



Management and Performance Challenges

Office of Inspector General

Top Management Issues at the U.S. Department of Labor January 2003

Following are the ten areas that the Office of Inspector General considers the most serious management challenges currently facing the Department:

- Grant Accountability, Performance, and Effectiveness
- WIA Program Implementation
- Financial Performance
- Accountability: Budget and Performance Integration
- Security of Pension Assets
- Protection of Worker Benefit Funds
- Information Technology and Electronic Government
- Integrity of Foreign Labor Certification Programs
- Human Capital Management
- Effectiveness of Mine Safety and Health Programs

Grant Accountability, Performance, and Effectiveness

The Department continues to face challenges in effectively providing accountability for the costs and results of its grant programs. The Department provides almost \$9.5 billion in grants each year, mostly in the employment and training area. However, there are inherent risks associated with these grants because a large share of the funding is passed down to subgrantees and contractors, making it difficult to provide direct Federal oversight. In addition, many of the grantees are relatively small and/or new to administering Federal grants. Recent OIG audits highlight our concerns about accountability over DOL grants in the following areas under this initiative:

Preaward/Award: Federal program regulations establish requirements related to procurements, including the use of competitive procurement procedures in selecting and awarding funds to entities to provide services. We have identified instances where subgrants and contracts were awarded without competition, contrary to program requirements. We have also found weak internal controls over the awards process, and instances where services were performed in the absence of a contract or grant agreement. For example, our March 2002 audit of a Welfare-to-Work (WtW) grantee that received over \$500,000 in WtW funds found that procurement procedures were not followed in selecting the grantee as a WtW service provider. We also determined that the grantee was not financially solvent, and had not demonstrated success in administering Federal grant funds, which the OIG concluded adversely affected the quality of training provided. During the course of our audit, state officials terminated the grant.

Grant Execution: The purpose and objectives of Federal grant programs are set out in statutes, regulations, and grant agreements. These grants and subgrants establish performance levels that must be achieved. In addition, program laws, regulations, and individual agreements impose requirements that affect allowable costs. We have identified numerous deficiencies related to inadequate performance and/or unallowable charges. For example, an OIG audit found that only 59 participants were served under two WtW contracts that were expected to serve 170. Our March 2002 audit of a WtW competitive grantee found payments were: made for costs that were incurred before contracts were effective; in excess of grant limitations; inadequately supported; and/or not authorized by the grant agreement or individual contracts. After the issuance of this audit report, ETA did not extend this grant.

Reporting: Recipients of Federal funds are required to maintain systems capable of recording and reporting accurate and timely financial, participant, and performance information. However, our November 2001 audit of DOL grants to assist trade-affected dislocated workers in El Paso, Texas found that the grantee's management information system overstated the placement rate as 81%, as opposed to a rate of 36.2% as determined by our audit. In another WtW audit, the OIG found that required Federal reports were sporadically submitted, and those that were received were inaccurate.

Oversight: Because grant funds are spent by entities outside the Federal government, appropriate agency guidance, monitoring, and oversight of grantees are key to providing accountability over such funds. During our audits of several grants awarded to State Workforce Agencies to assure Y2K readiness, we learned ETA had informally issued guidance to the states that appeared to confuse or even contradict prior ETA instructions on the use of funds. In addition, recent OIG work with respect to selected states' obligation and expenditure of WIA funds found that ETA had not issued clear definitions and reporting instructions regarding the reporting of obligations.

Recently, the OIG has worked with ETA, DOL's largest grantor agency, to help assess weaknesses in its grant accountability procedures and to develop potential solutions. In April 2002, ETA took a significant step toward improving accountability when it issued a grant/contract administration implementation plan that addressed many of the OIG's concerns. The plan included a comprehensive list of issues, recommendations, timelines, responsible offices, and budgetary needs and identified specific, measurable strategies to be implemented. The OIG will continue to work with ETA and the Department to improve accountability over DOL grants so that funds are properly managed.

The OIG previously identified the rapid expansion of the Bureau of International Labor Affairs (ILAB) as one of the top management challenges facing the Department. While ILAB has improved its grant accountability by implementing most of the recommendations from prior OIG audits and evaluations, additional improvements are needed. Specifically, actions need to be taken to improve internal controls and system security over the Activity Tracking System, which ILAB developed to provide day-to-day project financial information. In addition, DOL's Office of Administration and Management, Office of the Chief Financial Officer, and ILAB need to work together to ensure that ILAB is able to obtain pertinent, timely information from DOL's Core Financial Management System.

WIA Program Implementation

The Department also faces significant challenges associated with WIA training and employment programs for youth, adults, and dislocated workers. Designed to improve the occupational skills, employment prospects, and earning potential of participants, these programs are funded at billions of dollars annually. The upcoming reauthorization of WIA and related rulemaking, as well as OIG recommendations on WIA activities, present opportunities to make needed improvements to the operation of these key programs.

Resolving Inconsistencies in WIA: Traditionally, a tension has existed between providing states and local governments maximum flexibility in running employment and training programs and assuring financial and performance accountability for such programs. Both increased accountability and state and local flexibility are among the seven key principles embodied in the Workforce Investment Act of 1998, which superseded the Job Training Partnership Act on July 1, 2000.

In implementing WIA, the Department left many key terms and definitions to state discretion. Some of these impact on reporting against performance measures. For example, credential attainment is a performance measure for the WIA adult, dislocated worker, and youth training programs, and states compete for incentive money based on their achievement of this and other performance measures. However, the states have wide latitude in determining the definition of "credential." As a result, depending on states' policies, credentials could encompass anything from a two-week word processing course to a two-year associate's degree. Also, recent OIG work with respect to selected states' obligations and expenditures of WIA funds found confusion exists over ETA's definition of what constitutes a local obligation that states are required to report on Financial Status Reports. In fact, we found disagreement existed even within ETA, which administers WIA, over this key reporting term. We noted states interpreted ETA's definition differently, which resulted in inconsistent reporting of this item. ETA recently issued guidance to clarify key WIA financial reporting terms and instructions.

WIA authorizes appropriations through FY 2003. As WIA reauthorization is debated next year, the Department will be challenged to work with the Congress in drafting replacement legislation and issuing implementing regulations that strike an appropriate balance between the sometimes competing interests of accountability and flexibility.

Financial Performance

One of the goals of the President's Management Agenda is improved financial management. The Department has made great strides in financial reporting and has received clean audit opinions on its financial statements since FY 1997. This progress is reflected in the Department's improved rating on the OMB Scorecard that measures progress towards implementing the Agenda. Previously rated as "red" in the category of financial management, the DOL recently received a score of "yellow" for its progress in this area. Nevertheless, the Department faces significant challenges in producing timely financial information that can be used in its day-to-day management. To do so, the Department must stress proactive management of its financial records over financial statement preparation. Financial events and transactions need to be recorded when they occur rather than at year-end. There have been improvements in this area as the Department has complied with OMB's required semiannual financial statements. However, key to the proactive management of the Department's financial records is vesting the necessary authority in the Department's Chief Financial Officer (CFO) to provide direct oversight of all financial management operations of the various DOL agencies. Historically, the CFO has not had this authority.

Another challenge in this area is the adequacy of information being provided to the Department via audit reports conducted by independent public accountants or state auditors under the Single Audit Act. Over 90% of the Department's expenditures are audited under the Single Audit Act by independent public accountants or state auditors throughout the country. The Department relies on the Single Audit Act to provide audits for grant costs as well as for Unemployment Insurance (UI) benefit costs and employer tax receipts at each of the states. During FY 2002, in addition to its scheduled single audit reviews, the OIG conducted comprehensive quality control reviews of six single audits. The results of these reviews indicate that all six had serious deficiencies, including inadequate sampling, which would make the reports unreliable. As a result, the OIG is increasing our monitoring and evaluation of single audits, and will be working with DOL's grantor agencies to improve their monitoring and evaluation activities. Further, in coordination with OMB, 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 them for financial management purposes.

Accountability: Budget and Performance Integration

Performance budgeting is also a major focus of the President's Management Agenda, which calls for further integrating budget and performance to foster a results-oriented Department that is guided by performance rather than process. To this end, the Department has taken initial steps toward instituting a performance budget for FY 2004. Key to the Department's success in integrating budget and performance will be effective strategic planning, as envisioned by the Government Performance and Results Act (GPRA), and the ability to improve the quality and accessibility of program and cost data, including data reported by entities below the Federal level, which serve as a basis for determining the results achieved by programs and operations. Another important tool in the effort to link budget to program outcomes is the Federal Accounting Standards Advisory Board's Statement of Federal Financial Accounting Standard Number 4, which is aimed at providing reliable and timely accounting for the full cost of Federal programs and activities.

Quality of Program Data: The Department is limited in its ability to access and control the quality of program results data used to determine the attainment of its strategic plan goals. This includes difficulties associated with ensuring the quality of the myriad data provided by states and other sources below the Federal level, where 90% of the Department's budget is actually spent. For example, past OIG audits of the WtW Competitive Grants, Dislocated Worker, and Trade programs disclosed high error rates in performance data reported to the Department by its state partners and other grantees. The errors affected performance measures, including participants' wages, training activities, and successes in obtaining jobs, that serve as key indicators in determining the outcomes and success of the program. ETA has initiated a data validation project to create more precise programming specifications and standards for use in validating that the state data concerning WtW, WIA, and other ETA programs are correctly reported to ETA. The OIG will continue to follow ETA's progress in implementing the data validation project to assure the reliability of program data.

Access to Data: Two important tenets of GPRA are that agencies must evaluate program effectiveness and validate performance data. In the employment and training area, it is particularly important to know whether programs have resulted in individuals becoming self-sufficient by obtaining long-term unsubsidized employment at livable wages. Two important tools that may be used to this end are UI and Social Security Administration wage records of individual program participants. However, the Department is limited in its ability to obtain such data for program evaluation and validation purposes in a timely manner. To enhance its ability to conduct program evaluation and validation in this and other equally important areas, the Department needs to have statutory authority to easily obtain and utilize these types of records,

including the information contained in the National Directory of New Hires, which is administered by the Department of Health and Human Services.

Managerial Cost Accounting: Once performance data are determined to be reliable, managerial cost accounting, which matches cost information with program results, is the next step in managing for results. During FY 1999, the Department began implementing the managerial cost accounting standard through agency pilot programs. It was planned that the low-level structures developed in the pilot studies would ultimately be aggregated to result in an integrated agency-wide cost accounting system. However, during FY 2001, the Department abandoned this “bottom-up” approach and began focusing on initiating a “top-down” alternative approach to the implementation of managerial cost accounting. This effort was to be defined by disaggregating high-level agency activities into their components.

The OIG has recently reviewed the implementation efforts of these revised FY 2001 cost accounting plans, and found that overall, the project has had little impact on DOL’s managerial cost accounting system, practices, or capabilities. With the notable exception of the Bureau of Labor Statistics, agency and program managers have been reluctant to either begin the cost accounting process or advance beyond participating in isolated pilot cost studies. The OIG recognizes that an important step in assuring the proper implementation of a managerial cost accounting system was taken in early September 2002, when the Deputy Secretary of Labor asked that the CFO oversee the Department’s cost accounting policy and program. Another important element for matching the full cost of program activities to program results (cost-effectiveness) is the ability to associate employee time with specific activities (activity-based costing), and it was hoped that this element would be included in DOL’s new payroll system. However, activity-based costing was not included in the payroll system, which was implemented in August 2002.

The OIG plans to review the CFO’s plans for the implementation of cost accounting and specific agency or program implementation efforts. In order for DOL’s GPRA reporting to be credible, it is important for DOL to ensure that the performance and cost information generated is accurate, accessible, and auditable.

Security of Pension Assets

The Department is responsible for administering and enforcing the fiduciary, reporting, and disclosure provisions of Title I of the Employee Retirement Income Security Act of 1974 (ERISA). The goal of Title I is to protect the interests of participants and their beneficiaries in employee benefit plans. Currently, there are over 6 million private employee benefit plans, which cover approximately 150 million people, with nearly \$5 trillion in assets. Given the size of this universe, protecting pension assets poses a significant challenge for the Department. The OIG has identified the following areas as particularly problematic:

Safeguards to Protect Pension Assets: Over the years, the OIG has 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 provision that results in inadequate auditing of pension plan assets because it exempts from audit all pension plan funds that have been invested in institutions such as savings and loans, banks, or insurance companies regulated by Federal or state governments. Currently, because of this limited scope provision, plan auditors conducting audits of pension plans cannot render an opinion on the plans’ financial statements in accordance with professional auditing standards. These “no opinion” audits provide no substantive assurance of asset integrity to benefit participants or the Department. The Department has concurred with our recommendation through the years and has submitted legislative proposals that would repeal this provision. We urge the Department to continue to push for legislative change in order to adequately protect pension assets.

Further, we have recommended that plan auditors be required to report any ERISA violations directly to the Department. The public accounting profession has a responsibility to be cognizant of potential fraud and other illegal acts in financial statement audits. However, under current law, a plan auditor who finds a potential ERISA violation is not required to report it to the Department. In the interests of plan participants, plan auditors or administrators should be required to promptly report to the Department any ERISA violations.

In addition, we believe that more clarity and guidance is needed on computing participant benefits, particularly with respect to cash balance plans, a growing segment of the pension universe. Industry sources estimate that, since the mid-1980s, 300 to 700 traditional defined benefit pension plans have converted to cash balance plans, potentially affecting over 8 million working Americans and involving over \$334 billion in pension assets. The OIG recently audited a judgmental

sample of cash balance plan conversions and found that while the conversions adequately protected accrued benefits, some of the sampled cash balance plans were underpaying benefits after the conversions. This was due to employer errors made while projecting participant benefits and cost-of-living allowances. We also found that while the Pension and Welfare Benefits Administration (PWBA) focused on disclosure and education, it did not review the manner in which plans calculated accrued benefits for those employees who left before normal retirement age (usually age 65). We recommended that PWBA direct more enforcement resources toward protecting the benefits of cash balance plan participants, and work with the IRS in developing improved guidance on calculating participant accrued benefits. By taking a more active role in protecting cash balance plan participant benefits, PWBA can help prevent future losses and correct underpayments for workers participating in cash balance plans.

In response, PWBA stated that its enforcement oversight responsibilities are statutorily restricted. Although the IRS has the exclusive authority to issue regulations regarding participant benefits, PWBA has concurrent enforcement authority and fiduciary responsibility over participant benefits, and we believe that it should work with the IRS on such regulatory issues.

Pension Plan Enforcement: Another area of concern involves the security of the billions of dollars in assets in private pension plans, which are an attractive target to organized crime elements, corrupt pension plan officials, and individuals who influence the investment activity of pension assets.

In particular, OIG labor racketeering investigations continue to show that the security of the assets within Taft-Hartley plans, which are jointly administered by labor union representatives and management representatives, is at risk. In 1997 the OIG identified the risk posed by corrupt financial investment and service providers who have the opportunity and ability to structure complex financial schemes to conceal their criminal activity. Our investigations of these schemes have uncovered multi-million dollar fraud enterprises. Abuses by service providers are of particular concern because of the potential for multi-million dollar losses; they typically provide investment or financial advice for more than one plan. A clear illustration is the Capital Consultants, Inc., case, one of the largest pension frauds in history, in which hundreds of millions of dollars were bilked from dozens of union pension funds.

In addition, we have renewed concern about the security of the assets in employer-sponsored 401(k) plans. In 1997, OIG testimony highlighted the problem of employers failing to promptly and appropriately deposit employee contributions into 401(k) plans. At that time, we believed PWBA needed to improve the targeting of its investigative resources toward plans with the most serious potential for abuse. The OIG believes that it is imperative that the Department have in place an effective targeting plan in order to meet the challenges posed by such fraud. Within our jurisdiction, the OIG is developing investigative casework on the growing 401(k) plans that are jointly administered by union and management trustees, and we will continue to monitor the Department's targeting efforts in this area.

Protection of Worker Benefit Funds

Safeguarding Federal employee benefits programs administered by the Department of Labor is a formidable challenge, given the existing vulnerabilities and the sheer scope of these programs, which affect the lives of millions of workers and retirees and involve billions of taxpayer dollars. The OIG has identified vulnerabilities involving financial stability and program integrity within four of the Department's major worker benefit programs.

Funding Concerns

Unemployment Trust Fund: The unemployment trust fund (UTF) was created in 1935 to protect workers during temporary periods of unemployment by providing income maintenance benefits. States provide temporary financial assistance, which is financed by employer taxes. This program paid over \$50 billion in benefits in FY 2002.

Recent circumstances have heightened the OIG's concern that states may not have adequate reserves to meet the demands on their trust funds. After several years of decreasing unemployment, the national unemployment rate has increased over the last two years from 4% in FY 2000 to a current rate of over 5.5%. The Department has estimated that, should a severe recession occur, UTF net assets would decline by \$60 billion, or 68%, over four years. Last year, we reported our concern that 19 states' trust funds were reported by the Department in its financial statements as minimally solvent in FY 2000, which was a period of economic expansion, and were therefore vulnerable to depletion during a recession. As of September 30, 2002, 30 states are being reported as minimally solvent.

Another issue affecting UTF assets relates to the Department of the Treasury's charges to the UTF for its work in collecting and processing unemployment taxes and administering the fund. In a 1999 audit, the OIG determined that the Treasury had overcharged the UTF \$48 million during FYs 1996, 1997, and 1998. This audit found that Treasury's method of charging for administrative costs was fragmented, cumbersome, and unreliable. The OIG recommended that the Departments of Labor and Treasury negotiate an alternative method for charging administrative costs. As a result of our audit, the Treasury Inspector General for Tax Administration is currently looking at Treasury's charges to the UTF. In addition, the OIG is facilitating, and DOL and Treasury officials are pursuing, an agreement on a new methodology for determining Treasury's administrative costs. Once agreement is reached, the OIG will continue to work with the involved parties to ensure that the new methodology is implemented and the \$48 million in overcharges we identified in 1999—and any overcharges for subsequent periods—are credited to the UTF.

In addition, overpayment problems in the UI program are of significant concern. As part of our audit of the DOL FY 2001 financial statements, we noted that the Benefits Accuracy Measurement (BAM) system, which was developed by the Department as a management tool to identify overpayment problems, projected overpayments of \$2.3 billion for FY 2001. For the same period, actual overpayments identified through states' Benefit Payment Control (BPC) activities—under which each state identifies and investigates benefit overpayments, establishes receivables, and collects overpayments—totaled \$669 million, or less than one third of the amount estimated by BAM activities. We also noted that overpayment rates projected by BAM have remained relatively flat at approximately 8.5% over the past 12 years. This raised a concern that the BAM system was not being utilized to reduce the amount of overpayments, and the OIG's ongoing audit work in this area continues to indicate that the information provided by BAM is not being utilized fully to prevent overpayment problems. ETA intends to provide more accountability and oversight with respect to UI overpayments, in part by developing a related outcome goal within the Department's GPRA framework.

Black Lung Trust Fund Deficit: DOL administers the Black Lung Trust Fund to provide disability benefits and medical services to eligible workers in the coal mining industry, when a mine operator cannot be determined liable for providing such benefits. The OIG is concerned with the escalating indebtedness of the trust fund. The Department's consolidated financial statements for FY 2001 reflect that the trust fund was in debt by \$7.3 billion to the U.S. Treasury. This debt resulted from advances provided to the program, which have become an annual necessity for the trust fund to operate. Currently, the excise taxes are sufficient to pay benefits and administrative costs; however, the trust fund must continue to borrow from the Treasury to pay the interest due on past advances.

DOL's annual projections of future receipts and outlays indicate that cumulative borrowings from the Treasury could total \$32.3 billion (unaudited) or more by 2040. According to DOL's estimates, the excise tax collections by 2040 would cover less than 30% of the interest that is accruing and annual advances will exceed \$1.2 billion per year. The Department has acknowledged that, if current operating conditions continue, a change in the statutory operating structure of the trust fund will be necessary to meet its obligations. The Department is working with the Congress on legislation to address the Trust Fund's current debt to the U.S. Treasury and extend current Trust Fund excise tax rates.

Energy Employees' Occupational Illness Compensation Programs: The Energy Employees' Occupational Illness Compensation Program Act of 2000 authorized compensation for certain illnesses suffered by employees of the Department of Energy, its predecessor agencies, and contractors who performed work for the nuclear weapons program. Presently, the program is in the developmental stages with payments expected to increase dramatically over the next several years, presenting a significant challenge to the Department.

Program Integrity

Unemployment Insurance: The integrity of the UI program is also of concern to the OIG. As with any multi-billion dollar benefit payment program, there are those who benefit from the UI program illegally. Through our UI investigative activities, we have identified a number of methods used to defraud the program and have focused on four schemes in particular: (1) fictitious and/or fraudulent employer schemes; (2) internal embezzlement schemes; (3) identity theft or imposter schemes; and (4) counterfeiting of UI benefit checks. We are particularly concerned with identity theft or imposter schemes, which occur when individual identities are stolen and then used to apply for UI benefits. Further, our investigations have disclosed that the ability to file electronic and mail claims creates a vulnerability because individuals have the opportunity to defraud multiple states from a single location. Schemes against the UI program have resulted in substantial losses to the UTF. In addition, systemic weaknesses pose problems for the UI system that need to be addressed, including loss of contributions due to hidden wages and misclassification of workers by their employers.

Recent OIG testimony on the integrity and abuse of the UI program highlighted several recommendations to the Department for strengthening the program. Among our recommendations are enhancing fraud detection and investigative training for state personnel who are responsible for benefit payment control and internal security. This training should focus on fraud prevention and detection, information sharing regarding common fraud schemes, and dissemination of best practices used by the states. This transfer of knowledge would assist the states in their efforts to improve their enforcement and oversight capabilities.

Federal Employees' Compensation Act: Recent OIG testimony highlighted some of our management and operational concerns regarding the Federal Employees' Compensation Act (FECA) program, which provides compensation and medical care for Federal employees who suffer job-related injuries, diseases, or death. While the Department has initiated several measures to enhance the integrity of the \$2 billion FECA program, OIG investigations continue to disclose the vulnerabilities to fraud committed by medical providers and claimants. Fraudulent activities by medical providers include billing the government for services that were not rendered, charging multiple times for the same procedure, billing for non-existent illnesses or injuries, and overcharging for services. Claimant fraud activities include reporting false injuries, recovering but then continuing to claim benefits, and failing to report or underreporting outside employment income to the Department.

Information Technology and Electronic Government

The expansion of electronic government is also among the aims of the President's Management Agenda. This presents challenges for the Department, such as the security of its information technology (IT) assets, the seamless implementation of its new IT architecture, and the integrity of its benefits program in an electronic government environment.

Pursuant to the Government Information Security Reform Act, we provided to the Office of Management and Budget the OIG's Executive Summary Report on the results of OIG IT audits and evaluations during FY 2002. Based on 16 audits and evaluations, including systems security tests, and the independent verification and validation of the Department's Plans of Action and Milestones, we found DOL is improving upon its information security program. The Department has provided much needed direction for its information security program, resulting in a more coordinated and comprehensive approach in implementing system security. However, while the efforts by the Department and program components are notable, the OIG continues to identify areas needing improvement. The Department will continue to be challenged in assessing risks; implementing preventive and/or detective management, operational, and technical controls; and identifying vulnerabilities through iterative testing and managing the related mitigation activities.

Security of IT Assets: DOL currently operates 82 sensitive systems, including mission-critical information systems, encompassing application and general support systems. The Department relies on these systems to monitor and analyze the nation's labor market and economic activities, manage workforce services, and protect and compensate American workers. Recent OIG audits revealed specific vulnerabilities in computer security and protection of assets. Further, the Department is also implementing a new IT enterprise-wide architecture and is modernizing its IT systems accordingly. Although the Department has been proactive in moving to correct weaknesses as they are identified, the Department needs to continue its efforts to secure its major systems against threats and loss of assets at the system level.

CIO Authority: The Chief Information Officer (CIO) is the Departmental official responsible for establishing information technology policy, providing oversight of IT assets, and ensuring compliance with a host of IT requirements. Currently, the CIO is the Assistant Secretary for Administration and Management, who is also responsible for providing leadership in a number of administrative areas. In our opinion, having this dual role may either divert attention from, or conflict with, the CIO's responsibilities. The OIG believes that, like the Chief Financial Officer (CFO), who is responsible for establishing policy, providing oversight, and ensuring compliance relative to financial management, the CIO should be organizationally independent in the Department.

We do not disagree with the Department's position that the incumbent CIO and Deputy CIO have been successful under the current structure, nor do we disagree that aligning the CIO organization with OASAM provides certain advantages in planning and funding priorities. The fact that the current CIO and Deputy CIO have had significant successes in information technology management in the Department does not guarantee that all future CIOs will enjoy the same level of success. Further, no DOL agency or component should have to be directly aligned with OASAM in order to be properly reflected in the Department's strategic planning or to receive the appropriate level of funding. We believe that in the long run, the Department will best be served by situating the CIO to be more organizationally independent with the sole focus of information technology management. Lastly, from the standpoint of the future importance and role of information

technology in carrying out the Department's business, the willingness of having a CIO in a shared role with that of the Assistant Secretary of OASAM could allow for the possibility that information management duties may not always be the primary duties of the Department's future CIOs.

Program Integrity in an Electronic Environment: The Department and its program partners are moving from a paper environment to an electronic one for the delivery of services, benefits, and program administration. The use of automated procedures and Internet communications has the potential to broaden the range of services, increase hours of operation, and reduce administrative costs. However, this move also brings new and increased vulnerability to misuse, fraud, and monetary loss. This has been evidenced in recent OIG casework in the Department's worker benefits and UI programs. Therefore, to assure program integrity, the Department must assess the risks involved and utilize a comprehensive, integrated approach to oversight and enforcement that addresses technological changes to how services are provided and benefits paid.

Integrity of Foreign Labor Certification Programs

The Department's foreign labor certification programs provide employers access to foreign labor. The permanent H-2A and H-2B programs are designed to ensure that the admission of alien workers does not adversely affect the job opportunities, wages, and working conditions of American workers or legal resident aliens. The H-1B Visa Specialty Workers program helps employers compete in the global market by giving them access to highly qualified individuals in specialty occupations. Abuses of these programs may result in economic harm to American workers and businesses, exploitation of foreign workers, and security risks associated with aliens who are admitted to this country by fraudulent means.

The Department's ability to enhance the integrity of the H-1B program is severely challenged because it lacks the authority to validate information on applications completed by program participants. Under the program, employers who intend to temporarily employ foreign specialty-occupation workers are required to file labor condition applications with the Department stating that appropriate wage rates will be paid and workplace guidelines followed. DOL is statutorily required to certify applications unless it determines them to be "incomplete or obviously inaccurate." Under current law, the Department's role in reviewing labor condition applications amounts to a rubber stamp.

The OIG believes that if the Department is to have a meaningful role in the labor certification process, it should have corresponding statutory authority to ensure the integrity of the process, including verifying the accuracy of information provided on labor condition applications. This is critical because the OIG continues to identify fraud in the foreign labor certification programs, particularly the H-1B program. These cases involve fraudulent petitions filed with DOL on behalf of fictitious companies and corporations, petitions that use the names of legitimate companies and corporations without their knowledge or permission, and immigration attorneys and labor brokers who collect fees and file fraudulent applications on behalf of aliens. For example, a recent joint investigation led by the OIG found that a Virginia attorney, with the help of associates, filed 1,400 fraudulent labor certification applications. For one small restaurant, he filed 238 applications for cooks over a period of 17 months. The attorney was indicted in September 2002 on charges including labor certification and immigration fraud.

Human Capital Management

The management of human capital will present a significant challenge to the Department over the next decade, due to anticipated workforce and skills shortages. As many Federal workers become eligible for retirement, the Department's ability to recruit and retain highly qualified people will be essential to the successful accomplishment of its mission. The Department projects that 27% of its workforce, as well as about 50% of its supervisors, are eligible to retire within the next five years. The resulting need for human capital planning across government has been highlighted both in the President's Management Agenda and a 2001 General Accounting Office report that added strategic human capital management to its list of Federal programs and operations identified as high risk.

Recognizing this challenge, the Department has instituted a number of policies to maximize its recruitment and retention of talented people. These include increased use of special hiring programs, telework, flexible work schedules, transportation and childcare subsidies, training and professional development, succession planning, and retention and recruitment bonuses. The Department also has indicated that it plans to implement a Department-wide strategy to address succession planning, core competency analysis and training, and the further use of personnel flexibilities. Maximizing the efficiency and utilization of these programs must remain a priority if the Department is to be truly effective in attracting and keeping the best people.

The OIG recently evaluated both the Department's telework program and its participation in the Presidential Management Internship program, which is designed to attract individuals with advanced degrees to Federal service. In these studies, we identified ways to improve the use of these programs as recruitment and retention tools.

In addition, there are a number of specific legislative, regulatory, and policy changes that would be helpful to Federal agencies like DOL in more effectively competing with private industry for highly skilled personnel and in retaining qualified employees. Flexibilities are needed in the areas of salary levels, recruitment bonuses, and promotions, as well as a number of hiring rules such as the number of selected qualified candidates who may be considered from a certification list. With such flexibilities, however, comes an even greater responsibility for DOL management to ensure that any new authorities are applied appropriately.

Effectiveness of Mine Safety and Health Programs

In January 2001, the OIG listed enhancing the effectiveness of programs administered by the Mine Safety and Health Administration (MSHA) as a management challenge to the Department. Prior evaluations by the OIG had identified a number of mine health and safety issues needing the Department's attention to ensure programs that protect miners from injury or death operate efficiently and effectively. MSHA has taken significant steps toward addressing the recommendations that resulted from those evaluations, and will be challenged in the coming year to fully implement outstanding recommendations, some of which require rulemaking.

For example, an OIG evaluation found MSHA was unable to complete statutorily mandated inspections of Metal/Nonmetal mine operations because of the rapid growth in mine operations, reductions in the numbers of inspectors, and shifts toward compliance assistance. Chief among our recommendations was that MSHA study its enforcement and compliance assistance programs to determine which have been most effective in reducing injuries and fatalities. In response to our report, MSHA has completed this review. It is also developing a nationwide "Special Emphasis" program, based on input from district offices, to concentrate its safety and health inspectorate on mines with excessive incidence, injury, and illness rates. Additionally, MSHA has taken steps to reinstate the program for accident reduction or a derivation of that program.

MSHA has also developed a plan to encourage districts to achieve more consistency in inspections and enforcement nationwide. It also reviewed statistical data to better identify/forecast injury and fatality trends at mining operations, so as to focus their safety and health compliance specialists in areas where these events are more likely to occur.

In the area of hazard complaints, MSHA continues to implement recommendations from an OIG evaluation that found more needed to be done to improve the intake, management, tracking, and analysis of complaints. To that end, MSHA has completed a final review of its Hazard Complaint Procedures Handbook, which addresses these areas of concern. The handbook will be distributed to all enforcement personnel and integrated into inspector training modules at the National Mine Health and Safety Academy.

Finally, an OIG evaluation of MSHA's handling of inspections at the W.R. Grace & Company Mine in Libby, Montana, identified five areas where MSHA could do more to protect miners and their families against the health risks of exposure to asbestos. Three key recommendations require rulemaking: (1) lowering the permissible exposure limits for asbestos, (2) using a more effective method to analyze fiber samples that may contain asbestos, and (3) better addressing take-home contamination from asbestos. In response to these recommendations, MSHA issued an advance notice of proposed rulemaking on March 29, 2002, to request public comment. The benefits of rulemaking addressing these three areas would be the reduction or elimination of asbestos-related diseases arising from exposure to asbestos. Two additional recommendations pertaining to education and training have been resolved and closed based on MSHA's implementation of the OIG's recommendations. ■