The original documents are located in Box 38, folder "Transition Reports (1977) - Labor Department (2)" of the John Marsh Files at the Gerald R. Ford Presidential Library.

OSHA

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

ISSUES - FIRST SIX MONTHS

Approval of State Plans	Policy Issue
Inflationary and Economic Impact Statements	Policy Issue
On-site Consultation	Legislative Issue
MESA Transfer	Legislative Issue
Toxic Substances Act	Program Issue
Noise Standard	Program Issue
Special Susceptibility Groups	Policy Issue
Revision of Safety Standards	Policy Issue
Agriculture	Policy Issue

(Issues listed in approximate order of importance and urgency)

APPROVAL OF STATE PLANS

I. Statement of Issues

How should OSHA determine whether or not a state may operate its own job safety and health plan, as provided in the Act?

II. Background

The OSH Act requires that OSHA, following its approval of a state plan, carry out a monitoring and evaluation process of the state program for a total of four years. Specific factors are monitored by OSHA for purposes of determining that the plan does or does not meet the standard set out in the Act: any state plan should be as effective as OSHA. Parenthetically, labor groups have been of the view that state plans are not "as effective as" OSHA and have therefore opposed approval and certification of state plans.

The specific factors to be monitored are presently under review to identify more meaningful performance measures. For example, should a state be certified if its safety program is up to par but its health program, upon which OSHA put little emphasis until now, is seriously lagging? In addition, many states are at odds with OSHA over other, more specific criteria. Even with development of specific criteria, the judgment will be largely subjective and subject to great controversy, both substantive and political.

III. Status

Twenty-four state plans have received approval. Five of them have received initial certification and are in the one year (18e) final decision period. There are a number of other state plans that are also likely to be considered for certification in the next few months. It is, therefore, essential that the substance of OSHA monitoring and evaluation of state plans be defensible with respect to safety and health protection and be able to stand up to legal review. Much work has been done on this issue in terms of laying out objective criteria. The more subjective criteria are the subject of discussions now scheduled to be held in December.

IV. Critical Dates

First six months of 1977, fourteen states will become eligible to receive initial certification: Alaska, California, Colorado, Connecticut, Hawaii, Indiana, Kentucky, Maryland, Michigan, Oregon, Tennessee, Vermont, Virgin Islands and Washington State.

INFLATIONARY IMPACT STATEMENTS

I. Statement of Issue

How should OSHA react if Executive Order 11821, which requires assessment of inflationary impact of government actions, expires as planned on December 31, 1976?

II. Background

Executive Order #11821 requires that major proposals for legislation and regulations be accompanied by a certification that inflationary impact of the proposal has been evaluated. This has been the subject of frequent criticism, particularly by organized labor, including two letters from George Meany to the Secretary of Labor and at least one major suit urging repeal of the order. OSHA's position has been that studies of this nature are essential to establish fairness and comprehensiveness in the rulemaking process. Thus, critical elements for OSHA consideration include the state of industrial technology and the economic consequences of proposed actions, especially when considering the timing of compliance requirements. The data developed through this process can provide factual answers to many questions and criticisms of OSHA regulations as examples of expensive and ineffective governmental regulation. Further, these studies provide evidence when inevitable court challenges arise from standard setting or enforcement actions.

III. Status

OSHA has taken actions to internalize the requirements of the order by establishing agency procedures to make it an integral part of standards development, without delaying the rulemaking process. It is important to continue this sort of analysis whether the Executive Order expires or is extended.

The inflation impact analysis requirement, therefore serves a useful purpose even while making the rule-making process for OSHA somewhat more cumbersome. It has been helpful both in the development of productive standards and to fend off criticisms of arbitrary actions in the standards development process, particularly from industry groups. Should Executive Order 11821 expire, OSHA may find itself under considerable pressure not to perform the very sort of economic analysis that is becoming increasingly important in the rulemaking, regulating and judicial processes.

V. Critical Dates

Early 1977 -- define and defend an appropriate economic analysis procedure should Executive Order 11821 expire.

ON-SITE CONSULTATIVE ASSISTANCE TO EMPLOYERS

I. Statement of Issue

What should the Administration's position be with respect to providing on-site consultative assistance to employers?

II. Background

Since its inception OSHA has been urged by employers to provide assistance in understanding and complying with the OSH Act primarily through on-site consultation without threat of citation or penalty. Proponents of this service have maintained that OSHA's safety and health standards are sufficiently technical as to require expertise not readily available to most employers. DOL has interpreted the OSH Act such that Federal OSHA inspectors on the worksite were bound to cite violations and thus could not provide sanction-free consultations or inspections. However, in support of consultative services OSHA has allowed the 24 existing State job safety and health programs, to provide this service. In addition, 13 States without safety and health programs are offering consultation reimbursed by Federal funds. In the remaining 19 States or jurisdictions employers must avail themselves of private consultants or discuss problems with OSHA away from the worksite. Many bills have been introduced in Congress during the last 5 years to provide Federal on-site consultation. An on-site consultation bill passed the House in November 1975, 115-15, but a counterpart measure failed to receive Senate approval. The Ford Administration had supported both bills. The business community, for the most part, has supported consultation amendments while organized labor has opposed them, claiming that consultation by Federal OSHA would dilute enforcement.

III. Status of Work on the Issue

OSHA has prepared a number of issue papers on this topic and is near completion of 2 contracted studies designed to evaluate and describe the nature and effectiveness of existing consultation activities. There are varying interpretations of what " consultation" is. In addition, a recent reorganization of OSHA posits an expanded role for the offices dealing with consultative services. Legislative action in favor of consultation would require a series of major resource decisions for OSHA.

IV. Critical Dates

On-site consultation amendments will certainly be introduced in the 95th Congress, probably early in the session, even though the main supporters in the Senate and the House will not be returning. The policy issue here is whether to support or oppose consultation amendments and which alternative methods of providing consultation, if any, are to be developed. An early decision on the first issue is necessary in order to determine our legislative strategy. The timing of the second issue depends on the lead time granted OSHA by any new statute.

TRANSFERRING MESA TO DOL

I. Statement of Issue

What should the Administration's position be regarding the the proposal to transfer the Mine Enforcement Safety Administration (MESA) to the Department of Labor?

II. Background

Legislation to transfer MESA from Department of the Interior to DOL was introduced in both Houses of the 94th Congress. The House passed a MESA transfer bill, which also contained major amendments to the Federal Metal and Nonmetallic Mine Safety Act, by 309-86; the Senate bill mandating transfer and strengthening of mine safety laws was reported out of Committee but did not receive floor consideration before Congress adjourned. Both bills also contained provisions delineating jurisdictional areas between OSHA and MESA, a point of contention with the mining industry, unions and the agencies. The Ford Administration and the mining industry opposed MESA transfer, maintaining that the Interior Department had the requisite experience and expertise to administer mine safety laws; segments of organized labor, especially the United Mine Workers and the United Steelworkers, pressed for transfer to DOL, claiming that Interior's responsibilities for energy resource development conflicted with its safety duties.

III. Status of Work on the Issue

A series of issue papers on MESA transfer has been prepared by DOL during discussions with OMB and Interior this year.

IV. Critical Dates

Although the sponsor of the MESA transfer bill in the House, Congressman Dominick Daniels (D. N.J.), has retired, it is likely that similar legislation will be introduced in both the House and Senate immediately after Congress resumes. The issues to be resolved include the Administration's position on the transfer issue; the administrative location of MESA within DOL, if transfer is approved, and the position to be taken regarding the provisions which add OSHA-like features to the current mine safety laws (e.g. employee walkaround rights, general duty clause, etc.).

TOXIC SUBSTANCES CONTROL ACT

I. Statement of Issue

What inputs should OSHA make to EPA to assure proper implementation of the toxic substance control act?

II. Background

The Toxic Substances Control Act of 1976 was recently signed into law after some five years of Congressional debate. This major piece of legislation presents OSHA with a real opportunity to help structure a meaningful Federal effort to prevent occupational health problems, such as occurred with Kepone, before they arise. However, because of EPA's mission it will undoubtely use its substantial resources to focus regulations on environmental protection rather than workplace protection. It is therefore incumbent upon OSHA to work closely with EPA in order to ensure application of the provisions of the statute to worker protection.

III. Status

EPA has set up a number of working groups that OSHA has been invited to attend. OSHA is also represented by statute on the interagency committee on priorities. Key concerns, among others, that OSHA will want to focus on are: regulatory strategy, interagency coordination, scope and content of reporting and recordkeeping programs; identification of 50 priority substances; design of data systems; implementation of premarket notification programs; and definition of categories under testing regulations. Close monitoring of proposed regulations and implementation plans will be required to insure that OSHA concerns are taken into full consideration. What OSHA's precise role will be in helping to define "toxic substances" is still unclear. Another open question is to what extent OSHA will be able to acquire data on all firms utilizing a particular toxic substance. Such data, while imposing a larger enforcement burden on OSHA, would be enormously helpful in identifying workplace hazards. Finally, there are a number of concerns that attach to broader DOL goals, such as workers' compensation, occupational illness data, and joint environmental/inflation impact statements.

IV. Critical Dates

Immediate participation in task groups, etc.

March 1977 -- Initial publication of EPA regulatory strategy.

NOISE STANDARD

I. Statement of Issue

What permissible noise exposure limit will OSHA establish and what methods of compliance with that standard will be required?

II. Background

OSHA published a proposed amendment to its present noise standard in October 1974. The current noise standard being enforced by OSHA includes an average 90 decibel exposure limit for an 8-hour work period, engineering and administrative controls as the primary means of limiting exposure, and a general requirement for a hearing conservation program. The new, proposed standard, similar in many respects to the present standard, would clarify the requirement for the use of engineering controls for noise reduction and add specific requirements for a hearing conservation program.

OSHA's proposal has been sharply criticized by EPA and several labor unions as not being sufficiently protective and these groups suggest that the exposure level be reduced below 90 decibels. Industry has been equally critical of OSHA's proposal to require the use of engineering controls in lieu of less costly ear protectors and related hearing conservation measures. Industry likewise argues that the present 90 decibel exposure limit provides adequate protection. The impact of this standard across industries and the substantial discussion surrounding the economic and engineering feasibility issues has engendered major controversy.

Enforcement of the current OSHA noise standard is also becoming increasingly difficult in light of a recent Occupational Safety and Health Review Commission decision. That ruling would require OSHA to prove the economic and technological feasibility of required engineering controls on a case by case basis. Issuance of a final noise standard would presumably relieve much of that burden by providing a public record that would establish the feasibility of such a standard in a general fashion.

III. Status

Two public hearings have been held; two economic impact studies have been issued by OSHA; and several thousand pages of written comment, oral testimony, and exhibits received. Cost estimates for the various options under consideration have been substantial, ranging from $284 million to in excess of $18 billion in annualized cost to industry. Labor groups have charged OSHA, because of these costs, with delaying the rulemaking with lengthy studies related to these cost estimates.

IV. Critical Dates

The public comment period is scheduled to close December 8, 1976. Normally, a final standard should be issued within 60 days after that. OSHA has indicated in letters to Mr. Meany and Congressman Obey that a final standard will be issued in "early 1977." Failure to do so or to develop an acceptable alternative will likely result in renewed criticism of OSHA by numerous interest groups, particularly organized labor.

GROUPS WITH SPECIAL SUSCEPTIBILITY TO WORKPLACE HAZARDS

I. Statement of Issue

What should be OSHA's lead standard? More generally, how can OSHA protect highly susceptible groups in the working population without violating Equal Employment Opportunity regulations or other, less formal conventions regarding employment opportunities?

II. Background

The Secretary of Labor is faced with conflicting goals in this area. OSHA is charged with assuring all workers a safe and healthy workplace. Medical evidence indicates that some groups have common characteristics which comprise a heightened susceptibility to certain toxic substances found in the workplace. Most prominent are women of childbearing capacity when exposed to lead or to ionizing radiation or Blacks with sickle cell anemia when exposed to lead. There are numerous other substances, known and unknown, that affect particular groups. Moreover, it is often neither technologically nor economically feasible to lower exposures to such substances to a level that would protect all workers, including highly susceptible groups. The alternative may be that OSHA should move to exclude such groups from the risk of such exposure.

However, this raises issues of equal employment opportunity. For example, The Office of Federal Contract Compliance, under Executive Order 11246 and Section 503 of the Rehabilitation Act of 1973, is required to assure that affirmative action is taken in the employment and promotion of minority, female and handicapped workers by Federal contractors. Title VII of the Civil Rights Act of 1964, as amended, also prohibits any employment discrimination.

III. Status

The issue, perhaps, arises most clearly with regard to women. Currently, 36,000,000 women are in the labor force. The National Institute for Occupational Safety and Health estimates that more than 1,000,000 of these women between the ages of 16 and 34 are currently exposed to chemicals that could affect their capacity to bear children. The growing awareness of this problem in the media and increasing activism in major women's groups are creating special pressures to deal with this side of the issue. The upcoming hearings on the proposed lead standard are likely to be used as a forum for their views. Consideration is being given to forming a special task force on women in the workplace to follow-up on a just-completed OSHA study on this issue.

IV. Critical Dates

Early 1977-- The hearings on the proposed lead standard will bring this issue to a head.

REVISION OF SAFETY STANDARDS

I. Statement of Issue

How should OSHA proceed on the revision of it safety standards?

II. Background

Comprehensive revision of the several thousand consensus safety standards began in 1976. Adopted in bulk shortly after the signing, in 1970, of OSHA's authorizing legislation, these standards were never thoroughly reviewed. Consequently, many are overly complex, redundant and often unrelated to employee safety. The standards, in fact, had originally been written by technicians and were designed principally for voluntary use in manufacturing by other technicians. They were not meant to be mandatory standards for use in all workplaces or without professional advice. Nevertheless, the OSH Act essentially adopted them *in toto*, effective August 1971. They have been the subject of much criticism of OSHA such as "confusing," "petty," and "irrelevant."

After several months of preparation, OSHA launched its revision process in April 1976 by publishing about 15 percent of the consensus safety standards and requesting information and comment on areas which should be modified. Publication was followed by a series of public meetings around the country to provide full opportunity for inputs. The written and oral comments received are now being reviewed prior to publication, probably in February 1977, of a proposed rule suggesting specific revisions of the subject safety standards. The standards currently undergoing revision were selected because of their broad impact. Revision should greatly lessen the regulatory burden on employers while affording at least the same degree of protection to employees. Nevertheless, some controversy is likely to surround publication of these revisions.

III. Status

Shortly after OSHA began work, a Presidential Task Force of attorneys and safety experts detailed from outside agencies, as well as OSHA, was established to provide assistance. The Task Force addressed itself to revising an additional 10% of the consensus safety standards. The Task Force made two separate but related recommendations: one involving specific areas where revisions of the standards seemed appropriate, and the other involving a new approach to administering safety standards, substituting goal-oriented performance standards for the cumbersome specification standards. These recommendations were conveyed to OSHA and were publicly discussed by the National Advisory Committee on Occupational Safety and Health in October 1976. The Task Force's recommendations are now being studied further by OSHA. The next step is publication in the Federal Register for comment.

IV. Critical Dates

OSHA should revise additional sections of the standards. The Task Force is presently scheduled to be dissolved at the end of December and a decision must be made on how to continue the safety standards revision effort.

OSHA AGRICULTURAL POLICY

I. Statement of Issue

How should OSHA treat the agricultural sector which, in many respects, is unique in the spectrum of industries in the U.S.?

II. Background

OSHA's efforts in the agricultural sector have been limited, with six standards promulgated pertaining specifically to farm employers and only 1.5% of OSHA's total inspections made on farms. Nevertheless, OSHA's actions in this area have drawn considerable and vocal opposition from the farm community, and farm state legislators have led several Congressional attempts to amend the OSH Act. This resulted in the appropriations amendment exempting farms with 10 or fewer employees from OSHA's authority for fiscal year 1977. The agency regards as unfortunate the precedent of exclusion of a segment of the working population from safety and health coverage. Agriculture spokesmen have maintained that OSHA is insensitive to the nature of farm employment and has not consulted sufficiently with agriculture experts in devising farm policy. The fact remains that agriculture is a dangerous occupation; the National Safety Council lists it second in number of employee deaths during 1975.

III. Status of Work on the Issue

As a result of the controversial nature of OSHA's actions in this area, the Agency has tried to augment its use of agricultural expertise and advice. A special adviser for agricultural affairs, with broad agriculture experience, has been hired; OSHA has increased its contacts with the Department of Agriculture and with Congressional Agriculture committees; the composition of the Standards Advisory Committee on Agriculture has been strengthened; and the controversial field sanitation standard proposal of last summer is being intensively reviewed to determine the proper disposition of such a rule.

IV. Critical Dates

The appropriations amendment exempting small farms expires with the end of the fiscal year, but floor discussion of the FY 1978 DOL-HEW appropriations is expected in late spring. It would be particularly important to try and keep the exclusion from recurring. Any strategy for dealing with this and further amendments should thus be considered immediately.

In regard to the field sanitation proposal, the OSHA Act provides that within 60 days after the period for public comment, OSHA shall direct that a hearing take place or a determination be made that the rule not be issued. A decision to commence public hearings, which is expected soon, would set this statutory timetable in motion.

EMPLOYMENT STANDARDS ADMINISTRATION

ISSUES - FIRST SIX MONTHS

State Workers' Compensation	Legislative Issue
Hearing Loss	Policy Issue
Black Lung Benefits	Legislative Issue
ESA-Continuation of Pay	Policy Issue
Executive Order 11246	Regulatory Issue
Consolidation - Executive Order 11246	Program Issue
ESA-Davis-Bacon/PWEDA	Program Issue
ESA-Davis-Bacon Enforcement	Program Issue
Amend FLSA	Legislative Issue

(Issues listed in approximate order of importance and urgency.)

Legislative Issue
State Workers' Compensation

I. Statement of Issue

How should DOL respond to the recommendations of the Interdepartmental Workers' Compensation Task Force?

II. Background

In a July 1972 report, the National Commission on State Workmen's Compensation Laws made 84 recommendations to improve workers' compensation programs, including 19 identified as so essential that they should be implemented by the States by July 1, 1975. Six of the essential recommendations concerned closing coverage gaps, nine dealt with the adequacy of income replacement benefits, Others concerned coverage for work-related diseased, medical care and rehabilitation benefits, and choice of jurisdiction to file claims. In May 1974, the President issued a White Paper generally supporting the 19 essential recommendations and other improvements in State programs, although generally opposing further Federal involvement in favor of encouraging State initiative. In addition, an Interdepartmental Workers' Compensation Task Force was established to accelerate State reform to evaluate State progress, and to implement a program of further research.

Both the House Subcommittee on Manpower, Compensation, and Health and Safety of the House Education and Labor Committee and the Senate Subcommittee of Labor of the Senate Committee on Labor and Public Welfare have held lengthy hearings in the 94th Congress. Bills considered by the subcommittees contained provisions imposing varying levels of Federalization of the workers' compensation programs. Active interest by the Congress can be anticipated during the next two years.

III. Status of Work on the Issue

A report by the Interdepartmental Workers' Compensation Task Force is scheduled in the near future. In addition, ASPER is preparing a decision paper scheduled for completion in December, which will propose options related to legislation and the future of the task force.

IV. Critical Dates

A decision of the future of the task force will be necessary soon after it submits its report. Recommendations to the Congress, based on the task force report, should be developed by late spring.

Policy Issue
Hearing Loss

I. Statement of Issue

What criteria should be used to determine job-related hearing loss under the Federal Employees' Compensation Act (FECA) and the Longshoremen's and Harbor Workers' Compensation Act (LSHWCA).

II. Background

In 1969, the Department departed from the American Medical Association guidelines for testing for hearing loss cases under the FECA, adopting more liberalized criteria based on studies by the National Institute of Occupational Safety and Health. The more liberal standards were applied to the LSHWCA in July 1976. The change in standards involves the tonal frequency levels at which hearing loss is tested and the formulae by which impairment is calculated.

Concurrent with the change in standards, the number of FECA claims filed annually alledging hearing loss rose from approximately 400 annually to between 5,000 and 7,000 annually. The Department of Defense, the General Accounting Office and Labor's Internal Audit group have raised issues suggesting that the more liberal criteria are encouraging claims, resulting in undue benefits for limited impairment. There are no universally accepted frequency levels for testing hearing impairment as it related to workers' compensation principles. There are also criticisms from the same source regarding the procedural aspects of hearing loss adjudication which are being received. With a possible liability of $90 million associated with the 14,000 plus hearing loss cases currently in the pipeline, the credibility of adjudicatory standards is paramount.

III. Status of Work on the Issue

Several papers have been prepared in prior years on the subject by the Department's internal audit group. Results of GAO's inquiries into the subject are contained in House Report 94-1757 and accompanying testimony from this fall's House oversight hearings on the FECA. ESA is internally reviewing several options to assess changes in hearing loss procedures and is negotiating with AMA'a Academy of Ophthamology and Otoloryngology (AAOO) for research on testing criteria.

IV. Critical Dates

With pressures from claimants for prompt adjudication continuing and equal pressures to change procedures from Federal agencies also continue, a policy and operational determination is urgently needed.

Legislative Issue
Black Lung Benefits

I. Statement of Issue

The Department must develop a position on probable proposals to amend the Black Lung Benefits Act, to among other things, extend the 1981 termination date of Federal payment of Black Lung benefits, establish a trust fund to pay the benefits, establish automatic entitlements to benefits, and to liberalize the medical evidence required to approve claims.

II. Background

Both the House of Representatives' and the Senate's Committee on Labor and Public Welfare (with amendments by the Senate Finance Committee) approved bills in 1976 to amend the Black Lung Benefit provisions of the Federal Coal Mine Health and Safety Act, although the measures had significant differences. Both bills sought to liberalize standards for eligibility to counter the low rate of approval of claims (8-10%), and extend the statutory termination date of the program (currently at 1981). The Congress can be expected to take up the legislation when it returns in January. There is a degree of interest within the Department on the trust fund concept. The Administration has, however, flatly opposed both the House and Senate measures proposed in the last Congress, particularly any liberalization of entitlement, due to the impact on Federal costs.

III. Status of Work on the Issue

The Office of the Solicitor of Labor is preparing an issue paper which will consider the various options for restructuring the Black Lung legislation, including possible trust fund proposals.

IV. Critical Dates

The SOL paper is scheduled for completion and subsequent circulation for comment in December. If the Executive Branch wants to take the initiative on Black Lung Benefits Act legislation, it should have formulated positions for the preparation of testimony and have drafted any alternative legislation by the end of February 1976.

I. Statement of Issue

The Department must determine whether or not the expanding caseflow and alleged claims filing abuses resulting from the Continuation-of-Pay (COP) provisions of the Federal Employees' Compensation Act (FECA) are sufficient to warrant revisions to the present legislation or regulations.

II. Background

The 1974 Amendments to the FECA included a provision for salary continuation for up to 45 days for an employee's job-related "traumatic" injury, elimination of the initial 3-day waiting period before receipt of benefits, and free choice of a personal physician to examine and certify an injury. The COP provision intended to alleviate the then-existing major timelag between the date of an employee's injury and the initial receipt of benefits. In this respect, that particular provision has succeeded. However in combination these provisions appear to have stimulated increased utilization of the FECA for short-term injuries, with over 80,000 COP cases filed in FY 1976, compared to about 28,000 initially projected at the time the provisions were enacted. Federal agencies are experiencing increasing amounts of dollar outlays for non-productive labor time as a result of such cases, and are alleging that the provisions encourage abuse and malingering. This has been brought out in Congressional oversight testimony by several agencies. The FECA program has the responsibility to "post-adjudicate" these agency-paid claims (certify for job-relatedness and proper level of payment), and process all bills and costs for medical treatment associated with COP cases. There is evidence that current procedures do not permit either the agencies or FECA to realistically monitor the use of the COP provisions.

III. Status of Work on the Issue

An in-depth analysis of the COP provision, and its workload and fiscal impact on both the FECA program and other Federal agencies, is currently underway. It will address the proper period of agency responsibility for salary continuation, the need, if any, for the re-institution of an initial waiting period for benefits, the process for an agency to controvert an employee's claim, and the impact of the free choice of physicians on FECA utilization. Other Federal agencies, as well as the General Accounting Office and Congressional staff, are also studying the rising costs and potential for abuse in claims filed under the FECA. A number of options to increase agency involvement and to simplify operational procedures are being developed.

IV. Critical Dates

With oversight hearings having been just concluded, mounting pressures from Federal agencies, and widespread, if often inaccurate, adverse publicity of the FECA program, decisions will be needed early in 1977 with regard to the approach to the subject. Federal agencies, such as the Postal Service, are pushing for a quick response.

While a number of corrective actions could be taken administratively, under current authorities it may be necessary to seek amendatory legislation.

Regulatory Issue
Executive Order 11246

I. Statement of Issue

Should the Department finalize the proposed regulations under E.O. 11246 for comment to simplify compliance procedures and reporting requirements for Federal contractors subject to the Executive Order.

II. Background

On September 17, 1976, the Department published for comment material changes in the regulations establishing requirements for contractor compliance under E.O. 11246. The Executive Order establishes requirements that Federal contractors must meet in taking affirmative action to hire and advance in employment minorities and women. The proposed regulations are designed to reduce the costly paperwork burden associated with the affirmative action requirements, particularly for small business. The proposed changes would raise the dollar volume and employee threshold before an Affirmative Action Plan and subsequent reports must be filed. The new regulations would also substitute a "letter of deficiency" for the present "show cause notice" procedures in case of non-compliance.

III. Status of Work on the Issue

Public comment was solicited at a series of hearings held during the week of November 2. Women's groups and minority organizations do not favor the proposal -- especially the elimination of the show cause notices.

Reaction was strong enough to provoke the House Subcommittee on Equal Opportunities to call a hearing on November 10. The Department noted that these changes had been under consideration for five years and were developed in close consultation with a variety of interest groups, although there was no attempt to obtain a consensus. No commitments were made during that period.

IV. Critical Dates

The 60 day comment period is still in force. In addition, the testimony obtained at the four open hearings must be reviewed.

The opinion expressed at the November 10 Congressional hearing was that the first part of the regulations ready to go into effect would be those dealing with E.O. 11246.

The current target date for the Department's evaluation of comments and final action is January 17, 1977.

I. Statement of Issue

Federally funded construction work is being performed by local government entities without the payment of Davis-Bacon Act prevailing wages.

II. Background

Title X of the Public Works and Economic Development Act (PWEDA) provides funds to local governments to undertake construction projects. The more recent Local Public Works Capital Development and Investment Act of 1976 funds projects which could begin within 90 days of grant. The intent of the latter measure was to alleviate unemployment quickly, and to provide quick stimulation to the economy. Some recipients are using funds from the Acts to perform construction with their own employees ("force account") rather than the rates paid to regular employees for the trades in question. In most cases the latter wage rates are lower than those specified for Davis-Bacon projects.

These Acts are administered by the Economic Development Administration (EDA) in the Department of Commerce. The enabling legislation contains the normal references to Davis-Bacon provisions for Federally funded construction. Instances have occurred where grant recipients apparently hire large numbers of employees on a temporary basis to perform construction which would not normally be performed with their regular work force. The Department has taken the position that in such instances, Davis-Bacon provisions should apply.

III. Status of Work on the Issue

The Department's position was communicated to the Secretary of Commerce initially in April 1976 concerning the PWEDA. (See Attachments). The Secretary of Commerce responded in that same month, in effect rejecting the DOL position, citing previous decisions of the Solicitor of Labor concerning "force account" work. With regard to the subsequently passed Local Public Works Capital Development and Investment Act of 1976, which has similar provisions, the Department has again voiced its position in a letter to the Secretary of Commerce dated October 27, 1976. No response has yet been received.

IV. Critical Dates

Commerce will likely reiterate its conflicting position, thereby leaving this issue at impasse. There is public interest in this issue, and ultimate resolution of the differing agency positions will be needed early in 1977.

I. Statement of Issue

The current minimal enforcement of the prevailing wage and other provisions under the Davis-Bacon Act for Federally-funded construction, requires a basic decision as to whether this circumstance can continue, and the best means to obtain a strengthened enforcement posture.

II. Background

Davis-Bacon provisions apply to about 75,000 construction contracts annually with an estimated total value of $35 - $40 billion. A conservative estimate of direct wage payments on these projects is approximately $13 billion annually. Enforcement authority under the Davis-Bacon Act is fragmented. Primary enforcement responsibility rests with Federal contracting or grant agencies, as delegated under Reorganization Plan 14 of 1950. Investigation has shown that a number of these agencies are performing little, and in some cases no enforcement work. In FY 1976, all contracting agencies combined conducted 2,135 compliance actions, and reported only 133 cases in which violations exceeded $500. ESA conducted 904 compliance actions, of which 304 involved over $500 in violations. Of particular concern is the fact that some agencies conduct no enforcement whatsoever.

As part of the FY 1976 budget cycle, a proposal was made to OMB to consolidate enforcement authority for Davis-Bacon in the Department of Labor. This was based on a PBRC analysis of alternatives. OMB has given a preliminary indication that this approach will be turned down because of overall concern with the validity of determinations and the fact that contracting and grant agencies do not have resources discretely identified for DBRA enforcement purposes. The resource aspect of the issue would thus remain unresolved, even if there is approval or endorsement of the basic issue of enforcement authority. Alternative program and budgetary strategies therefore need to be developed if there is to be a viable enforcement program.

III. Status of Work on the Issue

To spot check the overall lack of enforcement, ESA undertook investigations this fall, of twenty randomly selected projects. The contract value of these projects was about $80 million. While the investigations are not yet complete, preliminary findings show compliance on eight projects, minor violations on three, substantial non-compliance on eight, and no judgment yet on one. There was no agency enforcement activity on 13 of the twenty. Wages found due to workers to date total over $70,000, and will climb higher. All indications are that the compliance situation will continue to deteriorate. ESA is initiating an options study on alternative enforcement strategies.

IV. Critical Dates

Enforcement strategies and methodologies, and the identification of resource needs will be required to be completed by mid-1977, prior to final Departmental budgetary decisions for the FY 1979 budget cycle.

I. Statement of Issue

The Department must formulate a position on probable amendments to the Fair Labor Standards Act to increase the Federal minimum wage by statutory action and/or by utilizing a price or wage index, to increase the overtime penalty, to eliminate or revise the tip credit, and to establish a youth differential, and to eliminate current exemptions.

II. Background

During the Fall of 1975 the Subcommittee on Labor Standards of the House Committee on Education and Labor held hearings on H. R. 10130, a bill introduced by Chairman Dent to amend the Fair Labor Standards Act. The bill would have increased the basic $2.30 an hour minimum in steps to $3 an hour with subsequent increased tied to the Consumer Price Index similar to the increases provided for the pensions of retired Federal employees. Additionally, the bill would have increased the ovettime penality rate and eliminated the 50 percent tip credit for tipped employees. Subsequent draft versions of the Dent bill would have lowered the initial increases in the minimum and utilized average hourly earnings concepts for subsequent increases, eliminated any change in the overtime penalty, and modified the change in the tip credit. Throughout 1976, the Dent subcommittee consistently indicated an intent to mark-up and report a bill even in the final months of the session. Chairman Dent has indicated that minimum wage legislation will be the first order of business of his subcommittee when the Congress returns in January and the Department and Executive Branch will be asked for views on the legislation. The critical issues will be whether or how much the minimum should be increased, and whether or how it should be indexed. Both questions are tied directly to the lost real earnings of minimum wage workers since the last amendments in 1974 and concerns about the disemployment effects of increases particularly with high unemployment rates of certain components of the labor force, such as teenagers and minorities.

In addition, the Department is now completing a series of research studies mandated by the 1974 amendments to the Fair Labor Standards Act on the impact of current exemptions to the Act and the test for exclusion from coverage of professional and administrative personnel. The results of these studies will probably be incorporated in any consideration of amendments.

III. Status of Work on the Issue

The Assistant Secretary for Policy, Evaluation and Research held a seminar of academicians on November 16, on the issues which was attended by staff of ESA and other interested agencies. ASPER is preparing an issue paper due for completion in December, based upon previous work done in connection with the proposed legislation and hearings, and taking into account the November 16 seminar.

IV. Critical Dates

The Administration should have its positions formulated early in the Congressional session.

LABOR-MANAGEMENT SERVICES ADMINISTRATION

ISSUES - FIRST SIX MONTHS

1.	UMTA - DOL jurisdictional Issue re: 13(c) Employee Protections	Regulatory Issue
2.	Issuance of new 13(c) regulations	Regulatory Issue
3.	Reduction of FLMR case backlog	Program Issue
4.	LMSA involvement in pre-election technical assistance	Program Issue
5.	Jurisdiction over National Education Association under LMRDA	Regulatory Issue
6.	Memorandum of Understanding with FBI re: investigation of criminal provisions of LMRDA	Program Issue
7.	LMSA participation with Justice Department in Strike Forces of Organized Crime Program	Program Issue
8.	Confidentiality of construction industry wage data under FOI claim	Program Issue
9.	Departmental response to anticipated legislation re: Federal employee labor relations	Legislative Issue
10.	Departmental response to anticipated legislation re: collectivd bargaining rights for state and local public employees	Legislative Issue
11.	Departmental response to anticipated legislation re: "common situs" picketing in construction industry	Legislative Issue
12.	Departmental response to anticipated legislation re: repeal of Section 14(b) of the Taft-Hartley Act.	Legislative Issue
	Relationship of LMSA to Pension and Welfare Benefits Programs (see PWBP section)	

(Issues listed in approximate order of importance and urgency).

Employee Protections - Interdepartmental Jurisdiction Issue

I. Statement of Issue

A policy statement published in the Federal Register on October 20, 1976, for comment contained a paragraph which, in the view of the Department of Labor, seeks to preempt the Secretary of Labor's authority with respect to employee protections in certain cases.

II. Background

The Department of Transportation is not particularly enthusiastic with the employee protection program and has, on occasion, sought to limit its applicability. In the instant case, UMTA (Urban Mass Transportation Administration of DOT) made statements in the Federal Register concerning the application of 13(c), and the eligibility of certain employees for coverage thereby, in paratransit situations. That paragraph reads as follows:

> Where an organization is providing paratransit service as an incidental adjunct to its main business, UMTA will not consider such organization to be a mass transportation company within the meaning of Section 3(e) of the Act, or a mass transportation company or system with employees entitled to protection under Section 13(c). For example, a nonprofit senior citizens center receiving capital assistance directly or through a public body under Section 3 or Section 16 of the Act for the purpose of providing transportation services to and from the center, would be considered by UMTA as not within the meaning of Sections 3(e) and 13(c). Similarly, a private taxi operator providing shared-ride paratransit services or contract services to a public transit authority, e.g., to provide special transportation services for elderly and handicapped persons, could be held to be providing such services on an incidental basis to its main business. (underscoring added)

UMTA's promulgation of this Notice with the statements concerning 13(c) coverage constitutes a blatant disregard of the Secretary of Labor's authority and responsibility under Section 13(c). UMTA is obviously attempting to usurp the Secretary of Labor's decision making responsibility. At best, the Secretary of Labor is left in a position of having to comment on a proposed policy statement concerning his own program.

The UMTA statement on 13(c) seems to say that if a non-transit organization provides transportation services only incidentally to its primary business activity, then its provision of those transportation services, even with Federal assistance, will not invoke 13(c) protections. UMTA then implies that even taxi firms might qualify under this exception.

Left unanswered by the UMTA statement are numerous questions. For example, if a firm qualifying under the "incidental service" exception engages in Federally-supported activity which causes the lay-off of employees on existing transit systems, are those employees protected?

More important than these technical questions, however, is the matter of UMTA's usurption of the Secretary of Labor's administrative responsibility under Section 13(c). If UMTA can define 13(c) jurisdiction here, what is to keep UMTA from determining its application, or interpretation, elsewhere.

III. Status

Assistant Secretary DeLury sent a strong letter of protest to UMTA, and is currently awaiting a reply.

IV. Critical Dates

A retraction as soon as possible by UMTA, before any action is taken under the proposed policy, is the only settlement of the matter acceptable to the Department of Labor.

Employee Protections Regulations

I. Statement of Issue

The issue is: (1) whether or not regulations or guidelines should be issued; and (2) what the content should be, i.e., procedural or substantive or both.

II. Background

The Urban Mass Transportation Act of 1964, as amended, specifies that the Secretary of Labor must certify that the required employee protection provisions are in place before the Department of Transportation may release grant money under the statute. Until recently, Federal grant assistance to the Urban Mass Transportation sector was almost exclusively devoted to improvement of existing systems. The employees of most such systems were organized and the parties were familiar with negotiations techniques. During all of this time the program was administered on an informal basis without written regulations or guidelines. In the last two years substantially more money has been made available, resulting in funding for a greatly increased number of projects. A formula grant program for operating assistance has been enacted, and support has been given to new modes of transportation. This change has brought many new applicants into the program many of whom represent public jurisdictions with little or no experience in labor-management relations and, in many cases, they are strongly opposed to public employee bargaining.

On July 23, 1975, representatives of the American Public Transit Association, the Amalgamated Transit Union, and the Transport Workers Union of America signed a National Employee Protective Agreement for application to operating assistance grants under the Urban Mass Transportation Act. The agreement was executed by members of the railroad unions on July 31, 1975. Upon signing of the National Agreement the Secretary of Labor joined with the parties in encouraging use of the agreement as promptly as possible by individual transit employers and appropriate local representatives of affected employees. Although the agreement has worked well in providing a vehicle for expedited certification in a vast number of cases, it has met with vocal opposition from a select number of applicants. Notwithstanding, the Department has continued to encourage its utilization for operating assistance grants.

III. Status of Work on the Issue

In June 1976, the President, through the Domestic Council, directed a number of actions by the Departments of Labor and Transportation for purposes of review of the current procedures and practices utilized under Section 13(c). As part of this review DOL met with and received proposals from numerous organizations having an interest in Section 13(c).

The Department indicated in October 1976, its intention to publish proposed guidelines. Final action on the proposals was to be considered following receipt and review of comments by various interest groups.

IV. Critical Dates

Consultative sessions on the guidelines began in October 1976. They are continuing at the present time and should be concluded by January. However, if widely differing reactions are evident among the various affected groups, decisions will be required concerning whether or not, and how much, the proposed guidelines should be modified on the basis of objections.

I. Statement of Issue

What method should be devised to reduce the current excessive growing FLMR case backlog at both the field and national office levels in order to make the program more responsive to the needs of the clientele in the Federal sector?

II. Background

Whereas representation case filings have remained constant in FY 75 and FY 76, unfair labor practice filings have increased 31% between FY 74 and 75 and again by 32% between FY 75 and 76. Grievability/arbitrability application filings have increased 24% between FY 75 and 76. Without an increase in staff, the increase in filings has resulted in FY 76 backlogs in the field of 4.8 months in representation cases, 9.3 months in unfair labor practice cases and 9.2 months in grievability/arbitrability cases. During this same period, backlogs in the national office have increased to 7.2 months for decisions and 3.5 months for request for reviews. With FY 77 and FY 78 projections of 25% increases in unfair labor practice filings and 15% increases in grievability/arbitrability filings, backlogs for those years should be far greater. To have an effective and responsible Federal labor relations program, backlogs in the field should be reduced to 4 months for grievability/arbitrability and representation cases and 6 months for unfair labor practice cases. Backlogs in the national office should be limited to 3 months. To offset the current excessive backlogs and those anticipated for FY 77 and 78, the Assistant Secretary has requested, and PBRC has approved, the seeking of 40 additional program positions in a supplemental FY 77 budget request.

III. Status of Work on the Issue

A hearing on the 40 program positions was held before OMB on September 22, 1976, and the matter is presently under consideration by that agency.

IV. Critical Dates

If OMB does not authorize a supplemental budget increase in FY 77, the seeking of a budget increase in FY 78 will be imperative.

To what extent should LMSA be involved in the provision of pre-election technical assistance and in the actual conduct of union elections?

I. Statement of Issue

A decision will be required as to the extent, direction and level of effort which LMSA, in its administration of the Labor-Management Reporting and Disclosure Act (LMRDA), utilizes for the provision of pre-election advice and technical assistance and for the observation of the conduct of union elections.

II. Background

In enforcing the LMRDA election standards, LMSA has adopted a policy of encouraging unions to resolve their own problems with government intervention as a last resort. In an attempt to avoid potentially actionable complaints concerning an election and to minimize future demands for an investigation or rerun, LMSA, when requested, has provided a limited amount of advice and technical assistance before the conduct of an election to help the unions comply with the LMRDA election standards. Although LMSA had been requested in advance to supervise and conduct the elections for major unions, the Agency has declined to do so because of a lack of authority and resources to undertake such an activity.

In the last year, because of Secretary Usery's desire to anticipate and head off possible problems, LMSA agreed to observe and advise the IUE on its election of international officers. This action sets a precedent for LMSA, one which has heavy resource implications for the administration of this program.

III. Status of Work on the Issue

Upon completion of its involvement in the IUE election, the Agency will review and assess its experience and develop an issue paper concerning the implications and policy options for this activity.

IV. Critical Dates

It is anticipated that over the next few months LMSA will prepare an option paper for review at Departmental policy-making levels. This review will be required in the first half of calendar 1977 because of the impact on resource requests associated with the FY 1978 planning cycle.

Is the National Education Association a Labor Organization under the LMRDA?

I. Statement of Issue

The issue is whether the National Education Association (NEA) is a labor organization within the meaning of the Labor-Management Reporting and Disclosure Act of 1959, as Amended (LMRDA) by virtue of the involvement in the private sector of approximately 25 local affiliates, or whether the NEA is not subject to the LMRDA in that its involvement in the private sector is so limited as to be "de minimis."

II. Background

The Department issued a regulation in 1959 (29 CFR 451.3(a)(4)) providing that a national labor organization composed of both governmental and non-governmental locals is subject to the LMRDA, and has asserted coverage over several national labor organizations which have only a minimal involvement in the private sector (such as the American Federation of Teachers (AFT), AFL-CIO, the American Federation of State, County, and Municipal Employees, AFL-CIO, and the American Association of University Professors). This position, which implicitly rejects "de minimis," may be challenged in court by the NEA.

This issue is significant in that action cannot be taken on complaints concerning the election of officers of the NEA until the question of the Secretary's jurisdiction under the LMRDA is resolved. This matter is especially significant at present in that there is a pending election complaint on which action must be taken in the near future. We have obtained a waiver to extend the statutory period for action until the end of November 1976, and if an additional waiver is obtained, a decision on the coverage of the NEA may be deferred until the beginning of 1977.

This issue has been raised regularly over the past ten years by election complaints and by complaints from officials of the AFT that the Department has not treated the AFT and the NEA equally in the matter of coverage. The Department has not asserted coverage over the NEA in the past because of the lack of evidence that the NEA has affiliated organizations which are active in the private sector. Evidence on approximately 25 such local organizations has now been obtained.

III. Status of Work on the Issue

In view of the possibility that legal action may arise whatever the decision on this issue may be, the evidence and a recommendation were forwarded to the Associate Solicitor for Labor-Management Laws.

IV. Critical Dates

The critical dates are late November 1976 for the pending election complaint, and early next year with regard to the long-pending AFT coverage complaint.

The Memorandum of Understanding re:
Enforcement of the LMRDA

1. Statement of Issue

Whether the Memorandum of Understanding entered into by the Department of Labor and the Department of Justice in early 1960, delegating to the FBI the investigation of most of the criminal provisions of the Act, should now be rescinded.

2. Background

Upon passage of the Labor-Management Reporting and Disclosure Act in September 1959 it became apparent that the Bureau of Labor-Management Reports of the Department did not have the expertise for investigating the criminal provisions of the statute. Accordingly, in early 1960, the Department of Labor entered into a Memorandum of Understanding with the Department of Justice delegating to the FBI the authority to investigate many of the criminal violations of the LMRDA. Over the years the Memorandum of Understanding has been modified to the extent that the individual U. S. attorneys may designate either LMSA or the FBI to investigate the violations at issue; almost universally the U. S. A's prefer LMSA to conduct the investigations in labor-management matters. Since LMSA now has the expertise to enforce all provisions of the Act the Memorandum of Understanding serves no practical purpose and should be amended leaving to the FBI only the enforcement of officer-convict and violence violations.

3. Status of Work on The Issue

A proposed revised Memorandum of Understanding is currently being prepared for discussion with the D/J.

4. Critical Dates

Since the Memorandum of Understanding has always imposed barriers to efficient field operations it is recommended that it be amended by May 30, 1977.

President's Anti-Organized Crime Program

1. Statement of Issue

The necessity for formalizing with the Department of Justice the Department of Labor's participation in the Anti-Organized Crime Program.

2. Background

LMSE provides the Department of Labor support to the Anti-Organized Crime Strike Forces presently operating in 14 major areas. Each Strike Force is headed by a special attorney from the Department of Justice and is supported by investigators from the various federal law enforcement agencies participating in the program. LMSE has provided support to the President's Anti-Organized Crime Program since its inception. However, we have never formalized the terms and conditions of our participation with the Department of Justice. As a result, we found LMSE Compliance Officers being used on investigations involving mail fraud, internal revenue violations, etc. We have, within house, corrected these situations and now limit our participation to labor-management matters only. It is essential that we enter into a Memorandum of Understanding with the Department of Justice defining and delimiting Department of Labor participation in this program.

3. Status of Work on the Issue

LMSA has drafted a proposed Memorandum of Understanding which will be discussed with appropriate officials in the D/J. A meeting was recently held with the representative of the D/J responsible for the Anti-Organized Crime Program at which time this issue was discussed. LMSA requested that coordinating plans be made by all participating agencies for the coming year's activities and that the participating agencies be given more say in where the Strike Forces are to be located, the goals and targets, and the allocation of personnel.

4. Critical Dates

The Memorandum of Understanding should be finalized within the next six months. Coordinating planning by all participating agencies should be undertaken within the same time frame. Therefore, this matter should be concluded no later than May 30, 1977.

PROGRAM ISSUE

I. Statement of Issue

Construction industry wage data submitted on a confidential basis may be subject to release under the Freedom of Information Act.

II. Background

When the union members of the CISC pledged their support to the continuation of the CISC data system in 1974, they requested that the Department of Labor not make the total system available on request except to the national construction unions. The unions felt that the wholesale availability of this data in a convenient computer format could prove inimical to the best interests of the industry during negotiations. Specifically, the unions feared that the data would be widely published and that efforts would be made to use the published data to attempt to influence the course of negotiations.

The Department of Labor agreed to honor the union's request to keep the file confidential and to date there has been no formal effort made by unauthorized parties to obtain copies of the file. During 1976, however, several inquiries, were received by the Division concerning the availability of the file. None of these inquiries resulted in a claim under the Freedom of Information Act.

III. Status of Work on the Issue

As a result of the inquiries the Division sought an opinion from the Solicitor of Labor concerning the defensibility of the Department's informal understanding with the building trades unions. The SOL suggested that the unions supplying information to the Division should expressly request confidentiality for that information and that the Department should agree to notify the unions should an FOIA request be received by the Department. The Solicitor's suggestion has been carried out through an exchange of letters between Robert Georgine, President of the Building and Construction Trade Department. AFL-CIO, and Bernard DeLury, Assistant Secretary of Labor for Labor Management Services Administration. However, the basic issue of

whether or not to release the data has not been resolved. There is concern that, if the Department does not continue to comply with the restrictions originally agreed upon, the unions will no longer supply the basic data.

IV. Critical Dates

The matter will not require a decision unless a request under the Freedom of Information Act is made by an organization restricted under the agreement with the construction unions.

I. Statement of Issue

Should there be a statutory, rather than Executive Order, framework for the regulation of Federal labor-management relations?

II. Background

Although Executive Order 11491 was extensively amended most recently in February 1975, many interested parties view any changes short of legislation as unsatisfactory, half-way measures. Federal employee unions and outside groups, such as the ABA and the Federal Bar Association, have cited fundamental defects in the present system that can be remedied only by legislation. These include the narrow scope of bargaining, the lack of a truly neutral and independent authority to administer the program, and the absence of judicial review.

Several bills to replace the Order have been considered by recent Congresses. No bill has ever been reported out of committee, but it is likely that similar proposals will receive attention in the 95th Congress. The issues involved in such legislation have been studied at the staff level by several Task Forces within the Department over the past several years, but no decisions were taken at a policy-making level on how to proceed further.

III. Status of Work on the Issue

In the absence of a policy decision in this matter, no effort had been made in prior years to draft a Departmental bill. Now, however, renewed staff work leading to development of a legislative proposal is one of LMSA's high priority objectives for fiscal 1977, but work has not begun pending resolution of the policy questions noted in part IV below. Further, research contracts have been let and are in progress to study several key issues in Federal labor-management relations.

IV. Critical Dates and Questions

The major question that needs to be answered at this time is whether the Department should begin to formulate draft legislation to regulate Federal labor-management relations. If a decision is made to proceed in this direction, a related question is how, and to what extent, other interested parties, such as other Federal agencies, employees, unions, and the public, should be brought into the process of formulating a legislative proposal. Finally, the myriad substantive policy questions involved in drafting the details of such legislation will have to be addressed. If we are to avail ourselves of the findings of outstanding research contracts, the earliest date by which a draft bill could be finalized would be early 1978.

I. Statement of Issue

Is Federal legislation to protect the collective bargaining rights of State and local government employees necessary or desirable?

II. Background

In the past, the Department has taken a public position opposing Federal legislation in this area on numerous grounds, including the relative lack of experience in public sector bargaining at all levels. Notwithstanding this public position, some of the major issues and problems that might be raised by Federal legislation in this area have in the past been under study within the Department at the staff level.

In recent years, moreover, Congress has shown an interest in this area, since some States have failed to enact even minimal guarantees of the right of employees to organize and bargain, and the provisions of other States' laws vary widely. Many unions and other interested groups, and even some representatives of State and local labor relations systems, advocate one form or another of Federal legislation. The recent Supreme Court decision in the National League of Cities case holding unconstitutional the application of the Fair Labor Standards Act to States and local governments, however, may make Congress more cautious in proceeding in this direction, since the ruling casts doubt on the constitutional underpinning for Federal regulation of States that is grounded on the Commerce Clause.

III. Status of Work on the Issue

In its legislative program for 1977, the Department proposes to study and prepare recommendations on what Federal role, if any, is appropriate in this area.

IV. Critical Dates and Questions

A decision by the Department on whether to modify its current opposition to any Federal legislation in this area, and to begin to develop Federal legislation will be influenced by several key factors, including the state of labor relations in the non-Federal public sector and the interest expressed in such legislation by the 95th Congress. If a decision is made that Federal action is desirable, then it will be necessary to explore the form that legislation should take, as well as how to avoid the constitutional problems encountered by the FLSA amendments in the National League of Cities case.

I. Statement of Issue

What official position should the DOL take towards legislation to permit "common situs" picketing in the construction industry?

II. Background

The Supreme Court's decision (1949) in the Denver Building Trades case held that Sec. 8(b)(4)(B) of the Taft-Hartley Act prohibited a union from picketing a construction site whenever the picketing had the effect of inducing the employees of contractors with whom the union had no dispute to refuse to perform their services. The construction unions have long opposed this ruling as denying their members the same rights as industrial unions, who may picket any employer at the industrial site which is involved in the normal operations of the primary employer.

Bills have been introduced in the Congress over the past 25 years to amend the law and overturn the Denver Building Trades decision. Although such legislation was generally supported by previous Administrations, none of those bills passed the Congress prior to 1975. Most recently, Secretary Dunlop in 1975 supported a legislative proposal to permit "common situs" picketing, and formulated a proposal to reform construction industry collective bargaining. The two proposals were merged as H. R. 5900, which was passed by the Congress but vetoed by President Ford (for which he was severely criticized by the unions). The Democratic platform supports "the full right of construction workers to picket a job site peacefully."

III. Status of Work on the Issue

The DOL has done no work on this matter since the President's veto.

IV. Critical Dates

It is anticipated that a "common situs" bill will be introduced in the new Congress, but any action by the Congress will depend on other priorities. A policy decision is needed as to whether or not the DOL should take any legislative initiative in this matter.

I: Statement of Issue

What official position should be taken by the DOL towards Sec. 14(b) of the Taft-Hartley Act?

II. Background

Sec. 14(b) of the Taft-Hartley Act establishes the right of any State to enact a so-called "right-to-work" law prohibiting union-shop provisions in collective bargaining agreements covering employees in that state. Twenty states currently have such laws, which the unions oppose as a deterrent to their organizational efforts. Louisiana was the most recent state (mid-1976) to enact such a statute and in November 1976, the voters in Arkansas defeated a proposal to change that state's "right-to-work" law.

President Ford opposed the repeal of Sec. 14(b); consequently, while many DOL officials have on various occasions expressed their personal oppostion to "right-to-work" laws, no initiative has been taken by the DOL to repeal Sec. 14(b), (nor was any such bill introduced by any other person in the last Congress). The AFL-CIO has repeatedly recorded its opposition to Sec. 14(b), and the 1976 Democratic platform promises to "seek repeal of Sec. 14(b)."

III. Status of Work on the Issue

No work is currently underway in the DOL with respect to Sec. 14(b). It is likely that a bill to repeal Sec. 14(b) will be introduced in the new Congress, but any Congressional action on this matter will depend on other priorities.

IV. Critical Dates

The DOL regularly receives correspondence and inquiries (many referred from the White House) on the Administration's views towards Sec. 14(b) and "right-to-work" laws. Recent responses frequently quote the President's opposition to the repeal of Sec. 14(b). It is anticipated that the DOL will need to respond to further inquiries on this matter at the outset of the new Administration. A policy decision will also need to be made as to whether the DOL should take any legislative initiatives in this matter.

PWBP

PENSION AND WELFARE BENEFITS PROGRAMS

Priority	
	I. Program Issues:
C	1. Case Quality Control and Inter-Intra Agency Coordination
A	2. Central States Teamsters Investigation
B	3. Report Form Processing Coordination
C	4. Training
	II. Policy Issues:
A	1. Dual Jurisdiction with the Internal Revenue Service
A	2. Pension Program Location within Department
C	3. Pre-Emption of State Laws
B	4. Public Disclosure of Filings
	III. Legislative Issues:
C	1. Amendments to the Employee Retirement Income Security Act (ERISA)
	IV. Regulatory Issues:
B	1. Compliance Strategy Implementation
A	2. Exemptions from ERISA Requirements
A	3. Regulations Interpreting ERISA
C	4. Technical Assistance and Public Education Strategy

* A = Priority 1
  B = Priority 2
  C = Priority 3

I. Statement of Issue: Case Quality Control and Inter-Intra Agency Coordination

Control of ERISA case quality is closely tied to the level and quality of coordination between the Department, the IRS, and the Department of Justice, and between the Office of the Solicitor and PWBP.

II. Background

Upon enactment of ERISA there were no procedures or policies applicable to case identification, control, investigation or resolution. Since a high degree of quality in cases contributes to effective administration of ERISA an initial investigation program was developed and set forth in a Compliance Officers Handbook. In addition, LMSA personnel responsible for ERISA program cases in the field review all reports of investigation submitted (the National Office (NO) does not have direct control over these persons). The Enforcement staff furnishes technical advice to the investigating officer in unique or potential precedent setting situations.

The NO is responsible for maintaining liaison with the Department of Justice (DOJ), the Internal Revenue Service (IRS) and other agencies to augment the work of the field, advises the field of appropriate areas of investigation in a case, and reviews to assure that those areas are covered.

Coordination with the DOJ with respect to investigation and litigation has been a tremendous problem. The DOJ has been reluctant to fully coordinate its activities in the ERISA area. The situation with IRS has also been very bad, and both leave substantial room for improvement. Also, the Department has had internal problems of coordination as among audit, investigation and legal staff. This alone could keep the Department from effective ERISA implementation. This problem ties to resolution of issues I-2, I-3, II-1, II-2, and IV-1.

The effectiveness of the overall effort to date has not been great. If the Department is unable to implement effective internal mechanisms, it may lose its ERISA responsibilities. If the three agencies are unable to begin working together, an option discussed in the past of a totally separate ERISA agency may gain new support.

III. Status of Work on the Issue

The quality of cases is improving. As case reviews disclose shortcomings, they are returned to the field. This procedure has improved the quality of cases. However, until better internal control and coordination mechanisms are developed, little additional improvement can be expected.

The program is currently working to develop better means of case control. In addition the program is working on both the intra and inter agency coordination problems. However, coordination solutions may ultimately have to be enforced from the White House

IV. Critical Dates

Given the importance of case control, action must come as soon as possible. In case new resources are needed, action must be taken by early 1977. Any changes in organization relationships to ensure better coordination must also be immediate.

I. State of Issue: Teamsters Investigation

How to assure that the integrity of the current investigation into the Teamsters Central States Southeast, Southwest Areas Health and Welfare Funds is maintained.

II. Background

The subject investigation began in the fall of 1975. Initial work made it clear (by December 1975) that the investigation of this very large plan would demand special arrangements, and as a result, a Special Investigations Staff (SIS) was formed.

A Memorandum of Understanding was also signed between PWBP and the Solicitor making special arrangements for the makeup of the SIS. This arrangement has allowed effective integration of legal, audit and investigative personnel, and should be a model for restructuring the PWBP enforcement staff and the Solicitor's staff persons assigned to ERISA work.

The Special Investigations Staff has been working extremely hard to move forward with its responsibilities in this area. Among the results obtained thusfar has been the restructuring of the Board of Trustees of this plan. This restructuring, accomplished through mass resignations of trustees, effectively changed control of the Board, and is being followed up by negotiations leading to an agreement between the DOL and the Fund concerning how the assets of the plan will be managed in the future. Also, one former trustee of the Fund resigned as a direct result of a DOL demand that the plan remove him for failing to cooperate. Primary staffing of 20 positions has been completed, and staffing is now underway with respect to already authorized 15 additional positions.

This is the largest investigation undertaken under ERISA, and can be expected to set the tone for what type of enforcement employee benefit plans officials can expect. This investigation is clearly the Department's most visible ERISA activity.

III. Status of Work on the Issue

The Department has requested that 25 positions be included in a FY 1977 supplemental. However, in addition to this staffing request, other actions must be taken. These include:

> Continuing efforts will be necessary to insure proper coordinating with the Internal Revenue Service and the Department of Justice; support from the Secretary will have to continue to assure the present level of independence of this staff. This includes a need to insure that the Memorandum of Understanding signed by the Solicitor and the Administrator is strictly followed as the investigation proceeds.

IV. Critical Dates

The primary need at present is tied to the FY 1977 supplemental request. Necessary actions must be taken in January to assure that this request goes to Congress.

I. Statement of Issue: Reports Processing

How best to coordinate DOL and IRS reporting processing procedures under ERISA in order to maximize economy and efficiency while minimizing the burden placed on employee benefit plans by reporting requirements.

II. Background

ERISA requires annual reporting to both DOL and IRS on employee benefit plans. The two agencies devised and have issued a joint annual report (Form 5500) to ease the burden on filers by avoiding their having to complete two different forms. Both agencies receive a copy of the Form 5500, but the filers are often different (welfare plans file only with DOL), provide different information (schedules go only to DOL), and file at different time (tax year vs. plan year). By intent, ERISA establishes different uses for the information, at different times, for each agency. Finally, certain data disclosure restrictions apply to IRS which are specifically not applied to DOL.

OMB has expressed concern about DOL and IRS both publishing statistics from Form 5500 data and has stressed the need for coordination in this area. In this respect, two areas of potential coordination are (1) data editing (identification and correction of errors or omissions on reports) and (2) data entry (key punching). It seems particularly important that we avoid a situation where both agencies would be contacting the same filers to correct report errors or omissions --- such duplication could be expected to bring public and possible Congressional criticism.

III. Status of Work on the Issue

The program has met with IRS and has informed IRS of our needs with respect to data editing and data entry of some 100,000 Form 5500's DOL had selected as a sample for statistical publishing purposes. We have asked IRS to study our needs and let us know if they can handle the additional workload within the time deadlines we have specified. We pointed out that they do not currently receive Form 5500 from welfare plans (they receive Form 5500's for all pension plans) and that both pension and welfare plans are included in our report sample.

The IRS representative reacted favorably, but implied that IRS wished to go well beyond statistics related servicing. He said IRS could probably handle our work. He also said IRS might be willing to receive Form 5500 from welfare plans to overcome the single agency filing problem. He was unable to comment on time needs.

Agreement by DOL and IRS to the above proposition may be the start of an irreversible trend that could result in the transfer of sufficient DOL report related activities to IRS to endanger adequate fulfillment of DOL disclosure, enforcement and statistical publishing responsibilities under ERISA.

The full ramifications of this issue must be explored before any action is taken, and that analysis is not in progress.

IV. Critical Dates

Need to have DOL/IRS understanding by February 1977 to permit maximum coordination of report processing on 1977 annual report forms and to allow any resulting changes in the FY 1978 budget.

I. Statement of Issue: Training

Training and maintaining the professional skills of the PWBP staff.

II. Background

Upon passage of ERISA the administration of a broad and complex area of benefit plan operations and the people involved in those operations are made the responsibility of DOL. There were limited numbers of experienced personnel available for recruitment. Those who did not have a degree of expertise required indoctrination and training in the new law. At the same time they were being indoctrinated many of these people were developing policies and procedures for the administration of that law. A limited field staff was transferred from other programs within DOL. This staff, as well as national office personnel, required training in the law, employee benefit plans, and proposed PWBP enforcement program, investigative skills and techniques and PWBP policies.

On a crash basis a handbook for the guidance of Compliance Officers was developed. It assembled procedures and policies in various types of investigations and the PWBP enforcement strategy.

Also, a contract was let for the provision of nine courses for employees covering all the areas noted above. These efforts have provided a knowledge base for many employees, but over 200 new employees now need this same training. In addition, all employees now need this in-depth training covering provisions of ERISA if they are to effectively and competently perform thier duties.

III. Status of Work on Issue

The initial training program successfully exposed PWBP personnel to various facets of the law, the operating procedures of the office and some of the policies. This was done by making heavy demands upon the time of many staff people who neglected their primary responsibilities to respond to training requirements. There were no staff personnel who had sole responsibility for training. There are now no PWBP personnel solely responsible for training. The updating of the Compliance Officers Handbook as policies, procedures and investigating methods are refined or changed is a requisite, but personnel are not available to perform this task. Failure to continue a training program and to maintain a handbook that is current concerning policies, procedures and decisions affecting ERISA will seriously affect the field staff and will further erode their ability to properly administer the law.

The program is working to develop a training program, but must depend on an LMSA training office that has neither the staff nor technical expertise to develop that which is needed.

IV. Critical Dates

The implementation of ERISA will not competently be performed unless staff receive training. First, an organization decision is needed that will place full responsibility for teaching in PWBP. Second, necessary staff will need to be made available to develop the training program. Neither of these actions can afford delay.

I. Statement of Issue: Dual Jurisdiction

ERISA as enacted was a statute with joint responsibilities and overlapping jurisdictions that has demanded a high degree of consultation and coordination between the Department of Labor and the Internal Revenue Service.

II. Background

Employee benefit plans have historically been the subject of interest by both agencies. The IRS has established standards for initial qualification of plans for tax deferred status and monitors continued compliance by annual tax reporting. The Department of Labor (DOL) has become concerned with protecting the interest of plan participants first through reporting and disclosure alone, the Welfare Pension Plans Disclosure Act (WPPDA), subsequently advocating legislation to establish standards for plan operation and conduct of plan officials. The passage of ERISA created a statute administered in part by these two agencies with differing interests to protect.

III. Status of Work on the Issue

In the area of regulations the agencies recently reached agreement on a priority for consideration of certain regulations requiring coordination. It is important that (DOL) "input" into IRS regulations because the interests served are different and DOL comments often enable plan participants to achieve a greater degree of protection than might otherwise be the case. Also in the area of regulations, the agencies have held joint hearings to assist in the development of common positions. This is new, and an experience assessment is not yet possible. However, it would be difficult for progress under this new agreement to be less than in the past.

The exemptions from the prohibited transactions provisions are another important area requiring cooperation. In August, 1976, a Memo of Understanding was agreed to that should permit a more orderly consideration of dual jurisdiction exemptions. This has not yet occurred, however.

ERISA also permitted the Department to comment on plan submissions for qualification. The procedures have been developed and contacts established to enable the Department to make a worthwhile contribution in this area.

While the Department and IRS have taken steps to ensure good relations, the tie has been strained at best. Experience would clearly justify a new jurisdictional arrangement, making the success of new agreements exceptionally important. It is not our expectation however, that this will be the result, and intense public and congressional pressure can be expected.

The program is now developing an options paper on the issue as part of an overall review of the legislation. Resolution of this issue is tied to numbers IV 2 and 3.

IV. Critical Dates

Because of Congressional concern and public interest in the issue of dual jurisdiction, the Department must demonstrate the ability to administer ERISA in its present form or be prepared for Congressional attempts to either split the responsibilities for administration between the agencies or grant one agency the prime responsibility for regulating the employee benefit plan field. Continuous high level oversight is therefore essential to insure progress under dual jurisdiction. Should legislative action in this area be determined desirable a decision would have to be made by February, 1977.

I. Statement of Issue: Pension Program Location Within the Department

Where should the program charged with ERISA implementation be located within the Department of Labor.

II. Background

Up until the final stages of conference committee consideration of ERISA, the bill before the Congress contained a provision which would have created a new ERISA assistant secretary within the Department. This provision came out of the legislation, and the program was placed within the Labor-Management Services Administration (LMSA).

The Secretary created the position of Administrator, PWBP, in April 1975. In May 1976, the Secretary issued Secretary's Order 13-76 which delegated to the Administrator, PWBP, policy and program management for carrying out responsibilities of the Department under the ERISA. The Assistant Secretary for LMSA was assigned responsibility for directing field and management operations and systems services for PWBP.

LMSA directs its field staff, including staff which handles ERISA work, through a Field Operations office and six Regional Administrators who have line authority for all LMSA programs. PWBP has responsibility for program implementation, but has no line authority to direct support personnel.

Overall experience to date has convinced some persons that placement of PWBP within LMSA, with the current delegations, has not worked. A consensus does exist that the current situation needs review. The issue is of significance because of implications for ERISA implementation.

III. Status of Work on the Issue

The Assistant Secretary for Administration has been charged with completing a full options paper on this issue. Separation could be accomplished without legislation unless a new Assistant Secretary position is to be created.

Should a decision be made to keep PWBP within LMSA, a decision would be needed on the issue of the relations of the Administrator, PWBP, to the Assistant Secretary, LMSA.

IV. Critical Dates

The issue should be resolved in the very near future if the Department is to avoid serious morale problems which flow from the present uncertainty that exists. Separation, if it included the creation of a new assistant secretary position, would require legislative action. This would require a decision by February 1977. Also, such a decision would involve a reallocation of resources or additional resources to handle those administrative and support functions which are now provided to PWBP by LMSA.

I. Statement of Issue: Preemption

Section 514 of ERISA preempts state laws regulating employee benefit plans.

II. Background

A basic problem is created by Section 514's preemption of state laws. It is universally recognized that employee benefit plans (both pension and welfare benefit plans) require regulation. In acknowledgement of this need, such regulation should exist--to whatever degree necessary--at both the federal and state levels. Preemption of state regulation by ERISA, without the simultaneous substitution of some other form of regulation, results in a void of supervision in areas united by a common denominator of susceptibility to, and an historical pattern of, abuse.

With respect to state regulation of insurance, several states have enacted legislation directly focusing on employee benefit plans (both welfare and pension plans) separate and apart from the insurance code. In addition, states regulate (1) group insurance arrangements used to fund many employee benefit plans (including regulation of the carrier, the transacting of group business and the content of group insurance contracts). (2) Blue Cross/Blue Shield type plans and (3) prepaid professional service plans (HMO's, legal and dental plans). Finally, some states have sought to regulate self-insured employee benefit plans either under the insurance code or through specific legislation (both the comprehensive regulatory approach and the more limited mandating of minimum benefits).

Thus, the potential result of Section 514 on the above areas of state regulation of insurance, if a broad preemption of state laws occurs, is the absence of supervision over these benefit plan arrangements. Current interpretation of ERISA has led to this result.

III. Status of Work on the Issue

Litigation has been initiated, or is in the process of being initiated, by DOL against at least one state to enforce the preemptive power of Section 514. The program is developing a paper on this issue as part of its overall legislative review. This is an essential and sensitive issue that must be resolved in order to avoid problems in the regulation of employee benefit plans.

IV. Critical Dates

A decision will need to be made by February, 1977 on whether legislative action will be sought. If legislative action is not sought a policy decision will have to be made on what the enforcement strategy of the Department should be in this area.

I. Statement of Issue: Public Disclosure of Filings

Should the Department allow its ERISA microfiche contractor to disclose filings directly to the public, and directly receive such requests.

II. Background

SOL has ruled to date that all requests for public disclosure of documents filed pursuant to ERISA, including high volume requests which will be serviced by the microfiche contractor, must be received by DOL's Public Document Room and transmitted to the contractor, rather than being received directly by the contractor from the public, for direct service to the public.

The impact of ERISA includes a mass of report filings which cannot be handled other than through use of microfiche. A contractor is employed to provide microfiche copies of reports to DOL and to receive and service large volume requests for provision of copies of microfiched plan information or paper copies of same, at prescribed rates paid by the customer to DOL. The contractor then bills DOL for services rendered.

Other Governmental agencies will refer the public to DOL for ERISA disclosure service. DOL and the microfiche contractor's representatives are working toward trying to meet the coming impact of reports disclosure without the effective tool used by other Federal Agencies such as SEC, which is the provision of direct access by the public to the contractor to provide microfiche and paper copies of plan information available in any form or amount desired.

Unless this situation is changed, program resources will have to be devoted to this unneeded step in the disclosure process.

III. Status of Work on the Issue

A paper on the legal issue was prepared by the Plan Benefits Security Division, Office of the Solicitor.

Options on the subject are now being prepared.

IV. Critical Dates

Form EBS-1 (plan descriptions) to be available for public disclosure by 9-15-77. Form 5500 series (Annual Financial Report - through Dec. 31, 1976) to be available for public disclosure by 6-15-77.

Any change in policy which would provide direct access to the contractor for provision of plan information disclosure would have to be made in early 1977 in order to be of any value in meeting the DOL needs for prompt and efficient disclosure service to the public, Congress and other Governmental agencies.

Should legislation be necessary, a decision would have to be made by February 1977.

I. Statement of Issue: ERISA Amendments

The Department must decide whether it wishes to recommend any amendments to the Employee Retirement Income Security Act of 1974.

II. Background

A number of legislative proposals were made during the present session of Congress which have not been enacted by the Congress, (e.g., H.R. 7597). It can be expected that a number of proposals will be introduced during the next session of Congress which will gain more serious consideration and on which the Department will have to take early positions.

The ERISA is now two years old, and experience to date has highlighted many areas in which changes may be desirable.

III. Status of Work on the Issue

The program is now preparing a detailed analysis of the statute to identify areas where amendments should be supported by the Department. This paper should be completed by early January.

IV. Critical Dates

Decisions will have to be made by February, 1977, on what positions the Department will take on given amendments.

I. Statement of Issue: Compliance Strategy Implementation

Implementing a comprehensive strategy for ERISA enforcement.

II. Background

Early PWBP compliance strategy was to fully respond to public and Congressional requests for ERISA information and assistance. Servicing forty million plan participants with a field staff of 135 people has fully taxed the capabilities of the entire organization. Added to this was a decision to respond to benefit disputes and participants rights complaints in order to obtain voluntary compliance. Handling these cases placed even further demands upon our limited field staff.

The Administrator, PWBP, changed this strategy in mid-1976 to focus primarily on fiduciary violations. Progress in transferring the emphasis of PWBP programs towards the investigation of fiduciary responsibilities has been slow and difficult because of the demands on the time of the field staff in all other areas.

The Internal Revenue Service has declined to furnish information or assistance to plan participants or others until regulations are developed. People who have been denied assistance at the IRS turned to DOL and PWBP. Since a primary focus of DOL sections of ERISA are Reporting and Disclosure sections, such decision was made shortly after enactment of ERISA that PWBP would respond to requests for information and assistance.

The result of these actions taken together has been a tremendous flow of requests to DOL. The Department cannot, with current resources, meet these demands and enforce the multiple provisions of ERISA.

III. Status of Work on the Issue

Repeated efforts (through budgetary requests) have been made to increase both the field staff and the National Office staff to enable them to respond to the large workload that is generated by outside sources, and carry out directed compliance simultaneously.

The program outlines to work on refinement of its overall compliance strategy to ensure the most effective use of current resources.

IV. Critical Dates

In order for adequate resources to be available, a decision would have to be made by January for inclusion either in FY 1977 supplemental or the FY 1978 budget.

I. Statement of Issue: Exemptions for ERISA Requirements

An enormous number of exemption applications have been filed with DOL and IRS in the 2 years since the passage of ERISA, the delay in the processing of which has resulted in significant Congressional and public pressure on both the DOL and the IRS.

II. Background

Due to ERISA's extememly broad coverage, many common, established business practices have become prohibited transactions. Congress granted the DOL and the IRS dual jurisdiction over the granting of exemptions as a relief in such situations if the exemption would be administratively feasible, in the interests of and protection of plan participants and assets respectively. To date, performance of the agencies has been terrible. It has proven to be nearly impossible, due to the necessity of merging the conflicting perspectives and philosophies of DOL and IRS. In addition, there have been substantial conflicts between PWBP and the Office of the Solicitor.

III. Status of Work on the Issue

Effective October 15, 1976, the DOL and the IRS executed a Memorandum of Understanding which is intended to expedite the processing of exemption applications which up to that date had been backlogged for lengthy periods of time. In addition, in an attempt to standardize incoming applications, DOL has published an ERISA application procedure.

Since the passage of ERISA, a total of 538 applications for exemption have been filed with DOL and IRS. During that period, the agencies have granted only 8 exemptions. This poor record is the result of conflicts between DOL and IRS, conflicts between PWBP and SOL, and inadequate staff. The Department and the IRS have been severely criticized for this record, and Congress has made it clear that legislative action will be taken during the coming session if the agencies do not solve the problems themselves. They are working to develop better processing approaches, but the basic philosophical differences may make a non-legislative solution impractical. PWBP is studying the issue, which ties closely to issue II-I, dual jurisdiction. Within the Department the Under Secretary has set up a system of weekly status reports, and has delineated responsibilities of the Solicitor and the program. Strict goals have been set for exemptions to be processed, and this new system will be evaluated in April to determine how the long term Solicitor/Program relationship should be defined.

IV. Critical Dates

The following target dates have been established with respect to class exemptions:

November 1976 -- Mutual Funds "In House"
Mutual Funds "Out House"
Sale of Insurance Policies By and To Plans
December 1976 -- Consultants, Ins. Agents and Brokers, Mutual Fund Salesmen, Third Party Notes
January 1977 -- Ins.Co. Pooled Separate Accounts
Captive Ins. Companies

There are statutory exemptions which expire in mid-1977 and must be extended by administrative action if they are to continue.

The Department will have to decide on any legislative actions by February, 1977.

I. Statement of Issue: Regulations Interpreting ERISA

In order to meet statutory effective dates, further regulations in the areas of coverage, reporting and disclosure and fiduciary responsibility must be issued, addressing several significant issues which remain outstanding.

II. Background

To implement Congressional intent has required that the Department promulgate a massive volume of regulations (over 90) to govern employee benefit plans subject to ERISA. Certain basic regulations on coverage and reporting requirements have been published but are not yet finalized.

Many of the issues to be covered by regulation have been subject to intense public and legislative criticism.

III. Status of Work on the Issue

This program and the Office of the Solicitor recently established a master listing of DOL priority regulation projects and the months in which they should be considered. This proposal has been cleared by the Administrator, PWBP, and the Under Secretary. Coordination between the Department and IRS should assist in meeting the deadlines established. DOL and the IRS have recently agreed on priorities for certain joint regulation projects which will permit a more efficient utilization of available resources.

Regulation projects previously published which are currently under re-evaluation include annual reporting, minimum standards and gratuitous payments.

IV. Critical Dates

During 1977, employee benefit plans will be required to adopt the necessary amendments to achieve compliance with the minimum standard provisions of ERISA and meet the annual report filing requirement. Therefore, publication of these regulations is essential.

I. Statement of Issue: Technical Assistance Strategy

Strategy to direct PWBP public education program in calendar year 1977.

II. Background

To date the PWBP program to educate the public about their rights under the ERISA has been limited to the issuance of publications (generally aimed at assisting employers and plan administrators to meet their obligations under the Act) and an audio-visual presentation which explains the Act generally. Little has been done to reach plan participants and beneficiaries directly, explain their rights, and/or offer PWBP assistance in the settlement of disputes with plan administrator's over the interpretation of plan provisions. This direction was taken on the basis of a policy decision issued in 1975 at the Administrator's level to commit PWBP's current limited resources to situations in which statutory violations are alleged or suspected.

There are millions of participants who are unaware of their rights under ERISA. A decision as to whether PWBP will continue this present low key approach to the problem, or will be given the resources required to implement a nation-wide public education program aimed at participants, should be made early in 1977.

III. Status of Work on Issue

Additional publications aimed at plan participants and containing detailed information about their rights are being worked on currently.

Limited resources continue to be a major factor impeding any effort to initiate a broad based public education and assistance program as it appears was contemplated by the ERISA.

Additional resources were requested during the last two budget cycles.

IV. Critical Dates

A decision to change the current strategy would demand additional resources. Were a FY 1977 supplemental appropriation requested a decision would have to be made by January 1977. Were a change in the FY 1978 request made it would have to be done by February at the latest.

U.S. DEPARTMENT OF LABOR
BUREAU OF LABOR STATISTICS
WASHINGTON, D.C. 20212

NOV 16 1976

MEMORANDUM FOR: THE SECRETARY

FROM : JULIUS SHISKIN
Commissioner of Labor Statistics

SUBJECT : Transition Planning: Major Issues and Problems to be Addressed in the Coming Year

The Bureau of Labor Statistics--as the research and statistical arm of the Department--really has no issues of such paramount importance as to require Secretarial action in the coming year. It does, however, have three activities that may create outside interest; hence, the top policy staff should be at least aware of them. They are:

1. The Employment Review Commission: PL 94-444, which authorized appropriations for public service jobs, also establishes a National Commission on Employment and Unemployment Statistics, which will have responsibility for "examining the procedures, concepts, and methodology involved in unemployment statistics and suggesting ways and means of improving them." The President, according to the Act, is to appoint nine members to the Commission, seven to be experts on employment and unemployment statistics and two to represent the general public. The Commission's report of its findings and recommendations is due 18 months after the appointment of the first five members of the Commission.

   The Bureau is developing a list of qualified persons which may be helpful in selecting candidates for the Commission. We are also preparing a supplemental budget request for the Commission and to support the computer and other costs for studies required from the BLS and the Census Bureau. This will be submitted to the Department shortly.

2. Two Consumer Price Indexes: The Bureau plans to release two Consumer Price Indexes in April 1977: a revised index for urban wage earner and clerical workers, which represents 40 percent of

the population; and a new index, broader in scope, for all urban consumers, which represents 80 percent of the population.

Since these indexes involve both conceptual and methodological changes, top level officials should be aware of the principal differences between them.

3. Local Area Unemployment Estimates: Congress, in recent legislation such as the Comprehensive Employment and Training Act, the Public Works Employment Act of 1976, and the 1976 amendments to the Public Works and Economic Development Act, has required the use of local area unemployment rates in the allocation of Federal revenue sharing funds. The development of these estimates for small areas places a strain on BLS standards for quality, since the data base for developing the estimates is inadequate. The Bureau has undertaken a long-range program to improve the data. The fund allocations, however, are politically sensitive, and the administrative needs are running ahead of the Bureau's capacity to produce high quality data.

WELFARE REFORM

I. Statement of the Issue

What should be the character of welfare reform and, particularly, the Labor Department's role in the new system?

II. Background

Several important features of any design for welfare reform can have an important bearing on workers and on labor markets. These include benefit levels, work incentives, coverage of the working poor and work requirements.

Many reform proposals have included a major added role for the Department. For example, the Nixon Administration's Family Assistance Plan would have given the Department full responsibility not only for moving employable recipients toward jobs, but also for paying their benefits. HEW would have handled the non-employables.

Dividing the welfare population is intended to reduce the risk that employables will opt for the improved benefits rather than work. Strong financial incentives for claimants to work and coverage of the working poor would ease the Department's task of determining whether or not appropriate work has been refused. These "work test" decisions are difficult, and equal treatment by thousands of government officials in offices throughout the country is hard to achieve.

The character and scope of the manpower and social services--training, child care, etc.--that are provided employables is another major issue involving the Department.

III. Status of Work on the Issue

ASPER and ETA staff have been following the welfare reform debate since the defeat of FAP.

IV. Critical Dates

These are dependent on the timing of the Administration's plans to submit welfare reform legislation. An early decision may be needed on whether to attempt to delay incremental changes to existing programs until a planned schedule for broader welfare reform can be adopted.

Management Issue

I. Statement of Issue

To improve labor-management relations in the Department.

II. Background

Significance of the issue. The inability of both labor and management to realize a signed agreement reflects the less than desirable labor-management relations climate. Failure to reach an agreement will tend to further deteriorate the overall climate and relationship.

Brief history of issue. Local 12 (National Office). Negotiations started in August of 1975 and continued until January of 1976. Even with the assistance of the Federal Mediation and Conciliation Service negotiations were terminated by Local 12. Based on subsequent actions of the Secretary negotiations were resumed in November 1976.

National Council of Field Labor Lodges (NCFLL). Negotiations with the Field Council are deadlocked even though that contract has terminated. Management by law is prevented from resuming negotiations since the Field Council is engaged in a jurisdictional dispute with the National Union of Compliance Officers.

III. Status of Work on the Issue

- The Secretary appointed a three-member team of labor-management neutrals to help devise the very best labor-management relations program that would be beneficial to employees, their unions and the Department. Their report has been issued and is being worked on.

- A complete reorganization of the DOL labor relations program has been initiated and efforts are underway to identify and select a qualified Director of Labor Relations.

- The Secretary has engaged a consultant assisted by key agency managers to lead the Local 12 negotiations.

- A Task Force is working on defining and clarifying the Local 12 unit. After completion, a similar approach will be taken to clarify and define the NCFLL unit.

Migrants

MIGRANT FARM WORKERS

ISSUES - FIRST SIX MONTHS

Migrant Housing Standards	Program Issue
Richey Court Order	Program Issue
Use of Foreign Workers	Regulatory Issue
Extension of National Labor Relations Act	Legislative

(Issues are listed in approximate order of importance and urgency).

I. Statement of Issue

Should OSHA assume total responsibility for enforcement of migrant housing standards?

II. Background

Currently, three agencies in the Department of Labor share responsibility for conducting migrant housing inspections and the enforcement of two different housing standards. The Employment and Training Administration (ETA), through its State employment service system, conducts pre-occupancy inspections of migrant farmworker housing under terms of CFR 620. This regulation requires all housing owned by employers placing an order for purposes of interstate recruitment of farm labor to be inspected prior to clearing the order to supply states. OSHA is responsible for enforcement of CFR 1510. This regulation governs temporary labor camps. The Employment Standards Administration (ESA) inspects migrant housing owned or controlled by contractors under authority of the Farm Labor Contractor Registration Act--applying CFR 620 or CFR 1510. Conflicts exist between OSHA standards and the standards issued by ETA.

The Department is under sharp criticism for having two different standards and shared responsibility for their enforcement by three different agencies.

III. Status of Work on Issue

The DOL Standing Committee on Farmworker Concerns proposed a twofold course of action, subsequently approved by the Under Secretary. First, OSHA will publish a proposed set of regulations combining CFR 620 and CFR 1510 by December, 1976. Final rulemaking is scheduled by April 1, 1977. Second, in order to maximize the limited resources currently available to inspect an estimated 50,000 migrant housing units, all three agencies were required to assume enforcement responsibility during the 1976 harvest season. The development of a single standard and the coordinated enforcement program were designed to eliminate confusion and to maximize resources.

IV. Critical Dates and Questions

The important question to be addressed is whether OSHA should assume total responsibility for enforcement of migrant housing standards given the large requirement for staff resources to accomplish the task. Such effort imposes a burden which this agency is unable to meet with its present level of staff. On the other hand, OSHA is mandated by law to protect employee health and safety-- including that of migrant and seasonal farmworkers.

A decision is required before the beginning of the 1977 harvest season.

OSHA, ETA, ESA

I. Statement of Issue

To decide DOL's legal and administrative posture if U.S. District Judge Charles Richey rules that DOL has not complied with his court order of 1974, concerning Employment Service (ES) services to migrant and seasonal farmworkers (MSFWs).

II. Background

In 1972, DOL was sued by a number of plaintiffs representing MSFWs charging that DOL violated several laws by not ensuring that ES agencies served MSFWs on a non-discriminatory basis. In 1973, Judge Richey issued an injunction and declaratory judgement finding DOL had violated several laws and directing DOL to implement certain reforms. A consent decree agreed to by DOL and plaintiffs was signed by Judge Richey in 1974, as a court order. The order requires DOL to take certain actions to insure proper treatment of MSFWs by the ES and also established a Special Review Committee to oversee DOL implementation and to report to the court.

III. Status of Work on Issue

DOL has worked very hard for 2 years to implement the order. A report to the court from the Secretary in November 1976, detailed DOL's compliance and asked that the court remove its administrative constraints. The Special Review Committee's report to the court indicated DOL had not fully complied and recommended the court appoint an independent source to monitor DOL for another year. Plaintiffs have indicated they intend to seek further injunctive relief.

IV. Critical Dates

Dates will be determined by the nature and timing of the Judge's ruling, which could come at any time.

I. Statement of Issue

Should the Department modify its present policy, designed to minimize temporary use of foreign workers in agriculture?

II. Background

Due in part to mechanization, the use of temporary workers in agriculture is now generally confined to apple harvest, cane sugar harvest, the Maine woods industry and sheepherding activities. Such employers assert that American workers no longer seek these jobs, which often involve arduous labor at modest wages. On the other hand, some public interest and migrant legal action groups maintain that, with adequate wages and improved working conditions, American workers will fill these temporary jobs.

This is a politically sensitive issue, with spokesmen for growers and workers, as well as members of Congress, often in frequent contact with the Department over the use of aliens and on wages paid in such activities. The Department of Labor's responsibility is to assure that growers do have access to adequate labor supply to avoid spoilage of crops, at wages which assure that the employment of aliens will not have an adverse effect on U.S. workers. This is done by pre-season recruitment for U.S. workers, and by the annual determinations of "adverse effect wage rates" which must be offered to American workers before the use of temporary alien workers is authorized. DOL responsibilities in implementing provisions of the immigration law relating to the use of such temporary workers in agriculture also involve inspections of available housing facilities for their use.

III. Status of Work on Issue

New approaches for such "adverse effect wage rates" are being studied. Among major problems are: Apple harvest - widely differing rates for many States, such as Maryland, Virginia, West Virginia; Sheep - unauthorized transfer of workers among employers in the western range which may ignore DOL labor supply, wage and housing determinations; Maine woods - some areas accessible primarily from Canada; Cane harvest - work is among the most arduous type of agricultural labor and may require substantially higher wages to attract U.S. workers.

IV. Critical Dates

Ground rules for 1977 foreign worker use must be resolved in time for pre-season meetings to be held in the late winter or early spring of 1977.

I. Statement of Issue

Should the National Labor Relations Act be amended to cover farmworkers?

II. Background

The nation's farmworkers are the only major group of employees (except for domestics) in the private sector of the economy who are not now covered by Federal labor relations legislation. To date only a handful of states have enacted legislation protecting the collective bargaining rights of farmworkers, and the variations in state laws are creating inequities for both employees and employers in the various states.

Over the past decade, a variety of legislative proposals in this area have been introduced in the Congress, and Department of Labor officials have repeatedly gone on record as favoring the extension of Federally-protected collective bargaining rights to farmworkers. In FY 1975 a draft bill was formulated by the Department after lengthy discussions with the Department of Agriculture and representatives of agricultural employees and employers. Disagreements between the principal interested parties on particular provisions of the legislative proposal stalled further action at that time. Shortly thereafter, California enacted an agricultural labor relations law, and the Department postponed further action pending an assessment of experience under the California statute. Congressional actions in this area also were shelved at that time.

III. Status of Work on the Issue

The Department has continued to monitor agricultural labor relations in California and elsewhere. Further, the formulation of farmworker legislation is currently an LMSA high priority objective for fiscal 1977, but work cannot proceed much further pending the resolution of the policy question noted in part IV below.

IV. Critical Dates and Questions

The most important question that must be addressed is whether the Department should now resume its efforts to draft a Federal collective bargaining law for farmworkers. Such efforts will necessarily include an assessment of the effectiveness of the California law and discussions with the interested parties, both inside and outside the government.

It is likely that bills will again be introduced in the new Congress on this issue, but any action by the Congress will depend on other priorities.

Veterans

CROSSCUTTING ISSUE - VETERANS AFFAIRS

I. Statement of Issue

A determination must be made as to the organizational placement and the duties and responsibilities of the newly created position of Deputy Assistant Secretary for Veterans Employment.

II. Background

Public Law 94-502, Veterans Education and Employment Assistance Act of 1976, created the position of Deputy Assistant Secretary for Veterans Employment. The principal function of the position is that of advisor to the Secretary of Labor on Departmental employment, unemployment and training programs to the extent they affect veterans. The primary purpose for creating the position, according to the Senate Report accompanying the bill, was to establish at a significantly high level a position that "will produce the responsiveness to veteran problems within the Department of Labor which has been lacking to date." All the major veteran organizations endorsed the creating of the position, however, at the Assistant Secretary level. The Senate originally contemplated the position of the Director of the Veterans Employment Service being elevated to the level of Assistant Secretary.

III. Status of Work on Issue

Key decisions remain to be made regarding the following:

- Where to locate the position? The Employment and Training Administration, the Employment Standards Administration and the Labor-Management Services Administration all have significant responsibilities which affect veterans employment.

- What duties and responsibilities are to be assigned to the position? Is the position to function in an advisory and coordinative capacity and/or have direct operational responsibilities?

Staff recommendations are currently being prepared by the Department.

IV. Critical Dates

P.L. 94-502 is effective on December 1, 1976. Immediate attention must be given to this issue, as any hesitation will invite criticism from veterans groups. After a candidate is chosen for the job, Senate confirmation will also be necessary.What duties