

## **2008 Top Management Challenges Facing the Department of Labor**

The Department's FY 2008 Top Management Challenges identified by the Office of Inspector General (OIG) are below. For 2008, the OIG considers workplace protection, accountability, integrity of benefit programs, and the delivery of goods and services as the most serious management and performance challenges facing the Department. The OIG assessed the Department's progress in these areas and continues to review and monitor how these complex issues are addressed.

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.

- 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 Federal Employees' Compensation Act Program
- 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
- Preserving Departmental Records

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

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

**Challenge for the Department:** The OIG has consistently revealed a pattern of weak oversight, inadequate policies, and a lack of accountability on the part of MSHA made more of a challenge by years of resource shortages. Congress has allocated additional funding. However, it will take several years for the Department to be fully functional with these increased resources. 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 ensure the safety of miners. These resource issues further reemphasize the need for MSHA to have adequate procedures in place for carrying out its mission. Further, MSHA management must monitor performance to ensure that its employees are following those procedures and documenting their activities.

The OIG's recent audits have documented the need for MSHA to improve its operating procedures and management oversight. For example, an OIG report on MSHA inspections found that MSHA did not complete 147 required safety inspections at 107 underground coal mines where approximately 7,500 miners worked during FY 2006. In an OIG audit of

MSHA's process for approving the roof control plan at Utah's Crandall Canyon Mine, the OIG found that MSHA was negligent in its review, approval, and oversight of the roof control plan.

Likewise, the Independent Review Team established to evaluate MSHA's actions prior to the August 2007 accident at the Crandall Canyon Mine and during the subsequent rescue activities, identified many serious deficiencies in MSHA's actions, including inadequate evaluation of the engineering data to justify mining in the North and South Barriers and inadequate oversight of the plan evaluation and approval process by MSHA management. The review concluded that MSHA's failure to adequately evaluate the roof control plans contributed to the August accident.

Our audit of how MSHA determines whether a fatality is mining-related found that investigators and decision makers lacked independence and investigative documentation was not always complete. We also found that decisions about the cause of a fatality were sometimes made on a manager's preliminary assessment and a full investigation was not done.

OSHA's mission is to prevent work-related injuries, illnesses and deaths and to ensure that every working man and woman in the nation has safe and healthful work conditions; however, work-related fatalities reported in the BLS Census of Fatal Occupational Injuries were 5,764 in 2004, 5,734 in 2005, 5,840 in 2006, and 5,488 in 2007.<sup>1</sup> Because it is impossible for OSHA to inspect the more than seven million workplaces in the nation, it is essential that OSHA target its limited resources to inspect workplaces with the highest risk of hazardous conditions or which have a history of causing significant injuries or fatalities. Recent fatal workplace accidents involving cranes, combustible dust, and refineries highlight this challenge. In addition, OSHA must ensure that voluntary compliance programs are effective.

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, an 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. The OIG recommended that OSHA establish a performance measure that benchmarks and reports the percentage of serious hazards corrected by the initial correction due date.

In response to concerns about the effectiveness of OSHA's enforcement program, the OIG is conducting an audit to determine whether OSHA has accurately identified high-risk employers based on OSHA's definition of these employers under its Enhanced Enforcement Program.

**Department's Progress:** MSHA and OSHA have made progress in addressing this challenge. For example, with supplemental funding provided by Congress, MSHA has hired more mine inspectors to improve completion of statutorily required inspections. However, MSHA needs to ensure that its recently hired inspectors are properly trained. While new inspectors are trained, MSHA has re-allocated current resources by rotating inspectors into understaffed

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<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.

districts for two week intervals to assist in completing all mandated inspections. MSHA has also increased and clarified the documentation required to support mine inspection activities and defined specific steps for reviewing mine plans.

Further, MSHA has issued guidance to standardize its roof control plan approval process and has developed checklists to detail required information and documentation when inspectors review roof control plans. To address concerns about independence of decisions about mining fatalities, the Fatality Review Committee now includes a representative outside of MSHA. However, this individual is still a DOL employee.

MSHA also needs to remain vigilant to ensure that approvals of roof control plans are done in accordance with its new procedures. The OIG continues to believe that an individual who is not employed by the Department will provide a greater degree of independence and integrity to the work of the Fatality Review Committee.

In response to an OIG report on OSHA's Consultation Program, OSHA has implemented measures to ensure that employers are referred for enforcement action when serious safety hazards are not corrected in a timely manner. OSHA has also established a new performance measure tied to the initial hazard correction due date to ensure that serious hazards are corrected in a timely manner without the need for granting time extensions to correct the hazard.

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

**Overview:** In FY 2007, the Department's Employment and Training Administration (ETA), issued \$5.5 billion in formula grants and almost \$1 billion in discretionary grants for job training and employment services. Since 2001, ETA has spent nearly \$900 million in discretionary grant funds on the High Growth Job Training Initiative (High Growth), Community-Based Job Training Initiative (Community Based), and the Workforce Innovation in Regional Economic Development (WIRED). These initiatives were designed to give greater emphasis to the employment and training needs of high-growth, high-demand industries.

All state and local government and nonprofit recipients that expend \$500,000 or more in Federal assistance in one year are required by the Single Audit Act to obtain an annual audit by an independent public accountant. The Act mandates the examination of a recipient's financial records, financial statements, federal award transactions and expenditures, the general management of its operations, the systems of internal control, and the federal assistance itself received during the audit period. ETA grants are awarded to state and local governments and other non-DOL organizations. The Department relies on audits conducted under the Single Audit Act to provide oversight of its grants – both formula and discretionary.

**Challenge for the Department:** DOL continues to face challenges in ensuring 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. Both OIG and GAO have found in the past year that ETA continues to have weaknesses in managing

its grants to this end. In audits involving the High Growth, Community Based, and WIRED initiatives, these weaknesses have 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. Moreover, ETA continues to be 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. Finally, ETA has not evaluated the usefulness of individual grant products or the overall effectiveness of its discretionary grant initiatives.

Another challenge for the Department related to both formula and discretionary grants is that grantees' audits conducted under the Single Audit Act by independent public accountants are not always completed timely and information from single audits is not always reliable. The OIG has found serious deficiencies in these audits that demonstrate that the Department is not receiving timely, accurate, reliable information that will assist it making the best possible program and funding decisions.

**Department's Progress:** As a result of the audits by the OIG and GAO, ETA has recently increased 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 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.

The Department has implemented procedures requiring written notifications be sent to grantees when single audit reports are submitted more than three months past the due date. The notifications serve to remind the grantees of the timeframes established in OMB Circular A-133, to ensure awareness that the reports were submitted untimely, and to prevent future untimely submissions.

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

**Overview:** The purpose of the Job Corps program is to assist eligible at-risk youth who need intensive education and training services in a safe, residential environment. Job Corps has contracts with private companies to operate 98 centers and interagency agreements with the Departments of Interior and Agriculture to operate 28 centers. The program was appropriated nearly \$1.6 billion in FY 2008.

**Challenge for the Department:** The OIG's work has consistently identified challenges to the effectiveness of the Department's Job Corps program. These challenges include ensuring the safety and health of students and having accurate, reliable data about the program's performance. A cornerstone of the Job Corps program is removing students from unsafe environments and placing them in a safe residential training program. Ensuring maintenance of its facilities is a challenge for Job Corps. Unsafe conditions resulting from inadequate maintenance adversely impacts the overall success of the Job Corps program.

OIG audits have documented numerous health and safety problems at certain centers, such as water-damaged and collapsing ceiling tiles; mold on student dormitory walls and ceilings; and missing or inoperable emergency exit signs. Further, Job Corps officials need to do more to address the problems of illegal drugs and violence at its facilities.

OIG audits have also found that contractors have manipulated performance data to inflate their success. The OIG has repeatedly 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 incentive fees and bonuses directly to contractor performance largely measured by on-board strength, attendance, and outcomes. Under such contracts, there is a risk that contractors will 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 evaluate how well student needs are being met.

**Department's Progress:** Job Corps has addressed a number of student safety and health issues and indicated that it will provide more rigorous monitoring of all centers. Also, Job Corps has taken action to improve financial and performance data reliability at all centers. Although, each center will conduct mandatory audits of student records concurrent with annual center quality assessments, more needs to be done to resolve problems with inaccurate performance data.

Although Job Corps is continuing its efforts to maintain a safe and healthy environment for its students, it must be held accountable to monitor and verify that all centers are being managed and maintained to ensure safe and healthy environments.

## **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 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 Department funds State Workforce Agencies (SWAs) which administer the UI program through grant agreements. These grant agreements are intended to ensure that SWAs administer the UI program efficiently and that they 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 such as a hurricane.

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.

**Challenge for the Department:** Reducing and preventing UI and DUA overpayments, combating fraud against these programs, and timely detecting and recovering overpayments that do occur remains a major challenge for the Department and states. In FY 2007, the Department reported more than \$3 billion in UI overpayments—a slight drop

from \$3.1 billion in FY 2006. However, the Department did not meet its target goal of identifying and establishing for recovery 60 percent of UI overpayments in FY 2007.

OIG work 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, the OIG found that Louisiana paid unemployment benefits to claimants when the National Directory of New Hires (NDNH) database reported those individuals as having obtained jobs. This one example represented potential overpayments of \$51 million. Following the 2005 hurricanes, the OIG opened over 300 cases of potential UI and DUA fraud resulting in 142 indictments and 86 convictions. To date, 240 of these cases have been closed.

It is a challenge for the Department, other Federal agencies, and the states to have systems and controls in place to quickly prevent or respond to improper payments during national emergencies or disasters. The Department needs to promote states' use of the National Directory of New Hires (NDNH) database to prevent and timely detect overpayments. 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. It is critical that all SWAs have IT contingency plans for UI to ensure individuals who rely on these benefits receive this vital support in a time of need and uncertainty.

Preventing fraud against the UI program is also a challenge. The OIG investigates fraud committed by individuals who do not report or underreport outside income while receiving UI benefits. In addition to single claimants and fictitious employer-related schemes, OIG investigations have uncovered schemes in which individuals have used identity theft to illegally obtain benefits and schemes in which UI benefits have been paid to ineligible claimants.

**Department's Progress:** The Department has taken some measures to reduce and prevent UI and DUA overpayments. The Department stated in its FY 2006 Performance and Accountability Report that it has developed a new core performance measure on overpayment detection. Although the Department implemented this new performance measure two years ago, there has been only a slight drop in the UI overpayment rate. The Department is also working with state agencies to encourage the use of the NDNH database, which will improve the states' efforts to detect overpayments early. The OIG is currently conducting an audit to assess the states' use of this tool.

In coordination with other Federal partners and the National Association of State Workforce Agencies, the Department has 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.

The OIG is working with UI's state partners to more effectively provide training to detect and prevent UI fraud.

## **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 \$2.6 billion in 2007. 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 structure and operation of the FECA 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, and 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.

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:** The Department has taken several steps to improve the administration of FECA. The Department completed the roll-out of its new FECA benefit payment system, Integrated Federal Employee Compensation System, which tracks due dates of medical evaluations; revalidates eligibility for continued benefits; uses data mining to prevent improper payments; boosts efficiency; and promises improved customer satisfaction.

The Department needs to continue to seek legislative reforms to the program. The OIG supports the Department's efforts to seek legislative reforms to the FECA program which would 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 ten 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.

To help ensure proper payments in the FECA program, the Department is seeking legislative authority to easily and expeditiously access 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. In addition, the OIG has started an audit to determine whether OWCP is complying with Federal regulations and internal

policies and procedures when assessing the wage earning capacity of FECA periodic roll claimants.

### **CHALLENGE: Improving Procurement Integrity**

**Overview:** The Department contracts for many goods and services to assist in carrying out its mission. In FY 2007, the Department's acquisition authority exceeded \$1.8 billion and included over 10,700 acquisition actions.

**Challenge for the Department:** Ensuring integrity in procurement activities is a continuing challenge for the Department. The OIG's work continues to identify 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. For example, an OIG audit of an employment and training contract raised concerns about preferential treatment in how work was directed to a specific subcontractor. Another audit found no evidence that DOL Contracting Officers were checking required sources – existing government inventories of excess personal property or nonprofit agencies affiliated with the Committee for Purchase from People Who Are Blind or Severely Disabled – before making GSA Schedule procurements.

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. 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.

In addition, a recent OIG audit of procurements for Job Corps found that procurement personnel did not always comply with the Federal Acquisition Regulation in obtaining adequate justification for sole source contracts. The OIG also determined that there was a lack of training and inadequate oversight during the contracting process. As a result, contracting integrity, as well as fair and open competition, could be compromised.

**Department's Progress:** 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 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. Unfortunately, the Department still has not satisfied the full intent of SARA, as 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.

### **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 Foreign Labor Certification Program allows an employer to hire a foreign worker to work permanently in the U.S., if a qualified U.S. worker is unavailable. 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 U.S. and perform temporary non-agricultural labor on a one-time, seasonal, peak load, or intermittent basis.

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 foreign labor certification, eliminated the 100 percent review of such applications, and established a random sampling and targeted approach to auditing applications to ensure compliance with the law and program requirements.

**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, some of which have been initiated based on referrals from ETA, have identified fraud against these programs, and is the fastest growing area of OIG investigations. OIG investigations continue to uncover schemes carried out by immigration attorneys, labor brokers, and transnational organized crime groups, some with possible national security implications. Further, OIG investigations have revealed schemes involving fraudulent applications that are filed with DOL on behalf of fictitious companies—or applications using names of legitimate companies without their knowledge.

An OIG audit of the PERM system found that ETA had discontinued random audits of applications for alien employment certifications. Furthermore, ETA had not conducted audits of all the applications selected for audit, whether selected randomly or as a result of its targeting criteria. The Department discontinued random audits in December 2005, citing a lack of staff resources to conduct the audits and began relying solely on its targeted audits to ensure integrity of the FLC programs. However, as employers and representatives such as labor brokers and others learned what elements in an application were likely to trigger an audit, they were able to structure applications in a way that could lessen the likelihood of applications being audited. The random audit process served as a deterrent to fraudulent FLC applications.

**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, in July 2007 the Department enacted the Fraud Rule which prohibited the practice of substitution.

In addition, 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 visa fraud. In March 2008, ETA's OFLC launched its Fraud Detection and Protection Unit designed to recognize visa fraud and more expeditiously respond to OIG requests for program-related information. The OIG continues to work closely with ETA's fraud unit.

## **CHALLENGE: Securing Information Technology Systems and Protecting Related Information Assets**

**Overview:** It is essential for the Department to ensure that its information systems are secure. These systems contain vital sensitive information that is central to the Department's mission and to the effective administration of its programs—systems and information that provide the nation's leading economic indicators such as the Consumer Price Index, unemployment rate, injury and illness rates, workers' compensation benefits, participant pension and welfare plan information and job and training services. 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:** Security of information technology (IT) systems is a government-wide challenge and is a continuing challenge for DOL. Keeping up with new threats and IT developments, providing assurances that information technology 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 and data.

Another challenge for the Department is ensuring that information systems operated by contractors have the same level of IT security controls as systems operated by the Department. OIG audit work has disclosed security deficiencies in contractor operated systems.

An OIG FY 2008 Federal Information Security Management Act (FISMA) audit found that the DOL security program did not fully implement minimum security controls. The OIG identified pervasive and obvious weaknesses across DOL, including access controls, certification, accreditation and security assessment, configuration management, contingency planning, and incident response. The OIG has identified these same deficiencies in past years' FISMA audits. The recurring cycle of the same weaknesses, especially obvious access control vulnerabilities, identified by the OIG since FY 2006 demonstrates that DOL's information security program must improve its current effort to fully implement and monitor information security controls throughout the Department.

In light of these challenges, the OIG continues to recommend the creation of an independent Chief Information Officer (CIO) to provide exclusive oversight of IT issues. 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 (CPISO). 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:** In efforts to fully comply with FISMA, the Department is taking steps to improve the security of its information systems by focusing on access controls, policies and procedures, account management, and system authorization. The Department's Chief Information Officer plans to improve upon the testing and monitoring of system security, focusing on those agencies identified as having greater identified vulnerabilities/risks. Finally, the Department has required all employees to complete Computer Security Awareness Training annually.

### **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 is a challenge for the Department. OIG labor racketeering investigations demonstrate the continued vulnerability of plan assets to criminal activity.

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. The Department must obtain legislative change to correct substandard benefit plan audits and ensure that auditors with poor records do not perform additional plan audits.

Other legislative changes recommended by OIG include the repeal of ERISA's limited scope audit exemption that prevents independent public accountants from rendering an opinion on the plans' financial statements or assets held in other regulated entities such as financial institutions, requiring plan administrators or auditors to report potential ERISA violations directly to DOL, and strengthening criminal penalties in Title 18 of the U.S. Code to provide a stronger fraud deterrent.

Another challenge is the Department's responsibility for regulatory oversight of ERISA health care provisions. DOL needs to continue to work closely with State insurance commissioners and the Department of Justice to assist in the identification and prosecution of fraudulent Multiple Employer Welfare Arrangements.

The OIG is planning an audit to determine how EBSA evaluates the effectiveness of its National enforcement projects and uses this information to direct future enforcement activities. Further, the OIG is beginning an audit to evaluate whether EBSA's Rapid ERISA Action Team project proactively identifies employers facing financial hardships in order to

protect the rights and benefits of pension and health plan participants when the plan sponsor faces severe financial hardship.

**Department's Progress:** While the Department has sought the recommended legislative changes, these changes have not been enacted.

DOL continues to utilize a multi-pronged strategy to help ensure compliance with ERISA Title I. EBSA has also reached out to other Federal enforcement agencies to broaden its enforcement efforts. A Memorandum of Understanding (MOU) was signed on July 29, 2008, between EBSA and the Securities and Exchange Commission. The MOU establishes a process for both agencies to share information and meet regularly on matters of mutual interest, including findings and trends, enforcement cases, and regulatory requirements.

### **CHALLENGE: Preserving Departmental Records**

**Overview:** The Federal Records Act of 1950 requires that the head of each Federal agency establish and maintain an active records management program. The National Archives and Records Administration has oversight responsibilities for Federal records management programs. The Department's Assistant Secretary for Administration and Management is responsible for managing the Department's records and for providing overall policy direction for the Department's records management program. The Department's records management program consists of records creation, maintenance and use, and disposition of records to achieve adequate and proper documentation of the Department's policies and transactions.

**Challenge for the Department:** It is a challenge for the Department to ensure that it preserves records in accordance with laws and regulations, and properly disposes of those records it is not required to keep. It is also a major challenge for the Department to have an effective recordkeeping and document management system to manage e-mails and electronic file needs. DOL may be at risk of not being able to address in a timely and complete manner e-mail and electronic file needs required as a result of legal hold orders and litigation discovery.

An additional challenge is the proper handling for both hard copy and electronic records that do not have legal retention requirements. Although these documents and files are not considered long-term Federal records, they may be subject to legal holds, congressional requests, and requests under the Freedom of Information Act. It is therefore important that they are disposed of in accordance with an appropriate records management program.

The OIG's recent audit of the Department's Records Management Program found that the Department had not: conducted comprehensive periodic evaluations of its records management program; provided records management training to all staff, or effectively managed transitory records or documents that have no legal retention requirements.

**Department's Progress:** Records management is an emerging challenge for the Department and agencies government-wide, particularly as reliance on electronic documents continues to increase. In FY 2008, the Department implemented mandatory Records Management Training for all its employees. The Department will conduct periodic evaluations of agency's records management programs over a five year cycle beginning in FY 2009. The Department has undertaken other efforts to improve its records

management program, including issuing guidance and specific instructions on how to handle electronic records, issuing an updated Records Management Handbook, and updating agency records schedules. The Department has also stated that it will update its cost-benefit analysis regarding the establishment of an electronic recordkeeping and document management system. Such a system would provide capabilities for storing, indexing, locating and tracking e-mails that are Federal records and addresses the unnecessary retention of e-mails that are transitory records or non-records.

### **EMERGING CHALLENGE**

Congress enacted the Energy Employees Occupational Illness Compensation Program Act to provide timely, uniform, and adequate compensation to civilian men and women suffering from cancer and other illnesses incurred as a result of their work in the nuclear weapons production and testing programs of the Department of Energy and its predecessor agencies. As of August of this year, the Department had received 167,018 claims, and issued decisions to approve or deny benefits on nearly 82 percent of these claims. The Department had approved slightly more than 39 percent of claims and paid nearly \$3.8 billion in compensation plus more than \$200 million in medical reimbursements.

Recent inquiries by several members of Congress and the public have raised concerns as to whether the Department unfairly denies too many claims and whether claims decisions are timely.

In response to concerns about the Energy workers' program, the OIG is conducting an audit 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.