states and the Department. A 2003 OIG report addressed the way WIA obligations and expenditures are reported and the question of which is the better basis for determining how much money is available for expenditure and how much new money is needed. We found reported obligations were generally overstated and reported expenditures were generally understated. We concluded, that if obligations accurately reflect legal commitments and are consistently reported, obligations are the more useful measure for assessing states' current WIA funding availability. ETA issued revised instructions to clarify WIA financial reporting requirements in November 2002. WIA reauthorization is an opportunity to provide definitive reporting guidance to grantees on both obligations and expenditures and to mandate accurate, timely reporting.

#### Grant Accountability, Performance, and Effectiveness

The Department is challenged to provide accountability for the costs and results of \$10 billion in grants it awards each year, mostly for employment and training activities. ETA, DOL's largest grantor agency, is responsible for administering these grants, which provide job skills and enhanced opportunities for workers. Direct Federal oversight of grants of this type is difficult because a large share of the funding is passed down through the states to subgrantees and contractors.

OIG audits have identified, and continue to identify, concerns about accountability at all phases of the grant process. Weaknesses in the pre-award/award stage; grant execution problems including poor performance and charging unallowable costs, errors in grant reporting, and weaknesses in ETA oversight are among those concerns. The OIG has worked with ETA both to resolve our recommendations involving individual grants as well as to improve its overall approach to grant accountability.

ETA took a significant step in April 2003 when it issued an Order implementing its Grant/Contract Administration Plan. Employment and Training Order No. 1-03, which updates ETA's grant administration policy, is designed to improve grantee accountability, compliance, and performance. The Order identifies goals and ETA policies for each of four major phases of grant administration: pre-award, grant award, post-award grant management, and closeout/audit resolution. It also identifies roles and responsibilities for program, administrative and financial, and Regional staff for each phase of the grant process. In carrying out the order, ETA has issued a Regional Accounting Policies and Procedures Manual and is making improvements to post-award grant monitoring, among other things.

The OIG is encouraged by these early efforts and will work with the Department to improve accountability over DOL grants so that funds are properly managed. In the meantime, OIG audits continue to highlight those areas of concern that must be addressed in order to achieve grant accountability, performance, and effectiveness.

### Effectiveness of Mine Safety and Health Programs

The OIG still considers enhancing the effectiveness of MSHA programs as a management challenge because the protection of miners from injury or death is at stake. Prior evaluations by the OIG identified a number of mine safety and health issues needing the Department's attention, and MSHA has taken significant steps toward addressing our recommendations. Unresolved recommendations require rulemaking, which will be a challenge for MSHA to fully implement in the coming year.

In particular, based on our evaluation of inspection activities at the W.R. Grace & Company Mine in Libby, Montana, MSHA must address lowering the permissible exposure limits for asbestos, using a more effective method to analyze fiber samples that may contain asbestos, and addressing take-home contamination from asbestos. In response to our recommendations on asbestos rulemaking, MSHA said it expects to publish its proposed rule "Measuring and Controlling Asbestos Exposure" by May 2004.

### Addressing Issues that Require Joint Action with Other Federal Entities

The Department is challenged to correct longstanding problems that require coordination with other government entities to fully resolve. Issues requiring intergovernmental action include: Internal Revenue Service (IRS) overcharges to the Unemployment Trust Fund (UTF); inadequate guidance concerning pension plans that underpay participants; the insufficiency of the Black Lung Disability Trust Fund; and strategic human capital management.

**IRS Overcharges to the UI Trust Fund.** The IRS charges the UTF for collecting employers' monthly UI payments and related activities. For the past 15 years, the OIG has reported problems with the costs that the IRS charges to administer the UTF. In 1999, we reported that the IRS did not have a cost accounting system to capture actual costs of its UTF-related work, and had overcharged the UTF \$48 million during a 3-year period, which they returned to the trust fund. A follow-up audit determined that the IRS charged almost \$300 million in administrative costs to the UTF for FYs 1999-2002 without adequate documentation. If the IRS had used a method based on the percent of revenue received, the agency would have charged the UTF approximately \$174 million less.

We suggested that ETA work with the IRS to adopt an alternative method to allocate administrative costs to the UTF, and request the IRS reimburse the fund for unsupported charges of \$118 million. Following our audit, the IRS reduced the amount of its FY 2002 administrative charges to the UTF. In addition, the IRS is scheduled to implement a new methodology for allocating program-related costs to their appropriate trust funds in FY 2004. The IRS agreed to provide ETA with additional information on this methodology as it evolves in order for ETA to assess whether the new methodology will be acceptable. ETA continues to consult with the OIG regarding its attempts to resolve this issue with the IRS.

**Cash Balance Pension Plans.** In 2002 we raised concerns about the methodology used to convert traditional defined benefit pension plans to cash balance plans, calling for more clarity and guidance on computing participant benefits. Our audit of a judgmental sample of cash balance conversions found that some sampled plans underpaid benefits after con-

version due to errors made by employers while projecting participant benefits and cost-of-living allowances. We found that while EBSA focused on disclosure and education, it did not review the manner in which plans calculated accrued benefits for employees who left work before normal retirement age. We recommended EBSA direct more resources to protecting the benefits of cash balance plan participants, and work with the IRS in developing improved guidance on calculating participant accrued benefits.

EBSA responded that its enforcement oversight responsibilities are statutorily restricted, and therefore disagreed with our recommendation to direct more enforcement resources toward protection efforts. Nonetheless, in February 2002, EBSA asked the IRS for advice concerning plans that underpaid participants. One month later, EBSA provided a legal opinion to the OIG stating that the Department did have some limited authority to take enforcement action in certain cases. That legal opinion also stated that the Department should wait until the IRS provided its comments to EBSA before EBSA would even consider taking any action. Eighteen months have now passed with no comments from the IRS. We remain concerned that plan participants who left the plans before retirement age may have been underpaid significant amounts because of the IRS' and EBSA's continued lack of action.

**Black Lung Disability Trust Fund Indebtedness.** The OIG first reported in March 1997 on the chronic insufficiency of Black Lung Disability Trust Fund revenue, which provides benefits for eligible coal miners. When coal excise tax revenues are insufficient to meet the trust fund's obligations, it receives advances from the U.S. Treasury. At the close of FY 2002, outstanding advances to the Black Lung Disability Trust Fund totaled \$7.7 billion. Since the trust fund remains unable to repay any principal on these advances, it must borrow to pay the interest. DOL's projections indicate that cumulative borrowing from the Treasury could total \$53.7 billion or more by 2040. DOL must therefore continue to work with the Congress on legislation to restructure the Fund's debt and provide additional funding to compensate for lost income to correct these problems.

**Human Capital Management.** Strategic human capital management is vital if the Department seeks to be a high-performing organization. Plans must be in place to recruit, hire, train, and retain the best talent available so that organizational goals can be met. Given projected retirement statistics within the next decade of employees throughout the Federal Government, some agencies are pursuing legislative reform in order to manage their people more effectively. The Department has taken significant steps to address this issue, but must continue to work with the Office of Personnel Management and, if necessary, the Congress to maximize its ability to attract and retain talented people.

### Changes from Last Year

In identifying the most critical management challenges faced by the DOL each year, the OIG recognizes significant matters meriting the continued attention of the Department may be omitted from the list. For example, this year's challenge list highlights the UI program, but not the Energy Employees' Occupational Illness Compensation program, which will be challenged because of its newness and increasing worker benefits. The Bureau of International Labor Affairs has implemented additional management controls

and plans to address additional OIG recommended improvements. As a result, at this point, we do not consider this issue to be among DOL's most critical challenges. Finally, this year's top management challenges do not raise the issue of the authority of the Chief Financial Officer (CFO). Recent achievements in addressing longstanding OIG financial management recommendations, including progress toward implementing managerial cost accounting in the Department, are evidence of the leadership and authority the CFO is exercising over agency financial operations. The OIG will continue to monitor DOL's progress in these areas.

## Management's Response to the Inspector General's Statement on the Top Management Challenges Facing the U.S. Department of Labor

December, 2003

Since the announcement of the President's Management Agenda in 2001, the Department continues to make solid progress in implementing its five Government-wide initiatives: *Strategic Management of Human Capital*, *Competitive Sourcing*, *Improved Financial Performance*, *Expanded Electronic Government*, and *Budget and Performance Integration*. DOL remains one of the leaders among Cabinet agencies — with status scores of *Yellow* for four of the five Government-wide initiatives, and progress scores of *Green* for the same four initiatives. Nonetheless, we recognize the areas needing improvement and have plans in place to achieve success.

The Department recognizes that the nine challenges posed by the Inspector General represent issues of major potential impact on the effectiveness and efficiency of DOL's programs and operations. The Department's responses identify extensive actions to address these challenges, which have been completed or are currently in progress. The Department anticipates that the results of initiatives to address several management challenges during FY 2003 and a reassessment of other challenges should enable the Inspector General to report even further progress next year.

Several of the challenges reference specific concerns reported in detail in Office of the Inspector General (OIG) audits issued over the past several years, and the management response summarizes corrective action plans taken or planned by the Department. We anticipate that the majority of these findings should be corrected within the next year. Other challenges require legislative action or necessitate that actions be taken jointly with non-DOL government agencies, as explained in management's response. The Department's responses to other challenges offer systematic performance data to provide readers comprehensive information about the overall effectiveness of a program or area of responsibility.

Where a sustained effort is required over several years to address an OIG management challenge that impacts a core program or management priority, performance goals and strategies are provided in either the Departmental or agency annual performance plans. For example, plans at the Departmental and agency level are in place to comprehensively address the human capital management challenges faced by the Department, as well as to improve the results of the job training programs identified in the Inspector General's statement. Finally, other issues raised in the management challenges, such as plans to improve data quality and achieve further integration of budget and performance, are discussed in detail in the Department's Annual Performance Plan.

Actions taken or planned by the Department to address each management challenge are discussed below.

### Unemployment Insurance: Overpayments, Identity Theft Fraud, and Funding

**Overpayments and the Benefit Accuracy Measurement (BAM) system.** The Department is taking crucial steps to improve both the prevention and detection/recovery of overpayments. These steps include encouraging and funding states to use online Social Security Administration data on-line to prevent overpayments due to misused social security numbers, and conducting cross-matches of benefit payments against the New Hire database. In April 2003, the Employment and Training Administration (ETA) issued an Unemployment Insurance Program Letter on integrity analysis to provide states with guidance on the costs and benefits of alternative approaches to preventing, detecting and recovering overpayments.

Regarding overpayments and the BAM system, Office of Workforce Security (OWS) calculations suggest a significant savings, although more modest than the OIG's finding of \$428 million in savings. OWS estimates that States could save approximately \$100 million per year if all States would connect to the New Hire databases and follow up on new hires of the rate of two percent of claimants per year—the rate at which the most active states currently use the databases.

**UI Trust Fund Solvency.** The most recent data show that 21 states were minimally solvent as of December 31, 2002. States are considered minimally solvent when, at the beginning of a recession, they have enough funds on deposit to pay benefits at the rate paid out for the average of the three highest 12-month periods during the last 20 years or a period covering the three most recent recessions, whichever is longer. This is a marked improvement from previous years' data.

### Integrity of Foreign Labor Certification Programs

Overall, DOL has taken positive steps to build and improve the systems used to identify fraud in the Foreign Labor Certification programs, in an effort to reduce the incidence of fraud and improve program effectiveness and integrity. To address the OIG's concerns about this issue, ETA has held several meetings with the OIG, the United States Citizenship and Immigration Services (CIS), and the Office of the US Attorney General, who provided ETA with suggestions of data and processes to include in the new and enhanced fraud detection system. Virtually all the recommendations were accepted and are being implemented within the new Program Electronic Review Management system.

The OIG also expressed concerns over the H-1B program and H-2B Temporary Nonagricultural program. For the H-1B program, OIG noted that because the Department does not have the authority to validate information on H-1B applications, DOL's role in the program does little to add value to the process of protecting American jobs and wages. However, as the Immigration and Nationality Act specifically states: "The Secretary of Labor shall review such an application only for completeness and obvious inaccuracies." The OIG's recommendations would require legislation changes and, accordingly, will be a matter of future policy discussions.

For the H-2B Temporary Nonagricultural Program, ETA has been working closely with CIS to determine why CIS has granted visas to foreign workers despite an application rejection by DOL. Better instructions are being provided to regional alien labor certifi-



cation staff on ways to reduce the number of overturns by CIS and improve the consistency of decisions made between CIS and DOL.

### Financial and Performance Accountability

**Financial Accounting.** The Office of the Chief Financial Officer (OCFO) is pursuing an efficient and integrated approach that builds on government, industry, and project management best practices for acquiring a commercial off-the-shelf financial management package and the system integration expertise necessary for implementation. This approach will use a performance-based acquisition strategy based on effective planning and requirements-gathering consistent with DOL information technology policy and system development life-cycle guidance. OCFO plans to manage the DOLARS Replacement Project using critical components of earned-value management methods for program planning, reporting, and management. OCFO has also developed appropriate planning documents, emphasizing different aspects of the effort, to ensure that the acquisition and implementation of a modern financial management system is cost-effective, efficient, and meets DOL business, technical, and compliance needs.

**Managerial Cost Accounting.** The Department supports the use of managerial cost accounting (MCA) for results-oriented decision-making and measurement of program economy and effectiveness. Since March 2003, DOL has made significant progress in its ongoing initiative to enhance the Department's managerial cost accounting capability. DOL seeks to enhance MCA through a program entitled Cost Analysis Manager (CAM), and to deliver value-added cost information throughout DOL to support program evaluation, decision-making, cost effectiveness in the delivery of programs, and attainment of strategic goals. To this end, OCFO formed a CAM Project Management Office and developed a Plan of Action to complete CAM implementation by July 2004.

DOL is currently implementing the roadmap defined in the Plan of Action, fully supported by senior executive management, to develop cost information that supports key business requirements of Agency Heads and senior management, operational needs of program managers, and financial reporting needs. Key progress to date includes:

- Acceptance of Plan of Action by Agency Heads and the Deputy Secretary
- Development and delivery of CAM training to 130 DOL finance and program managers
- Commencement of MCA implementation for large major agencies, including ESA, ETA, MSHA, OSHA and EBSA
- Identification and utilization of existing cost information and costing processes, including MCA pilots, information contained in the Department's core accounting system, subsidiary ledgers, and the Statement of Net Cost
- Definition of significant outputs (i.e., products and services) to define the major programs of the five agencies listed above
- Linking costs to these agencies' programs and to the defined outputs

**Quality Performance Data.** As OIG notes, ETA has launched a data validation initiative to ensure the accuracy of performance data and other program information collected

and reported from states and grantees. Data validation for the Unemployment Insurance (UI) program was implemented in July 2003 for the UI quarterly reports. States submitted validation summary reports in September 2003.

ETA is currently implementing a data validation requirement for six employment and training programs. ETA released guidance in August 2003, establishing the Agency's data validation policy and implementation timeframes. States received training on data validation during the summer of 2003. States will submit validation summary reports in April 2004 for the PY 2002 Workforce Investment Act annual report, FY 2003 Trade Act Participant Record records for the Trade Adjustment Assistance program, and ETA 9002 and VETS 200 reports covering four quarters of the Labor Exchange program. Additional training for National Program grantees will be held during the winter and spring of 2004, and they will begin the validation process by the end of CY 2004.

**Single Audit.** The Department shares the OIG's concerns about the adequacy of Single Audit Act (SAA) audit coverage of its programs. In our oversight and monitoring activities, we will continue to strive to ensure that covered recipients and sub-recipients have required audits performed, that audits are appropriately resolved, and that audit results are used to improve program performance.

Additionally, in FY 2004 and beyond, the Department will establish quality controls more proactively through implementation of the provisions of the Improper Payments Information Act of 2002. For every program/activity with significant erroneous payments, the Department will construct a statistically-valid methodology and program design to estimate the annual amount of erroneous payments, analyze causes of errors, and ensure progress in reducing erroneous payments. These actions will allow the Department to more effectively target payment errors. DOL will also conduct periodic program reviews to improve internal controls and train staff to provide guidance on maintaining these controls over the long term.

**Internal Controls on the Federal Employee's Compensation Act Program.** As noted by the OIG, this issue relates to procedures OWCP has in place to ensure that current medical evidence is present in each long-term disability file. Of the errors identified by OIG, 60 percent occurred in one office. OWCP had identified failure to comply with this procedure through its own internal accountability reviews, and has already initiated corrective action. FECA management is taking concrete steps to ensure staff are following procedures and is developing an electronic tracking system to assist them in doing so

### Information Technology and Electronic Government

**Computer Systems Security.** Given the expanding electronic government environment, coupled with the emergence and proliferation of web-based technologies, the Department recognizes a critical need to emphasize the delivery of its Cyber Security Program. Integral to this, as well as the efficiency and effectiveness of DOL as a whole, is the importance of implementing systems which deliver quality services to the public while at the same time lowering overall life cycle and program costs.

**Information Systems Planning and Implementation.** DOL's Office of Chief Information Officer (OCIO) is implementing a comprehensive project management structure that employs a rigorous system developmental life-cycle management process that includes appropriate checks and balances to ensure projects are being executed according to plan, performance, and budget. This is accomplished through systematic reviews of efforts in accordance with the Capital Planning, Investment, and Control Process. These quarterly reviews allow the OCIO to ensure that agencies' projects are properly aligned with DOL's business objectives, Cyber Security Program, and Enterprise Architecture.

The overall CIO Information Technology (IT) management structure has been strengthened with the recent hiring of an additional senior executive IT manager, who along with the Deputy CIO, will oversee IT system management, development of IT projects, and ongoing IT systems operations. DOL is taking steps to hire qualified and experienced project management staff and to provide project management training for the existing CIO staff. A Contracting Officers Technical Representative (COTR) training class was also provided to the entire senior staff of both the OCIO Programs and the Information Technology Center.

**DOL Security Efforts.** DOL has made significant strides in the effectiveness of its Cyber Security Program, resulting in the proactive use of program management tools such as Plans of Action and Milestones, and an enhanced risk assessment methodology that includes both qualitative and quantitative risk evaluations. DOL also implemented a web-based computer security awareness and training program that provides consistent and convenient access to security training and on-line completion of status reports. The number of employees and contractors who have successfully completed this training increased from 93 percent in FY 02 to 97 percent in FY 03.

DOL's continued emphasis on program integration has led to a revised System Development Lifecycle Manual that corresponds with the DOL Computer Security Handbook and the Cyber Security Program Plan. In collaboration with the IT Security Officer's Working Group, DOL has established a forum for sharing best practices and increasing managerial involvement in information security issues. This collaborative effort has resulted in 58 percent of DOL's sensitive systems achieving Authority to Operate (ATO), an increase of 17 percent over FY 02. This increase is significant because the number of systems requiring ATO increased from 46 in FY 02 to 81 in FY 03. DOL is committed to achieving its goal of having all 81 systems achieve ATO by July 2004.

While DOL has made significant strides in the effectiveness of its Cyber Security Program Plan, it acknowledges that opportunity for program improvement still exists. Most DOL systems have contingency plans in place; however, adequate testing has not yet been implemented. Although 42 percent of DOL systems have Interim Authority to Operate, the majority of these systems only require systems testing and evaluation to achieve full ATO. DOL has implemented a project management strategy to ensure a high degree of involvement in agency security programs and to cultivate a robust Cyber Security Program.

## Security of Pension Assets

**Safeguards to Protect Pension Assets.** Between 1991 and 1997, the Department submitted legislative proposals calling for the repeal of the limited-scope audit provision and for reforms to strengthen plan audits. DOL also proposed legislative changes that would require the direct reporting of certain criminal violations relating to employee benefit plans. Despite DOL's continued efforts, neither the House nor the Senate reported legislation out of committee.

The Department continues to take steps to improve the audit process established by the Employee Retirement Income Security Act (ERISA) of 1974. In February 2003, the Department's Employee Benefit Security Administration (EBSA) initiated its second nationwide review to assess the quality of employee benefit plan audits. This study involves a statistical sample of 300 plan audits to assess compliance with professional accounting and auditing standards, and should be completed in early 2004.

Ongoing DOL program initiatives include cooperative efforts with the accounting profession. EBSA will be coordinating closely with the Public Company Accounting Oversight Board (created by the Sarbanes – Oxley Act) and will continue its active involvement with the American Institute of Certified Public Accountants and the Financial Accounting Standards Board (FASB) to develop accounting guidance for employee benefit plans and additional technical materials for CPAs to use in conducting audits of employee benefit plans.

**Pension Plan Enforcement.** DOL recognizes that pension funds represent a target for individuals with criminal intent and has responded with a strong enforcement program. EBSA's enforcement mission is to deter and correct violations of Title I of ERISA and related criminal statutes through the use of civil and criminal investigations of plans, plan sponsors, fiduciaries, and service providers. EBSA's criminal investigations during FY 2003 resulted in 137 indictments, convictions or pleas entered in 57 different EBSA cases, and recovery of over \$5.8 million on behalf of employee benefit plans or their participants and beneficiaries. EBSA also closed 4,253 civil investigations, 69 percent of which were closed with results. During this period, EBSA civil enforcement investigations had monetary results of over \$1 billion.

EBSA will continue targeting criminal cases using successful means such as analyzing computer data, gathering information through civil investigations, leads from plan participants, plan officials, informants, and media sources, and information gained from other government agencies. DOL also maintains close working relationships with other law enforcement agencies such as the U.S. Attorneys, the FBI, the Postal Inspectors, and OIG. DOL is also proactively promoting early detection and prevention of criminal behavior through aggressive compliance assistance, outreach and education campaigns that create knowledgeable consumers who can assist in "policing" their own benefit plans.

EBSA has had a national enforcement project since 1995 focusing on the failure of employers to timely remit employee contributions to 401(k) plans. Since the beginning of the project through September 30, 2003, EBSA has opened over 9,200 civil investigations and closed almost 8,000 civil investigations (5,500 with violations and monetary

results). Also, 209 criminal cases have been opened. These cases have so far resulted in the criminal prosecution of 124 persons and monetary returns of over \$305 million nationwide have been achieved by EBSA

DOL's announcement of a final Voluntary Fiduciary Correction Program (VFCP) enables 401(k) plan sponsors to self-correct delinquent participant contributions by restoring losses, including earnings, to plans. DOL received 240 VFCP applications during FY 2003 and had monetary results of approximately \$8.7 million.

### Workforce Investment Act Reauthorization

**Increase Training Provider Participation.** Several provisions in the Workforce Investment Act (WIA) reauthorization bills before the Congress (House-passed H.R. 1261 and Senate-passed S. 1627) should help increase training provider participation, including requirements relating to the certification of eligible providers of training services. States would be given the authority to determine what provider information and data will be required to establish a list of eligible training providers. There would be no federal requirement to report performance outcomes for all students in a training program rather than just WIA-funded students. States would have the flexibility to design procedures that respond to their state's needs. To ensure the quality of providers, States would have to establish criteria including the performance of providers with respect to WIA's performance indicators.

Second, WIA would be amended to address issues regarding current law requirements for a "sequencing of services" – that is, how a participant moves from core to intensive to training services. States and local areas would be given additional flexibility to determine whether core or intensive services alone are sufficient for the participant to obtain employment, or whether training services would also be necessary.

Third, the concept of Individual Training Account would be broadened to "Career Scholarship Account" and local areas would have the flexibility to combine other training resources with WIA funds in these accounts. This would facilitate training acquisition and maximize the number of participants that can be assisted through training.

Regarding OIG's recommendation that ETA encourage states to periodically review training courses to ensure fee and time restrictions do not lower program quality, ETA agrees that States should take appropriate steps to ensure that training provided is of high quality. Although there are no federal requirements relating to fee and time restrictions for training courses, ETA believes that States need to identify factors affecting quality of training programs and develop appropriate policies, accordingly. This would be part of an increase in State responsibility under revised eligible training provider provisions in a reauthorized WIA. ETA has particularly encouraged an emphasis on outcomes achieved by providers, but additional features, including those noted by the OIG, may also be relevant. ETA will encourage sharing of information and practices among States to assist in the development of appropriate training program policies.

**Improve Dislocated Worker Program Services and Outcomes.** The Department's approach for improvement of the Dislocated Worker program reflects the broad principles of OIG's recommendations. A feature of the proposed WIA reauthorization is con-

solidation of funding streams for the WIA Dislocated Worker, Adult, and Employment Service funding streams into a single formula grant, designed to streamline state and local program administration. Until the WIA reauthorization is complete, DOL contends that policy changes to eligibility requirements for the Dislocated Worker program are inappropriate, and should be issued after final legislation is enacted. Through the implementation of common measures for federal employment and training programs, DOL will capture more comprehensive information on program participants, and improve delivery of services in ways that encourage program participants' prompt return to the workforce.

The common measures will require state and local areas to provide participants meaningful, reportable service, or terminate participation if no service is provided within 90 days. This uniform strategy provides a clear statement of ETA policy, and encourages provision of services associated with quick re-entry to employment for dislocated workers. The Department is also developing a new reporting and information collection system that will more comprehensively and meaningfully demonstrate workforce system results. ETA's data validation initiative will also ensure the accuracy of performance data reported by states and grantees.

**Youth Program Improvements.** ETA continues to focus on the OIG's key issue that programs be accurately evaluated. DOL is currently revising a comprehensive case management manual developed in October 2002, and will distribute the document to all youth workforce investment areas in FY 2004. ETA is also implementing a data validation project that addresses required documentation needed to substantiate reported performance outcomes.

DOL does not concur with the OIG recommendation to encourage revisions to WIA, such as allowing summer employment as a stand-alone activity for particular participants, because this is contrary to the original legislative intent to improve youth programs under WIA. The WIA legislation moved youth programming towards a comprehensive youth development approach centered on a broad range of coordinated services embodied in the ten required program elements. In its guidance to the workforce investment system, DOL has continuously encouraged states and local areas to integrate summer employment opportunities with other program elements in a comprehensive strategy to address youth employment and training needs. DOL believes the workforce investment system has continued to focus on summer jobs programs because of the relative ease of serving in-school youth. Although this practice continues, DOL contends that the legislation should reinforce the original legislative direction, rather than retreating from the practice.

**State and Local Reporting of WIA Obligations.** The Department agrees with the OIG's assertion that clarification of obligations and expenditures and mandating timely, accurate reporting are critical factors in WIA reauthorization. The OIG suggests that obligations are the more useful measure for assessing states' current WIA funding availability, and the General Accounting Office (GAO) recommends that DOL require States to report obligations made at the point of service delivery. However, as noted in DOL's response to the GAO report, the Department is concerned that it would be burdensome and expensive to implement reporting of obligations at the point of service delivery



nationwide. Accordingly, DOL supports the WIA reauthorization proposals that would require states to make financial reports on the basis of expenditures, and would allow DOL to recapture unexpended funds in each program in states and local areas in excess of 30 percent of total funds available during a program year.

In conjunction with issuing revised instructions that clarified WIA financial reporting requirements, DOL is providing on-going training about timely reporting of expenditures and accurate reporting of obligations. DOL is also developing an introductory course on financial management and reporting that focuses on application of accounting requirements and concepts, such as proper accrual of costs at the end of a reporting period, and commitment and obligation of funds. Through guidance, training, and technical assistance, DOL continues to make accounting of WIA funds a priority.

#### Grant Accountability, Performance and Effectiveness

Implementation of policies contained in the Employment and Training Order No. 1-03 issued in April 2003 is a priority for ETA. The order was designed to update ETA policy and clarify roles and responsibilities for grant administration to improve accountability, compliance, and performance from services delivered by ETA grantees. ETA recently introduced the Grants e-management System (GEMS) and will deploy the system Department-wide. GEMS assists Federal Project Officers to manage daily grants management workload and to track activities throughout the life cycle of each grant. The system provides automated tools for grant monitoring activities including pre-award assistance, tracking and submitting grant modification requests, performing desk reviews, conducting monitoring visits and generating reports, and performing risk assessments at several phases of a grant's life cycle.

Additionally, DOL has developed a standardized risk assessment for use in overseeing ETA-administered grants. This assessment will be used to assign a risk level for each grant, to identify "at risk" grants, and to assist in prioritization of oversight activities over the coming quarter. ETA is also redesigning its Grants Tracking System (GTS) to tie into GEMS, which will support improved grants tracking, as well as the management and processing of procurement action requests.

#### Effectiveness of Mine Safety and Health Programs

Working together with mine operators and miners, the Mine Safety and Health Administration (MSHA) is facilitating cultural change in the mining community so that safety is embraced as a value. As a result, for all of FY 2003, mining fatality and injury rates declined to record lows. MSHA has also successfully implemented OIG's recommendations to better integrate our enforcement and compliance assistance activities, standardize complaint-handling procedures, and promote Personal Protective Equipment use by miners. Specifically, MSHA has:

- Tested and deployed a Nationwide hazard complaint analysis system, conducted training, and implemented revised Hazard Complaint Procedures Handbook procedures (effective in November of 2002).

- Rolled out an extensive educational and behaviorally-based campaign conducted with NIOSH to increase personal protective equipment among miners, running through December 2005.
- Conducted detailed analysis of trends in injuries and fatalities so that compliance assistance can be targeted more effectively and problem areas addressed more proactively.

MSHA also intends to issue a proposed rule by May 2004 on “Measuring and Controlling Asbestos Exposure,” which will address lowering the Permissible Exposure Limit for asbestos to a more protective level. Currently, MSHA is assessing the best means to address the issues of fiber sample analysis and take-home asbestos contamination.

### Addressing Issues That Require Joint Action with Other Federal Entities

**IRS Overcharges to the UI Trust Fund.** On August 19, 2003, ETA advised the OIG that it has conducted negotiations with the IRS. The IRS has begun to develop a new financial accounting system that includes a module that uses a different methodology for allocating its program-related costs to appropriate trust funds. ETA will assess the acceptability of this methodology as it develops. To date, IRS has described how they are addressing the problem and another meeting is pending in December to specify more of these approaches.

ETA’s target to execute a Memorandum of Agreement with the IRS for ensuring consistent application of the new cost-allocation methodology is January 9, 2004; accordingly, the earliest date for a final response to this challenge is January 30, 2004. IRS intends to use the methodology to determine past overcharges and amounts to be reimbursed to the UI trust fund. ETA will be involved in that process.

**Cash Balance Pension Plans.** The Department’s regulatory and enforcement authority in this area is limited, since DOL cannot take any enforcement action or begin working with IRS on additional guidance until IRS determines whether there were violations of Internal Revenue Code and ERISA. Consequently, DOL forwarded a copy of the OIG report and supporting work papers to the IRS for its review and comments, and is currently awaiting IRS’ response. DOL will provide assistance in developing new guidance if IRS determines this action is warranted.

**Black Lung Disability Trust Fund Indebtedness.** This issue can only be resolved by legislative action. Progress is anticipated shortly on proposed legislation being advanced as part of the President’s 2004 budget. The proposed legislation would restructure the existing indebtedness and extend the current excise tax rates until the debt is repaid.

**Human Capital Management.** The Department takes seriously the challenge to maintain a high-performing organization, and has implemented new flexibilities available through the Office of Personnel Management (OPM) to attract and retain talented people, including:

- **Succession Planning.** DOL has successfully implemented an SES Candidate Program (27 participants), and the Mid-Level Management Development Program (40 participants), two programs to insure a sufficient number of

leaders are available to meet future DOL needs. DOL has also launched a mentoring program for mid-level employees to develop new leaders, with 118 mentoring pairs participating in FY 2003. DOL recently received an Impact award from the International Personnel Management Association recognizing these succession-planning efforts.

- **Hiring and Pay Flexibilities.** DOL has aggressively implemented new hiring flexibilities made available by OPM, particularly making extensive use of the Career Intern Program to appoint 64 employees in FY 2003. This authority also allowed DOL to launch an initiative to address a gap in business skills, such that DOL hired 30 MBA Fellows currently rotating through various DOL agencies.

DOL also continues to use pay flexibilities to recruit and retain high performing employees, with over 120 recruitment bonuses, 15 retention allowances, and 9 relocation bonuses awarded in FY 2003. DOL also began utilizing the Student Loan Repayment Program in FY 2003, and hired 76 students under the Student Career Experience Program.

- **Competency Models.** In FY 2003, DOL developed competency models for all mission-critical occupations that contain the general and technical competencies required at various proficiency levels (entry, journey, senior and expert). These competency models identify and define competencies and set benchmarks (standards by which work is measured at each proficiency level), selection indicators, and developmental indicators for each competency.
- **Performance Management.** To ensure a results-oriented and high-performing workforce, DOL has placed all managers on performance plans encompassing basic management competencies and performance goals tied to DOL's organizational goals. DOL has also aligned all employees' performance rating cycles to coincide with the fiscal year, so performance goals from strategic and annual performance plans will filter down to all employees. DOL is also increasing the size of award pools so performance awards are more meaningful to employees.

**Strategic Planning.** DOL has submitted a management cross-cut of \$2.6 million in FY 2003 to fund key human capital initiatives. In an effort to tie together human capital initiatives, DOL has just completed development of a comprehensive Human Capital Strategic Plan for FY 2003 through FY 2008. This plan summarizes the current assessment of our workforce, provides projections regarding retirement and turnover, and focuses on major strategic initiatives to accomplish the President's Management Agenda goals.

- **New Flexibilities Under the Homeland Security Act.** Currently, DOL is reviewing new HR flexibilities provided under the Homeland Security Act,

and will work with OPM to implement these new authorities. Government-wide succession planning efforts currently under consideration, include:

- Studying whether category rating is an appropriate alternative to numerical scores to rank applicants on competitive certificates.
- Reviewing the direct hiring authority process to hire qualified applicants without competition.
- Submitting a Departmental request to OPM for use of voluntary early retirement authority (VERA) in FY 2004.