2007 Top Management Challenges Facing the Department of Labor

For 2007, the Office of Inspector General (OIG) considers the following areas to be the most serious management and performance challenges facing the Department of Labor. They involve workplace protections, compliance, accountability, and delivery of services and benefits. The OIG has assessed the Department's progress in these areas and will continue to review and monitor the Department's effort to address these complex challenges.

- Protecting the Safety and Health of Workers
- Ensuring the Effectiveness of the Job Corps Program
- Ensuring the Security of Employee Benefit Plan Assets
- Safeguarding Unemployment Insurance
- Improving the Federal Employees' Compensation Act Program
- Improving Procurement Integrity
- Securing Information Technology Systems and Protecting Related Information Assets
- Maintaining the Integrity of Foreign Labor Certification Programs
- Improving Performance Accountability of Grants
- Preserving Departmental Records

CHALLENGE: Protecting the Safety and Health of Workers

Overview: The Federal Mine Safety and Health Act of 1977, as amended by the Mine Improvement and New Emergency Response Act of 2006 (MINER Act), charges the Mine Safety and Health Administration (MSHA) with protecting the safety and health of over 300,000 men and women who work in our nation's mines.

The Occupational Safety and Health Administration (OSHA), authorized by the Occupational Safety and Health Act of 1970, promulgates and enforces occupational safety and health standards and provides compliance assistance to employers and employees. State OSHA Programs provide comparable protections and services to over 7.7 million state and local government employees. Recent OIG audits have identified opportunities for strengthening MSHA and OSHA's enforcement and assistance activities.

Challenge for the Department: The magnitude of the Department's mission to protect the health and safety of workers and the finite resources available presents a significant challenge requiring an appropriate balance between enforcement and compliance assistance and vigilance in ensuring that such programs are effectively administered. MSHA created an Accountability Program to ensure that its health and safety enforcement program is working effectively. This Accountability Program is MSHA's internal peer review process that is supposed to ensure that mine safety inspectors are doing their jobs effectively. However, a recent OIG audit found that this program is not well-designed and should be strengthened, because some peer reviews only looked at paper records of mine inspections and peer review teams did not always visit the mines to review what inspectors had examined. Recent tragic events involving several mines underscore the importance of thorough mine safety inspections and of having an effective peer review process to provide assurance that mine inspections are properly conducted.

OSHA's Consultation Program was designed to encourage employers to volunteer for an inspection and then resolve work place safety and health issues without the use of enforcement fines and penalties. However, a recent OIG audit found that consultation program officials seldom ensured that interim protection was in place before granting employers' requests for extensions to correct serious hazards, and employers who did not complete corrective actions in a timely fashion were seldom referred for enforcement actions. We have recommended that OSHA establish a performance measure that benchmarks and reports the percentage of serious hazards corrected by the initial correction due date.

Department's Progress: MSHA has proposed several steps to address shortcomings in its Accountability Program. Most significantly, MSHA has announced plans to create a new Office of Accountability within the Office of the Assistant Secretary to ensure that management controls are in place and fully implemented to prevent potential lapses in enforcement policies and procedures.

In response to problems in its Consultation Program identified by our audit, OSHA will ensure that its new OSHA Information System will not allow consultants to grant extensions without the assurance that proper interim protections are in place. In addition, OSHA has taken some actions and will implement additional measures to ensure that consultation program officials refer employers for enforcement action. These measures include clarifying existing requirements, training for both Federal and state consultation staff, and increased monitoring by Regional Offices. While OSHA disagreed with our recommendation on performance measures, the OSHA Information System is being designed to allow OSHA to create specific benchmarks for states that may have problems monitoring the correction of serious hazards.

CHALLENGE: Ensuring the Effectiveness of the Job Corps Program

Overview: Job Corps operates 126 centers throughout the United States and Puerto Rico to provide occupational skills, academic training, job placement services, and other support services, such as housing and transportation, to approximately 60,000 students each year. Its purpose is to assist eligible at-risk youth who need intensive education and training services. The program was appropriated nearly $1.5 billion in FY 2007. It utilized contracts with private companies to operate 98 centers and interagency agreements with the Departments of Interior and Agriculture to operate 28 centers.

Challenge for the Department: The challenges facing the Department regarding its Job Corps program include: 1) management of its centers; 2) performance monitoring and verification; 3) student safety and health; and 4) assessment of incoming students for cognitive disabilities. For example, a recent OIG report found numerous health and safety problems, such as inoperable fire alarms, and an unhealthful food handling area at the Oconaluftee Job Corps Center, which is operated by another Federal agency. Job Corps needs to utilize the results of facilities surveys conducted by its contractor to make sure necessary repairs are funded and completed as scheduled. In addition, we have found that the Department needs to hold regional offices accountable for utilizing effective monitoring techniques in their oversight of services provided by Job Corps contractors and government operators. Further, an OIG audit of Job Corps' processes for assessing students for cognitive disabilities found that Federal law requires assessment for cognitive disabilities under specific circumstances, but that Job Corps had not done so. Job Corps must identify and address cognitive disabilities of current and future students in order to improve their outcomes and long-term success.

Another concern relates to the fact that Job Corps runs contractor-operated centers through performance-based contracts, which tie incentive fees and bonuses directly to contractor performance. Under such contracts, there is a risk that contractors will inflate their performance reports so they can continue to operate centers. Recent audits determined that specific centers have manipulated their reported performance data. Our audits have disclosed other challenges as well, including inadequate financial management systems, unauthorized costs charged to center budgets, and deficiencies in the management of personal property.

Department's Progress: Job Corps has addressed some student safety and health issues raised by the OIG by temporarily closing the Oconaluftee Center. In addition, Job Corps has indicated that it will provide more rigorous monitoring of all centers. Job Corps has also taken action to improve performance data reliability at all centers, including requiring each regional office to conduct mandatory audits of student records concurrent with annual center quality assessments. Further Job Corps has developed additional criteria and a dedicated website for identifying and addressing students with cognitive disabilities. Much remains to be done to address the many challenges faced by this program to provide safe, quality, and long-impact services to disadvantaged youth.

CHALLENGE: Ensuring Security of Employee Benefit Plan Assets

Overview: Retirement, health and welfare benefit plans consist of approximately $5.6 trillion in assets covering more than 150 million workers and retirees. These plans and their service providers continue to be a strong audit and investigative focus of both the OIG and the Employee Benefits Security Administration (EBSA). 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 retirement and health benefit plan assets against fraud is a challenge for the Department. OIG labor racketeering investigations and the increased criminal enforcement by EBSA continue to find that plan assets are vulnerable to criminal activity.

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 challenges in providing adequate oversight. However, the Department's authority to require corrective action is currently limited. The Department should increase its efforts toward legislative change to strengthen its oversight authority over plan auditors and the scope of plan audits to increase plan protections for American workers.

Another challenge is the Department's increased responsibility for regulatory oversight of ERISA health care provisions. In the health care arena, the Department needs to continue its efforts to decrease the number of fraudulent Multiple Employer Welfare Arrangements, which are typically marketed to small businesses as a way to obtain inexpensive health coverage for their employees. In this regard, the Department should continue, through its national enforcement projects, to work closely with State insurance commissioners and the Department of Justice to identify and prosecute fraudulent MEWAs.

Department's Progress: The Department has made several improvements to its processes for identifying and correcting deficient employee benefit plan audits. Also, the Department has sought legislative changes to obtain more authority over plan auditors and the scope of plan audits.

The Department continues to utilize a multi-pronged strategy to help ensure compliance with ERISA Title I. This includes imposing criminal penalties to correct violations of the law, ensuring the security of employee benefit plan assets, and regulatory oversight of health care laws.

CHALLENGE: Safeguarding Unemployment Insurance

Overview: The Department partners with the states in administering unemployment benefit programs. State Unemployment Insurance (UI) provides benefits to workers who are unemployed because of a lack of suitable work and meet other eligibility requirements established by their respective states. UI benefits are financed through employer taxes imposed by the states and collected by the Internal Revenue Service, which holds them in the Unemployment Trust Fund (UTF) until needed to pay benefits.

The second program, 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. The 2005 hurricanes demonstrated the importance of effective controls to ensure that unemployment benefits reached only eligible persons.

Through the Benefits Accuracy Measurement (BAM) program, the Department has identified duplicative payments to individuals who are working while concurrently claiming UI benefits as the single largest cause of overpayment errors. Also, audit work initiated following Hurricanes Katrina and Rita identified potential benefit overpayments as a result of claimants concurrently filing under the UI and DUA programs, states not timely verifying eligibility for DUA, and other reasons. For example, we found that Louisiana paid claimants when the National Directory of New Hires (NDNH) database reported those individuals as having obtained jobs requiring further follow-up by the state. This one example represented potential overpayments of $51 million. In addition, following the 2005 hurricanes, the OIG opened over 300 cases of potential UI and DUA fraud resulting in 77 indictments and 43 convictions. As of August 10, 2007, 189 of these cases have been closed.

Challenge for the Department: Preventing UI and DUA overpayments and reducing fraud against these programs remains a major challenge for the Department and states. The Department, other Federal agencies, and the states are further challenged in having the necessary systems and controls in place to quickly respond and yet prevent improper payments during national emergencies or disasters. Ongoing audit and investigative work indicate that improper payments related to past disasters may be extensive. The prevention and early detection of overpayments is critical because the follow-up required to verify and collect an overpayment once it has been made is significant. Therefore, the Department needs to continue its efforts to disseminate information to the states about best practices and promote the use of mechanisms, such as the NDNH, to help states identify ineligible claimants more timely.

Department's Progress: The Department has taken some measures to eliminate UI and DUA overpayments. For example, in coordination with other Federal partners and the National Association of State Workforce Agencies, the Department developed action plans using lessons learned from recent disasters. The Department has also brought together Federal partners to develop a resource guide to facilitate coordination and streamline the delivery of services in the event of a major disaster.

In addition, the Department stated in its FY 2006 Performance and Accountability Report that it has developed a new core performance measure on overpayment detection and has begun to improve states' ability to identify individuals who are working while also claiming UI benefits. Further, the Department is working with state agencies to encourage the use of the NDNH database, which will improve the states' efforts to detect overpayments early. The Department and its state partners need to continue to incorporate the results of BAM and the NDNH to better prevent and detect overpayments. The OIG will continue to monitor the Department's use of this new performance measure to detect UI overpayments.

CHALLENGE: Improving the Federal Employees' Compensation Act Program

Overview: The Federal Employees' Compensation Act (FECA) Program provides income and pays medical expenses for covered Federal civilian employees injured on the job or 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 and impacts employees and budgets of all Federal agencies. FECA benefit expenditures totaled $2.5 billion in 2006. 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 structure and operation of the FECA program is both a Departmental and government-wide challenge. All Federal agencies rely upon OWCP to adjudicate the eligibility of claims, to manage the medical treatment of those claims, and to make compensation payments and pay medical expenses. Beginning in FY 2003, we reported that OWCP had not consistently obtained and reviewed medical evidence when determining claimants' continued eligibility for FECA compensation payments. Further, beginning in FY 2000, we reported that OWCP did not have the legal authority to match FECA compensation recipients against social security wage records. This is still the case. This match would help enable OWCP to identify individuals who are collecting FECA benefits while working and collecting wages. It is a challenge for the Department to ensure that only eligible recipients are receiving FECA benefits.

Department's Progress: The Department has taken several steps to improve the administration of FECA and is seeking legislative reforms to the FECA program. These legislative changes would: enhance incentives for employees to return to work; discourage unsubstantiated claims; and make other benefit and administrative improvements. If these proposals are enacted, the Department estimates that the government will save $608 million over 10 years.

Last year, the Department completed the roll-out of its new FECA benefit payment system, Integrated Federal Employees' Compensation System, which tracks due dates of medical evaluations; revalidates eligibility for continued benefits; contains increased internal mechanisms to prevent improper payments; boosts efficiency; and promises improved customer satisfaction.

CHALLENGE: Improving Procurement Integrity

Overview: The Department contracts for many goods and services to assist in carrying out its mission. In FY 2006, the Department's acquisition authority exceeded $1.7 billion and included over 8,800 acquisition actions. The OIG continues to be concerned about the Department's procurement activities. Specifically, for several years, we have recommended that the Department separate program and procurement responsibilities to ensure procurement integrity. Several OIG audits have reported that failure to adequately segregate program and procurement duties places procurement actions at risk due to conflict of interest or preferential treatment, among other things.

In addition, the Services Acquisition Reform Act (SARA) of 2003 requires that executive agencies appoint a Chief Acquisition Officer (CAO) whose primary duty is acquisition management. However, the Department's current organization is not in compliance with this requirement, as the Assistant Secretary for Administration and Management is serving as the CAO while retaining other significant non-acquisition responsibilities.

Challenge for the Department: Until procurement and programmatic responsibilities are properly separated and effective controls are put in place, the Department will be at risk for wasteful and abusive procurement practices. The Department must improve its procurement and contract management processes to ensure that it is receiving quality services at fair prices in compliance with contract terms. An important first step to improving procurement integrity is the appointment of a CAO, whose primary duty is acquisition management, as required by SARA.

Department's Progress: The OIG has classified six of the eight recommendations from Audit Report Number 05-05-005-07-720 (March 31, 2005) as "resolved and closed," due to improved Departmental procurement processes and operating procedures. The Department has taken preliminary steps to implement SARA. In January 2007, the Secretary 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 his or her 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. The OIG encourages the Department to move expeditiously to implement the Secretary's Order, comply with SARA requirements, and separate the procurement and program functions as the OIG has recommended.

CHALLENGE: Securing Information Technology Systems and Protecting Related Information Assets

Overview: The security of the Department's information technology (IT) systems and data is vital. Those systems produce key economic indicators and pay billions of dollars in benefits and services. In FY 2007, the OIG identified a significant deficiency related to access controls across DOL financial and non-financial information systems. As of March 2007, the OIG found that the Department had not fully implemented OMB's government-wide requirements to protect personally identifiable information (PII). The term "personally identifiable information" refers to information that can be used to distinguish or trace an individual's identity, such as name and social security number.

Challenge for the Department: Our audits have identified a number of IT challenges for the Department, including preventing unauthorized access to systems, certification and accreditation of systems, and incident response capability. It is also a challenge for the Department to fully implement OMB's requirements for protecting PII and close outstanding security issues within management's planned actions and target dates.

Keeping up with new threats and IT developments, providing assurances that IT systems will function reliably, and safeguarding information assets will continue to challenge the Department and require a sustained effort. As the need to raise the level of accountability for IT security in Government continues, it is important for agencies to have the proper structure in place to achieve accountability, effectiveness, compliance with security controls, and remediation of vulnerabilities to prevent security breaches. To this end, as in last year's Top Management Challenges, the OIG recommends the creation of an independent Chief Information Officer (CIO) to provide oversight of IT issues. In addition, we also believe that the Department should now consider having agency-level security officers report to the Department's Chief Information Security Officer (CISO), in addition to reporting to their respective agency heads as they do now. Similarly, the CISO could report to the Secretary's Office as well as to the CIO. The OIG believes such steps would enhance effectiveness within the Department-wide information security program.

Department's Progress: To meet the challenges associated with securing IT systems from harm, the Department is continuing to identify, assess, and remediate IT security vulnerabilities and is providing IT security training to program agency ISOs. In addition, the Department has indicated its plans to fully implement OMB's PII recommendations by the first quarter of 2009. The Department has also required all employees to complete Computer Security Awareness Training.

CHALLENGE: Maintaining the Integrity of Foreign Labor Certification Programs

Overview: The Department's Foreign Labor Certification (FLC) programs provide U.S. employers access to foreign labor to meet worker shortages under terms and conditions that do not adversely affect US workers. The Permanent Foreign Labor Certification Program allows an employer to hire a foreign worker to work permanently in the United States, if a qualified US worker is unavailable. The H-1B program allows the Department to certify employers' applications to hire temporary foreign workers in specialty occupations.

OIG audits have identified vulnerabilities in FLC programs, and our investigations, some of which have been initiated based on referrals from DOL's Employment and Training Administration (ETA), have identified fraud against these programs. The foreign labor certification process continues to be compromised by dishonest attorneys, labor brokers, and employers. For instance, a recent OIG case led to the conviction of a former owner of an information technology company. He was convicted for his role in fraudulently assisting hundreds of immigrant aliens to live and work illegally in the United States. This former business owner was sentenced to prison and ordered to forfeit $5.7 million.

Challenge for the Department: The Department is challenged in maintaining the integrity of the FLC programs, while effectively reviewing employer requests for foreign workers. For instance, the Department must increase its detection of fraudulent labor applications during the certification process. FLC programs are one of the few legal avenues available for foreign workers who want to enter the U.S. on a temporary or permanent basis. This fact, combined with the large amounts of money that can be made by unscrupulous entities, continues to create strong incentives to commit fraud or abuse.

Because the Department must certify that H-1B applications are accurate and complete within seven days, DOL has limited capacity to validate the information on the application, which presents a challenge to the program's integrity. Considering the large number of both Permanent and H-1B applications, it remains a challenge for the Department to avoid backlogs while maintaining the integrity of the FLC process.

Department's Progress: The Department has instituted measures to reduce fraud in its FLC programs. As a result of OIG investigations repeatedly demonstrating the need to eliminate the practice of substituting a new foreign worker for the one originally named on a permanent labor certification application, the Department enacted the Fraud Rule which prohibited the practice of substitution. The Fraud Rule became effective on July 16, 2007. In addition, the OIG and ETA have been working collaboratively to identify and reduce fraud in the FLC process by immigration attorneys, employers, and others. Finally, the Department recently announced that it had eliminated the backlog of permanent program applications on-time.

CHALLENGE: Improving Performance Accountability of Grants

Overview: The competitiveness of the American workforce is a top priority for the Department. To that end, the Department's FY 2008 Budget proposed $3.4 billion to fund its training and employment grant programs. In addition, the Department proposed significant reforms to how the funding will be managed at the State-level. Grant funds are mainly provided as Federal awards to state and local government entities and to other non-profit organizations.

To ensure that grant monies are being used for their intended purpose, in addition to ETA's monitoring and oversight, the Single Audit Act (SAA) requires each recipient that expends $500,000 or more in Federal awards in a year to obtain an annual audit. The single audit covers both the reporting entity's financial statements and Federal awards. As more than 90% of its expenditures are by state and local governments and other non-DOL organizations, the Department relies on audits conducted under the SAA to provide oversight of its grants.

Challenge for the Department: Given the amount of money annually provided by the Department to grantees, it is critical that the Department has an effective means to ensure that funds were used as intended.

OIG audit work disclosed high error rates in the performance data reported by Departmental grantees and raised concerns about the usefulness of that data for decision making. In addition, the OIG continues to be concerned about the adequacy of information that the Department receives from SAA audits, which are conducted by independent public accountants or state auditors. Our quality control reviews of single audits and a June 2007 report on the National Single Audit Sampling Project have revealed serious deficiencies. As a result, the Department is not receiving reliable information that it needs to make program and funding decisions. Further, a recent OIG audit disclosed that the Department lacks monitoring procedures to ensure that single audits of its grantees are completed and that reports are received in a timely manner for each grantee that meets the single audit threshold.

Department's Progress: The Department is completing its second full year of operating its new data validation system which was designed to reduce errors in performance data reported by grantees. In support of the Department and other Federal entities that issue grants, the National Single Audit Sampling Project has made significant recommendations to OMB to improve the reliability of single audits. Also, the Department has agreed that single audit procedures should be strengthened and will coordinate with appropriate agencies to develop and implement changes as recommended. These efforts are important steps in the Department's effort to improve performance accountability of grants.

CHALLENGE: Preserving Department Records Management

Overview: The Department and other Federal agencies must create and maintain Federal records to account for their official business. As part of this responsibility, the Department is required to ensure that its Federal records are preserved and retrievable to document its policies and activities, and comply with Freedom of Information Act requests, and other statutory and regulatory reasons. The Department implements its records management program through the policy and guidelines established in the DOL Manual Series and Records Management Handbook.

Challenge for the Department: The burgeoning use of electronic media to administer its programs makes it essential for the Department to have systems and processes in place to manage records effectively. Like other Federal agencies, the Department faces a major challenge in determining what information constitutes records that must be preserved as well as efficiently determining how to store, back-up, or dispose of records and other information.

For example, current Departmental policy requires employees to treat e-mail like any paper record. If an e-mail is an official record, then employees are expected to print and file the email in a manual recordkeeping system. Recently, the OIG reported that department employees may not be aware of their responsibilities to preserve Federal records and recommended that the Department require records management training for managers and employees. To this end, the Department needs to keep their employees trained and apprised of records management responsibilities.

Department's Progress: Records management is an emerging challenge for the Department and agencies government-wide. The OIG is conducting an audit which will assess the Department's progress in this area.

Changes from Last Year

The OIG recognizes that matters meriting the continued attention of Departmental management may be omitted from the list of its top challenges. This year we removed the challenge of *Preparing for Emergencies* from the list, because of the Department's progress in making employee safety and emergency preparedness a priority. The OIG will continue to monitor the Department's actions in this area.

This year, we added a new challenge, *Preserving Department Records Management,* because of the Department's legal requirements to maintain and safeguard its records.