

Management's Response to the Inspector General's Statement on the Top Management Issues at the U.S. Department of Labor

The Department has achieved significant progress during the past year in overcoming the top management challenges identified by the Inspector General in January 2002, and the President's Management Agenda Scorecard and the Inspector General's January 2003 statement on the top management issues offer clear recognition of DOL's accomplishments. By the end of FY 2002, the Department's status ratings had improved to Yellow for four of the five items on the President's Management Agenda Scorecard, and progress for the same items was rated as Green, placing the Department as the highest rated Cabinet agency. The Inspector General's January 2003 statement removed one of the prior year's challenges and indicated substantial progress for others.

The Department anticipates that the results of initiatives to address several management issues during FY 2003 and a reassessment of other issues should enable the Inspector General to report even further progress in January 2004. In this regard, as referenced by the Inspector General's statement, many concerns first raised last year about the effectiveness of mine safety and health programs have been fully addressed during FY 2002, and efforts are underway to revise regulations as necessary to resolve all of the remaining mine safety concerns. The expected completion during FY 2003 of a program that will enable States to validate the quality of their performance data before reporting the results of their job training programs to DOL should resolve the Department's data quality issues. The Inspector General's statement also repeats some challenges, particularly in the information technology arena, that DOL has comprehensively addressed in prior years; a reassessment of the responses should allow the Inspector General to close these issues or provide specific guidance to the Department about the additional measures required.

Where a sustained effort is required by DOL over several years to address a management issue that impacts a core program or management priority, performance goals and strategies are targeted in the Department's Annual Performance Plan. For example, the Department's Plan incorporates goals to address the human capital management issues faced by DOL as well as to improve the results of the job training programs identified in the Inspector General's statement. Several issues require legislative action or otherwise fall outside of the Department's jurisdiction, as explained in management's response. To improve the clarity of presentation, the Department requests that the Inspector General segregate such items in future years' statements of management issues, directing the recommendations to officials in a position to complete the required actions.

Each management challenge and the actions taken or planned by the Department to address the conditions cited are discussed below.

Grant Accountability, Performance, and Effectiveness

DOL acknowledges that effective grants management and performance accountability are a continuing challenge in managing grants programs at the Federal, State, and local levels. DOL is pleased that the Office of Inspector General (OIG) has recognized the Department's efforts to improve the effectiveness of our grants management systems through the implementation of a comprehensive Contract/Grant Administration Plan. The Department has worked with OIG on the development of this plan, and will continue to work with OIG throughout its implementation.

Preaward/Award: OIG suggests that vulnerabilities associated with DOL-funded grants stem primarily from the fact that funds are passed down (often by formula) to second and third tier subgrantees and subcontractors, and because many of the ultimate recipients of funds are small organizations. While the first of the assertions is undoubtedly true, this decentralized system of funding and performance accountability, as acknowledged later in OIG's Top Management Issues paper (see "Resolving Inconsistencies in WIA"), is a key feature of the Workforce Investment Act (WIA). While DOL is working to improve its oversight and monitoring capabilities, this must be accomplished within the framework of the decentralized system prescribed by the legislation.

Small and new grantees that are not accustomed to managing Federal grant funds are only a small fraction of DOL grant funds — for example, of the \$17.5 million in grants under the faith-based initiative, \$500,000 was awarded to small, community-based organizations. A report released by the White House Center for Faith-Based and Community Initiatives recommended that more funds be made available to non-traditional grantees, and DOL is working both to ensure that more funds are awarded to faith and community-based organizations and to improve the capacity of these organizations to manage the funds.

Finally, as referenced by OIG, the grant to a Welfare-to-Work competitive grantee that was the subject of a March 2002 audit was terminated based on the OIG audit and subsequent work by DOL staff. This serves as an example of effective monitoring and OIG/DOL cooperation.

Grant Execution: DOL has engaged in an extensive program to provide training and technical assistance tools to grantees (particularly new grantees) with respect to the statutory, regulatory and performance requirements of their grants. Overall, DOL anticipates that this training will be an effective tool to improve performance and minimize disallowed costs. DOL is also implementing performance management and oversight strategies that should further improve grantee performance. DOL will continue to work with OIG and on the basis of our own monitoring to disallow costs, impose corrective actions and, where appropriate, terminate grantees.

Reporting: DOL has been implementing internet-based financial and performance reporting systems. These systems have built-in edit checks and acceptance requirements that are designed to ensure timely and accurate reporting. The Department has also recently begun to implement an extensive performance reporting validation project to ensure that performance results reported by grantees conform to the definitions and criteria established by the applicable DOL program.

Oversight: The Employment and Training Administration (ETA), DOL's largest grantor agency, has identified accountability over grant funding as a priority, as recognized by OIG in the discussion of this agency's Grant/Contract Administration Implementation Plan in the Top Management Issues paper. As part of this effort DOL recently issued, with OIG concurrence, clarifying guidance on the proper reporting of WIA obligations at the local level. Consistent with its focus on grant and contract administration in FY 2002, ETA established the requirement that at least half of all formula-funded grants be monitored on-site.

The Department appreciates OIG's recognition of the improvements achieved by the Bureau of International Labor Affairs (ILAB) with respect to accountability for grants issued. The Office of the Assistant Secretary for Administration and Management (OASAM), the Office of the Chief Financial Officer (OCFO), and ILAB will work together in FY 2003 to address further improvements in the area of financial management to help assure that ILAB receives pertinent and timely information. ILAB also plans to work with a contractor to improve internal controls and security over its Activity Tracking System — an internal system that serves as an unofficial tool for program managers to track budgets, expenditures, and obligations.

WIA Program Implementation

The Workforce Investment Act has provided a significant opportunity and challenge to create a new generation of workforce investment programs that respond to the career development needs of Americans and the human resource needs of America's businesses. The Department has worked hard with the States and localities to build this system, and has learned many lessons in the process. The Department plans to incorporate these lessons into the process to reauthorize the Workforce Investment Act that will occur in 2003. Among the important areas in which the Department will propose changes is improving and simplifying the performance accountability system, including financial reporting.

Resolving Inconsistencies in WIA

Obligations and Expenditures: The Department has sent out revised reporting instructions recommended by the General Accounting Office (GAO) and the Inspector General to clarify an immediate problem relating to reporting of local obligations, as noted in OIG's Top Management Issues paper. GAO has also suggested that DOL concerns regarding the reliability of obligation data can be addressed by new requirements to report obligations made at the point of service delivery, rather than the current requirements that States report obligations reflected in the accounting records at the State or local level. However, the Department is concerned that such a requirement would be extremely burdensome and expensive to implement nationwide. DOL will follow the suggestion made by GAO to consult with the States on this

recommendation when financial reporting requirements are next reconsidered, but remains skeptical that the recommendation can be implemented. This consultation will most likely occur as part of discussions about WIA reauthorization. The Department is reluctant to make major interim changes. DOL concurs with the recommendations to provide guidance and technical assistance focused on accounting and reporting requirements and to share information on effective practices. To date, the Department's concerns have been to identify the causes of low spending and related low service levels and to address them. Ensuring that all States are aware of requirements relating to the accounting of WIA funds will be a priority for the coming year.

Definition of Credential: DOL and several other Federal agencies are working with the Office of Management and Budget (OMB) to develop a core set of performance measures that would apply to all Federally-funded job training programs, including WIA title I formula programs. Under this proposal, which is scheduled to take effect in FY 2004, the credential attainment measure for adult and dislocated workers would be eliminated. While it would remain for the youth program, DOL is working with the Department of Education's Office of Vocational and Adult Education to develop a definition that would apply to all Federal youth employment programs. No interim changes to the credential definition are anticipated.

Financial Performance

The Department's Office of the Chief Financial Officer works closely with program agencies on financial management and compliance issues. This partnership has resulted in DOL's financial management status on OMB's scorecard for the President's Management Agenda being upgraded from Red to Yellow, and its progress score being upgraded from Yellow to Green. The OCFO, however, believes that sound financial management goes well beyond the ability to produce timely and accurate financial statements. The ultimate goal of sound financial management is to provide DOL executives and program managers with information needed to make management decisions on a day-to-day basis. In FY 2003, the OCFO intends to work closely with each program agency to identify its needs and develop the tools and processes that will provide executives and managers with information that is essential for the effective management of their programs and activities.

The OCFO is committed to fulfilling its responsibilities under the Single Audit Act and intends to increase its involvement in the oversight of grantor agency monitoring and evaluation activities.

Accountability: Budget and Performance Integration

The President's Management Agenda Scorecard, as of September 30, 2002, rated DOL as Yellow for budget and performance integration and recognized our progress in this area as Green, clearly reflecting the Department's commitment to this key milestone towards performance-based management. While the full integration of performance and budget is a multi-year project, DOL has made substantial strides during the past year that will culminate in the presentation to Congress in February 2003 of a complete performance budget for the Department for FY 2004. In addition, the Department has developed a plan to further improve the performance budget presentation for FY 2005 and the years beyond, as experience in this new approach to budgeting, more reliable performance information, and the increased availability of cost accounting data support more precise linkages between budget and performance.

Quality of Program Data: The Department has adopted proactive measures to assure the quality of performance data that measure the results achieved by DOL programs, exceeding the standards established by OMB. Guidance included in OMB Circular No. A-11 defines performance data as acceptably reliable, "when there is neither a refusal nor a marked reluctance by agency managers or government decision makers to use the data in carrying out their responsibilities." In addition, Circular No. A-11 provides that Federal agencies are not required to develop an independent capacity for verifying or validating performance data received from non-Federal sources, and instructs agencies to be mindful of the costs and anticipated benefits of improving the quality of program information which meets decision-makers' needs.

Notwithstanding OMB's guidance, the Department has developed approaches for ensuring the validity of key data submitted by a variety of third parties, to improve the confidence of DOL management in the reliability of performance data that supports decisions critical to the well-being of the Nation's workers. For example, both the Mine Safety and Health Administration (MSHA) and the Occupational Safety and Health Administration (OSHA) conduct audits of a selected number of mine operations and other businesses respectively, to verify the accuracy of the employers' data pertaining to

Management and Performance Challenges

injuries, illnesses, and lost productive time. The Bureau of International Labor Affairs relies on program evaluations to confirm the performance results reported by local project administrators who receive DOL grant funding through the International Labor Organization and other grantees, where applicable. The Department's OIG conducts selective audits to verify performance data from internal Departmental systems as well as third parties.

With respect to the Department's employment and training programs, as OIG notes, DOL has mounted a data validity and verification program to improve the quality of program data from States and other grantees that are part of the workforce investment system. Development work has been substantially completed and will be followed by training and assistance in early 2003. Using this program, the States and grantees will be expected to validate the performance data that will be included in the Department's FY 2003 Annual Report for the employment and training goals.

Access to Data: The Department agrees that Unemployment Insurance (UI) Wage Record information and the National Directory of New Hires are important sources of information for determining program outcomes. The Department believes that the current statutory authority in WIA has been sufficient to provide needed access to UI wage record information for program accountability reporting. The States and the Department have used UI wage record information as the source for reporting on the WIA employment indicators. The Department will propose to continue this authority with the reauthorization of WIA. The Department also has plans to work with the Department of Health and Human Services to explore mechanisms to combine selected New Hire information with that in UI wage records to improve the usefulness of these as data sources for economic and program performance accountability information. In doing so, the Department will consider whether statutory authorization may be required.

Managerial Cost Accounting: The Department supports the use of managerial cost accounting for results-oriented decision-making and measurement of program economy and effectiveness. In order to enhance the Department's managerial cost accounting efforts, the Office of the Chief Financial Officer is in the process of forming a division within its Office of Financial Integrity responsible for enhancing the Department's managerial accounting processes and facilitating the integration of performance and financial information at the operational level. These activities will be coordinated with OASAM's efforts to integrate budget and performance.

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 calling for reforms to strengthen plan audits. During that same period, the Department also proposed legislative changes that would require the direct reporting of certain criminal violations relating to employee benefit plans. Despite the Department's continued efforts, Congress has not enacted this legislation.

Absent Congressional action, the Department continues to take steps to improve the audit process established by the Employee Retirement Income Security Act of 1974 (ERISA). Program initiatives of DOL include cooperative efforts with the accounting profession, such as referral of deficient accountant work to State boards of accounting and to the American Institute of Certified Public Accountants for appropriate remedial actions. In addition to these ongoing program efforts, the Department's Pension Welfare Benefits Administration (PWBA) continues its active involvement with the Financial Accounting Standards Board to develop accounting guidance for employee benefit plans. DOL recognizes that the problem of deficient audits remains in spite of the Department's compliance initiatives and is considering approaches to address these issues.

With respect to cash balance plans, OIG issued a report in 2002 of its audit of PWBA's oversight of cash balance plan lump sum distributions. In its report, OIG recommended that PWBA direct more enforcement resources toward protecting the benefits of cash balance plans' participant benefits, initiate specific action on the 13 plans identified by OIG in its audit report, and work with the Internal Revenue Service (IRS) to develop improved guidance for plan sponsors in calculating participant accrued benefits in cash balance plans.

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

Pension Plan Enforcement: The Department recognizes that pension funds represent a target for individuals with criminal intent and has responded to that challenge with a strong enforcement program. PWBA's enforcement mission is to deter and correct violations of Title I of ERISA and related criminal statutes. This is accomplished through civil and criminal investigations of plans, plan sponsors, fiduciaries, and service providers. During the past few years, there has been an increased commitment to our criminal enforcement program. During FY 2002, there were 134 indictments issued as a result of PWBA's criminal investigations, and convictions or pleas were entered in 49 different PWBA cases. PWBA criminal enforcement investigations resulted in the recovery of over \$2.3 million on behalf of employee benefit plans or their participants and beneficiaries. In addition, PWBA closed 4,925 civil investigations of which 58 percent or 2,877 were with results. During this period, PWBA civil enforcement investigations had monetary results of over \$830 million, approximately 27 percent more than FY 2001 and a record for the Agency.

PWBA will continue to target criminal cases in various ways that have demonstrated successful results in the past 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. The Department also maintains close working relationships with other law enforcement agencies such as the U.S. Attorneys, the Federal Bureau of Investigations, the Postal Inspectors, and OIG. Finally, while not all fraud can be prevented, DOL is proactive in the early detection and prevention of criminal behavior by, among other things, aggressive outreach and education campaigns. Education campaigns create knowledgeable consumers who can assist in "policing" their own benefit plans. An informed public is a good source of early detection and prevention of criminal activity and the Department continues to leverage the knowledge of the public who may be in the best position to identify potential fraudulent behavior.

The Department recognizes the importance of devoting appropriate enforcement resources to the review of service providers to employee benefit plans, including Taft-Hartley plans. In its Strategic Enforcement Plan, published in April 2000, PWBA identified plan service providers as a national investigative priority. Investigations of plan service providers offer the opportunity to address abusive practices that may affect more than one plan, and by focusing investigative resources on plan service providers, PWBA can address violations involving many plans. Because such investigations generally result in larger recoveries for more plans and more participants, this approach allows PWBA to leverage its resources and obtain the maximum impact for the benefit of plan participants and beneficiaries. As pointed out by the OIG, an illustration of this investigative approach is PWBA's Capital Consultants, Inc. case in which, as a result of PWBA's efforts, over \$149 million have been recovered to date. In addition, 27 trustees have been precluded from involvement in employee benefit plans as fiduciaries or service providers. With respect to the criminal investigation, which PWBA conducted jointly with OIG, seven individuals have been indicted thus far. Four defendants have pled guilty and one of these defendants is serving a 24-month prison sentence. PWBA continues to investigate the trustees of other plans that invested with Capital Consultants.

With respect to employer-sponsored 401(k) plans, PWBA 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, 2002, PWBA has opened 8,000 civil investigations and closed 6,538 civil investigations (4,428 with violations and monetary recoveries). Also, 170 criminal cases have been opened. Thus far, these cases have resulted in the criminal prosecution of 117 persons. PWBA has recovered over \$170 million nationwide through this project. The investigations opened under this project are among the most successful for PWBA in terms of finding and correcting violations, due in large part to PWBA's use of strategic targeting of resources. For example, in FY 2002, PWBA closed 1,351 civil cases in this project, 1,062 of which (or 79 percent) resulted in corrected violations. This compares favorably to the overall ratio of cases closed with violations, which was 58 percent in FY 2002. A significant step occurred in March 2002, when the Department announced a final Voluntary Fiduciary Correction Program (VFCP). The VFCP enables 401(k) plan sponsors to self-correct delinquent participant contributions by restoring losses, including earnings, to plans. Applicants meeting the conditions of the VFCP are granted relief from any applicable excise taxes under a VFCP Class Exemption published. The Department has received 166 VFCP applications, most of which address correction of 401(k) contributions. To promote use of the VFCP, in 2002 the PWBA's Web site posted Frequently Asked Questions on calculating earnings on delinquent 401(k) contributions under the VFCP.

Protection of Worker Benefit Funds

Funding Concerns

The Department is dedicated to the highest standards of financial stewardship and program integrity in administering funds that provide critical benefits to the Nation's workers. The funding concerns identified by OIG are matters largely outside the Department's control. With respect to program integrity, we recognize that all Government benefit programs are vulnerable to abuse. However, the minimal rates of fraud and overpayments identified in systemic studies of the Federal Employees' Compensation Act program, the Department's initiatives to reduce erroneous payments in conjunction with the President's Management Agenda, and aggressive corrective actions in response to OIG recommendations attest to the Department's vigilance in protecting these funds. The Department is aware, however, that further protection of these funds is required and will continue to seek out additional ways to combat fraud and minimize overpayments.

Unemployment Trust Fund: As noted by OIG, the Unemployment Trust Fund paid \$50.6 billion for "State Unemployment Benefits" for FY 2002. In addition, 30 States were reported as "not minimally solvent" as of September 30, 2002, up from 21 for September 30, 2000, and 26 for September 30, 2001. These increases are normal for an economic downturn because of the counter-cyclical nature of UI funding. The Department provides technical assistance to the States on issues relating to solvency.

The Department appreciates OIG's assistance in facilitating an agreement with the Department of the Treasury to develop a new methodology that will more accurately charge the Unemployment Trust Fund for the collection and processing of unemployment taxes and the administration of the fund. The completion of an agreement should allow this issue to be removed from the Department's top management issues.

In addressing overpayment problems in the Unemployment Insurance (UI) program, OIG notes 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. Furthermore, OIG states that, for FY 2001, 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 \$0.669 billion, or less than one-third of the amount estimated by BAM activities. The Benefit Payment Control activities do not establish a larger percentage of the dollars that the BAM program estimates as overpaid for reasons particular to each of the two programs. BAM, for example, includes in its estimates some overpayments that BCP can detect, but finds too small to be cost beneficial to establish for collection, or which State law deems non-recoverable. On the other hand, BAM estimates overpayments for causes, such as failure to conduct a work search, that BCP would establish for collection, but cannot detect with available resources. BAM is only able to detect some overpayments because BAM investigators conduct an intense, rigorous investigation of each sampled claim that is too costly to be applied in the general administration of the UI program. Applying the BCP program attributes to the \$2.3 billion overpayments estimated by BAM in FY 2001 results in the following: \$1.235 billion are recoverable and detectable using BCP methods; \$0.566 billion are recoverable, but not likely to be detected by BPC; and \$0.484 billion are non-recoverable and thus out of the scope of the BPC program. States now establish through BCP over 50 percent of the BAM estimate of the kinds of overpayments that their current BPC methods are most likely to be able to detect. The Department is taking steps to raise that percentage by improving both the prevention and detection/recovery of overpayments. These include encouraging and funding States to use Social Security Administration data on-line to prevent overpayments due to misused social security numbers, and to conduct crossmatches of benefit payments against the New Hire database to detect unreported benefit year earnings.

The BAM estimate has been flat over the past 12 years because all practical, cost-effective corrective actions that have been identified to date were implemented during the first year or two of the BAM program when problems were initially uncovered. The 8.5 percent national estimate is probably reasonable given: (1) the definition of error currently used in BAM; (2) the complexity of the UI program; and (3) the current funding levels. However, the Department is continuing analysis and urging States to continue to explore innovative ways to prevent overpayments from occurring, and to detect and recover higher percentages of the overpayments the States could not prevent.

As referenced by OIG, the Department has developed a performance measure for FY 2003 to improve the accuracy of UI payments by establishing for recovery 59 percent of overpayments the system could potentially recover, and plans to adopt a measure in FY 2004 to target the recovery of those overpayments. These performance measures support the financial management initiatives of the President's Management Agenda to reduce erroneous payments in major benefit programs.

Black Lung Disability Trust Fund Deficit: This issue can only be resolved by legislative action and the Department continues to seek such a solution. Proposed legislation, which would restructure the existing indebtedness and extend the current excise tax rates until the debt is repaid, was approved by the Secretary on January 14, 2002, approved by OMB, and has been transmitted by the Secretary to the Congress for its consideration.

Energy Employees Occupational Illness Compensation Programs: The Department contracted with an actuarial firm for analysis of the Energy Employees Illness Occupational Compensation Program's data and a projection of the liability for future payments as of September 30, 2002. The results have been submitted to the OIG for audit.

Program Integrity

Unemployment Insurance: OIG discusses a number of weaknesses that pose problems for the Unemployment Insurance system and need to be addressed, including the loss of contributions due to hidden wages and the misclassification of workers. Under the Department's guidance, the States are aggressively pursuing employers that hide wages by misclassifying their employees. In the ten quarters since the Department began keeping records on misclassified workers, State tax auditors have completed 278,160 employer audits and found previously unreported wages of \$3.8 billion and 243,115 employees that were misclassified as independent contractors.

To further identify hidden wages, the Department has worked with OIG over the last three years in an effort to provide State UI agencies with a 1099-MISC Extract tape from the Internal Revenue Service that identifies individuals who are being reported to the IRS as independent contractors. This tape assists the States by providing leads for the selection of employers for audit purposes. As of May 2002, a total of 20 State UI programs have begun to receive this tape.

DOL has taken a number of recent actions and continues to work to address fraud detection and investigation in the States, including:

- **1998** The Unemployment Insurance System distributed training materials to States for the purpose of improving methods for detection and investigation of overpayments including a CD-ROM for beginner training and a set of five videos for advanced training.
- **1999** Distributed copies of the OIG study "Audit of Benefit Payment Controls" that contained recommendations for strengthening States' overpayment detection procedures in their wage/benefit crossmatch systems and espoused the advantages of employing the New Hires system for detecting overpayments.
- **2000** Provided guidance reiterating the advantages of using the New Hires system and further encouraged States to use it.
- **2001** Provided training to States through presentations and workshops at a national conference on a variety of topics pertaining to benefit payment control, internal security, and tax integrity.
- **2002** A guidance letter is in draft to invite States to submit supplemental budget requests to obtain funding for the purposes of implementing/operating/enhancing New Hires systems. The Department is currently working with the Social Security Administration to develop a system for all States that will address identity theft and the fraudulent use of Social Security Numbers for filing Unemployment Insurance claims.
- **2003** A National Integrity Conference is planned. Workshops will be directed towards State supervisors of benefit payment control operations, and will include topics relating to prevention, detection, and collection of overpayments.

Federal Employees' Compensation Act (FECA): We believe that the OIG's audit work and fraud investigation experience demonstrate that the internal controls instituted by the FECA program are generally effective and reasonable.

Each year fewer than 100 individuals are prosecuted for FECA fraud, out of a universe of more than 250,000 claimants receiving benefits and hundreds of thousands of medical providers billing for services. In FY 1999, the total amount of FECA benefits determined by outside auditors to have been overpaid, for fraudulent and non-fraudulent reasons, was less than 3/4 of one percent of total compensation payment made. The percentage of medical payments found to be potentially inappropriate by the OIG-supervised audit was even smaller. While some inappropriate payments do go undetected, the Office of Workers' Compensation Programs' (OWCP) major cost containment initiatives are making significant progress in addressing those instances. OWCP has taken numerous concrete steps to address its vulnerability:

- A proposed legislative solution to obtain automated cross-matches with SSA, as recommended by OIG;
- Procedural changes for obtaining earnings information by requiring submission of the authorization to obtain earnings data from SSA annually instead of every three years;
- Periodic Roll Management reviews of long-term disability cases for continuing entitlement to benefits, in place since 1992. (Note: OWCP devotes more than 120 FTE to this function each year);
- The Quality Case Management (QCM) initiative, which ensures that new disability cases are carefully reviewed, including by rehabilitation nurses, to ensure appropriate care, early return to work, and avoidance of inappropriate payments;
- The Corrective Coding Initiative review of medical bills (implemented in response to OIG findings regarding improper medical provider bill coding practices);
- Modernization of ADP systems to ensure that FECA payment systems are designed to minimize vulnerability to fraud and abuse;
- Automated system relational edits to bills, in addition to Correct Coding and fee schedule edits, to deny or suspend bills for services unrelated to the diagnosis accepted in the case;
- Limited utilization review of high-cost and high-incidence medical services, such as physical therapy and psychiatric services to ensure that proper treatment regimens are followed for those medical services, initiated in FY 2001. Funding sought in FY 2003 for an expansion to examine patterns of unusual changes, to detect misbillings and potential fraud by medical providers;
- Fiscal Operations Specialist position created with monitoring and auditing responsibilities in each of FECA's twelve district offices, including identification of potential duplicate medical and compensation payments and guarding against any potential compensation or medical fraud, including internal fraud;
- The "OASIS" system, which entails electronic imaging and handling of FECA case files, to greatly enhance program controls over incoming mail;
- Continued refinement of existing improper payments controls, wherever necessary, and design of new systems to minimize vulnerability. For example, the initiative to receive some new claims and medical bills electronically, carefully designed to maintain and enhance existing controls;
- Centralized medical bill processing (operations to begin in late FY 2003), provided under contract with ACS, Inc. which specializes in using automated case review measures, including clinical guidelines for medical treatment and fraud and abuse protection, identification of appropriate clinical treatments, and improved tracking and prior authorization of requests for medical services.

Information Technology and Electronic Government

Security of IT Assets: The Department has been vigilant in securing information technology (IT) assets. In FY 2002, the Department had 46 sensitive systems, and has prepared current risk assessments and system security plans for each of these systems. Additionally, known vulnerabilities for the 46 sensitive systems have been addressed through system level Plans of Actions & Milestones that reflect the significant progress DOL has achieved toward mitigating risks. The Department's past performance in managing the Plans of Actions & Milestones has been highly successful and cited as an example by the Office of Management and Budget for completeness and effectiveness. Additionally, the Department achieved 87 percent compliance with the National Institute of Standards and Technology's model described in Special Publication 800-26 at Level Three and 85 percent compliance with Level Four, demonstrating the Department has implemented security procedures and controls, and the procedures and controls are tested and reviewed. The Department is expanding its security program in FY2003 to cover an additional 36 sensitive systems, raising the total number of systems managed under

the security program to 82. Risk assessments and Plans of Actions & Milestones to mitigate risks will be developed for the additional 36 sensitive systems during FY2003. Additionally, the Department's Annual Performance Plan for FY 2003 provides further confirmation of DOL's commitment to the security of our information technology assets, with a performance measure to reduce severe unauthorized intrusions by 50 percent.

OIG stated in the FY 2002 Annual Security Act Report that, "...the Department is improving upon managing its information security program through its related Plans of Action and Milestones, in accordance with the Office of Management and Budget Memorandum 02-09." The report further states that, "These accomplishments are helping to ensure security issues are being addressed throughout each phase of a system's life-cycle." Additionally, the OIG concluded that the Department has established an information security program that has an observed focus and commitment. These factors should bring about assurances that DOL computer systems are reliable and adequately safeguarded, and result in providing uninterrupted delivery of benefits and services to the public.

Finally, the Department is pleased to report that, according to a General Accounting Office report on Computer Security issued November 19, 2002, *Computer Security: Progress Made, But Critical Federal Operations and Assets Remain at Risk*, DOL was the highest ranked Cabinet level agency and the second highest overall Federal agency, moving from a score of 56 in FY 2001 to a score of 79 in FY 2002, with a report card grade of C+. This score is based on information contained in agency reports submitted to OMB as required by the Government Information Security Reform Act (GISRA). The GISRA focuses on the program management, implementation and evaluation of agency plans and procedures designed to protect the security of information technology systems that support Federal operations and assets.

CIO Authority and Organizational Independence: The current organizational alignment that assigns the responsibilities of the Chief Information Officer (CIO) to the Assistant Secretary for Administration and Management (ASAM) promotes operational effectiveness and efficiencies, contributing to the successful record the Department has achieved in the area of information technology management. The Department's record also demonstrates that the CIO has the necessary authority and organizational independence from other agencies within the Department to manage DOL's information technology resources proficiently.

The integration of CIO responsibilities within the Assistant Secretary for Administration and Management position affords distinct advantages in the implementation of the Clinger Cohen Act. Effective management of information technologies requires linking proposed IT investments to Departmental missions, priorities, and strategies. It also requires a close partnership with the Departmental Budget Center to control IT investments. The ASAM is responsible for DOL strategic planning, Government Performance and Results Act implementation, and Departmental budget development and management and human resources management. As a result, the ASAM is best positioned to ensure the integration of IT policies and plans cohesively throughout the Department. It is worth noting that only 3 of 46 mission critical systems (less than 7 percent) fall within the Office of the Assistant Secretary for Administration and Management and come directly under the ASAM's area of responsibility. Thus, the ASAM's objectivity is not hindered by the integration of CIO responsibilities or vice versa.

Under the continuing leadership of the Assistant Secretary for Administration and Management, the Department has established a track record of excellence in the information technology field, with FY 2002 accomplishments described in this section — including recognition of effective performance from the Congress, the General Accounting Office, the Office of Management and Budget, and OIG itself. In addition, the Office of Management and Budget designated DOL to serve as a "managing partner" to lead one of the 24 large-scale E-government initiatives, entitled GovBenefits. GovBenefits was the first of twenty-four Federal-wide initiatives to offer services to the public, launching Phase I on April 29, 2002. It is a partnership of ten Federal agencies to provide improved, personalized access to government assistance programs.

As a result of this and many other achievements, DOL is recognized as a leader in Clinger Cohen Act implementation throughout the Federal government. For example, the Director of the Office of Management and Budget recognized DOL for its leadership as the only department with centralized funding for some of its IT systems. The Office of Management and Budget's scorecard for the implementation of the President's Management Agenda cites effective enterprise architecture and capital planning processes, two of the primary objectives of the Clinger Cohen Act. DOL received a Yellow status rating and a Green rating for progress on the September 30, 2002 President's Management Agenda scorecard. The FY 2002 Budget Passback highlighted the efforts of the CIO in the development of an E-government strategy and cited our customer value network process as "best practice material."

The Fiscal Year 2002 Annual Security Act Report referenced earlier also states: "...The Department's Office of the Chief Information Officer is recognized for its leadership in tracking the performance level of each security plan and how it has been able to integrate security performance results within the Department's Capital Planning and Investment Control process and the Enterprise Architecture, including related budgetary decision papers and exhibits." The Department was recognized and received an award in FY 2002 from The Performance Institute for Overall Performance Management.

DOL's sustained record of performance should allay OIG's concerns that the administrative functions of the Department divert the Assistant Secretary for Administration and Management's attention from or conflict with his information technology responsibilities. While we agree with OIG that the successes of the incumbent ASAM and Deputy CIO do not guarantee that all future ASAMs will enjoy the same level of success, the existing organizational structure supports their achievements. If a future leadership team proves less successful, the causes of the diminished results should be identified and addressed by the most suitable remedy. To undertake a disruptive and costly organizational realignment at this time would be inappropriate.

Program Integrity in an Electronic Environment: As described in the Management Responses to this OIG in the Department's FY 2000 and FY 2001 Annual Reports, DOL and our program partners recognize that any significant revision of benefits payment processes — including those utilizing automation — must be designed and implemented such that vulnerability to fraud and abuse is assessed, and appropriate controls are developed to minimize or curtail that vulnerability. While posing potential new risks to program integrity, electronic benefit payment also offers a wide array of new methods for detecting and preventing fraud and abuse that were unavailable in a less automated environment, and the Department and our partners have fully exploited these tools to maximize the protection of program assets.

The Department has provided detailed information in the past two years' reports regarding the comprehensive security and oversight procedures DOL and our program partners have instituted to protect the integrity of benefit payment processes in an electronic environment. Studies of Unemployment Insurance (UI) claims discussed in the prior DOL Annual Reports have identified no statistically significant differences in the incidence of fraud in claims filed by traditional procedures versus those filed by telephone, and OIG has identified a combined fraud and non-fraud overpayment rate of less than one percent in the Federal Employees' Compensation Act program. Although OIG references recent casework in worker benefit systems and the UI program as supporting its concerns, OIG has not provided sufficient information to enable the Department to determine whether these acts of fraud required an electronic environment, or simply made use of available automated filing systems in lieu of paper forms to obtain benefits illegally. Furthermore, in the Top Management Issues paper, OIG has neither acknowledged the extensive measures for protecting electronic benefit payments discussed in the Department's prior Annual Reports nor offered insights on specific inadequate or missing controls that could assist the Department and its partners to fully meet the challenges of program integrity in an electronic environment.

Program integrity is a primary consideration as the Department's Office of Workers' Compensation Programs (OWCP) moves toward an electronic environment. Current electronic initiatives are all performed with known and trusted trading partners. The electronic receipt of claims for job related injuries and illnesses is a joint effort of OWCP and the employing agencies of the injured Federal workers. All records submitted electronically pass through multiple data reviews — by the injured worker's supervisor, by the Human Resources office at the employing agency, and by OWCP district offices — that significantly reduce the risk of fraud or abuse in the claims submission process.

All medical bills submitted electronically are processed through well-known commercial clearinghouses that verify the legitimacy of a medical provider prior to allowing the provider to become a member of the clearinghouse. Internally, OWCP continues to improve the editing and auditing of medical bills to better detect instances of fraud or abuse.

As the Department develops new systems for the workers' compensation programs, DOL will ensure continuing compliance with all relevant government standards for security for internal automated procedures and Internet communications.

Integrity of Foreign Labor Certification Programs

The identification of fraud in the Foreign Labor Certification Programs continues to be a significant challenge to DOL because of limited resources, lack of knowledge on how much and where fraud takes place in the process, and no enforcement authority. Additionally, as pointed out by OIG, the Department lacks the authority to validate information on applications completed by program participants in the H-1B program. DOL has procedures in place to alert legitimate companies and corporations that permanent applications have been filed on their behalf. These procedures have been successful in the past because companies have responded and leads have been provided to OIG. The examples of fraud cited by OIG are two cases in which DOL Regional Office staff worked with OIG on fraudulently filed cases. To address this challenge during FY 2003, DOL will be participating with the Immigration and Naturalization Service in its development of an anti-fraud strategic plan, which focuses on intelligence gathering, fraud assessment and enforcement experience. DOL will analyze the results of this effort to identify additional improvements to existing procedures and the use of technology to help reduce the incidence of fraud.

Human Capital Management

DOL considers human capital management a top priority, and the recognition the Department has received for achievements and innovations during FY 2003 provides evidence of our success in meeting the challenges facing the DOL workforce in the 21st Century. For example, the Office of Management and Budget assessed DOL's status as Yellow and progress as Green for Human Capital Management on the President's Management Agenda Scorecard as of September 30, 2002. In addition, the Department was selected as a finalist for the 2002 President's Quality Award for its approach to strategic management of human capital. The Department has also implemented numerous initiatives supporting the specific human capital management issues detailed by OIG. An overview of these initiatives is provided below.

The development and use of core competencies is a priority within DOL. The Department is in the process of identifying core competencies for DOL's primary occupations, including front line staff, human resources, and support staff, as well as leadership competency models. DOL uses its core competencies in such functions as:

- Providing clarity for employees to manage their individual professional development process;
- Providing a means for self-assessment;
- Providing a link to developmental and learning activities to improve job performance;
- Developing organizational training programs; and
- Recruiting and hiring new employees with the necessary knowledge, skills, and abilities.

DOL actively uses personnel flexibilities to both recruit and retain a quality workforce. This is predominately accomplished using such flexibilities as recruitment and retention bonuses at present, and the Department is assessing the Student Loan Repayment Program as an additional incentive. DOL is also broadening its use of special hiring authorities, such as the Career Internship Program on which the recently launched MBA Outreach program, designed to recruit and nurture the next generation of DOL leaders, is based. Recruitment for the first class of MBA's proved highly successful, with approximately 250 candidates applying for 20 slots, and the Department may expand the program to a second FY 2003 class.

DOL has implemented an aggressive succession management program. DOL maintains an active Senior Executive Service Candidate Development Program, and 27 candidates are in training during FY 2003 for top executive positions in the Department. Our first "Excellence In Leadership" Succession Management Program class is currently being trained to fill critical future leadership positions. In addition to the "Excellence In Leadership" Program, DOL provides a Manager's Mentoring Program, and a Leadership Transition Program. Several DOL agencies have also initiated their own management development programs to identify and train candidates for advancement into the supervisory and managerial ranks.

In addition to the initiatives designed to build our leadership strength, training is provided to the general workforce to increase professional growth and to eliminate skill gaps. Courses are offered in facilitation, consulting and conflict management, as well as many other skills. Through DOL's Performance Enhancement Resource Center, employees have the opportunity to select from over 1,500 "available as needed" training modules from their computers.

In response to the recommendation that the Department track and report on telework participation, DOL will expand its current tracking of formal telework arrangements to include informal, episodic telework. Further, the Department is working with the Office of Personnel Management to develop web-based telework training for Federal supervisors and employees.

In response to OIG recommendations on the Presidential Management Internship (PMI) Program, DOL developed an action plan to improve the program. The Department has prepared a PMI Handbook, desk aid, and training for supervisors and will conduct its own PMI orientation program prior to the OPM orientation. These actions will clarify responsibilities for all parties. DOL will also sponsor a networking session so that new PMIs can meet and benefit from the experience of former PMIs.

Effectiveness of Mine Safety and Health Programs

The Department's Mine Safety and Health Administration (MSHA) is taking action to further integrate enforcement and compliance assistance activities by improving direction and guidance to district management on the operation of program activities, and is studying the allocation and distribution of enforcement and compliance assistance resources to determine the combination of activities that will produce the greatest effects on mine safety. DOL developed new performance goals with more meaningful outcomes regarding the prevention of mining related fatalities, injuries and illnesses. The Department is also identifying trends in mining injuries and fatalities, studying features of current programs to identify elements that are most successful in reducing injuries and fatalities, and will utilize these elements to revise other MSHA enforcement and compliance assistance activities. MSHA was not reviewed by the OIG in FY 2002. In FY 2001, OIG completed three audits/evaluations of MSHA's Metal and Nonmetal Mine Safety and Health programs: a Study of Metal and Nonmetal Mining Enforcement and Compliance Assistance Activities 1983-2000; an Evaluation of MSHA's Handling of Inspections at the W.R. Grace Mine in Libby, Montana; and an Evaluation of Hazard Complaint Handling in MSHA's Office of Metal and Nonmetal Mine Safety and Health. As discussed in the following paragraphs, MSHA has initiated a number of actions to address the findings and recommendations from these OIG studies.

MSHA has developed and distributed a "Consistency Plan" for Metal and Nonmetal Safety and Health Mining Districts to encourage safety and health compliance specialists to uniformly enforce standards on a nationwide basis. MSHA has also completed a review of statistical data to more effectively identify injury and fatality trends at mining operations. The results of this review will enable the Department to focus MSHA resources in areas where problems are more likely to occur. An action plan resulting from the review is under development and will be completed by March 2003.

In March 2002, MSHA began providing specific training on asbestos-related matters to safety and health compliance specialists who visit mines known to contain asbestos. MSHA also provides training on procedures for air and bulk sampling where asbestos may be present. Several of the OIG recommendations require rulemaking, including 1) lowering the permissible exposure limit for asbestos; 2) use of Transmission Electron Microscopy in initial analysis of fiber samples; and 3) addressing take-home contamination. Advanced notice of proposed rulemaking was published in March 2002. Seven public meetings were held across the country seeking input on these issues.

Until the regulation is finalized, MSHA is taking the following actions: 1) encouraging mine operators to comply with the OSHA asbestos standards, to educate operators to recognize that a "standard of care" based on lower exposure will reduce the potential for illness and liability; 2) using a contract laboratory to perform Transmission Electron Microscopy to confirm the identify of asbestos fibers on samples exceeding the OSHA limit; and 3) to address the take-home contamination issue, MSHA is currently stressing compliance with existing standards regarding special protective equipment and clothing.

MSHA formed a Hazard Complaint Committee to review, standardize, and develop hazard complaint intake, inspection and reporting forms, which are now integrated into a Hazard Complaint Procedures handbook. The Committee established consistent policies and procedures for the processing of hazard complaints by field office supervisors and inspectors, including appropriate responses to hazard complaints deemed trivial and/or outside of MSHA's jurisdiction and guidance on incorporating hazard complaints into a regular mine inspection. Following the publication of the handbook, headquarters staff will update training and materials provided to inspectors. MSHA is also developing a nationwide hazard complaint analysis system similar to the system used by Metal and Nonmetal headquarters staff. The handbook, updated training, and complaint analysis system are all scheduled for completion in January 2003.

Finally, MSHA is reviewing all violations related to Personal Protective Equipment (PPE) for special assessment, developing cognitive behavior approaches that will target risk taking and PPE use by management and labor, and is tracking fatalities involving adequacy, availability, and use of PPE. A Personal Protective Equipment workgroup is established and working with the National Institute for Occupational Safety and Health to develop a plan for increasing the use of such equipment to reduce fatalities, injuries, and illnesses in the Nation's mines. ■

