
Top Management Challenges

The Top Management Challenges identified by the Office of the Inspector General (OIG) for the Department of Labor (DOL) are discussed below.

2010 Top Management Challenges Facing the Department of Labor

For 2010, the OIG considers the following as the most serious management and performance challenges facing the Department:

- Achieving the Goals and Protecting the Investment Provided by the American Recovery and Reinvestment Act
- Protecting the Safety and Health of Workers
- Improving Performance Accountability of Workforce Investment Act Grants
- Ensuring the Effectiveness of the Job Corps Program
- Safeguarding Unemployment Insurance
- Improving the Management of Workers' Compensation Programs
- Maintaining the Integrity of Foreign Labor Certification Programs
- Securing Information Technology Systems and Protecting Related Information Assets
- Ensuring the Security of Employee Benefit Plan Assets
- Ensuring DOL's New Core Financial Management System Produces Reliable, Accurate, and Timely Financial Information

For each challenge, the OIG presents the challenge, the OIG's assessment of the Department's progress in addressing the challenge, and what remains to be done. These top management challenges are intended to identify and help resolve serious weaknesses in areas that involve substantial resources and provide critical services to the public.

CHALLENGE: Achieving the Goals and Protecting the Investment Provided by the American Recovery and Reinvestment Act

OVERVIEW:

The American Recovery and Reinvestment Act (Recovery Act) was enacted on February 17, 2009, to create new jobs and save existing ones, spur economic activity, invest in long-term growth, and foster accountability and transparency in government spending. As of August 19, 2010, the Department received nearly \$71 billion in Recovery Act funds. DOL has three key roles in the Recovery Act effort: providing worker training for these jobs, easing the burden of the recession on workers and employers by providing for extensions and expansions of unemployment benefits, and assisting and educating unemployed workers regarding expanded access to continued health benefits. The Employment and Training Administration (ETA) is responsible for virtually all of the Recovery Act funds provided to the Department. The mission of ETA is to contribute to the more efficient functioning of the U.S. labor market by providing high-quality job training, employment, labor market information, and unemployment insurance services primarily through state and local workforce development systems.

CHALLENGE FOR THE DEPARTMENT:

Ensuring program effectiveness and meeting Recovery Act requirements to stimulate the economy is a significant challenge for the Department. However, in several DOL programs, large amounts of Recovery Act funds remain

unspent. We reviewed DOL Recovery Act programs on the Health Care Tax Credit (HCTC), Unemployment Insurance (UI) Modernization, and Job Corps Leasing, and we identified large amounts of unspent Recovery Act funds and questionable expenditures of other such funds. Our March 2010 audit of the HCTC National Emergency Grants found that just \$8 million of the \$150 million designated for the program had been awarded to states since the Recovery Act was signed into law on February 17, 2009. Similarly, as part of our September 2010 audit of UI modernization grants, nine states indicated in response to an OIG survey that they were unlikely to apply for \$1.3 billion of UI modernization benefits.

Conversely, the need to spend funds quickly to meet Recovery Act requirements can lead to awards that may not be in the government's best interest. For example, Job Corps' largest single expenditure of Recovery Act funds was a 20-year lease totaling \$82 million with the YWCA of Greater Los Angeles, Inc. for the construction of a new facility to house the Los Angeles Job Corps Center. Job Corps also agreed to pay 60% of fair market value at the end of the lease term if it opts to purchase the facility. The Recovery Act included provisions that specifically allowed Job Corps to use the multi-year lease option and advance payments to lease real property as long as construction began within 120 days of the Recovery Act's enactment. To meet the 120-day requirement of the Act, OASAM issued a Request for Proposals that closed on April 2, 2009, and required construction to begin on or before June 16, 2009. This timetable gave the potential awardee less than 3 months to begin construction. Job Corps only received one proposal, which was from the existing center operator. While Job Corps did negotiate the proposed cost of the multi-year lease down from \$105 million to \$82 million, it did not perform a cost benefit analysis, claiming it was not required to do so. Through our analysis, we estimate that Government construction of the facility may have cost \$31 million less than the \$82 million multi-year lease. As a result, Job Corps may have lost the opportunity to put at least \$31 million of Recovery Act funds to better use.

DEPARTMENT'S PROGRESS:

In last year's top management challenges, the OIG stated that ETA would be challenged to demonstrate that Recovery Act grants were properly awarded. Our audit work over the past year found that ETA has announced, evaluated, and issued Recovery Act grants in accordance with relevant criteria. Also, monitoring guidelines and procedures were comprehensive, and grant agreements informed grantees of their responsibilities for Recovery Act reporting. However, funds provided by the Act for monitoring Recovery Act grants have expired as of September 30, 2010, which impacts ETA's ability to execute its Recovery Act grantee monitoring and oversight responsibilities and may increase the risk that a portion of the \$717 million in Recovery Act grant funds may not be spent for their intended purposes. ETA has asked for funding to support an increase in grant monitoring staff as part of its FY 2011 budget request.

Regarding unused Recovery Act funds, Congress has rescinded \$110 million of the \$150 million appropriated for HCTC National Emergency Grants. According to ETA, approximately \$14 million of the original \$150 million has been obligated, leaving about \$26 million available for future grants.

WHAT REMAINS TO BE DONE:

ETA needs to continue its efforts to identify and prioritize workloads and funding levels to ensure Recovery Act grants are adequately monitored, grant funds are spent properly, and grants achieve their intended purpose. Over the next two years, the OIG will focus its Recovery Act audit efforts on assessing how grantees and contractors performed and what was accomplished with Recovery Act funding.

ETA also needs to consider whether unused Recovery Act funds should and could be put to better use. For the remaining \$26 million available for HCTC National Emergency Grants, ETA should obtain estimates of the amount of HCTC National Emergency Grant funds needed by each state, an action ETA believes would be more prudent to pursue after January 1, 2011, when the status of the Trade Adjustment Assistance program (which is pending reauthorization) is clearer.

Regarding the lease with YWCA, management objected to the audit report's estimate of potential savings that might have accrued from a direct land or building purchase as speculative, given that no other offeror came forward to offer a suitable building or parcel of land. Management also stated that a cost benefit analysis was not required because OMB waived certain budgetary reporting of the lease. We did not concur that this relieved the Department of conducting a sound cost/benefit analysis. ETA needs to work with contracting officials in OASAM to demonstrate that the multi-year lease with the YWCA to acquire a new facility at the LAJCC was the least expensive option to the Government, and if appropriate, renegotiate the multi-year lease agreement.

CHALLENGE: Protecting the Safety and Health of Workers

OVERVIEW:

The Department administers the Occupational Safety and Health Act of 1970 (OSH Act) and the Federal Mine Safety and Health Act of 1977 (Mine Act), as amended by the Mine Improvement and New Emergency Response Act of 2006. DOL's effective enforcement of these laws is critical toward ensuring the workplace safety of our nation's workers.

The two DOL agencies primarily responsible for enforcing these laws are the Occupational Safety and Health Administration (OSHA) and the Mine Safety and Health Administration (MSHA). OSHA is responsible for ensuring safe and healthful working conditions for 130 million workers at more than seven million establishments. MSHA is responsible for the safety and health of more than 350,000 miners who work at more than 14,500 mines.

CHALLENGE FOR THE DEPARTMENT:

Enforcement plays an important part in OSHA's efforts to reduce workplace injuries, illnesses, and fatalities. With 4,340 fatal workplace injuries reported by the Bureau of Labor Statistics in 2009, OSHA's challenges are how to best target its resources and how to measure the impact of its efforts. OSHA carries out its enforcement responsibilities through a combination of directed and complaint investigations, but can reach only a fraction of the seven million entities it regulates. Consequently, OSHA must strive to target the most egregious and persistent violators while protecting the most vulnerable worker populations. OSHA must also evaluate the success of its enforcement strategies. For example, when unsafe conditions are identified, OSHA inspectors issue citations with penalties. While the OSH Act requires OSHA to consider certain factors, such as the size of the company in finalizing penalty amounts, specific reductions are not mandated. OSHA policies establish reductions as an incentive to abate violations voluntarily. However, a recent OIG audit found that OSHA has not effectively evaluated the impact of hundreds of millions of dollars in penalty reductions as incentives to reducing workplace hazards.

Regarding MSHA, the OIG's reviews over the past several years revealed a pattern of weak oversight, inadequate policies, and a lack of accountability on the part of MSHA, which were exacerbated by years of resource shortages. MSHA's challenge involves effectively managing existing resources and utilizing existing authorities to maximize its enforcement efforts while fulfilling other important duties.

Historically, MSHA's resource shortage negatively impacted its ability to meet statutory requirements to conduct inspections at the nation's coal mines. In recent years, after Congress allocated supplemental funding to MSHA to hire additional mine inspectors, MSHA has emphasized completing 100% of its mandatory mine inspections. However, this has resulted in backlogs in other areas, such as the review of mine plans.

Recruiting and maintaining a properly trained cadre of mine inspectors is also a challenge for MSHA. A recent OIG audit found that journeyman MSHA inspectors were not being provided required periodic training. In addition, retirements and other attritions make maintaining a sufficient number of trained mine inspectors an ongoing challenge. By 2014, 41% of MSHA's enforcement personnel will be eligible to retire, and 25% are estimated to do

so. Consequently, MSHA must recruit and train the right personnel, as well as enough of them, to accomplish all of its critical statutory responsibilities.

MSHA has also struggled to consistently and proactively utilize its authority to identify mine operators with the worst compliance records. In 1977, with the passage of the Mine Act, MSHA was given the authority to take enhanced enforcement actions when a mine operator demonstrates recurring safety violations. This Pattern of Violations (POV) authority is an important tool for MSHA's enforcement activities; however, a recent OIG audit found that MSHA had not successfully used its POV authority in 32 years. Another challenge for MSHA's enforcement activities is the large volume of citations contested by mine operators and the resulting backlog of cases currently before the Federal Mine Safety and Health Review Commission.

Lastly, studies show that the incidence of Black Lung disease is rising and the disease is being found in younger miners. MSHA faces a challenge to reverse this trend through measures to reduce coal dust exposure.

DEPARTMENT'S PROGRESS:

OSHA has established a new program, the Severe Violator Enforcement Program (SVEP), which is designed to concentrate resources on inspecting employers who repeatedly violate the OSH Act. SVEP includes a requirement for mandatory follow-up inspections. As an example, for follow-up inspections of construction companies, which frequently move from location to location, SVEP requires that at least one other worksite of the cited employer be inspected if the initial worksite is closed. The Department has also introduced a new approach to measuring the performance of worker protection agencies. Central to this new approach is establishing regular processes for evaluating the success of enforcement strategies in helping to achieve desired outcomes.

MSHA continues to identify and hire mine inspector candidates within authorized personnel levels, and began examining and implementing faster, more efficient methods of delivering training using online technologies. Temporary resource reallocations and procedural changes have reduced the number of overdue mine plan reviews by two-thirds since 2008. MSHA indicates it has continued to work with the Federal Mine Safety and Health Commission to identify ways to reduce the backlog of challenged citations. Enacted in July 2010, the Supplemental Appropriations Act, 2010 (Public Law 111-212) provided an appropriation of \$18.2 million to the Department of Labor for the purpose of reducing existing case backlog before the Commission, and for other purposes. Of that amount, the Department has transferred \$4.451 million to MSHA for backlog reduction project expenses. MSHA continues to revamp the process and criteria for identifying mines with POV. In addition, MSHA is working with Congress to receive additional enforcement authorities through legislative changes. Through its "End Black Lung – Act NOW" initiative, MSHA has conducted public informational events, produced and distributed new educational materials, and co-sponsored one-day workshops with National Institute for Occupational Safety and Health (NIOSH). MSHA's rulemaking agenda includes work on a final rule regarding personal coal dust monitors and possible adjustments to coal dust exposure levels.

WHAT REMAINS TO BE DONE:

OSHA needs to monitor and evaluate the SVEP to ensure the program is being implemented as intended and is resulting in the identification and abatement of hazards having the desired results. As part of the Department's new approach to measuring the success of enforcement strategies, OSHA needs to evaluate the impact of penalty reductions on comprehensive improvements to workplace safety and health. OSHA also needs to implement its planned new information system, replacing its current 35-year-old system, which is subject to errors that hamper OSHA's enforcement efforts. In addition, adjustments to the new information system will likely be needed over the next several years to respond to program changes.

MSHA must formalize the policy and procedural changes of recent years by updating its operational handbooks, implement a human capital strategy that will continue to address expected enforcement personnel losses during the next five years, find ways to further reduce the number of overdue mine plan reviews, reduce the impact of any backlog of challenged citations on the effectiveness of its enforcement program, simplify and make more

transparent its process and criteria for placing mines on POV status, and monitor and measure efforts to reduce the rise in Black Lung cases.

CHALLENGE: Improving Performance Accountability of Workforce Investment Act Grants

OVERVIEW:

In FY 2009, ETA reported program costs totaling \$3.4 billion for the Workforce Investment Act (WIA) Adult, Dislocated Worker, and Youth programs. WIA adult employment and training programs are provided through financial assistance grants to States and territories to design and operate programs for disadvantaged persons, including public assistance recipients. ETA also awards grants to States to provide reemployment services and retraining assistance to individuals dislocated from their employment. Youth programs are funded through grant awards that support program activities and services to prepare low-income youth for academic and employment success, including summer jobs.

CHALLENGE FOR THE DEPARTMENT:

Successfully meeting the employment and training needs of citizens requires selecting the best service providers, making expectations clear to grantees, ensuring that success can be measured, providing active oversight, and disseminating and replicating proven strategies and programs. DOL is challenged to ensure the grants it awards accomplish program objectives. For example, SWAs are required under WIA to conduct evaluations of their Title IB workforce investment activities (Adult, Dislocated Worker, and Youth programs). A recent OIG audit found that not all SWAs conduct these evaluations, and those who do conduct them, do not always report the identified best practices in their respective WIA Annual Reports to ETA. ETA also did not have a process for analyzing and sharing the results with other SWAs and stakeholders. Without a mechanism for capturing, analyzing, and sharing the evaluations, SWAs and other grantees are missing opportunities to know and learn from other programs which may lead to significant improvements in their own operations.

ETA may face challenges in providing adequate oversight and monitoring for some of the grants it awards. Funds provided by the Recovery Act to ETA and used to monitor discretionary grants expired on September 30, 2010. The reduction in staff resources and funding for travel costs will impact ETA's ability to fully execute its grant monitoring and oversight functions. ETA is also still working to improve the quality of WIA performance data reported by states. Reliable and timely performance data are needed to allow ETA to identify performance problems in time to correct them.

DEPARTMENT'S PROGRESS:

ETA has commissioned independent evaluations of demonstrations and initiatives. In response to an OIG audit, ETA issued policy guidance in September 2010, which clarifies the information states should submit regarding evaluation studies of WIA activities.

With respect to grant monitoring, ETA has requested funding for 48 additional Recovery Act monitoring positions in the FY 2011 budget. In the meantime, it plans to assign the Recovery Act workload to a combination of both Recovery Act-funded and permanent Federal Project Officers. ETA has developed a Workforce Analysis report for each Regional Office on how the Recovery Act grants will be absorbed into ongoing operations. ETA also indicated it has used its remaining Recovery Act administrative funds to secure contract support for administrative tasks related to grants management. ETA stated this will free up permanent staff time for grants monitoring.

WHAT REMAINS TO BE DONE:

ETA needs to develop a process to analyze evaluation results so that it can improve delivery of services nationally and be a proactive clearinghouse to the SWAs for best practices. ETA has indicated it will: 1) develop guidelines for Regional Office staff to initially review SWA evaluations to determine which ones to pass on to its national office for

final review; 2) share best practices, tools, and replicable models identified through state evaluations based on rigorous research practices through its online technical assistance platform ([www.Workforce³One.org](http://www.Workforce3One.org)); and 3) explore opportunities, depending on funding availability, to improve the functionality of the Workforce³One.org website. ETA also needs to complete the Data Validation component of its Core Monitoring Guide, provide training to ensure that its Regional Administrators and Federal Project Officers understand how to use the new component, and ensure data validation reviews are being done as part of regional monitoring in FY 2011.

CHALLENGE: Ensuring the Effectiveness of the Job Corps Program

OVERVIEW:

Education, training, and support services are provided to approximately 60,000 students at 124 Job Corps centers located throughout the United States and Puerto Rico. Job Corps centers are operated for DOL by private contractors, and by other Federal Agencies through interagency agreements. The program was appropriated nearly \$1.7 billion in FY 2010.

CHALLENGE FOR THE DEPARTMENT:

Placement and Recruitment Outcomes – Job Corps has been challenged to meet its placement and recruitment goals over the past several years. The number of Job Corps graduates placed in jobs, continuing their education, and/or entering the military has declined from 91% for the year ended June 30, 2005, to 76% for the year ended June 30, 2010. In addition, in June 2009, Government Accountability Office (GAO) reported that Job Corps achieved between 95 and 98% of the planned enrollment for male residential students during program years 2005 through 2007, but about 80% or less of the planned enrollment for female residential students. GAO recommended that Job Corps modify its recruiting methods and offer more career training that is both attractive to females and leads to careers that will enable them to become self sufficient.

Safety and Health Issues – Ensuring the quality of life at centers, including healthy living conditions and the sense of safety, is a continuing challenge for Job Corps. OIG audits continued to identify unsafe or unhealthy conditions and the lack of required safety inspections at some centers. We also found that some centers did not hold required behavior review board meetings to evaluate student misconduct and initiate disciplinary action; and underreported significant incidents occurring at the centers.

Performance and Financial Reporting – Ensuring the integrity of performance and financial data reported by center operators is a challenge for Job Corps. OIG audits have found that weak controls at centers have resulted in the overstatement of performance results, as well as unallowable costs charged to Job Corps. This is a particular challenge for Job Corps as most centers are operated by contractors through performance-based contracts with incentive fees and bonuses that are tied directly to contractor performance. Under such contracts, there is a risk that contractors will overstate performance results. Regarding financial activity, examples of problems identified by OIG audits include questioned costs of \$1.8 million related to a contractor's indirect costs, and \$65,553 that another contractor charged for the Center Director's personal housing and travel expenses.

DEPARTMENT'S PROGRESS:

In FY 2010, Job Corps stated it developed new female-oriented marketing and recruitment materials and increased its career technical training offerings to attract females, including high-growth industries such as health care and green jobs. Job Corps also created and distributed new materials and DVDs to assist with recruitment efforts.

Job Corps stated it has published several Information Notices and Program Instructions on safety issues, sent quarterly memoranda to the Regional Directors regarding major hazards identified during centers' quarterly inspections, and provided technical assistance in response to inquiries about center abatement action plans. Job Corps also reported that centers continued to provide training and support to students on issues such as conflict

resolution, abuse, and student leadership. Job Corps is in the process of clarifying its behavior management policies.

Job Corps stated that it added “Improving Data Integrity” to Regional Directors’ performance standards, and conducted data integrity audits concurrently with onsite compliance/quality assessments.

WHAT REMAINS TO BE DONE:

Job Corps needs to evaluate the drop in graduate placements and identify strategies to reverse this trend. Job Corps stated it is closely examining ways to improve the graduate placement rate but noted that the economic climate is a factor in employment results. Job Corps also needs to evaluate the success of its newly developed training programs and its efforts to attract female students, and make adjustments where needed. In addition, Job Corps needs to take actions to ensure centers provide a safe and conducive learning environment while supporting student success and program retention. Finally, Job Corps needs to provide proactive, consistent, and rigorous oversight of contractors at all centers.

CHALLENGE: Safeguarding Unemployment Insurance

OVERVIEW:

ETA partners with the states to administer unemployment benefit programs. State UI provides benefits to workers who are unemployed and meet the eligibility requirements established by their respective states. UI benefits are largely financed through employer taxes imposed by the states and deposited in the Unemployment Trust Fund (UTF) from which the states pay the benefits. The states administer these programs under an agreement with DOL in accordance with their state laws and regulations. ETA funds SWAs who administer the UI program through grant agreements. These grant agreements are intended to ensure that SWAs efficiently administer the UI program and comply with Federal laws and regulations. In addition, the SWAs are required to have disaster contingency plans in place to enable them to administer benefits in the aftermath of a disaster.

CHALLENGE FOR THE DEPARTMENT:

The current economic downturn has made controlling overpayments more difficult, as the number of claims filed has greatly increased and new programs had to be implemented quickly, which ETA stated caused states to shift resources from detecting improper payments to processing claims. For the 2010 Improper Payment and Information Act (IPIA) reporting period (July 2009 to June 2010), ETA reported a total overpayment rate of 10.59%, which equates to more than \$15.2 billion in UI overpayments – an increase from the \$11.4 billion reported for the 2009 IPIA period. ETA estimates that about \$3.4 billion of these overpayments are attributable to fraud – an increase of \$600 million from the \$2.8 billion reported in FY 2009. OIG investigations continue to uncover UI fraud committed by individuals, as well as identity theft schemes designed to illegally obtain UI benefits. OIG’s review of ETA’s compliance with Executive Order 13520 and its required Report on UI Improper Payments identified improvements needed to measure and to mitigate UI improper payments.

ETA is also challenged to ensure that SWAs have adequate information technology (IT) contingency plans in place that provide for the continuation of services in the aftermath of disasters. Our prior audit found that ETA had not ensured that SWA partners had established and maintained adequate IT contingency plans. Specifically, 50 out of 51 plans lacked critical elements needed to ensure the continued availability of the UI systems.

DEPARTMENT’S PROGRESS:

In March 2010, the Department implemented the State Information Data Exchange System (SIDES), which enables communication and transmission of UI separation information requests from UI agencies to multi-state employers and third-party administrators. In May 2010, the Unemployment Compensation Program Integrity Act draft legislation was delivered to Congress, and if enacted, the legislation would permit states to use up to 5% of

recovered unemployment compensation overpayments to deter and detect benefit overpayments. The legislation would also give employers incentive to provide timely, accurate, and complete information about why their former employees no longer work for them – information critical for states to determine eligibility. In addition, three more SWAs began using the National Directory of New Hires (NDNH) to identify persons who continued to collect UI payments after obtaining employment. ETA also agreed to conduct annual verification of SWAs' IT contingency plans to verify both plan existence and reliability. ETA stated they provided funding to assist states to develop or update UI IT contingency plans. Thirty-one states were provided funding totaling more than \$4 million for this initiative.

WHAT REMAINS TO BE DONE:

ETA can further improve its oversight of the states' detection and prevention of UI, extended benefits, and Disaster Unemployment Assistance overpayments by fully implementing SIDES; increasing the frequency of SWA on-site reviews; and ensuring that California implements NDNH (California is the only state not to have done so, and it alone represents 13% of the UI overpayments nationally). ETA stated that California will implement NDNH by September 2011. ETA is continuing to pursue legislation to define the "Date of Hire" and mandate its reporting by employers; and continuing to promote States' use of a variety of other databases (e.g., Social Security, Department of Corrections) to prevent and detect improper UI benefit payments. ETA also needs to provide additional, more detailed information on its efforts to reduce improper payments in its next Report on UI Improper Payments. Finally, in FY 2011, ETA needs to continue working with the states on their development of well-documented IT contingency plans.

CHALLENGE: Improving the Management of Workers' Compensation Programs

OVERVIEW:

The Department has responsibility for managing the Energy Employees Occupational Illness Compensation Act Program (Energy workers' program) and the Federal Employees' Compensation Act (FECA) Program. Both of these programs are within DOL's Office of Workers' Compensation Programs (OWCP).

The Energy workers' program was created to provide monetary compensation and/or medical benefits to civilian employees who incurred an occupational illness, such as cancer, as a result of their exposure to radiation or other toxic substances while employed in the nuclear weapons and testing programs of the U.S. Department of Energy and its predecessor agencies. In certain circumstances, these employees' survivors may be eligible for compensation. Since the program began in 2001 and through August 26, 2010, DOL reports it has paid more than \$6 billion in compensation and medical benefits to more than 61,400 claimants nationwide.

The FECA provides wage-loss compensation and pays medical expenses for covered Federal civilian and certain other employees who incur work-related occupational injuries or illnesses as well as survivors benefits for a covered employee's employment-related death. This program is administered by the Department, impacting all Federal agencies' budgets and employees. In FY 2010, Federal employees filed 127,526 new injury claims and 19,861 claims for loss compensation. FECA benefit expenditures totaled nearly \$2.8 billion for wage-loss compensation and medical treatment to more than 250,000 beneficiaries in FY 2010. Most of these costs were charged back to individual agencies for reimbursement to OWCP's Federal Employees' Compensation Fund.

CHALLENGE FOR THE DEPARTMENT:

The overall challenge for the Energy workers' program centers on the timeliness of its claim decisions. For the FECA program, minimizing improper payments and fraud continues to be its primary challenge. FECA fraud opportunities continue to exist, and certain ones are made more likely by FECA's inability to match FECA compensation recipients against social security wage records.

The Energy Workers Compensation program, though administered by the DOL, requires the pre-adjudication input, assistance, and determinations of three other major Federal agencies and a Federal advisory board. Complex regulatory requirements and the difficulty of locating employment and other records, as well as the inability of sick, often aging, claimants to fully understand their rights and responsibilities, contribute to the lengthy decision process. Furthermore, the NIOSH must prepare a complicated and time consuming dose reconstruction of the amount of radiation to which an employee with cancer was exposed. The Department has no regulatory authority to control the completion time of the NIOSH process.

The FECA program must ensure it makes proper payments, while also being responsive and timely to eligible claimants. The challenges facing the FECA program include moving claimants off the periodic rolls when they can return to work or their eligibility ceases, preventing ineligible recipients from receiving benefits, and preventing fraud by service providers and by individuals who receive FECA benefits while working. The OIG recognizes that it is difficult to identify and address improper payments and/or fraud in the FECA program, and we have previously reported OWCP does not have the legal authority to match FECA compensation recipients against Social Security wage records. Currently, OWCP must obtain written permission each time from each individual claimant in order to check records. Having direct authority to perform the match would enable OWCP to identify individuals who are collecting FECA benefits while working and collecting wages.

DEPARTMENT'S PROGRESS:

The Division of Energy Employees Occupational Illness Compensation indicates it has implemented new procedures to reduce the time it takes to develop impairment claims and it is revamping its procedural guidance. In addition, the Department has set up procedures to measure its timeliness of performance starting from the point of application to the final decision and payment. Furthermore, DOL now publishes graphs on its Web site that show processing times for various types of cases, including those sent to NIOSH for completion of a dose reconstruction. DOL has sponsored town hall meetings to inform workers and their survivors about available program benefits, and its Traveling Resource Center goes out monthly to assist individuals with the filing of their claims. DEEOIC continues to work with pre-decisional components to streamline and improve the issuance of final decisions.

The Department completed the rollout of its FECA benefit payment system, the Integrated Federal Employee Compensation System. This system is designed to track due dates of medical evaluations, revalidate eligibility for continued benefits, use data mining to prevent improper payments, boost efficiency, and improve customer satisfaction. The Department has sought legislative authority to allow it access to Social Security Administration wage records. In addition, the OIG continued to provide training to DOL and to other Federal agencies in the detection and prevention of fraud against the FECA program.

WHAT REMAINS TO BE DONE:

The Department needs to continue its efforts to further reduce case processing times. While average processing times in the Energy Workers program have improved over the past several years, it still takes more than 18 months to reach a final decision on a Part B case. Part B covers current or former workers who have been diagnosed with cancers, beryllium disease, or silicosis, and whose illness was caused by exposure to radiation, beryllium, or silica.

In addition to the need for access to SSA wage records, the Department needs to continue to seek legislative reforms to the FECA program to enhance incentives for employees who have recovered to return to work, address retirement equity issues, discourage unsubstantiated or otherwise unnecessary claims, and make other benefit and

administrative improvements. Through the enactment of these proposals, the Department estimates savings to the government over 10 years to be \$437 million.

CHALLENGE: Maintaining the Integrity of Foreign Labor Certification Programs

OVERVIEW:

The Department's Foreign Labor Certification (FLC) programs are administered by the ETA. These programs are intended to provide U.S. employers access to foreign labor to meet worker shortages under terms and conditions that do not adversely affect U.S. workers. The permanent labor certification program allows an employer to hire a foreign worker to work permanently in the United States, if a qualified U.S. worker is unavailable and the employment of the foreign worker will not adversely affect the wages and working conditions of similarly employed U.S. workers. The H-1B program allows the Department to certify employers' applications to hire temporary foreign workers in specialty occupations such as medicine, biotechnology, and business. The H-2B program permits employers to hire foreign workers to come temporarily to the United States and perform temporary non-agricultural labor on a one-time, seasonal, peak load, or intermittent basis. To obtain certification, employers must show that there are insufficient qualified U. S. workers available and willing to perform the work at the prevailing wage paid for the occupation. In addition, employers are required to pay any foreign worker the wage rate that prevails in the area of employment for the occupation and to comply with all laws governing such employment.

CHALLENGE FOR THE DEPARTMENT:

ETA is challenged in ensuring the integrity of the FLC programs it administers. OIG investigations (initiated on referrals from ETA and other law and non-law enforcement entities, as well as pro-active OIG efforts) continue to uncover schemes carried out by immigration attorneys, labor brokers, and transnational organized crime groups, some with possible national security implications. OIG investigations have repeatedly revealed schemes involving fraudulent applications filed with DOL on behalf of fictitious companies, and those wherein fraudulent applications were filed using the names of legitimate companies without the companies' knowledge. Additionally, OIG investigations have uncovered complex schemes involving fraudulent DOL FLC documents filed in conjunction with or in support of similarly falsified identification documents required by other Federal and state organizations.

Additional challenges ETA faces in maintaining the integrity of its foreign labor certification programs include statutory limits on its authority in the H-1B program, making system improvements in its H-1B Labor Condition Application processing system to better identify incomplete and/or obviously inaccurate applications, and uncertainty regarding the Department's authority to debar individuals or entities.

DEPARTMENT'S PROGRESS:

ETA's Office of Foreign Labor Certification (OFLC), Fraud Detection and Prevention Unit, which targets application fraud by reviewing applications for inconsistencies, errors, and omissions, continues to work closely with the OIG to identify and reduce fraud in the FLC process.

WHAT REMAINS TO BE DONE:

The Department needs to continue working with OIG to identify and reduce fraud, ensure appropriate training is provided to OFLC staff, and evaluate the results of its certification processes to assess their effectiveness. The Department needs to make adjustments to enhance integrity of its iCert H-1B Labor Condition Application processing system to incorporate missing electronic controls. Additionally, the Department should ensure debarments are considered, and decisions documented, for anyone convicted of FLC violations, and FLC debarments are reported to appropriate DOL personnel for inclusion in the government-wide exclusion system. To this end, ETA needs to work with the Office of the Solicitor to resolve this matter.

CHALLENGE: Securing Information Technology Systems and Protecting Related Information Assets

OVERVIEW:

DOL systems contain vital, sensitive information that is central to the Department's mission and to the effective administration of its programs. DOL systems are used to determine and house the Nation's leading economic indicators, such as the unemployment rate and the Consumer Price Index. They also maintain critical data related to worker safety and health, pension, and welfare benefits, job training services, and other worker benefits. The Congress and the public have voiced concerns over the ability of government agencies to provide effective information security and to protect critical data. The administration has called upon federal agencies to bring about greater use of technology to consolidate data center operations, use cloud computing infrastructures and services, and make use of Web 2.0 technologies, including blogs and social-networking services.

CHALLENGE FOR THE DEPARTMENT:

Overall, management of IT systems is a continuing challenge for DOL. Keeping up with new threats, IT developments, providing assurances that IT systems will function reliably, and safeguarding information assets will continue to challenge the Department today and in the future. The administration's goal of expanding the use of technology to create and maintain an open and transparent government, while safeguarding systems and protecting sensitive information, has added to the challenge.

The FY 2010 Federal Information Security Management Act (FISMA) audit identified access controls, inventory of sensitive IT assets, oversight of third-party systems, and remediation of known vulnerabilities as significant deficiencies. The OIG has reported on access control weaknesses over the Department's major information systems since FY 2001. These weaknesses represent a significant deficiency over access to key systems and may permit unauthorized users to obtain or alter sensitive information, including unauthorized access to financial records. Furthermore, the security of sensitive information that can be accessed remotely or stored on mobile computers/devices is a continuing challenge to the Department and in the Federal government overall. Management of these areas will likely become more challenging in the future as cloud computing is implemented. Consolidating data centers and moving mission critical systems to the cloud increases the risk of exposing personal identifiable information (PII) and unauthorized information exchanges, including critical and sensitive pre-decisional budget and policy information. While acknowledging the ongoing opportunity to improve controls, management has expressed its disagreement with these FISMA audit findings, in particular the seriousness of the issues identified by the OIG.

In light of these challenges, the OIG continues to recommend the creation of an independent Chief Information Officer (CIO) to provide exclusive oversight of all issues affecting the IT capabilities of the Department. While the Administration has moved to establish a separate CIO and Chief Technology Officer, DOL continues to manage its IT systems with a CIO who must balance IT with other important responsibilities, such as serving as the Chief Acquisition Officer (CAO) and Privacy Officer. The administration has clearly signaled that to be effective in meeting its objectives and goals going forward, such as implementing an open and transparent government, it will take a greater level of dedication to IT management and governance than in the past.

DEPARTMENT'S PROGRESS:

The Department is participating on several Federal Councils, Committees and Forums (e.g., Federal Chief Information Officer Council, Information Security and Identity Management Committee, the Chief Information Security Officer Forum) to assist in the development and implementation of policies, procedures, and standards that will address these challenges. In FY 2010, the Department focused its continuous monitoring program on the implementation of NIST 800-53 Rev 2 minimum security controls and on testing and evaluating access control and configuration management policies and procedures. Additionally, the Department established a Social Media Governance Work group that developed a Social Media policy and Handbook.

WHAT REMAINS TO BE DONE:

The Department needs to establish an independent CIO to provide exclusive oversight of all issues affecting the IT capabilities of the Department. DOL management recognizes the challenges associated with protecting the Department's information and information systems and is committed to strengthening its security posture. As such, the Department currently has plans in place to improve upon its security controls testing and evaluation process by performing agency specific customized testing that will focus on the agencies' high-risk vulnerabilities and control weaknesses and to pursue a technical solution for logging computer readable data extracts. Additionally, the Department will continue its current enterprise IT efforts to strengthen DOL's operating environment to include: infrastructure optimization, trusted internet connection, logical access control system, and a DOL risk management and compliance profile program. Social networking technologies will require the Department to develop new approaches to continuous monitoring of computer usage and providing information security assurance as the Department and its agencies begin taking advantage of Web 2.0, including blogging, Wiki, Facebook, MySpace, and Twitter as part of replacing old ways of communicating.

CHALLENGE: Ensuring the Security of Employee Benefit Plan Assets**OVERVIEW:**

The mission of the Department's Employee Benefits Security Administration (EBSA) is to protect the security of retirement, health, and other private-sector employer-sponsored benefits for America's workers, retirees, and their families. EBSA oversees benefit security for an estimated 708,000 private retirement plans, 2.8 million health plans, and similar numbers of other welfare benefit plans, such as those providing life or disability insurance. Benefits under EBSA's jurisdiction consist of approximately \$5 trillion in assets covering more than 150 million participants and beneficiaries. EBSA is charged with overseeing the administration and enforcement of the fiduciary, reporting, and disclosure provisions of Title I of the Employee Retirement Income Security Act (ERISA).

CHALLENGE FOR THE DEPARTMENT:

Protecting benefits and benefit plan assets generally against fraud, misconduct, and negligence remains an ongoing challenge for the Department. OIG investigations have shown that benefit plan assets remain vulnerable to labor racketeering and/or organized crime influence. These pension plans, health plans, and welfare benefit plans comprise trillions of dollars in assets covering more than 150 million American workers. Dishonest benefit plan service providers, including accountants, investment advisors, and plan administrators, continue to be a strong focus of OIG investigations, as well as corrupt union officials and/or organized crime members.

EBSA Has Limited Authority to Oversee Plan Audits – Employee benefit plan audits by independent public accountants (IPAs) must provide a first-line defense for plan participants against financial loss. Ensuring that audits by IPAs meet quality standards adds to the Department's challenge because the Department's authority to require plan audits to meet standards remains limited. EBSA does not have the authority to suspend, debar, or levy civil penalties against employee benefit plan auditors who perform substandard audits. In addition, ERISA allows plan administrators to exclude investments held by certain regulated institutions, such as banks and insurance companies, from the scope of a plan audit, resulting in the auditor's disclaimer of opinion on the financial statements, which seriously impairs the usefulness of the audit in protecting employee benefit plan assets.

EBSA Lacks Ability to Assess Enforcement Program Effectiveness – EBSA lacks the ability to assess the effectiveness of its civil enforcement programs. Our audits have found that EBSA could not determine whether its civil enforcement projects, such as the Multiple Employer Welfare Arrangements project and the Rapid ERISA Action Team (REACT) project, were increasing compliance with ERISA, or whether the projects were decreasing the risk that workers will lose benefits. We also found that EBSA could not clearly demonstrate it was directing resources to the enforcement areas with the most impact on its mission to deter and correct ERISA violations. Each EBSA regional office differed in its interpretation of its enforcement program impact and desired outcomes. As a result,

the allocation of resources differed among the regional offices, and agency resources may not have been directed at areas with the most impact.

Multiple Challenges Stem from Implementing the Patient Protection and Affordable Care Act (Health Care Reform Act) –The broad changes required by the Health Care Reform Act will challenge the Department to develop in excess of thirty new health plan regulations and provide ongoing technical assistance, incorporate new requirements into employee benefit enforcement programs, institute new statutorily mandated research and health plan surveys, and broaden assistance and educational programs for employee benefit plan participants and beneficiaries. These new and extensive health care requirements will pose major challenges for the Department.

DEPARTMENT’S PROGRESS:

The Department has previously sought legislative changes, such as expanding the authority of EBSA to address substandard benefit plan audits, and ensuring that auditors with poor records are not allowed to continue performing plan audits; these changes have not been enacted by Congress. In addition, the Department has unsuccessfully sought recommended legislative changes to either eliminate or modify the limited-scope audit exception to strengthen the protections afforded plan participants and beneficiaries. EBSA is working on new approaches to these issues and developing possible legislative language. In an effort to address inadequate assessments of the effectiveness of its enforcement program, EBSA, as part of the Department’s FY 2011- 2016 Strategic Plan, will be implementing a Sample Investigation Program in 2011, which will review randomly selected employee benefit plans for compliance with ERISA. EBSA has also published eight interim final regulations under the Health Care Reform Act, as well as other sub-regulatory guidance documents and model notices.

WHAT REMAINS TO BE DONE:

EBSA needs to continue work to obtain legislative change to address deficient benefit plan audits, to ensure that auditors with poor records do not perform any additional plan audits, and to repeal the limited scope audit exception. EBSA will need to evaluate the results of the Sample Investigation Program to determine what changes are needed to improve program effectiveness, and continue its efforts to develop guidance to support its implementation of the Health Care Reform Act.

CHALLENGE: Ensuring DOL’s New Core Financial Management System Produces Reliable, Accurate, and Timely Financial Information

OVERVIEW:

From FY 1989 to FY 2010, the DOL has relied upon the Department of Labor Accounting and Related Systems (DOLAR\$) as the financial system of record for the department. DOLAR\$ was implemented prior to all of the modern-day laws and regulations that drive Federal accounting, financial management, financial reporting, and information security. As a result, DOLAR\$ was enhanced and extended numerous times to meet the Department’s internal and external reporting requirements; however, DOLAR\$ antiquated technology did not allow DOL to efficiently and effectively meet its current and future financial and accounting needs. In July 2008, the Department awarded a contract for the development of the New Core Financial Management System (NCFMS). NCFMS was planned to be fully implemented and operational by mid-October 2009, but migration of data from DOLAR\$ to NCFMS did not occur until January 2010.

CHALLENGE FOR THE DEPARTMENT:

The implementation of NCFMS has presented the Department with several challenges. The number of actual users is significantly higher than planned. Initial estimates were 500 total users, but as of October 2010, the count is more than 2,600. It remains a challenge to support this larger than expected user base.

The Department is currently unable to produce auditable financial statements on schedule. The Department is challenged to clean up inaccurate financial data from DOLAR\$ and interfacing systems. Until these actions are completed, the system will continue to provide incorrect financial and budgetary information.

While many of the problems the Department has encountered with NCFMS can be attributed to the migration of data from DOLAR\$, new problems have been introduced due to the significant change in business processes and the users' lack of understanding of the new system. In NCFMS, certain key processes are performed differently than they were in DOLAR\$, because NCFMS incorporates the various OMB, Treasury and other Federal financial requirements, processes and controls.

DEPARTMENT'S PROGRESS:

The Department has indicated that NCFMS is now providing all of DOL with day-to-day financial transaction processing, budget execution, and reporting. Initially, integration and data migration issues required some manual workarounds to release grants and procurements. Additional data migration activities have substantially improved processing of these transactions, and the issuance of grants, travel payments and procurements is being consistently performed accurately and timely by NCFMS.

Initial NCFMS training was started in the summer of 2009; and based on feedback from attendees, the training was reformatted and given again with an agency focus in the fall of 2009. Computer Based Training and Quick Reference Guides were available in January 2010 prior to the NCFMS go-live, and continue to be used.

DOL stated it has been working with its service provider to scale the hardware, software, help desk, training, operations, and onsite support staff. According to DOL, this surge in support has resulted in the reduction of transaction backlogs, the lowering of late payment penalties and the increase in the accuracy of the data as transactions are getting processed more timely.

WHAT REMAINS TO BE DONE:

DOL needs to continue to work closely with OMB, Treasury and the OIG to address data quality and accuracy of reporting. The Department needs to enhance training materials on NCFMS and continue to train the NCFMS user community on its full capabilities. In addition, standard operating procedures and other such tools for NCFMS should be reviewed and revised on an ongoing basis to ensure that newly hired personnel have references on how to use the system. The first 9 months saw substantial increases in the number of late payment penalties as staff adjusted to the new business process. While DOL states it has nearly reached pre-implementation late payment rates, DOL needs to improve operational efficiencies in 2011 beyond the benchmarks of the previous system.

Changes from Last Year

Changes to the Top Management Challenges from FY 2009 include the addition of the challenge related to the implementation of the Department's NCFMS.

Improving Procurement Integrity was previously discussed in our FY 2009 Top Management Challenges. While the enactment of the Recovery Act greatly increased the amount of acquisition activity in the Department, our audit work found that, overall, the awards were announced, evaluated, and selected in accordance with relevant criteria. Additionally, Job Corps has addressed concerns expressed in previous audits regarding the lack of adequate segregation of duties between its Regional Director and Contracting Officer responsibilities by placing those functions in two different reporting structures.

While we have removed procurement integrity from the FY 2010 Top Management Challenges, we remain concerned that the Department has decided against appointing a CAO whose primary duty is acquisition management, as required by the Services Acquisition Reform Act of 2003. Audits of the Department's procurement activities will remain a priority for the OIG.