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## 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. The Department's responses and presentation of its progress on the Top Management Challenges are shown following the OIG report.

### 2009 Top Management Challenges Facing the Department of Labor

For 2009, the OIG considers the following as the most serious management and performance challenges facing the Department:

- Implementing the American Recovery and Reinvestment Act of 2009
- Protecting the Safety and Health of Workers
- Improving Performance Accountability of Grants
- Ensuring the Effectiveness of the Job Corps Program
- Safeguarding Unemployment Insurance
- Improving the Management of Workers' Compensation Programs
- Improving Procurement Integrity
- 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

For each challenge, the OIG presents an overview of the challenge, a description of the challenge, and the OIG's assessment of the Department's progress in addressing the challenge. The OIG continues to review and monitor how these complex issues are addressed.

#### **CHALLENGE: Implementing the American Recovery and Reinvestment Act of 2009**

**OVERVIEW:** The American Recovery and Reinvestment Act of 2009 (Recovery Act) was signed into law on February 17, 2009. It is an unprecedented effort to jumpstart the economy, while creating or saving millions of jobs. 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 Recovery Act also appropriates substantial funding for construction, alteration, and repair of Federal buildings and for infrastructure projects such as roads, bridges, and public transit.

**CHALLENGE FOR THE DEPARTMENT:** The Recovery Act provided the Department with approximately \$45 billion and mandated that these funds be spent expeditiously while ensuring transparency, accountability, and results. The risk for fraud and abuse grows when large sums of money are being disbursed quickly, eligibility requirements are being established or changed, or new programs are being created. Consequently, the Department has to meet the challenges inherently created by increased funding and the corresponding increase in the attempts at fraud and abuse that will likely follow. In addition, the Department has new or increased requirements impacting many of its ongoing programs. For example, the Recovery Act contains premium assistance provisions that expand the Consolidated Omnibus Budget Reconciliation Act (COBRA) eligibility and provide eligible individuals with a 65 percent reduction of their COBRA premiums for up to nine months. The Employee Benefits Security Administration (EBSA) will now be responsible for administering the extension and subsidization of COBRA for certain groups of eligible laid off workers and for handling appeals, outreach, and regulatory responsibilities. Handling the appeals in a timely manner, and having the necessary, trained personnel to do so, is a major challenge, as EBSA has reported receiving 6,000 inquiries per week about the COBRA premium reduction.

In addition, the increased funding tied to improvements to the Nation's infrastructure work will have an impact on Departmental enforcement efforts related to worker pay.

About \$40 billion of the Department's Recovery Act funds will be used to provide extensions of unemployment benefits and to fund a new temporary Federal Additional Compensation program, which increases the Weekly Benefit Amount for unemployment benefits by \$25 per week. While costly, the Recovery Act provisions relating to benefit extensions are (1) a continuation of the Emergency Unemployment Compensation program created by the Supplemental Appropriations Act 2008, and (2) an inducement for states to pay benefits under the permanent federal-state extended benefit program. The Federal Additional Compensation program is new to the Department, as well as to the States that are paying the additional weekly benefit and the Department will be challenged to ensure that these benefits are accounted for correctly.

The Recovery Act provided almost \$5 billion for Workforce Investment Act (WIA) programs, most of which will be expended through non-Federal entities, rather than directly by the Department. While these WIA programs are not new, our past audits have demonstrated problems with respect to grant accountability. Given the large number of grants being awarded under tight time frames, the pressure to spend the funds quickly, and the increased reporting requirements mandated by the Recovery Act, the Department now faces even greater challenges in demonstrating and reporting that grants are properly awarded, funds are properly spent, and that these investments achieve their intended outcomes.

The amount of Recovery Act funding designated for infrastructure work will increase the number of Federal construction projects over the course of two years. The Wage and Hour Division (WHD) will be required to publish up-to-date and accurate prevailing wage determinations for use on the newly funded construction projects, and to establish an active enforcement program for Recovery Act covered projects. Many WHD investigators have little or no experience with Davis-Bacon Act enforcement. Davis-Bacon complaint workloads are expected to substantially increase, an increase that may continue over a number of years given that some of the funded projects may be under construction for several years. It will be a challenge for WHD to assign a sufficient number of trained personnel that will ensure workers receive the wages they are legally due, and avoid a backlog of non-Recovery Act complaints as a result of increased Recovery Act worker complaints.

The Recovery Act requires Federal agencies to implement an unprecedented level of transparency and accountability to ensure the public can see where and how their tax dollars are being spent. The Department faces several challenges in implementing the performance reporting requirements of the Recovery Act. Most importantly, the Department needs to report whether recipients used Recovery Act funds to train and place participants in high-demand occupations or industries. Additionally, the Department needs to develop policies and procedures to perform data quality reviews of the quarterly reports submitted by recipients.

**DEPARTMENT'S PROGRESS:** The Department continues to implement its responsibilities under the Recovery Act and financial and performance reporting guidance issued by the Office of Management and Budget (OMB). In keeping with the Recovery Act's goals for accountability and transparency, DOL established a Web site (<http://www.dol.gov/recovery/>) to keep the public informed on how it is spending Recovery Act funds, and updates it regularly. The Department reassigned staff to address Recovery Act workload and launched a hiring initiative to meet its expanded program responsibilities. Individual agencies have taken steps to address their increased responsibilities under the Recovery Act. The Department appointed a Senior Accountable Official for the Recovery Act. The Senior Accountable Official has held weekly meetings to discuss the Department's progress in fulfilling the Recovery Act's responsibilities. The Office of the Chief Financial Officer has developed new accounting codes to enable it to separately account for Recovery Act funds. EBSA responded to more than 110,000 telephone inquiries related to COBRA premium assistance in the first five months after Recovery Act passage, and the Employment and Training Administration (ETA) made available to the states \$40 billion to support and expand unemployment insurance and \$3.5 billion in training and employment formula funds. WHD has selected a senior executive to

manage implementation of its Recovery Act plan, and budget, administrative, procurement, human resources and wage determination and enforcement staff have been reassigned to assist in Recovery Act efforts.

OIG completed several audits in fiscal year (FY) 2009 assessing the Department's progress under the Recovery Act. For Recovery Act financial activity, OIG found that, generally, the Department has implemented procedures to account for Recovery Act financial activity as required by Federal law and OMB guidance, and report on the use of Recovery Act funds in accordance with OMB guidance.

OIG's audit of the implementation of the Federal Assistance Compensation program in 10 states found that all of the states had aggressively implemented the program. As of June 30, 2009, the 10 states had paid about \$1.3 billion in benefits to Federal Assistance Compensation program recipients. Challenges encountered by the states included overpayment identification, recovery capabilities, and the withholding of taxes. The audit also found non-compliance issues concerning states not reporting overpayment information to ETA and not withholding taxes when requested by claimants.

OIG's audit of EBSA's implementation of the COBRA premium assistance provisions of the Recovery Act found that EBSA quickly started outreach activities to implement the COBRA provisions under the Recovery Act, and designed and implemented a process to provide timely reviews of appeals of premium assistance denials. EBSA could improve several aspects of its efforts through improved coordination with ETA to ensure Recovery Act COBRA premium assistance materials are displayed and distributed at all One-Stop centers, using feedback from enforcement investigations to help assess outreach efforts, developing a resource contingency plan, improving controls to assure accurate dates are used on applicant determination letters, and redesigning the letters sent to appellants.

## **CHALLENGE: Protecting the Safety and Health of Workers**

**OVERVIEW:** The Department administers the Occupational Safety and Health Act of 1970 and the Federal Mine Safety and Health Act of 1977 (Mine Act), as amended by the Mine Improvement Emergency Response Act of 2006. The workplace safety and health of our nation's workers depends on DOL's strong enforcement of these laws.

**CHALLENGE FOR THE DEPARTMENT:** The two DOL agencies primarily responsible for worker safety and health 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 111 million workers at more than seven million establishments. MSHA is responsible for the safety and health of over 390,000 miners who work at more than 14,800 mines. Given the scope of their responsibilities, OSHA and MSHA are continually challenged to effectively utilize their operating resources to meet mission needs in all areas of responsibility.

With more than 7 million workplaces nationwide and with 5,071 fatal workplace injuries reported by the Bureau of Labor Statistics in 2008<sup>1</sup>, OSHA's challenge is to target its limited resources to workplaces where they can have the greatest impact. In 2003, OSHA developed the Enhanced Enforcement Program (EEP). The EEP was designed to identify employers indifferent to their obligations under the Occupational Safety and Health Act in order to target their worksites with increased enforcement attention.

Our recent audit of OSHA's EEP found that OSHA did not always properly identify employers for enhanced enforcement. When it did, OSHA did not always take proper action nor place the appropriate management emphasis on compliance, commit the necessary resources, and provide clear policy guidance. For example, in 29 OSHA-designated EEP cases, OSHA did not take any of the appropriate enhanced enforcement actions, and 16 of

<sup>1</sup>These numbers include fatalities not under OSHA jurisdiction, such as deaths among miners, transportation workers, domestic workers, some public employees, and the self-employed, as well as fatalities that fall outside of OSHA's definition of work-relatedness.

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the 29 employers reported 20 subsequent fatalities. Of these, 14 fatalities were in cases that shared similar violations. The OIG recommended that OSHA form a task force to make recommendations to improve program efficiency and effectiveness in the following areas: targeting employers indifferent to the safety of their employees which are most likely to have unabated hazards and/or company-wide safety and health issues at multiple worksites; ensuring appropriate actions (i.e., follow-up and related worksite inspections) are taken on indifferent employers and related companies; centralizing data analysis to identify employers with multiple EEP qualifying and/or fatality cases that occur across Regions; and identifying and sharing Regional and Area Offices' "best practices" to improve compliance with EEP requirements.

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. Historically, MSHA was not meeting its statutory responsibility to conduct inspections at the nation's coal mines. Insufficient resources during a period of increasing mining activity made it difficult for the Department to ensure that it had enough resources in the right places to protect the safety of miners. While Congress allocated supplemental funding to MSHA in FY 2006 to hire additional mine inspectors, the full impact of that increase was not immediately realized. MSHA states that it takes from 18 to 24 months of classroom and on-the-job training for a new hire to become a qualified mine inspector. Therefore, MSHA is just now reaching a point where those new mine inspectors can have an impact on MSHA's workload. Retirements and other attritions make maintaining a sufficient number of trained mine inspectors an ongoing challenge.

**DEPARTMENT'S PROGRESS:** OSHA has established an EEP Revision Task Force to design a new program that will be able to identify and inspect recalcitrant employers more effectively. Some changes under consideration include mandatory follow-up inspections, more inspections of other establishments of an identified company, and additional enhanced settlement provisions. OSHA plans for the new program to include a more intensive examination of an employer's history for systemic problems that would trigger additional mandatory inspections.

All personnel hired under the FY 2006 supplemental funding provided to MSHA by Congress have now completed their training and are mine inspectors. As of April 30, 2009, MSHA reported that it had increased its enforcement personnel by 30 percent over 2006 levels. Additional hiring of trainees, due to attrition of enforcement personnel is an ongoing activity. Efforts are also underway to attract and retain engineers and specialists. In 2008, for the first time in its history, MSHA reported that it completed 100 percent of all mandatory mine inspections. However, the OIG remains concerned that MSHA has improved its efforts in inspecting mines at the cost of not fulfilling other statutory responsibilities, such as mine plan reviews.

## **CHALLENGE: Improving Performance Accountability of Grants**

**OVERVIEW:** In FY 2008, the Department's ETA reported program costs totaling \$3.2 billion for the 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 also funded through grant awards that support program activities and services to prepare low-income youth for academic and employment success, including summer jobs, by linking academic and occupational learning with youth development activities.

**CHALLENGE FOR THE DEPARTMENT:** DOL is challenged to ensure that discretionary grants are properly awarded and that the Department receives the quality of services that the taxpayers deserve. 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, evaluating outcomes, and disseminating and replicating proven strategies and programs. Past OIG and Government Accountability Office

(GAO) audits have found weaknesses in how ETA manages its grants to this end. In audits involving the High Growth, Community Based, and WIRED initiatives, weaknesses found included the lack of competition in awarding grants, grants that failed to achieve major performance goals, grant agreements with goals that were so unclear it was impossible to determine success or failure, and grants whose required matching funds were not provided. Our audits also found that ETA has not evaluated the usefulness of individual grant products or the overall effectiveness of its discretionary grant initiatives. ETA is also challenged to provide adequate oversight and monitoring of the grants it awards, as the agency lacks reliable and timely performance data that would allow identification of problems in time to correct them. In 2005, ETA implemented a data validation initiative to ensure that state workforce agencies (SWA) report accurate and reliable performance data for WIA programs. OIG's recent audit of three states found that they were not using the appropriate ETA criteria or source documentation to perform the data validations. As a result, ETA has no assurance that data validation is operating as designed, or that the data reported by states can be relied upon for accurately reporting performance results.

The large increase in funding provided by the Recovery Act challenges the Department even more in ensuring that grant funds are appropriately spent on activities that will yield the desired training and employment outcomes.

**DEPARTMENT'S PROGRESS:** As a result of the audits by the OIG and GAO, ETA has indicated that it will increase the emphasis placed on awarding discretionary grants competitively, developed procedures designed to better document decisions and discussions that lead to grant actions, implemented new procedures to ensure the proper justification of any future non-competitive awards, and provided training to agency grant officers on these new procedures. ETA has also stated that future agreements for pilots and demonstration grants will require grantees to obtain an independent evaluation of grant results. While these actions, if effectively implemented, should help to improve performance accountability, ETA needs to focus its future efforts on determining how best to prioritize its available resources to adequately monitor grant performance and how to evaluate grants to ensure desired results are achieved. In conjunction with our planned Recovery Act audit work, we will review the Department's stated progress in this challenge area.

### **CHALLENGE: Ensuring the Effectiveness of the Job Corps Program**

**OVERVIEW:** Education, training, and support services are provided to approximately 60,000 students at 122 Job Corps centers located throughout the United States and Puerto Rico. Job Corps centers are operated for DOL by private companies through competitive contracting processes, and by other Federal Agencies through interagency agreements. The program was appropriated nearly \$1.7 billion in FY 2009.

**CHALLENGE FOR THE DEPARTMENT:** The OIG's work has consistently identified challenges to the effectiveness of the Job Corps program. These challenges include ensuring the safety and health of students and having accurate, reliable, performance data necessary to determine the success of the program. OIG audits have identified safety program weaknesses at some centers, including unsafe or unhealthy conditions and the lack of required safety inspections. Unsafe or unhealthy conditions affect the learning environment and could adversely impact the overall success of the Job Corps program. Further, Job Corps officials need to do more to address the problems of centers not taking appropriate action for student misconduct, including illegal drug use and violence. The OIG found that some centers did not hold required behavior review board meetings to evaluate student misconduct and initiate disciplinary action. The lack of appropriate disciplinary action, including termination of enrollment, may place the remaining students at risk.

OIG audits have found that weak controls at centers have resulted in the overstatement and misrepresentation of performance data. The OIG has found problems with the reporting of student outcomes, on-board strength and attendance. This is a particular challenge for Job Corps when centers are operated by contractors through performance-based contracts, which tie cost reimbursement, incentive fees and bonuses directly to contractor performance largely measured by on-board strength, attendance, and outcomes. Under such contracts, there is a

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risk that contractors will graduate students with incomplete training or inflate their performance reports so they can continue to operate centers. It is essential for Job Corps to have reliable, accurate, and timely data, so that the Department can effectively evaluate contractor performance and participant outcomes.

**DEPARTMENT'S PROGRESS:** Job Corps continues to take actions such as strengthening policies and procedures, conducting periodic center assessments, and following up on issues identified in center assessments and contractor assessments. Specifically, Job Corps has recently revised its policies regarding the completion of training records, which was intended to mitigate both the risk of contractors graduating students with incomplete training or inflating their performance reporting. However, our audits continue to identify problems. Job Corps's actions may not achieve the desired outcomes unless proactive, consistent, and rigorous oversight of contractors and personnel is provided at all centers.

## **CHALLENGE: Safeguarding Unemployment Insurance**

**OVERVIEW:** The Department partners with the states to administer unemployment benefit programs. State Unemployment Insurance (UI) provides benefits to workers who are unemployed and meet the eligibility requirements established by their respective states. UI benefits are largely <sup>2</sup> financed through employer taxes imposed by the states and deposited in the Unemployment Trust Fund (UTF), from which the states pay the benefits.

The Department funds State Workforce Agencies (SWAs), which administer the UI program through grant agreements. These grant agreements are intended to ensure that SWAs both administer the UI program efficiently 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.

Disaster Unemployment Assistance (DUA) is a Federally-funded program that provides financial assistance to individuals who lose their jobs as a direct result of a major disaster and are ineligible for other UI benefits.

**CHALLENGE FOR THE DEPARTMENT:** Reducing and preventing UI and DUA overpayments by improving controls over eligibility, timely detecting and recovering overpayments, and combating fraud against these programs remain major challenges for the Department. Another challenge involves ensuring that SWAs have adequate information technology contingency plans that provide for the continuation of services in the aftermath of disasters.

In FY 2008, the Department reported a total overpayment rate of 9.92 percent, which equates to more than \$3.8 billion in UI overpayments – an increase from the \$3 billion reported in FY 2007. The Department met its target goal of identifying and establishing for recovery 56 percent of UI overpayments in FY 2008; however, this goal had been reduced from the target levels of 59-60 percent established during the previous five years. It is a challenge for the Department and the SWAs to have systems and controls in place to quickly prevent or respond to improper payments. The current economic downturn increases this challenge, as more claims are filed and states shift resources from detecting improper payments to processing claims. The Department needs to promote the states' use of the National Directory of New Hires (NDNH) database to prevent and timely detect overpayments. Our recent audit found that ETA could not demonstrate it exercised sufficient oversight to ensure SWAs utilized information from the NDNH to prevent and detect unemployment compensation overpayments. Without effective reviews of SWAs' use of the NDNH for cross-matching UI claims, ETA cannot ensure the reliability of the data provided by the states, and the dollar value of detected or possible undetected overpayments is unknown or cannot be validated. We also found that California (which accounts for roughly 16 percent of total UI benefits paid), Indiana, the District of Columbia, and Puerto Rico were not using the NDNH to detect unemployment compensation overpayments.

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<sup>2</sup>Employees also contribute to Unemployment Insurance in three states.

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Reducing fraud committed against the UI program is also a challenge. ETA estimates that about \$1 billion of the \$3.8 billion total overpayments resulted from willful misrepresentation by the claimant – a fraud overpayment rate of 2.7 percent of UI benefits paid in FY 2008. The OIG investigates fraud committed by individuals who do not report or who underreport earnings and income while receiving UI benefits. In addition to single claimants and fictitious employer-related schemes, OIG investigations continue to uncover schemes in which individuals and/or conspirators commit identity theft to illegally obtain benefits in which UI benefits have been paid to ineligible claimants.

The Department also needs to ensure that SWAs have adequate Information Technology (IT) Contingency Plans that will enable them to continue to pay UI benefits in the event of a disaster such as a hurricane. Our recent audit found that ETA had not ensured that SWA partners had established and maintained required IT contingency plans. Specifically, 50 out of 51 plans lacked critical elements to ensure the continued availability of the UI systems. It is critical that all SWAs have IT contingency plans for UI to ensure that individuals who rely on these benefits receive this vital support in a time of need and uncertainty.

**DEPARTMENT'S PROGRESS:** The Department has taken some measures to reduce and prevent UI and DUA overpayments. The Department stated in the DOL 2008 Performance and Accountability Report that it is continuing to promote the use of NDNH by all states, facilitating a National UI Benefits and Adjudication Conference for states to share best practices and discuss improvement strategies, and issuing guidance to the states to address legislative requirements of the Unemployment Compensation Integrity Act of 2008, which authorizes recovery of some UI fraud overpayments by offsetting Federal income tax refunds. Despite the Department's efforts, the UI overpayment rate over the seven-year period from CY 2002-2008 averaged 9.6 percent, an increase over the previous 12-year period, which averaged 8.3 percent.

The OIG continues to work with UI's state partners to more effectively provide training to detect and prevent UI fraud. In addition, UI was a participant at the OIG's recent investigators training conference where it provided instruction on its efforts to recognize, refer and address fraud relating to its program.

The Department generally agreed to implement our recommendations that ETA conduct annual verification of SWAs' IT contingency plans. ETA plans to begin working with a selected group of SWAs each year to verify the existence and reliability of their IT contingency plans, using the risk based approach that was recommended by the OIG. ETA also plans to issue advisories to the SWAs informing each about the availability of FY 2009 funds to develop or update IT contingency plans, including a requirement that the states awarded UI grants obtain independent verification and validation of their contingency plans' acceptability.

## **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 which were designed to address the needs of employees who are injured on the job.

The Energy workers' program was created to provide compensation to civilian employees who incurred an occupational illness, such as cancer, as a result of their exposure to radiation while employed in the nuclear weapons production and testing programs of the Department of Energy and its predecessor agencies. In certain circumstances, these employees' survivors may be eligible for compensation. Since the program began in 2001, through September 30, 2009, DOL reports it has received 183,456 claims, and issued decisions on nearly 90 percent of these claims. DOL had approved slightly more than 38 percent of claims filed and paid nearly \$4.8 billion in compensation.

The FECA program provides income and pays medical expenses for covered Federal civilian employees injured on the job, those who have work-related occupational diseases, and dependents of employees whose deaths resulted from job-related injuries or occupational diseases. This program is administered by the Department, impacting all Federal agencies' budgets and employees. FECA benefit expenditures totaled \$2.7 billion in 2008. Most of these costs were charged back to individual agencies for reimbursement to the Department's Office of Workers' Compensation Programs (OWCP).

**CHALLENGE FOR THE DEPARTMENT:** The challenge for the Energy workers' program centers on the number of claims that are denied compensation and on the timeliness of its claim decisions. For the FECA program, the determination of continuing eligibility is the primary challenge.

Inquiries by several members of Congress and the public raised concerns as to whether the Department unfairly denied too many Energy claims and whether claims decisions were timely. In response to those concerns, the OIG conducted an evaluation to determine whether claim decisions issued by the Department complied with applicable law and regulations, and whether the Department has a system in place to ensure that claims are adjudicated as promptly as possible and claimants are kept informed. The OIG found that claims decisions complied with applicable laws and regulations, and were based on the evidence provided by or obtained on the behalf of claimants. The OIG also found that the Energy workers' program has made progress in reducing the time it takes to adjudicate claims. However, we found that the claims process remained lengthy and it could take up to two years or more to process and adjudicate a claim. Part of the challenge is that the National Institute for Occupational Safety and Health (NIOSH) must prepare a dose reconstruction of the amount of radiation to which an employee with cancer was exposed. The dose reconstruction process is complicated and time consuming. The Department has no regulatory authority to control the time it takes to complete the NIOSH process. Nonetheless, more can be done to further reduce the time it takes to process claims, to assist claimants in developing their claims, and to better educate claimants on general program requirements. The timeliness of adjudicating claims from the viewpoint of the claimant, (i.e., how long it takes from the time they apply for benefits to reaching a final decision), needs to be measured and reported to show how well the Energy workers' program is serving claimants, rather than solely measuring how long a claim is at DOL.

For FECA, the structure and operation of the program is both a Departmental and a government-wide challenge. All Federal agencies rely upon OWCP to adjudicate the eligibility of claims, to manage the medical treatment of those claims, to make compensation payments, and to pay medical expenses. Ensuring proper payments while being responsive and timely to eligible claimants is a challenge for OWCP. Among these challenges are 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. A recent OIG audit found OWCP needs to improve its process for monitoring claimants in the temporary "reemployment status not yet determined" category. FECA claims examiners are responsible for proactively managing these cases until the claimant either returns to work, is found to be entitled to reduced compensation, or it is determined the claimant has no reemployment potential for an indefinite future. OIG noted 2,860 claimants who had been receiving FECA compensation while in the temporary "reemployment status not yet determined" category for 15 years or longer.

The OIG recognizes that it is difficult to identify and address improper payments and/or fraud in the FECA program. Another difficulty is that OWCP does not have the legal authority to match FECA compensation recipients against social security wage records. Currently, OWCP must obtain permission from each individual claimant each time in order for it to check records. Being able to do the match would enable OWCP to identify individuals who are collecting FECA benefits while working and collecting wages.

**DEPARTMENT'S PROGRESS:** For the Energy workers' program, the Department has implemented new procedures to reduce the time it takes to develop impairment claims and is revamping its procedural guidance. Additionally, the Department is measuring its timeliness performance from the point of application to final decision and



payment. The Department now publishes on its Web site graphs that show the processing times for various types of cases, including those sent to NIOSH for completion of a dose reconstruction. These measures are updated quarterly. The Department has also provided its Resource Centers with expanded access to the Energy Case Management System (ECMS), which will provide enhanced customer service to claimants. The Resource Centers are also working to improve the level of education provided to potential claimants regarding the benefits available under the Act.

For FECA, the Department completed the roll-out of its new FECA benefit payment system, the Integrated Federal Employee Compensation System, that 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 needs to continue its efforts 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 \$384 million. These legislative reforms would assist the Department to focus on improving case management and to ensure only eligible individuals receive benefits. In addition, to help ensure proper payments in the FECA program, the Department is seeking legislative authority to allow for easy and expeditious access to Social Security Administration (SSA) wage records.

The OIG continues to provide training to DOL and to other Federal agencies in the detection and prevention of fraud against the FECA program. This training is designed to upgrade and develop the best investigative practices and techniques throughout the investigative community to keep pace with the new types of fraudulent schemes confronting the program. Additionally, OWCP participated in the OIG's recent investigator training conference where it provided guidance on its various programs and suggestions for working with the OIG to effectively address fraud in those programs.

## **CHALLENGE: Improving Procurement Integrity**

**OVERVIEW:** The Department contracts for many goods and services to assist in carrying out its mission. In FY 2008, the Department's acquisition authority exceeded \$1.8 billion and included over 9,300 acquisition actions.

**CHALLENGE FOR THE DEPARTMENT:** Ensuring integrity in procurement activities is a continuing challenge for the Department. The OIG's past audit work has identified violations of Federal procurement regulations, preferential treatment in awards, procurement actions that were not in the government's best interest, and conflicts of interest in awards.

The Services Acquisition Reform Act (SARA) of 2003 requires that executive agencies appoint a Chief Acquisition Officer (CAO) whose primary duty is acquisition management. The Department's organization has not been in compliance with this requirement, as the Assistant Secretary for Administration and Management serves as the CAO while retaining other significant non-acquisition responsibilities. Until procurement and programmatic responsibilities are properly separated and effective controls are put in place, the Department will continue to be at risk for wasteful and abusive procurement practices.

**DEPARTMENT'S PROGRESS:** In January 2007, then-Secretary of Labor Chao issued Order 2-2007, which formally established the position of CAO within DOL. This Order specifically stated that the CAO will have acquisition management as a primary duty. Further, the Order emphasized that the CAO will report to the Secretary with day-to-day guidance from the Deputy Secretary and that the CAO will have responsibility for overseeing other Department acquisition activities. However, the Department is not in compliance with the full intent of SARA, as

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the delegated CAO continues to perform many other duties unrelated to acquisition management, such as serving as the Department's Chief Information Officer and overseeing the Department's budget operations. The new DOL leadership is considering its options regarding compliance with the requirements of SARA.

### **CHALLENGE: Maintaining the Integrity of Foreign Labor Certification Programs**

**OVERVIEW:** The Department's Foreign Labor Certification (FLC) programs provide United States (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.

**CHALLENGE FOR THE DEPARTMENT:** Maintaining the integrity of its FLC programs, while also ensuring a timely and effective review of applications to hire foreign workers, is a continuing challenge for the Department.

OIG investigations, initiated on referrals from ETA, other law enforcement and non-law enforcement entities, as well as on 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 their 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.

From an audit standpoint, the OIG has looked at how the Department is challenged to maintain the integrity of the FLC programs. In a prior audit of the Department's FLC programs, we found ETA's statutory role in the H-1B program to be limited by law to a perfunctory review of applications. ETA is required to approve an H-1B application if the form is complete and free of obvious errors, which amounts to a review function without any meaningful impact. In addition, a recent OIG audit of the ETA's iCert H-1B Labor Condition Applications processing system found that system improvements are needed to better identify incomplete and/or obviously inaccurate labor condition applications.

In March 2005, ETA created the PERM (Permanent Electronic Review Management) system which removed the states from a direct role in reviewing and auditing applications for permanent foreign labor certification, eliminated the 100 percent review of such applications, and established a sampling and targeting approach to auditing applications to ensure compliance with the law and program requirements. An OIG audit of the PERM system found that ETA had discontinued certain types of audits. We also found that ETA had not conducted audits of all the applications selected for audit. As a result, ETA may have certified fraudulent applications or applications that did not meet required criteria. Certifying labor applications for foreign workers who were not eligible for employment could negatively affect the U.S. workforce by reducing the number of jobs available for U.S. workers.

**DEPARTMENT'S PROGRESS:** The OIG and the Department have been working collaboratively to identify and reduce fraud in the FLC process by providing training and instruction to ETA personnel on better and more creative ways of identifying and referring to the OIG possible labor-related fraud. In March 2008, ETA's Office of Foreign Labor Certification launched its Fraud Detection and Prevention Unit designed to recognize application fraud by reviewing

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for inconsistencies, errors, and omissions. The OIG continues to work closely with ETA's fraud unit, which, as a presenter at the OIG's recent investigator training conference, provided program insight and ideas for better addressing fraud uncovered in its programs.

In the first quarter of FY 2009, the Department began a review to determine the feasibility of reinstating the audits it had previously discontinued doing and is conducting audits as resources permit. The Department has also implemented other protocols to protect program integrity, including steps to ensure that all audits of applications identified for audit are actually conducted, and having experienced analysts manually review all applications.

### **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.

**CHALLENGE FOR THE DEPARTMENT:** Management of information technology (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 OIG's IT audits have identified access controls, oversight of contractor systems, and the effectiveness of the Chief Information Officer's oversight of the Department's full implementation of mandatory, minimum information security controls as DOL's most significant challenges. 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.

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. Accountability can be further enhanced by developing and implementing new reporting lines of communication for the Chief Information Security Officer (CISO) and the Component Program Information Security Officers (CPISOs). These new communication lines will require the CISO to report directly to both the CIO and an Executive in the Secretary's Office dealing with major security matters, including progress on maintaining an effective Department-wide information security program. The CPISOs would continue to report directly to their respective component program Assistant Secretary while also reporting to DOL's CISO. These steps will help to establish a greater degree of accountability for an overall effective information security program.

**DEPARTMENT'S PROGRESS:** The Department is continuing to take steps to improve the security of its information systems by focusing on security controls identified as having the greatest risks throughout the Department, such as access controls and configuration management. The Department's CIO issued updated policy to implement minimum security controls developed by the National Institute of Standards and Technology and required by the Federal Information Security Management Act (FISMA) in those areas. The Department's CISO plans to focus testing on the technical and operational controls identified as having the greatest risks throughout the Department.

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

**OVERVIEW:** The Department's mission is to protect the security of retirement, health, and other private-sector employer-provided benefits for America's workers, retirees, and their families. These benefit plans consist of approximately \$5.6 trillion in assets covering more than 150 million workers and retirees. 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 these benefit plan assets against fraud, misconduct, and negligence is a challenge for the Department. OIG labor racketeering investigations demonstrate the continued vulnerability of plan assets to criminal activity. The Department is further challenged by its restricted authority to oversee plan audits, ERISA's limited scope audit exemption, and inadequate assessments of program effectiveness.

Employer benefit plan audits by independent public accountants provide a first-line defense for plan participants against financial loss. Ensuring that audits by independent public accountants meet quality standards adds to the Department's challenge in providing adequate oversight. However, DOL's authority to require plan audits to meet standards remains limited, because the Department does not have the authority to suspend, debar, or levy civil penalties against employee benefit plan auditors who perform substandard audits. The Department must obtain legislative change to address deficient benefit plan audits and ensure that auditors with poor records do not perform additional plan audits.

Further, OIG investigations have shown that benefit plan assets remain vulnerable to labor racketeering and organized crime influence. Those pension plans, health plans, and welfare benefit plans comprise hundreds of billions of dollars in assets. 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 organized crime members.

Another challenge involves EBSA's ability to assess the effectiveness of its civil enforcement programs. Our recent audit found that EBSA could not determine whether its civil enforcement projects, such as the Multiple Employer Welfare Arrangements project, were increasing compliance with the 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 its 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 enforcement program impact and desired outcomes because EBSA Headquarters did not provide clear guidance on intended enforcement 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.

OIG's audit of EBSA's Rapid ERISA Action Team (REACT) project found similar challenges. In the REACT project, EBSA aims to respond in an expedited manner to protect the rights and benefits of plan participants when the plan sponsor faces severe financial hardship or bankruptcy and the assets of the employee benefit plan are in jeopardy. The audit concluded that EBSA does not have a comprehensive method for measuring the desired activities and outcomes of the REACT project, and does not perform a national assessment to judge the value of the REACT project in meeting its overall enforcement mission.

**DEPARTMENT'S PROGRESS:** While the Department has sought the recommended legislative changes, such as expanding the authority of EBSA to address substandard benefit plan audits and ensuring that auditors with poor records do not perform additional plan audits, these changes have not been enacted. In response to OIG's audit report on the effectiveness of its civil enforcement projects, EBSA agreed that objectives for these projects could be more clearer; however, it disagreed with the recommendation to establish performance measures that evaluate each civil enforcement project's outcomes versus the stated objective, and with the recommendation to develop guidance for allocating enforcement resources based on intended outcomes and actual performance results.

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## Changes from Last Year

Changes to the Top Management Challenges from FY 2008 include a revised management challenge previously entitled, “Improving the Federal Employees’ Compensation Act Program,” which has been renamed to “Improving the Management of Workers’ Compensation Programs.” Our revised title incorporates concerns regarding the Federal Employees Compensation Act Program as well as the Energy Employees Occupational Illness Compensation Program. As discussed below, we removed the challenge entitled, “Preserving Departmental Records.”

### Preserving Departmental Records

Preserving Departmental Records was previously discussed in our FY 2008 Top Management Challenges. The Department took prompt action in responding to the multiple concerns we reported. This included providing annual training to all DOL employees; issuing guidance on the preservation of records, proper disposal of records, and management of electronic and hard copy records; and updating its cost-benefit analysis regarding the establishment of an electronic recordkeeping and document management system. As a result of the corrective actions taken by DOL management, we have removed this item from the list of Top Management Challenges.