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**Management and
Performance Challenges**

OFFICE OF INSPECTOR GENERAL TOP MANAGEMENT ISSUES AT THE U.S. DEPARTMENT OF LABOR JANUARY 2002

The following are the areas that the Office of Inspector General considers to be the most serious management challenges currently facing the Department:

- Effectiveness of Employment and Training Programs
- Financial Performance
- Accountability: Budget and Performance Integration
- Security of Pension Assets
- Protection of Worker Benefit Funds
- Information Technology and Electronic Government Challenges
- Integrity of Foreign Labor Certification Programs
- Effectiveness of Mine Safety and Health Programs
- Rapid Expansion of the Bureau of International Labor Affairs Program
- Human Capital Management

Effectiveness of Employment and Training Programs

After three decades, the Department continues to face challenges in effectively administering a number of key employment and training programs. Recent OIG audits highlight our concerns about the efficient and effective administration of programs designed to address the needs of hard-to-serve welfare recipients, as well as skilled individuals who lose their jobs as a result of plant closings, imports and other layoffs.

Events such as those of September 11, 2001, and their aftermath, demonstrate the need for Department programs to be ready to assist workers who experience layoffs and other employment interruptions. In such cases, the quick mobilization of funding and other resources must be tempered with the establishment of controls to assure the integrity of funds, the delivery of services, and the accuracy of reporting on how well the programs achieve the desired results. The following examples illustrate our concerns with the effectiveness of such programs.

Welfare-to-Work Competitive Grant Program: A recent audit disclosed that the Welfare-to-Work (WtW) competitive grant program, which is designed to provide services to the hardest-to-serve populations, falls short in keeping individuals in lasting unsubsidized employment. For example, our work disclosed that only 25% of our sample of 765 participants were continuously employed for more than six months. We also found that the numbers of competitive grant participants reported as placed in unsubsidized full-time and part-time employment were overstated by 27% and 43%, respectively. This example illustrates the challenges faced by the Employment and Training Administration (ETA) in obtaining quality performance data from its grantees.

Trade Programs: Another example involves the Department's Trade Adjustment Assistance and North American Free Trade Agreement-Transitional Adjustment Assistance Programs (collectively called the Trade Programs), which are designed to assist individuals who have become unemployed or whose earnings have been reduced as a result of increased imports to return to suitable employment (i.e., work of an equal to or higher than skill level than the former employment, and that pays at least 80% of the former wage). A recent OIG audit of the Trade Programs found that only 34% of program participants

found suitable employment and that the programs' unified reporting system was incomplete and contained inaccurate data.

Dislocated Worker Program: The OIG remains concerned about the extent to which the Department's Dislocated Worker Program, funded at nearly \$1.6 billion, is providing retraining and support services to eligible dislocated workers. An OIG audit report issued in June 2000 on the Job Training Partnership Act (JTPA) Dislocated Worker Program found that 35% of our sample participants were ineligible or that documentation was insufficient to establish their eligibility. We also raised concerns that the program's allocation process may not have distributed funds to areas where they were most needed. The JTPA Dislocated Worker Program was incorporated, with some modifications, into the new Workforce Investment Act (WIA) Program. Since the WIA Dislocated Worker Program is a key component of the Department's response to layoffs after September 11, a legislative change is needed to deploy funds to the right localities and beneficiaries, as this will be critical to the success of the response.

Assistance to Trade-affected Dislocated Workers in El Paso, Texas: Thousands of dislocated workers in the El Paso area who were certified as having been laid off as a result of foreign trade became entitled to benefit under the Trade Programs, in addition to regular Unemployment Insurance (UI). Substantial funding was also provided to supplement the services and benefits provided under UI and the Trade Programs. In total, approximately \$106 million, or about \$25,000 per participant, was expended on services provided to 4,275 El Paso dislocated workers. Despite this large infusion of funds, a recent OIG audit found that over 50% of those who entered employment had placement wage rates of less than \$6.00 per hour, and 16% earned only the minimum hourly wage \$5.15. Also, using the official definitions and reporting criteria applicable to the program, we verified a placement rate of 36.2% as of April 30, 2001, as opposed to the 81% captured in the program operator's management information system. This audit illustrates the risk of placing great emphasis on quickly dispersing funds in response to a need, without a corresponding emphasis on monitoring the results achieved in helping participants obtain lasting employment at livable wages.

Financial Performance

One of the Administration's five government-wide goals is improved financial performance. The Department has made great strides in financial reporting and has received clean audit opinions on its financial statements since FY 1997. The Department, however, does face significant challenges in producing timely financial information that can be used in its day-to-day management. Therefore, the Department needs to change its focus from financial statement preparation to proactive management of its financial records. Financial events and transactions need to be recorded when they occur rather than at year-end. Key to the proactive management of its 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 issue of concern in this area is the adequacy of information being provided to the Department via audit reports conducted by independent public accountants under the Single Audit Act. Over 90% of the Department's expenditures are audited under the Single Audit Act by scores of audit organizations throughout the country. The Department relies on the Single Audit Act to provide audits for grant costs as well as for UI benefit costs and employer tax receipts at each of the States. These audits are performed on an annual basis. In addition to the Single Audit Act reports, the Department relies on the Benefits Accuracy Management (BAM) system, which is operated by DOL in conjunction with the states, to oversee the states' benefit payments and employer tax receipts. This system, which estimates the overpayments of UI benefits to claimants on a state by state basis has identified approximately \$1.6 billion in overpayments. The Single Audit Compliance Supplement requires that the Single Audit Act

auditor evaluate the results of the BAM overpayment calculations. Recent OIG visits to two states found that auditors under the Single Audit Act were not familiar with BAM and were not evaluating BAM results. In addition, the OIG found that the testing by the auditors of benefits payments and employer receipts are inadequate because the sample sizes were too small. Also, although one auditor found an overpayment due to ineligible claimants which projected to approximately \$60 million in questioned costs, no mention was made in the Single Audit Report.

In coordination with OMB, the OIG has begun a multi-year review of these 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

A major goal of the Administration is the integration of budget and performance to ensure that the government is results-oriented and guided by performance rather than process. Key to this is the Department's success in capitalizing on a number of statutory initiatives designed to improve the quality of program and cost data that serve as the basis for determining the results achieved by Federal programs and operations. With the passage of the Government Performance and Results Act (GPRA), Congress created a management process whereby Federal agencies develop strategic plans, articulate program goals, allocate Federal resources to meet desired performance levels, and measure and report program results. The quality and accessibility of such data, including data reported by entities below the Federal level, are of critical importance to the Department's GPRA reporting. Similarly, the Federal Accounting Standards Advisory Board's Statement of Federal Financial Accounting Standard Number 4, which became effective in FY 1998, 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. Recent OIG audits of the WtW, Dislocated Worker, and Trade Programs continue to disclose high error rates in performance data reported to the Department by its state partners and other grantees. The errors affect 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. However, this project does not verify the accuracy of data contained in the state databases.

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 (SSA) wage records of individual program participants. However, the Department is limited in its ability to obtain such data for program evaluation and validation purposes. 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, the Department recently abandoned this “bottom-up” approach and is presently focusing on initiating a “top-down” alternative approach to the implementation of managerial cost accounting. This new effort will be defined by disaggregating high-level agency activities into their components. The OIG will review the revised plans for the implementation of cost accounting and specific agency or program implementation efforts and will continue our internal cost accounting efforts. An important element for matching the full cost of program activity to program results (cost effectiveness) is the ability to identify employee time to specific activities. The Department is currently revising its payroll system and has indicated that there are no plans to include activities-based costing in the new system. In order for DOL’s GPRA reporting to be credible, it is important that DOL ensure that performance and cost information generated are accurate, accessible and auditable.

Security of Pension Assets

The security of pension assets is a priority of the Department and of the OIG. This includes ensuring that weaknesses, vulnerabilities, and criminal activity are identified and addressed.

Pensions Plan Audits: Over the past several years, the OIG has raised concerns regarding the way pension plans are audited under the Employee Retirement Income Security Act (ERISA). ERISA contains a limited-scope 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. At the time ERISA was passed two decades ago, it was assumed that all of the funds invested in those regulated institutions were being adequately reviewed. Currently, because of this provision, independent public accountants (IPAs) 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.

Pension Plan Security: Another area of concern involves private pension plans, which serve as an attractive target to organized crime elements, corrupt pension plan officials, and individuals who influence the investment activity of pension assets. Labor racketeering investigations of pension plan monies that are jointly administered by labor union representatives and management representatives (Taft-Hartley plans) have elevated the OIG’s concern over the security of the assets in this segment of the pension plan universe.

OIG pension plan investigations have uncovered multi-million dollar fraud enterprises by financial and investment service providers. These investigations continue to reveal abuses by sophisticated investment advisors and pension plan administrators who have the opportunity and ability to structure complex financial schemes to conceal their criminal activity. The OIG is concerned about abuses by financial investment service providers because of the potential for multi-million dollar losses, since they typically provide investment or financial advice for more than one plan.

Based on recent investigative results and the fact that service providers typically control the investment of hundreds of millions of dollars of pension funds, the OIG has identified this area of the pension arena as especially vulnerable to organized crime activity and abuse.

Protection of Worker Benefit Funds

The Department administers several programs and statutes designed to provide and protect the benefits of workers. Protection of such benefits is critically important because they affect the lives of millions of workers and retirees and involve billions of taxpayer dollars. The OIG has identified vulnerabilities involving the 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. These benefits replace part of the unemployed worker's lost wages and, in so doing, help to stabilize the economy during periods of recession.

After several years of decreasing unemployment rates, the numbers of unemployment claims have recently increased. The Department has estimated that if a severe recession should occur, UTF net assets would decline by \$60.2 billion, or 69%, over four years. We are concerned that during FY 2000, while in an extended period of economic expansion, the Department reported that 19 states were considered minimally solvent and, therefore, vulnerable to exhausting their unemployment trust funds in a recession. The recent economic slowdown, exacerbated by the events of September 11, heightens our concern that states may not have adequate reserves to meet the demands on their trust funds. This could in turn result in states needing to borrow from the U.S. Treasury to fund unemployment benefit entitlements.

Another issue affecting the assets of the UTF 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. Subsequent to the OIG's report, the Treasury reviewed its records and credited back to the UTF \$71 million for prior years' overcharges. The 1999 audit found that Treasury's method of charging for administrative costs was fragmented, cumbersome, and unreliable, and the OIG recommended that the Departments of Labor and Treasury negotiate an alternative method for charging administrative costs. To date, this alternative method has not been established, thus we are concerned that the Treasury continues to overcharge DOL millions of dollars in administrative fees.

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 \$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. 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 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.

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 Fund is in the developmental stages with payments expected to increase dramatically over the next several years. While the Department is relying on OMB's initial PAYGO cost estimate for its calculation of the actuarial liability for the current year, it needs to develop its own actuarial model for future use.

PROGRAM INTEGRITY

Unemployment Insurance: The integrity of the UI Program was cited by Congress as one of the ten worst management issues in government. As with any multi-billion dollar benefit payment program, there are those who benefit from the UI program illegally. Through oversight of this program, we have identified a number of schemes used to defraud the program including fraudulent employer schemes, internal embezzlement schemes, fraudulent interstate claims, and the fraudulent collection of UI benefits by illegal aliens and others through the use of counterfeit or unissued Social Security numbers. Further, our investigations have disclosed that the ability to file electronic and mail claims has presented individuals with the opportunity to defraud multiple states from a single location. The OIG is very concerned about the continued proliferation of these types of schemes against the UI Program, as they have resulted in substantial losses to the UTF.

We believe that there is a need for increased training of state employees in fraud detection techniques, improved internal program controls, and improved enforcement. In addition, systemic weaknesses pose problems for the UI system, including loss of contributions due to the inability of states to search for hidden wages paid by employers who misclassify workers as independent contractors, employers who fail to report all wages paid, or employers who misrepresent their claims experience.

Federal Employees Compensation Act: The Federal Employees' Compensation Act (FECA) provides compensation and medical care for Federal employees who suffer job-related injuries, diseases or deaths. The OIG has been working with the Department to improve the cost-efficiency of the FECA Program. For example, one audit concluded the Department could save millions each year by utilizing commercial code manipulation detection packages to screen for improper billings. In addition, we found that granting the Office of Workers' Compensation Programs (OWCP) routine access to IRS wage data through the SSA could provide a cost-effective tool to identify claimants who failed to report wages. We estimated that, if an automated SSA crossmatch were conducted annually (as opposed to the current system of once every three years), OWCP's savings would total \$3.6 million in reduced administrative expenses over 10 years. An annual crossmatch would also enable OWCP to better identify, and remove from the disability rolls, claimants who fraudulently conceal earnings.

Finally, OIG investigations continue to disclose the vulnerability of this program to fraud. Fraudulent activities include medical providers who bill the Government for services that were not rendered, charge multiple times for the same procedure, bill for non-existent illnesses or injuries, or overcharge for services; and claimants who defraud the program by reporting false injuries, recover but continue claiming benefits, or do not report or under report their outside employment income to OWCP.

Information Technology and Electronic Government Challenges

One of the Administration's goals is the expansion of electronic government. This presents challenges for the Department in ensuring 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.

Security of IT Assets: DOL currently operates 67 mission-critical information systems. The Department relies on these critical information 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 new IT architecture and is modernizing its IT systems. Although the Department has been proactive in moving to correct weaknesses as they are identified, the Department needs to be more vigilant and to secure its major systems against threats and loss of assets. This requires a chief information officer (CIO) with sufficient authority and organizational independence from other agencies within the Department. Currently, the CIO is the Assistant Secretary for Administration and Management, who is also responsible for numerous administrative functions of the Department that may either divert attention from, or conflict with, IT responsibilities.

Program Integrity in an Electronic Environment: The Department of Labor and its program partners, like many organizations, 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 risk of misuse, fraud, and monetary loss. This has been evidenced in recent OIG casework in worker benefits programs. Therefore, to ensure program integrity, the Department must assess the risks involved and utilize a comprehensive, integrated approach of oversight and enforcement.

The OIG is also adapting its audit plan to assist the Department in addressing the challenges it faces in this new environment. For example, State Workforce Agencies are currently upgrading and modernizing their operations to offer customers telephone and Internet access to selected services. These services include UI claims filing, employer registration, employer wage and tax reporting, and appeals filing. The OIG will conduct audits in four to seven states in FY 2002 to determine the effectiveness of system security.

Integrity of Foreign Labor Certification Programs

The Department of Labor's foreign labor certification programs are designed to provide employers access to foreign workers in areas in which there is a shortage of workers. The program is supposed to ensure that the admission of aliens to work in the United States on a permanent or temporary basis 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 is intended to provide employers with access to highly qualified individuals in speciality occupations to allow them to compete in a global market. It requires employers who intend to temporarily employ foreign specialty-occupation workers to file labor condition applications with the Department stating that appropriate wage rates will be paid and workplace guidelines followed. The Department is required to certify applications unless it determines the applications to be "incomplete or obviously inaccurate." Under the current law, the Department's role in reviewing labor condition applications amounts to nothing more than a rubber stamp in the process.

The OIG has found that individuals allowed into the United States under this program often lack the specialized skills necessary for meeting the requirements for H-1B visas. We continue to identify fraud in the foreign labor certification programs, with the majority of cases involving the H-1B program. These cases involve fraudulent petitions that are filed with DOL on behalf of fictitious companies and

corporations, individuals who file petitions using 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.

The OIG believes that if the Department is to have a meaningful role in the labor certification process, it should have corresponding authority to ensure the integrity of the process. To do this, the Department needs to have the authority to ensure the validity of information provided on labor condition applications.

Effectiveness of Mine Safety and Health Programs

The Mine Safety and Health Administration (MSHA) is responsible for ensuring the safety and health of miners. OIG reviews have identified a number of areas needing DOL's attention to ensure the effectiveness and efficiency of the programs designed to protect miners from injury or death.

For example, in a recent OIG evaluation, we found that MSHA is 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 is the need for MSHA to study the allocation and geographic distribution of enforcement and compliance assistance resources to determine what combination of activities and inspections will produce the greatest effect on mine safety.

We have made a number of recommendations to address the various deficiencies that we have identified. For example, other OIG evaluations have disclosed that MSHA needs to do more to protect miners and their families from exposure to asbestos; improve the intake, management, tracking, and analysis of complaints; and improve educational, engineering and enforcement tools to more effectively contend with risk-taking behavior in the area of personal protective equipment.

Rapid Expansion of the Bureau of International Labor Affairs Program

The Bureau of International Labor Affairs (ILAB) assists in formulating international economic, trade, and immigration policies affecting American workers. ILAB is also responsible for spotlighting significant international child labor issues and contributing to the development and implementation of U.S. policy on international child labor. The increasing concern over child labor issues resulted, in part, in an almost sevenfold increase in ILAB's appropriations during the last two fiscal years. However, the OIG's evaluation and audit work have raised concerns over ILAB's management structure, managerial controls over grant programs, program results, evaluation methods, and the roles and responsibilities of individual staff to account for this increased level of funding adequately.

Human Capital Management

In January 2001, the General Accounting Office added strategic human capital management to its list of federal programs and operations identified as high risk. The OIG agrees that no management issue facing federal agencies could be more critical to their ability to serve the public than the ability to attract, retain, and motivate a highly-qualified workforce. The OIG is concerned about the human capital challenges that the Department faces in the next decade, particularly since the Department projects that over 27% of its entire workforce, as well as 47% of its supervisors, are eligible to retire in the next five years.

Management of human resources has been a priority for the Department of Labor. For example, DOL has instituted a number of policies to attract and retain a quality workforce. These include policies such

as flexible work schedules, telecommuting, payment of student loans, transportation and child care subsidies, and training and professional development. Moreover, in its recent Score Card Report, the Office of Management and Budget has acknowledged that DOL is using tools such as succession planning, and retention and recruitment bonuses. DOL has indicated its plans to implement a Department wide strategy to address succession planning, core competency analysis and training, and the further use of personnel flexibilities.

Given the challenges it faces, DOL needs to ensure the consistent and full utilization of current personnel flexibilities and DOL policies. In addition to these proactive efforts, 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, come an even greater responsibility for DOL management to ensure that any new authorities are applied appropriately. ■