

Outcome Goal 4.2 – Promote Job Flexibility and Minimize Regulatory Burden

Maintaining a growing, vibrant economy requires a competitive economic environment. Such an environment can only be achieved through a regulatory structure that assures regulations' benefits outweigh their burdens. A competitive economic environment must also take into account the modern workplace, with its increasingly flexible working arrangements. Many employment laws and regulations were written in the 1970's and were based on, among other things, traditional on-site, full-time, long-term employment relationships between workers and employers. The foundation and logic for these laws and regulations has changed considerably, yet the laws and regulations themselves have not. DOL is systematically reviewing the regulations it is responsible for enforcing, to ensure they do not unnecessarily pose barriers to flexible work arrangements.

Regulatory flexibility, another priority at DOL, is being actively sought via reviews pursuant to the Regulatory Flexibility Act of 1980 to determine if regulations have or will have a significant economic impact on a substantial number of small entities. These reviews also examine the effect on employers' compliance costs and whether the regulatory burdens of all employers, both large and small, are reduced.

Outcome Goal 4.2 goals and indicators will measure DOL's success in creating a more competitive economic environment through promotion and development of a regulatory structure and workplace arrangements that are congruent with the modern workplace. Over the next several years, DOL will conduct a comprehensive review of the key laws and regulations governing labor standards, pensions, health care, and worker safety to determine their appropriateness in the new workplace. Once the review is complete, DOL will pursue needed changes to reduce regulatory burden to improve productivity and competitiveness, while simultaneously protecting worker rights, benefits, and safety. DOL has already made strides in modernizing its regulatory approach by 1) shifting our emphasis toward compliance assistance through outreach, education, and innovative programs designed to prevent violations; 2) targeting our enforcement efforts to address the most egregious problems; and 3) expanding electronic options for employers to meet their reporting obligations. Over the next several years, we will analyze the effectiveness of this overarching strategy, seek ways to build upon the successes, exploit technology to improve our effectiveness, and take other steps necessary to ensure that our regulatory infrastructure is consistent with the 21st Century work environment.

Goal (Agency) – Period Goal Statement [Achievement]	Performance Summary
<p>4.2A (OASP) – FY 2004 Maximize regulatory flexibility and benefits and promote flexible workplace programs [Not Achieved]</p>	<p>The Department reached its target for providing the costs, benefits, and net benefits for all Regulatory Impact Analyses. The Department did not meet its target to receive public input to establish regulatory review priority, its target to develop an all-encompassing regulatory review plan to examine reporting and record-keeping requirements, or its target to fully implement the Flex-Options for Women Project.</p>

Net Cost of Programs

This goal is new in FY 2004. Associated costs are shared by most DOL agencies but only amounted to \$6 million for this period – a small fraction (one hundredth of one percent) of the total.

Results Summary

In FY 2004, DOL made considerable progress in its efforts to reduce regulatory burden and to promote flexible workplace programs. The Department published final overtime rules and is well on the way to modernizing regulations governing child labor. Currently in draft rule form, the new child labor regulations reflect changes in the workplace and provide the clarity that employers, youths and their parents need to make informed employment decisions. The updated overtime rules will reduce confusion and litigation, while continuing to protect workers.

The Department is also reviewing pension plan and benefit plan regulations, as well as workplace safety regulations. For pension and benefit plan regulations, DOL is assuring that requirements for seeking exemptions from certain prohibited transactions, including loans to benefit plan participants will continue to protect beneficiaries while taking into account new forms of pension and benefit plans. The review process for these

proposed regulations allows opportunities for public input, where appropriate, on both the selection of regulations for review and the outcomes of reviews.

Through the Women's Bureau (WB) Flex-Options for Women and the Office of Disability Employment Policy (ODEP) Telework Grants, the Department is making significant strides in creating more opportunities for flexible working arrangements. The WB enlisted women-owned businesses and other corporate mentors who developed a workplace flexibility policy/program for their workforces. Through the Telework Grants project, ODEP funds research examining how telework can be used as an employment option for people with disabilities.

Future Challenges

One of the central challenges to regulatory modernization is providing assurances to those protected by regulations that providing greater flexibility does not necessarily mean reductions in protections. This requires that DOL strive to demonstrate that increasing regulatory flexibility benefits those protected by the regulations. For instance, the new overtime rules tripled the salary level under which workers are guaranteed overtime, from \$8,060 to \$23,660, guaranteeing overtime protection to an additional 1.3 million workers. The rule also strengthens overtime protection for 5.4 million workers whose right to overtime protection was ambiguous.

The move toward greater workplace flexibility requires that managers understand that critical planning, employee monitoring, teaming and coordination do not necessarily have to suffer due to the added flexibility. It also requires that advocates of greater workplace flexibility demonstrate that the ability for workers to spend more time with their families will only result from changes to the nation's labor laws. Many of these laws were designed a generation ago, and their provisions do not fit today's changing workplace.

Promote Flexible Workplace Programs

Performance Goal 4.2A (ASP) – FY 2004

Maximize regulatory flexibility and benefits and promote flexible workplace programs

Indicators

Seek input from the public as part of its decision-making process in determining which regulations or regulatory programs should be prioritized for review for their effects on small businesses and entities;

Ensure that all new regulatory proposals identify monetary costs, benefits, and net benefits, and include a summary of this information in all Regulatory Impact Analyses performed by DOL agencies;

Develop a plan to review all significant regulations for maximum flexibility in their reporting and record keeping requirements in order to assess whether DOL agencies are allowing the use of electronic technology by employers where practicable; and

The Flex-Options for Women Project: Women-owned businesses will enhance their work forces/businesses by offering flexible workplace policies and programs that encourage a balance between home and work-life. The Women's Bureau will enlist 40 companies as corporate mentors and 80 women-owned businesses as companies seeking to establish workplace flexibility policies or programs.

Program Perspective

The Office of the Assistant Secretary for Policy (OASP) coordinates and tracks DOL's achievement of this goal in part through its role in directing the compilation and publication of the Department's Annual Regulatory Plan and Semi-Annual Regulatory Agenda. The Plan and the Agendas provide information on all regulatory items DOL will act on within the next year and those the agency has either completed action on or withdrawn within the past six months. With OASP's assistance, DOL regulatory agencies prioritize their regulatory initiatives to ensure they are in keeping with the Department's strategic goals. During the reporting period, the Department had 81 items on its regulatory agenda. Milestones (in the form of notices of proposed rulemakings, final rules, interim final rules, etc.) were published for 33 agenda items.

Results, Analysis and Future Plans

The goal was not achieved.

Regulations

DOL published milestones for 17 regulatory initiatives deemed "major" during the fiscal year, all of which contained the required quantitative analyses. ESA's Wage and Hour Division has completed drafting a final rule to clarify and update child labor regulations and reflect changes in the workplace and recent amendments to the law. These changes will eliminate confusion about the current law and assist employers, youths and their parents understand current federal child labor laws. The Wage and Hour Division also completed an update of the overtime regulations covering "white collar" workers, which are intended to reduce confusion and unnecessary litigation over the old rules while improving protections for workers. OSHA has begun a long-term effort to update standards that either reference or include language from outdated consensus standards. OSHA also reviews, at least once every three years, all of their reporting and recordkeeping requirements under the Paperwork Reduction Act of 1995. Both EBSA and OSHA are engaged in reviews of the relative benefits and burdens of existing regulations in accordance with Executive Order 12886 and section 610 of the Regulatory Flexibility Act. OSHA is currently conducting reviews on standards affecting occupational exposure to ethylene oxide and excavations. EBSA is also conducting reviews on the benefits and burdens of the procedures required before health and pension plan benefit providers are granted exceptions from certain transactions, including loans to benefit plan participants. The OSHA and EBSA review items are scheduled for completion in FY 2005. The review process allows opportunities for public input, where appropriate, on both the selection of regulations for review and the outcomes of reviews.

The Fall Regulatory Agenda, to be published in late November 2004, will have 81 items on it, many of which continue agency efforts to meet statutory requirements and update obsolete standards. With input from all the DOL agencies, OASP also drafted a Federal Register notice requesting input from the public that can help agencies prioritize regulations for review and possible changes. This Notice will be published for a 60-day comment period in the fall 2004.

Women's Bureau Flex-Options for Women: Approximately 41 women-owned businesses, assisted by 77 corporate mentors, have developed a workplace flexibility policy/program for their workforces. The target of enlisting 40 corporate mentors was exceeded. The target of reaching 80 women-owned businesses has not yet been attained. The Bureau is confident that the goal of identifying 80 newly initiated flex-options programs/policies will be reached by December 2004.

ODEP Telework Grants

ODEP is investigating, developing and validating strategies that may increase the Department's understanding of how telework can be used as an employment option for people with disabilities. This will be accomplished by issuing grants to research and develop comprehensive telework models. The grant solicitation closed on August 9, 2004. The projects will have a 36-month period of performance, to investigate, develop, and validate strategies likely to yield the largest number of telework positions for people with disabilities.

Management Issues

In accordance with the FY 2000 Treasury and General Government Appropriations Act, OMB publishes an annual Report to Congress on the Costs and Benefits of Federal Regulations. For the last several years the reports have included lists of regulations nominated by the public for their need of reform. Examples of nominated regulations enforced by the Department of Labor have been the Wage and Hour Division's overtime compensation regulation, OFCCP's Equal Opportunity Survey, MSHA's Explosives standard, and OSHA's Metalworking Fluids initiative. The OMB reports also include each agency's response to previous nominations. Possible responses include: work is already underway; issue will be added to the agenda as resources permit; agency is undecided; or agency will not pursue the suggestion.

MSHA engaged a consultant to conduct an independent evaluation in order to determine how the agency could systematically select and prioritize regulations for review. This evaluation, *Selecting Regulations for Regulatory Review*, by ICF Consulting was completed in April 2004. The agency is currently evaluating the recommendations. Appendix 2 contains a detailed summary of the evaluation.

EBSA is establishing a regulatory review program that will set forth a process for identifying initiatives for review, for providing for the evaluation of cost and benefits of identified regulations and exemptions and, to the extent legally permissible, modifying or eliminating those rules for which the costs and burdens outweigh the attendant benefits. Once established, the agency will apply the program's methodology to its regulations and prioritize specific ones for review.