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Federal Government Management: Examining Government Performance as we Near the Next Century

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FEDERAL GOVERNMENT MANAGEMENT: EX-
AMINING GOVERNMENT PERFORMANCE
AS WE NEAR THE NEXT CENTURY

EIGHTEENTH REPORT

BY THE

COMMITTEE ON GOVERNMENT
REFORM AND OVERSIGHT

together with

ADDITIONAL AND MINORITY VIEWS



SEPTEMBER 28, 1996.—Committed to the Committee of the Whole House
on the State of the Union and ordered to be printed

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LETTER OF TRANSMITTAL

HOUSE OF REPRESENTATIVES,
Washington, DC, September 28, 1996.

Hon. NEWT GINGRICH,
Speaker of the House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: By direction of the Committee on Government Reform and Oversight, I submit herewith the committee's eighteenth report to the 104th Congress.

WILLIAM F. CLINGER, Jr., *Chairman.*

Executive Summary

This report is the first attempt by a major oversight Committee of Congress to dispassionately examine mismanagement, waste, fraud and abuse of Federal resources, programs and personnel. In view of the fact that the Committee on Government Reform and Oversight is the only committee in the House of Representatives with jurisdiction over all Federal managerial programs and actions, this report focuses on actual management and accomplishments or lack thereof, rather than policy. By no means should this report be considered to be comprehensive, however. Serious management deficiencies in the executive branch of Government are too numerous to inventory in a single report. Only some of the more obvious problems facing the cabinet departments and several independent agencies have been reviewed here.

Some problems are unique to the departments, such as the failure of the Department of Labor to focus sufficient management resources on eliminating organized crime in labor unions, or the rising delinquency rates in agricultural loans managed by the Department of Agriculture. Other problems, such as mismanagement of contracts, abuses of the personnel system and failure to collect debts owed the Government can be found in almost all departments and agencies.

This report was initiated to shine the light of day on weak management practices, lack of effective oversight, and inconsistency in evaluating the effects of agency actions in the Federal Government. It briefly reviews the administration's highly publicized National Performance Review, which was developed to make Government "work better and cost less." The National Performance Review is clearly a laudable initiative, but to date, it has produced few concrete results.

On the positive side, the 104th Congress enacted legislation that, if implemented effectively, should make specific improvements in problem areas of the Federal sector. For example, comprehensive procurement reform, the Unfunded Mandates Reform Act, and the Line Item Veto are but a few of the refreshing management improvements enacted during the past two years.

The report concludes that public perceptions of pervasive waste, fraud and mismanagement in the Federal Government are unfortunately accurate. Other alarming developments in the Federal Government which demonstrate the need for greater accountability include the expansion of the General Accounting Office's "High Risk" list of Federal program areas. That catalogue of Government "hot spots" grew from 14 in 1990 to 20 today—a net increase of six areas.

Of the "twelve worst examples of government waste" outlined for priority attention of this administration by a 1992 House Commit-

tee on Government Operations majority staff report, 11 are the same or worse now. Some, like the failure of the Internal Revenue Service and the Department of Justice to collect outstanding debt and the growth of health care fraud and abuse, are much worse now. Taken individually, these items are cause for concern; taken in the aggregate, they are cause for alarm and an indication that leadership, both at the various agencies and at the helm of Government, is lacking. Indeed, with some exceptions, key appointees apparently do not understand or care to learn about effective management of their programs. Bureaucrats cannot operate those programs in the absence of strong guidance and oversight at the highest levels of their organizations.

The Federal Government is plagued by generic problems which result in billions of dollars lost to mismanagement, fraud and abuse. Poor financial management, wasteful procurement and inventory practices, sloppy contract management, personnel abuses and manipulation of personnel rules, silly or even harmful rules and regulations are among the consequences of bad management.

Acts such as the Chief Financial Officers Act and the Government Performance and Results Act were passed by Congress in frustration over managerial anarchy and program disaggregation. These Acts were passed in an effort to counter the tendency of management and budget to separate at the Federal level. As this report amply demonstrates, the Office of Management and Budget has exacerbated that problem by merging its management and budget functions.

This quick review of fraud, abuse and mismanagement uncovered \$350 billion in potential savings that could be achieved if greater resources were devoted to good management practices. Hundreds of billions more will be wasted in the near term on cost over runs, program delays, delinquent payments, loans, grants and unfulfilled contracts. Additional costs for the Department of Energy's nuclear waste cleanup alone is estimated to cost as much as \$350 billion.

Although this report is critical of the executive branch, it is not intended as an indictment of dedicated career civil servants, including managers, who are functioning in an increasingly complex and sometimes inflexible environment. The committee recognizes that Federal employees are operating under greater, rather than fewer constraints. It is the committee's intent that the report will stimulate discussion, induce action and result in positive reforms in Federal management.

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SEPTEMBER 28, 1996.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. CLINGER, from the Committee on Government Reform and Oversight, submitted the following

EIGHTEENTH REPORT

together with

ADDITIONAL AND MINORITY VIEWS

On September 24, 1996, the Committee on Government Reform and Oversight approved and adopted a report entitled “Federal Government Management: Examining Government Performance as We Near the Next Century.” The chairman was directed to transmit a copy to the Speaker of the House.

I. INTRODUCTION AND FINDINGS

The primary legislative jurisdiction of the Committee on Government Reform and Oversight as reflected in Rule X of the Rules of the House of Representatives includes matters relating to the overall economy, efficiency and management of government operations and activities, the relationship of the Federal Government to the States and municipalities, and reorganizations in the executive branch of the Government. Rule X also affords the committee primary oversight responsibility to “review and study, on a continuing basis, the operation of Government activities at all levels with a view to determining their economy and efficiency.”

Pursuant to this authority, the committee initiated a comprehensive review of agency management throughout the Federal Government. This report details the findings of the committee’s review.

The precedent for the conduct of a governmentwide management review was established in 1992 when the chairman of this committee, known then as the House Government Operations Committee, released a committee staff report on poor Federal management.

The Government Reform and Oversight Committee's review has revealed that the alarming problems of mismanagement, waste and abuse in Federal departments and agencies persist and may be growing. For example, an update of the 12 "worst examples of government waste" cited in the Government Operations Committee's 1992 staff report indicates that only one of the 12 examples has shown significant improvement. Seven of the cited examples are worse now, and three of these are much worse. (See Section III of this report.) Also, the General Accounting Office's (GAO) "High Risk" list of Federal program areas that are particularly vulnerable to fraud, waste, and abuse grew from 14 in 1990 to 20 today—a net increase of six areas. (See Section IV.) Such potential for wasteful spending is particularly intolerable given the urgent need to balance the Federal budget and make the best use of every dollar spent.

During the past 4 years, numerous administrative problems have arisen or have been exacerbated significantly. The incidence of tax scofflaws, inability or unwillingness to collect outstanding debt, multi-billion dollar cost over runs, and mismanagement of expensive computer systems, are a few examples. Specific instances of waste, mismanagement and fraud are numerous. Consider, for example, the following:

- \$125 billion in Federal debt is delinquent. That is 37 percent of all debt owed. An additional \$5 to \$6 billion of criminal debt is outstanding. The amount of delinquent debt is climbing steadily.
- Costing at least \$1 billion per mile, the reconstruction of Boston's central artery/tunnel project, financed through the Department of Transportation, is much more expensive per mile than the English Channel Tunnel or "Chunnel." In fact, its total cost is approaching the total cost of the Chunnel. This single project may cost \$9 billion over original estimates.
- Only 8 percent of callers could reach the Internal Revenue Service by phone for tax year 1995. The rate has plummeted since the 1989 tax filing season, when the agency answered 58 percent of its telephone calls for assistance.
- Drug use among teens doubled during the past 4 years. Spending on drug treatment programs tripled since 1988, but the estimated number of individuals treated actually declined. 80 percent of users are not enrolled in treatment programs—many of those casual users are teens.
- The Department of Interior "paid" \$800,015 for a \$150 vacuum cleaner, \$700,035 for a \$350 dishwasher, and \$79 million for a \$793 mobile radio unit. (See page 123.)
- \$1.6 million was paid by the Department of Interior for "personality profiles" for agency supervisors—and the agency is considering expanding the program to all 15,000 agency employees.
- The Immigration and Naturalization Service spends \$30 million annually for overtime. Under its pay system, the agency can—and does—pay for 16 hours of overtime for as little as 1 hour of

work on Sundays and holidays, and it even pays workers overtime to take annual leave.

- Unfunded liabilities for nuclear waste cleanup at the Department of Energy are estimated to be a staggering \$350 billion.

- The Department of the Interior failed to collect as much as \$1.2 billion in payments on oil royalties, and in California alone, oil companies were undercharged as much as \$856 million for royalty rights.

- The estimated cost of fraud and abuse this year to the Department of Health and Human Services Medicare and Medicaid programs may reach \$26.9 billion.

- 163 Federal job training programs costing more than \$20 billion compete against one another to serve the same client populations, and have overlapping and conflicting administrative structures.

- The Department of Agriculture allowed Federal prisoners to make long-distance telephone calls to sex and adult party lines at its expense.

- Federal employees in the Department of Commerce have used Government credit cards to make purchases of liquor, jewelry, flowers, music, payment of on-line computer services and private auto insurance.

- Since striking air traffic controllers were pardoned, safety concerns no longer determine where they are deployed. Controllers decide where their duty station will be. The Department of Transportation Inspector General declared the collective bargaining agreement with the union to be “[a] major problem impacting effectiveness and efficiency of Federal Aviation Administration operations.”

- If the Internal Revenue Service were a taxpayer, it would be audited. Total amounts of tax revenue and tax refunds it collects cannot be verified.

- \$12.6 million is being taken out of the Social Security Trust Funds to pay Federal employees to work full-time on union activities. One such employee is paid \$81,000 per year and performs no work for the Social Security Administration. More than 1,800 Federal employees are spending part of their time on union activities at SSA.

- The Environmental Protection Agency reduced its total advisory committees, but increased the amount they spend on them by 84 percent. Only 6 committees were required by law; the Environmental Protection Agency has 22 advisory committees.

- The Department of Labor has been tolerating the use of fraudulent wage data for purposes of the Davis-Bacon Act, potentially inflating Federal—and State—construction, alteration and repair costs by hundreds of millions of dollars.

- At the Department of Agriculture, an estimated \$2 billion per year in overpayments in the Food Stamp program are never recovered. A large quantity of food stamps are used in trafficking for non-food items, such as drugs and guns.

- The Safe and Drug Free Schools Act is not being monitored by the Federal Government. This troubling lack of oversight is reflected in the use of Federal funds for items such as: \$81,000 for large teeth and giant toothbrushes; over \$12,300 for wooden cars

with ping-pong balls; over \$18,000 for the hokey-pokey song; over \$122,000 for latex gloves; and \$3,700 for bicycle pumps.

Unfortunately, while the effective management of the Federal Government is more important than ever before, the Clinton administration has cut back significantly on central management capacity to oversee the executive branch. Examples include the loss of the management role once held by the Office of Management and Budget (OMB); the discontinuance of OMB's "High Risk" list; inadequate staffing at the Office of Federal Financial Management; and the approval of a blatantly illegal buyout plan for Federal employees.

The Clinton administration's highly publicized management reform initiative, known as the National Performance Review (NPR), included an exhaustive review of the executive branch. While the NPR has succeeded in highlighting the importance of government management, it has only tinkered at the margins of serious of management reform. Relatively few substantive reforms have been implemented, and it is difficult to substantiate any savings flowing from NPR's work. The examples of ongoing mismanagement, fraud, waste and abuse contained in this report demonstrate persuasively that the NPR's primary goal of "creating a Government that works better and costs less" has failed.

On a positive note, the committee expects that aggressive implementation of the Government Performance and Results Act (GPRA) will do much to force a change in the way the Federal bureaucracy does business. This law, conceived by Senator William Roth of Delaware, requires Federal departments and agencies to measure program performance and tie their performance goals to annual budget requests. GPRA will set the standard for government performance and will ensure that the egregious examples contained in this report of Federal mismanagement, fraud, waste and abuse will no longer be accepted as "business as usual."

Unfortunately, the administration has not aggressively implemented the GPRA. While a small group of dedicated civil servants are struggling to implement the Act in a responsible manner, overall implementation is significantly delayed and many agencies are far behind schedule in developing performance plans, validating performance measures, and setting sound program and agency-wide goals. In large part this is due to a lack of commitment at the highest levels of the departments and agencies to implementing management reforms. As a result, important GPRA pilot projects in managerial accountability and flexibility and performance budgeting are delayed. All agency-wide performance plans are to be in place by September 1997, but that goal cannot be achieved with legitimate plans given the status of implementation to date.

Because OMB recognizes that the GPRA will entail extensive planning and measurement of programs prior to implementation, it has urged agencies to "not underestimate the scope of the tasks ahead, nor the time that will be needed"¹ to prepare for the GPRA. Regrettably, OMB lacks the oversight authority and resources it once had to compel agencies to manage their programs responsibly, report honestly on their progress, prepare data in a consistent manner or reveal specific program information.

GPRA could be an extremely useful tool for agency managers, OMB and legislators to better understand individual programs as well as cross-cutting Federal functions such as financial management, credit, personnel, health care, environmental programs or job training. OMB has asked agencies to identify steps that should be taken on a multi-agency basis to coordinate and harmonize programs with common and cross-cutting goals and objectives in their GPRA strategic plans.² While this will be a difficult task, it will be extremely useful to identify areas of program overlap, fragmentation and duplication. Thus, GPRA can aid in harmonizing Federal functions and programs.

Harmonizing Federal programs and functions is important. In April 1995, the GAO completed a study of agency spending patterns in various funding categories contained in the Federal budget.³ The study showed that despite efforts to downsize, streamline, and reinvent the Federal bureaucracy, massive duplication, overlap and fragmentation in the jurisdiction of Federal agencies, programs and delivery systems still exists.

The GAO study shows that, on average, more than five different agencies perform the same or related functions. For example, eight agencies perform functions related to regulating natural resources and the environment. Fifteen agencies perform some kind of income security function. So many agencies are involved in trade promotion that 19 are represented on the Trade Promotion Coordinating Committee. Each of the four missions of the Department of Commerce are performed by eight other departments and agencies. Within the same department or agency, there are multiple agencies or programs performing the same function. The Department of Agriculture, for example, has four agencies with roles in rural and community development. The budget subfunction "Advancement of Commerce" is addressed in no fewer than 21 subdepartments within eight departments and agencies. In another report, the GAO found that within the Federal Government there are an amazing 163 programs with a job training or employment function.⁴

A certain amount of redundancy is understandable and can be beneficial if it occurs by design as part of a management strategy to foster competition, provide better service delivery to customer groups, or provide emergency backup. But GAO's examples are not isolated findings of duplication or strategic redundancy in a few programs. The scale of duplication in the Federal Government reflects serious bureaucratic expansion, program proliferation and administrative redundancy.

To demonstrate that the NPR has fallen short of its claim of "re-inventing" and streamlining government, the GAO performed an audit of the accomplishments of the NPR. The GAO found that, of 1,203 action items necessary for implementation of NPR recommendations, only 294, or 24 percent, were completed.⁵ On closer examination, many of the "completed" action items included activity items, and not actions that would fundamentally alter government performance. Some completed items include landscaping around Federal buildings, writing agency mission statements, publishing reports and frequently used statistics on the Internet, increasing user fees, using teams to write regulations, and ". . . select[ing] and develop[ing] capable and cohesive executive leaders

for [the agency].”⁶ None of these items are original to this administration.

In many other respects, the Federal Government remains un-reinvented. The big problems of the Federal Government remain. Many, though not all of them, are described in this report. The findings here are based mainly on government audits, congressional oversight and the work of the Federal inspectors general. It is clear from the committee’s review that the “Era of Big Government” to which the President alluded in his State of the Union Address is far from over.

ENDNOTES

¹Alice M. Rivlin, Director, Office of Management and Budget, Memorandum for the Heads of Executive Departments and Independent Agencies regarding Implementation of the Government Performance and Results Act of 1993, April 11, 1996, p. 2.

²*Id.*

³General Accounting Office, *Budget Function Classification: Agency Spending and Personnel Levels for Fiscal Years 1994 and 1995*, GAO/AIMD-95-115FS (April 1995).

⁴General Accounting Office, *Multiple Employment Training Programs: Major Overhaul Needed to Reduce Costs, Streamline the Bureaucracy, and Improve Results*, GAO/T-HEHS-95-53 (January 10, 1995).

⁵General Accounting Office, “*Management Reform: Completion Status of Agency Actions Under the National Performance Review*,” GAO/GGD-96-94 (June 1996).

⁶General Accounting Office, “*Management Reform: Completion Status of Agency Actions Under the National Performance Review*,” GAO/GGD-96-94 (June 1996), p. 41.

II. SCOPE OF REVIEW

This is a report on Federal management. It does not address *what* specific policy objectives, programs and activities the Federal Government should or should not pursue. Rather, it focuses on *how* Federal agencies execute those programs and other responsibilities that have been assigned to them. The merits of Federal programs and activities are, of course, subject to intense debate—particularly in these times of budget deficits and keen competition for limited Federal resources. However, the importance of efficient, effective, and honest management is not a debatable issue. Fraud, waste, abuse, and mismanagement serve no legitimate constituency or political interest. They cheat both the taxpayers and the intended beneficiaries of the programs and activities they affect. They also undermine the confidence of the American people in the capacity and will of the Federal Government to perform its functions effectively.

The report consists primarily of a survey of executive branch departments and agencies that describes their most serious management problems. The results are based on the committee’s analysis of volumes of data concerning management problems developed by the Federal inspectors general, the Office of Management and Budget (OMB), the National Performance Review, the General Accounting Office (GAO), congressional oversight hearings, and

sources outside the Federal Government. The information is comprehensive and current. Virtually all of the reports and other findings relied on were issued within the 2 to 3 years.

Each agency description covers several problem areas. This does not suggest by any means that the descriptions are exhaustive or capture all major problem areas. The committee's intent is to concentrate on those areas in which there is a clear consensus that a serious problem exists. Most if not all of the areas described have been the subject of recurring reports by agency inspectors general, the General Accounting Office, and others. Many appear on the "High-Risk" lists maintained by GAO and (until this year) by OMB. They also have been described in the work of the National Performance Review and in reports prepared by the agencies themselves under the Federal Managers' Financial Integrity Act. Unfortunately, it is all too easy to identify these core problems. Many have persisted for years—during both Republican and Democratic administrations.

The agency descriptions are limited to problems in the implementation of programs and activities over which the agencies have substantial control. They do not include areas in which the root cause of the problem requires a legislative solution. By the same token, they do not include statutory programs that some might regard as examples of "waste" because of disagreement with the policies and objectives of the law an agency is responsible for implementing.

In addition to the individual problem descriptions, the report discusses several themes that emerge from the agency surveys, as well as the committee's analysis of pervasive redundancy in current Federal programs and organizations. Finally, the report proposes an approach that the committee believes might provide a useful framework for addressing Federal management reforms on a fundamental and comprehensive basis.

III. UPDATE OF "12 WORST EXAMPLES OF GOVERNMENT WASTE" FROM 1992 COMMITTEE STAFF REPORT

OVERVIEW

The 1992 report by the majority staff of the House Government Operations Committee included a list of problem areas that it characterized as the twelve "worst examples of government waste."¹ This Section updates the status of the twelve areas.

By way of summary, only one of the twelve areas shows significant improvement. Seven of the problem areas are worse now, and three of these are much worse. On the positive side, the 104th Congress enacted legislation that, if implemented effectively, should make specific improvements in four of the problem areas. Congress passed legislation to address two more specific problem areas, but that legislation was vetoed by the President. Other laws enacted by the current Congress, which are designed to improve executive branch management practices in general, should have a positive impact on a number of the problem areas. One example is the Information Technology Management Reform Act of 1996 (Public Law 104-106, Division E).

The twelve problem areas, as described in the 1992 staff report, and their current status are as follows:

Problem: Department of Energy nuclear waste cleanup

Taxpayers will have to spend from \$150 to \$300 billion over the next 30 years because of the careless handling of hazardous wastes at Federal nuclear weapons plants.

Status: Worse now

DOE now has spent \$34 billion on cleanups, but schedules have slipped and progress is slow. In 1995, DOE projected that cleanups could take another 75 years to complete and cost up to an additional \$350 billion. This estimate does not include the cleanup costs for most contaminated groundwater or for currently active facilities.² At the end of fiscal year 1994, only 13 percent of the 856 environmental restoration projects had been completed. Two-thirds of the projects are still in the early stages of investigation and characterization. DOE has begun deactivating only a handful of its thousands of inactive facilities. Finally, DOE cannot permanently dispose of highly radioactive wastes from its own and commercial facilities until it develops a geologic repository. DOE does not expect to determine a site for this depository until 2001, or to begin operations until 2010. Some experts, including DOE's own internal advisory panel, have called for moving this entire project to the private sector.³ Management problems relating to nuclear waste cleanup are discussed in detail in the DOE section of this report.

Problem: S&L bailout

The S&L bailout is estimated to cost at least \$195 billion. At least \$66 billion could have been avoided if Federal regulators had closed insolvent thrifts earlier.

Status: About the same

Strictly speaking, the S&L bailout is neither better nor worse today. The S&L crisis was a *fait accompli* by 1989, and Federal efforts since then have dealt with its resolution. This debacle of monumental proportions stemmed from many causes, including failures by both the executive and legislative branches of the Federal Government. Among its root causes were laxity by Federal regulators, ill-conceived statutory authorities, and inadequate congressional oversight. Both the administration and the Congress waited far too long to address the crisis. GAO recently reported that the total cost of resolving the S&L crisis far exceeds the \$195 billion estimate, and could approach one-half a trillion dollars.⁴

Problem: Interior Department's failure to collect royalties on land patents to mining companies

Since 1987, the Interior Department has given away to mining companies patents assigning them mineral rights on Federal lands worth \$91.3 billion.

Status: The same now

The problem stems from the Mining Law of 1872, which permits mining rights to be patented for much less than current fair market value and does not impose any royalties on hardrock minerals extracted from Federal lands. Congress moved to resolve the problem in the 104th Congress. It passed legislation, as part of the fis-

cal year 1996 budget reconciliation bill, that would have (1) required that current market rates be used when selling Federal land to miners in the form of a patent, and (2) imposed a 5 percent net royalty on hardrock mining.⁵ Unfortunately, the President vetoed this legislation and, therefore, the problem continues today.

Problem: Interior Department's mine reclamations

It will cost the Interior Department \$81.5 billion to reclaim abandoned coal and non-coal mines to make them safe and reduce pollution.

Status: The same now

The 1995 reconciliation bill also established a fund for the clean-up of hardrock mines, to be derived from royalty revenues.⁶ As noted above, the legislation was vetoed. Thus, the problem continues.⁷

Problem: The Internal Revenue Service fails to collect billions in delinquent taxes

IRS is owed over \$125 billion in past due taxes. At least \$46 billion that could be collected may be written off because IRS is moving too slowly and the statute of limitations may expire.

Status: Much worse now

According to GAO, "IRS is losing ground in collecting mounting tax receivables."⁸ Total tax receivables now have reached \$200 billion. Because of the abysmal state of IRS' accounting records—a major problem in itself—it is impossible to tell how much of this amount is collectible. However, even using IRS estimates, annual collections as a proportion of collectible delinquent tax debt continue to decline. Despite congressional encouragement, IRS shows little enthusiasm for initiatives aimed at improving delinquent tax collection. The Treasury Department section of this report describes the problem in detail.

Problem: Defense Department inventory practices

In recent years, Defense has wasted over \$30 billion in inventory stocks. About \$21 billion in spare parts, clothing, and other supplies was unneeded. Another \$9.4 billion was excess; its current value has fallen to \$200 million.

Status: Worse now

GAO lists Defense Department inventory management as a "high-risk" area that has not improved:

. . . DOD has made little overall progress in correcting long-standing management problems that perpetuate buying and holding too much inventory. For example, DOD stores billions of dollars of unneeded inventory, requirements continue to be overstated leading to unnecessary procurements, and modern commercial practices are not being implemented as fast as possible.⁹

GAO reported that by the end of fiscal year 1993, items not needed for war reserves or current operations had grown to \$36 billion—almost half of DOD’s total inventory.¹⁰

Through enactment of the Federal Acquisition Reform Act of 1996 (Public Law 104–106, Division D), Congress has made the procurement process significantly easier. If DOD takes advantage of these procurement reforms and adopts more efficient inventory management practices advocated by GAO, it would virtually solve the excess inventory problem.

Problem: Department of Agriculture loan programs

Loan programs for farmers lost nearly \$21 billion from 1988 to 1989, and are expected to lose another \$18 billion on current loans.

Status: Worse now

Agriculture loan programs remain on GAO’s “high-risk” list, and losses continue to mount. Losses exceeding \$6 billion were incurred during fiscal years 1991–94.¹¹ As of April 1995, the outstanding principal on active direct and guaranteed farm loans totaled \$17.8 billion; almost \$6 billion of this amount was held by delinquent borrowers.¹² The Department of Agriculture section of this report discusses the problem.

The recently enacted Federal Agriculture Improvement and Reform Act of 1996 (Public Law 104–127) will force the Department to make needed improvements in such areas as lending guidelines and collection of delinquent debt.

Problem: Mismanagement and corruption at the Department of Housing and Urban Development

During the “HUD Scandal” of the mid to late 1980’s, more than \$8 billion was lost as a result of gross mismanagement, influence peddling, favoritism, fraud, and embezzlement on the part of HUD officials. This included \$6 billion from the multifamily housing co-insurance program and \$2 billion in other abuses.

Status: Worse now

While it appears that corruption has abated, mismanagement at HUD remains pervasive. The HUD Inspector General recently described the Department’s management problems as “extreme.” In 1994, GAO placed the entire Department on its “high-risk” list. Also, a 1994 report by the National Academy of Public Administration called for HUD’s abolition in 5 years if it is not operating under a clear legislative mandate and in an effective, accountable manner. Congress is actively considering legislation to reform HUD. The HUD section of this report discusses the Department’s management problems in more detail.

Problem: Pension Benefit Guarantee Corporation

Underfunding of private pension plans and poor financial management by PBGC may require a Federal bailout of \$20–30 billion.

Status: Better now

GAO has removed PBGC from its “high-risk” list.¹³ The Retirement Protection Act of 1994 (Public Law 103–465) strengthened

minimum funding standards for private pension plans and phased out the cap on variable rate premiums paid by underfunded defined pension benefit plans. GAO gave PBGC's financial statements for fiscal years 1993 and 1994 an unqualified opinion. It noted that PBGC has continued to make progress in improving its internal controls but still has material internal control weaknesses.¹⁴

Problem: Health care fraud and abuse

Health care fraud and abuse could cost \$21 billion in losses to Federal Medicare and Medicaid payments in 1992. HHS oversight, initiative, and resources to combat health care fraud are inadequate.

Status: Much worse now

Medicare fraud and abuse is, by itself, one of 6 major focus areas in GAO's high-risk work.¹⁵ Experts estimate that 10 percent of national health care spending is lost to fraud, waste, and abuse. Applying this factor to projected Medicare spending, annual losses will reach \$18 billion in fiscal year 1997 and a staggering \$38 billion by 2003. As detailed in the HHS section of this report, flawed payment policies, weak billing controls, and inconsistent program management all contribute to Medicare's vulnerability to fraud, waste, and abuse. Medicare scams abound, insurers owe Medicare millions of dollars for mistaken payments, and providers continue to exploit loopholes and billing control weaknesses. Federal controls have not kept pace with increasingly complicated health care financial arrangements. These problems are exacerbated by the Federal Government's failure to take aggressive action to penalize perpetrators of fraud.

Title V of the recently enacted Health Insurance Reform Act of 1996 (Public Law 104-191) contains a number of provisions to prevent and combat health care fraud and abuse.

Problem: Environmental Protection Agency Superfund program

The Superfund program is wasteful and has accomplished little. About 40 percent of the \$9 billion spent on Superfund in recent years went for administration and management. After 12 years, only 80 of 1,275 hazardous waste sites have been cleaned up. Another \$50 billion probably will be spent on the program.

Status: About the same now

The Superfund program remains high-risk.¹⁶ A recent estimate indicates that the hazardous waste problem has grown to \$75 billion for non-Federal sites and to as much as \$400 billion for Federal facilities.¹⁷ As of March 1995, EPA reported 15,723 superfund cleanup sites of which 1,363 are considered the most hazardous.¹⁸ A total of about \$30 billion has been spent on Superfund, about half of which was financed by taxpayer funds appropriated by the government. Between \$1.3 and \$1.5 billion is spent annually by the government and spending at the non-Federal level is twice that amount. Despite this investment, cleanups have been completed at less than 100 of the nearly 1,400 sites listed as national priorities. The average time required for cleanup is 12 years. EPA has been criticized for failing to prioritize sites for cleanup on the basis of

risk,¹⁹ and has only very recently made its first attempt to do so. Superfund management remains inefficient and beset by high overhead costs. Nearly half of Superfund expenditures go not to clean up sites, but to pay lawyers, consultants, and agency staff. The problems with the Superfund program are detailed in the EPA section of this report.

Problem: Justice Department debt collection

Justice Department debt collection efforts are plagued by management problems, particularly lack of centralized information.

Status: Much worse now

The problem extends well beyond the Justice Department, as the Government's debt collection efforts continue to decline on all fronts. As noted above, delinquent tax debt is increasing rapidly. Non-tax delinquencies also are on the rise. According to OMB's most recent report, non-tax delinquent debt increased by \$1.2 billion during fiscal year 1995 to a total of over \$50 billion.²⁰ The OMB figures do not even include criminal debt, which has increased exponentially in recent years and is now estimated at nearly \$6 billion. Inadequate financial management and information systems continue to plague Federal debt collection. The most recent example is the total collapse of efforts to create a National Fine Center to track and collect criminal debt, which resulted in the waste of millions of dollars from the Crime Victims Fund. Debt collection problems are described in detail in the Justice Department and Treasury Department sections of this report.

The recently enacted Debt Collection Improvement Act of 1996²¹ provides agencies with additional tools to enhance debt collection efforts. The executive branch needs to supply much stronger leadership and interest if these tools are to be used successfully.

ENDNOTES

¹House Committee on Government Operations Committee Print, *Managing the Federal Government: A Decade of Decline*, 102d Cong., 2d Sess. (December 1992), pp. xi–xii.

²General Accounting Office, *Energy Management: Technology Development Program Taking Action to Address Problems*, GAO/RCED–96–184 (July 9, 1996), p. 1.

³General Accounting Office, *Department of Energy: Observations on the Future of the Department*, GAO/T–RCED–96–244 (September 4, 1996), p. 13.

⁴General Accounting Office, *Financial Audit: Resolution Trust Corporation's 1995 and 1994 Financial Statements*, GAO/AIMD–96–123 (July 2, 1996).

⁵See the proposed "Mining Revenue Act of 1995," H.R. 2491, 104th Cong., Title V, chapter 5.

⁶*Id.*

⁷While the problem remains, the Committee staff's estimate of the costs of reclaiming mines cannot be confirmed. A recent GAO report, *Federal Land Management: Information on Efforts to Inventory Abandoned Hard Rock Mines*, GAO/RCED–96–30 (February 23, 1996), concludes that total cleanup costs, or even the total number of abandoned mines cannot be determined definitively.

⁸ General Accounting Office, High-Risk Series, *An Overview*, GAO/HR-95-1 (February 1995), p. 6.

⁹ General Accounting Office, High-Risk Series, *Defense Inventory Management*, GAO/HR-95-5 (February 1995), p. 7.

¹⁰ *Id.*, pp. 14-15.

¹¹ General Accounting Office, High-Risk Series, *Farm Loan Programs*, GAO/HR-95-9 (February 1995), p. 8.

¹² See *Consolidated Farm Service Agency: Update on the Farm Loan Portfolio*, GAO/RCED-95-223FS (July 14, 1995), pp. 1-2.

¹³ See General Accounting Office, High-Risk Series, *An Overview*, GAO/HR-95-1, note 4, pp. 30-31.

¹⁴ General Accounting Office, *Financial Audit: Pension Benefit Guaranty Corporation's 1994 and 1993 Financial Statements*, GAO/AIMD-95-83 (March 8, 1995).

¹⁵ *Id.*, pp. 7-8. See also High-Risk Series, *Medicare Claims*, GAO/HR-95-8 (February 1995).

¹⁶ See GAO, High-Risk Series, *Superfund Program Management*, GAO/HR-95-12 (February 1995).

¹⁷ General Accounting Office, *Superfund: More Emphasis Needed on Risk Reduction*, GAO/T-RCED-96-168 (May 8, 1996), p. 1.

¹⁸ General Accounting Office, *Superfund System Enhancements Could Improve the Efficiency of Cost Recovery*, GAO/AIMD-95-177, August 1995.

¹⁹ See, for example, General Accounting Office, *Federal Facilities: Consistent Relative Risk Evaluations Needed for Prioritizing Cleanups*, GAO/RCED-96-150 (June 7, 1996).

²⁰ Office of Management and Budget & Chief Financial Officers Council, *Federal Financial Management Status Report & Five-Year Plan, Appendix I: Status Report on Credit Management and Debt Collection* (June 1996), p. 50.

²¹ Public Law 104-134, section 31001, 110 Stat. 1321-358 (April 26, 1996).

IV. EVOLUTION OF GAO'S HIGH RISK LIST

In 1990, the General Accounting Office undertook an initiative to place special emphasis on "high-risk" Federal program areas—areas that it considered to be particularly vulnerable to fraud, waste, abuse, and mismanagement.¹ The GAO's original high-risk list consisted of 14 areas. Three more areas were added to the list in 1991 and 1992. In December 1992, GAO issued its first series of reports on the high-risk areas. At this point, the high-risk list consisted of 17 areas. In 1994, GAO added another new area—the Department of Housing and Urban Development.

In February 1995, GAO issued a second high-risk series of reports. At this time, GAO deleted from the high-risk list 5 areas that it found had made "significant progress." However, it added 7 new high-risk areas. Thus, GAO's high-risk list now includes a total of 20 areas. GAO observed: "Collectively, these high-risk areas affect almost all of the government's \$1.25 trillion revenue collection efforts and hundreds of billions of dollars of federal expenditures."²

The evolution of GAO's high-risk list is summarized below. Areas still on the list are indicated in **bold**.

Original 14 high-risk areas:

Resolution Trust Corporation
Internal Revenue Service Receivables
Management of Seized and Forfeited Assets
Medicare claims
Pension Benefit Guarantee Corporation
Student Loans
State Department Management of Overseas Property
Defense Inventory Management
Defense Weapons Systems Acquisition
NASA Contract Management
Farm Loan Programs
Superfund Program Management
Federal Transit Administration Grant Management
Department of Energy Contract Management

Three areas added in 1991 and 1992:

Bank Insurance Fund
Managing the Customs Service³
Defense Contract Pricing

One area added in January 1994:

Department of Housing and Urban Development

Seven more areas added in February 1995:

Defense Financial Management
Defense Corporate Information Management (CIMI) Initiative
IRS Financial Management
IRS Filing Fraud
IRS Tax Systems Modernization (TSM) Initiative
FAA Air Traffic Control Modernization
National Weather Service Modernization

Five areas deleted in February 1995:

Resolution Trust Corporation
Bank Insurance Fund
Pension Benefit Guarantee Corporation
State Department Management of Overseas Property
Federal Transit Administration's Grant Management

ENDNOTES

¹The Office of Management initiated a high-risk program of its own in 1989. The OMB high-risk program continued through fiscal year 1996, and was featured in detailed reports in the President's annual budget. However, OMB now has dropped its high-risk program.

²General Accounting Office, High-Risk Series, *An Overview*, GAO/HR-95-1 (February 1995), p. 7.

³This area was modified in 1995 to focus on Customs Service financial management.

V. NEED FOR A FUNDAMENTAL REVIEW OF FEDERAL PROGRAMS AND STRUCTURES

This report's agency-by-agency survey of management issues catalogs a wide range of serious problems affecting specific programs and activities within those organizations. Taken individually, the committee's findings are cause enough for concern. Taken in the aggregate, they raise even greater concerns. In order to gain a full appreciation of the magnitude of the government's management problems, it is necessary to step back from the individual programs, activities, and agencies and at examine Federal management in a broader context.

THE FEDERAL GOVERNMENT CONSISTS OF A MAZE OF PROGRAMS AND AGENCIES, MANY OF WHICH APPEAR INEFFECTIVE

Over the years, Federal programs and agencies have evolved in an *ad hoc* and random manner with little consideration of how they relate to each other. Individual programs proliferated in response to the real or perceived needs of the moment. This committee's recent report, *Creating A 21st Century Government*, pointed out that there were 1,013 Federal programs in 1985, while today there are 1,390 Federal programs administered by 53 departments and agencies. To support these programs and the bureaucracies that run them, Federal income tax receipts today have grown 13 times higher than they were in 1960.¹

As the agency-by-agency survey findings indicate, numerous Federal activities are chronically ineffective and wasteful. It is unclear, at best, whether many of these activities serve currently valid Federal missions. Legitimate questions have been raised concerning the viability of entire departments, including Commerce, Energy, and Housing and Urban Development. Many other activities that clearly address valid Federal missions are so beset by chronic problems that it is questionable whether they can carry out these missions effectively without fundamental change. One prime example is the Federal Aviation Administration's air traffic control system.

Existing programs and agencies, no matter how inefficient, ineffective or even hopeless they may be, rarely die; nor do they undergo fundamental re-examination and reform. Unfortunately, the far more common response is to tinker at the margins or, worse yet, add more programs and layers of government on top of those that have failed or functioned poorly. Often, the problems are considered so daunting or politically sensitive that they are largely ignored. In this environment, management problems flourish and continue to grow.

DUPLICATION AND OVERLAP ABOUND IN CURRENT FEDERAL ORGANIZATIONS AND PROGRAMS

As one would expect, given the random evolution that has occurred over many decades, the Federal Government of today features massive overlap and duplication in both programs and organizations. The GAO recently analyzed department and agency spending patterns in relation to the 18 budget function classifications that cover the Federal Government's broad mission areas.² A GAO official described the results as follows:

Generally, and not surprisingly, our analysis illustrates that duplication appears to be endemic. Our current environment is a product of an adaptive federal government's response over time to new needs and problems, each of which was reflected in new responsibilities and roles for departments and agencies.³

The essence of the analysis is captured by a table from the GAO report that is reproduced on the next page.⁴ As the GAO official observed, this table paints "a picture of both fragmentation and overlap—some of it intentional."⁵ Among other things, the table shows:

- The income security function involves 15 different Federal departments and agencies.
- The education, employment and social services function involves seven departments and numerous other agencies.
- Federal law enforcement functions are spread out among five departments and four other agencies.
- Most departments participate in a variety of basic functions.
- The Agriculture Department tops the list, participating in 10 different functions.
- On top of the array of departments and major Federal agencies specifically listed on the table, an unspecified number of "other independent agencies" participate in 14 of the 18 functions.

The patchwork quilt that makes up the current Federal structure is illustrated even more dramatically by examining duplication and overlap in major program categories. The following examples are taken from two recent GAO products:⁶

- The Department of Education administers over 200 different education programs, while 30 other Federal agencies administer another 308.

- About 86 programs in nine Federal departments and agencies, accounting for over \$280 million, deal with teacher training. At least 46 programs administered by eight Federal agencies deal with youth development. These programs are funded through earmarked appropriations targeted to similar populations.

- The taxpayers support over 90 early childhood programs in 11 Federal agencies and 20 offices. The Department of Health and Human Services runs 28 of these programs, and the Department of Education runs another 34. Thirteen different programs target disadvantaged children from birth through age 5. Thus, a single disadvantaged child could potentially be eligible for as many as 13 Federal programs.

- Hundreds of Federal programs provide rural development assistance across multiple Federal agencies. The programs are difficult to administer because State and local officials must grapple with varying program regulations. For example, there are 11 different programs in six different Federal agencies that provide assistance for water and sewer projects; each has its own set of regulations.

- Federal food safety programs evolved through as many as 35 laws and are administered by 12 different agencies. Yet, these programs do not effectively protect the public from major food-borne illnesses. The programs lack coherence because their basic structure was created and continues to operate in a piecemeal fashion and in response to specific health threats from particular food products. Not surprisingly, the programs are hampered by inconsistent oversight and enforcement authorities, inefficient use of resources, and ineffective coordination.

- The Federal Government operates 163 separate employment training programs scattered among 15 departments and agencies and 40 interdepartmental offices. Given their size and structure, these programs—which have a total budget of about \$20 billion—are particularly vulnerable to fraud, waste and abuse.

- Federal lands are managed through the National Park Service, Bureau of Land Management, and Fish and Wildlife Service within the Department of the Interior, and the Forest Service within the Department of Agriculture.

- Fourteen different programs within the Department of Agriculture provide food and food-related assistance to about 39 million people, from infants to the elderly, with estimated Federal funding of \$37 billion in fiscal year 1994.

Finally, departments and agencies can undergo fundamental change in their missions but retain obsolete structures. One prime example is the Department of Energy (DOE). The DOE was created in 1977 in the wake of the energy crisis. While energy research, conservation, and policymaking dominated early DOE priorities, weapons production, and now environmental cleanup now account

for most of its budget. New missions in science and industrial competitiveness are now emerging. Notwithstanding the sharp reduction in the arms race and proposed cutbacks in energy and nuclear research funding, DOE still maintains a redundant structure for nuclear weapons work. This structure, which had its origins in the World War II-era Manhattan Project, includes a network of 28 laboratories with a total budget of nearly \$8 billion and 63,000 employees.⁷

In a succinct statement of the basic point to be made from the analyses and examples described above, the Comptroller General observed:

The case for reorganizing the federal government is an easy one to make. Many departments and agencies were created in a different time and in response to problems very different from today's. Many have accumulated responsibilities beyond their original purposes. As new challenges arose or new needs were identified, new programs and responsibilities were added to departments and agencies with insufficient regard to their effects on the overall delivery of services to the public.⁸

A proposed analytical framework for reassessing Federal programs and organizations

This committee's Subcommittee on Government Management, Information, and Technology held a hearing last May on the work of the National Performance Review (NPR).⁹ As discussed in that hearing and elsewhere in this report, the results achieved by the NPR have been disappointing. In the committee's view, one reason for this is that the NPR did not take a sufficiently broad approach to Federal management issues. In this respect, it is similar to many other efforts to reorganize or "reinvent" the Federal Government.

In seeking a more comprehensive and innovative approach, the committee was particularly impressed with the testimony of Mr. Scott Fosler, President of the National Academy of Public Administration, at the May 1995 hearing. Mr. Fosler began by outlining what he described as "a common series of responses" that have been taken by both public and private institutions when they are confronted with pressure for change and restructuring.¹⁰ The responses consist of four phases. The first is "denial"; the second is making incremental adjustments and "patching" problems; the third involves deep, cost-driven cuts and radical "downsizing" of their existing structures and resources. None of these phases tends to yield lasting and positive changes. Instead, such changes come in the fourth and final phase, which Mr. Foster described as follows:

[O]rganizations return to the fundamentals of performance: mission, capacity, and results. Organizations in this stage ask fundamental questions about purpose: What is our mission? Who are our customers? Do we have the right mission and the right customers? What resources, processes, and other capacities are required to produce results with quality, speed, and at least cost? How should we de-

fine our mission given the resources and competencies available to us?

The emphasis on performance in no way ends the concern with cost, or pressure to downsize. But by focusing on what they should do—identifying core purposes and missions, and strengthening their core competencies—organizations have been able to cut costs by:

- abandoning entire missions and lines of business;
- jettisoning marginal or unproductive resources that were not contributing to their basic purposes;
- outsourcing necessary work that can be performed by other organizations better or at less cost; and
- reengineering work processes, often by employing information technology, and thereby sharply reducing the resources required to accomplish core missions.¹¹

Mr. Fosler noted that, taken as a whole, efforts to reorganize and reform the Federal Government have yet to reach this fourth phase. Recognizing the difficulty of adopting such an approach for the “vast and varied institution” that is the Federal Government, he nevertheless proposed a framework for doing just that. This proposed framework requires a comprehensive and zero-based re-evaluation of current Federal programs and structures, applying the following considerations:

- Keep and strengthen those programs which fit a Federal mission and which work, or can be made to work, consolidating programs and eliminating duplication where appropriate, and re-engineering core processes.
- Terminate those programs which do not fit a Federal mission and do not work, or cannot be made to work, or do not work at reasonable cost.
- Privatize or devolve to State or local levels of government programs which work and have value but do not fit a Federal mission.
- Give further consideration to those programs which do not fall clearly into one of the first three categories. Cases requiring special examination include programs and activities that are not working well but might serve a Federal mission if they could be made to work. They also include problems that require some kind of Federal response, but about which too little is known to determine exactly what to do.¹²

CITIZENS COMMISSION FOR A 21ST CENTURY GOVERNMENT

As we approach the 21st Century, with the massive fiscal and management problems facing the Federal Government, there is a growing consensus that the *status quo* cannot continue. The current state of Federal management constitutes a fundamental disservice to the taxpayers as a whole and to all of its citizens who must look to the Federal Government to perform essential services. As the committee’s report on *Creating A 21st Century Government* observed:

[T]he American electorate is demonstrating support for a government smaller in size, scope and cost—yet more efficient and effective in those activities it must perform. The challenge for Congress is to determine the appropriate

role of the Federal Government in our evolving society and to identify the structure and practices that will enable the government to fulfill its missions now and into the next century.

Today, the Federal Government is performing too many functions to deliver them all efficiently and cost effectively. It is critical to refocus government on those essential functions that it must perform and consider whether government should be involved in an activity if it cannot do it well.¹³

The committee report stated that the first step in this process is to consider government reorganization from a broad perspective that goes beyond any single department or agency. Because of the ripple effects caused by reorganizations, the best strategy is to approach the restructuring of the Federal Government in a comprehensive, rather than fragmented way. The second step is to identify core principles to drive and shape government reorganization, and to apply those principles across the programs, functions, and institutions of the Federal Government.¹⁴

Based on these considerations, the committee developed legislation last year entitled the “21st Century Government Act.” This legislation would establish a “Citizens Commission on 21st Century Government.” The Commission would be an independent commission in the legislative branch consisting of 11 members. The Speaker of the House and the Majority Leader of the Senate would each appoint 3 members, and the Minority Leaders of the House and Senate would each appoint 2 members. The Speaker and the Senate Majority Leader, in consultation with the Minority Leaders in each House, would jointly appoint one additional member to chair the Commission. Any citizen, other than a Member of Congress or an elected or appointed executive branch official, could serve on the Commission. The Commission would hold such hearings as it considered appropriate.

The Commission would review and analyze current Federal functions under the following criteria, which follow closely the analytical framework proposed by Mr. Fosler:

- Does the function have clearly defined missions and objectives?
- Do the missions and objectives serve a currently valid and important Federal role?
- Does the current Federal role constitute the most effective and efficient means of achieving the function’s objectives?
- Is the current Federal role the least intrusive means of accomplishing the objectives in terms of individual liberty and principles of federalism?
- Is there a need to enhance Federal performance of the function?

Based on its analysis of Federal functions, the Commission would develop and submit to Congress a comprehensive reorganization and restructuring plan for the executive branch in the form of draft legislation. Among other issues, the Commission’s proposal would address—

- whether the Federal Government should have fewer cabinet departments and, if so, what they should be;

- whether and how similar functions should be consolidated within a single department or agency;
- whether and how common administrative functions should be consolidated within one executive organization;
- whether and how a single cabinet-level White House office should be designated with responsibility for representation and oversight of all independent agencies; and
- whether and how streamlined hierarchical structures could be provided within each department and agency.

The Commission's legislative proposal would be introduced in each House of Congress, considered by congressional committees of jurisdiction under a limited timeframe, and then considered by each House under expedited procedures. The proposal would not be subject to floor amendments.

The proposed "21st Century Government Act" passed the House last year.¹⁵ The committee reiterates its support for this proposal, and believes that its enactment should be one of the first priorities of the 105th Congress.

ENDNOTES

¹ House Committee on Government Reform and Oversight, Second Report, *Creating A 21st Century Government*, 104th Cong, 1st Sess., H.R. Rep. No. 104-434 (December 21, 1995), p. 2.

² See generally, General Accounting Office, *Budget Function Classification: Agency Spending and Personnel Levels for Fiscal Years 1994 and 1995*, GAO/AIMD-95-115FS (April 11, 1995).

³ *Government Restructuring: Identifying Potential Duplication in Federal Missions and Approaches*, GAO/T-AIMD-95-161 (June 7, 1995), p. 2.

⁴ GAO/AIMD-95-115FS, note 2, p. 13.

⁵ GAO/T-AIMD-95-161, note 3, pp. 2-3.

⁶ See General Accounting Office, *Government Reorganization: Issues and Principles*, GAO/T-GGD-AIMD-95-166 (May 17, 1995), and *Program Consolidation: Budgetary Implications and Other Issues*, GAO/T-AIMD-95-145 (May 23, 1995). Both of these products reference numerous other GAO reports and products that document the examples described in the text.

⁷ GAO/T-AIMD-95-145, note 6, pp. 3, 8-9.

⁸ GAO/T-AIMD-95-166, note 6, p. 2.

⁹ Hearing before the Subcommittee on Government Management, Information, and Technology, House Committee on Government Reform and Oversight, *The National Performance Review*, 104th Cong., 1st Sess. (May 2, 1995).

¹⁰ *Id.*, p. 69.

¹¹ *Id.*

¹² *Id.*, p. 70. Mr. Fosler's framework is presented in full at pages 73-75 of the published hearing record.

¹³ House Committee on Government Reform and Oversight, Second Report, note 1, p. 2.

¹⁴ *Id.*, p. 3.

¹⁵ See Title II, subtitle F, of H.R. 2586, 104th Cong., 141 Cong. Rec. 12044 (daily ed., November 9, 1995).

VI. MANAGEMENT PROBLEMS IN FEDERAL DEPARTMENTS AND AGENCIES

Department of Agriculture

OVERVIEW

The U.S. Department of Agriculture (USDA), established in 1862, is the third largest civilian agency in the Federal Government, spending nearly \$58 billion annually and employing 98,277 Federal employees.

The USDA's mission is to regulate commercial agriculture, forestry and food safety, to assist certain groups of low income individuals with obtaining food, and to help residents of depressed rural areas. The USDA administers a variety of agriculture and food programs including direct and guaranteed loans intended to help farmers acquire homes and farm equipment, crop insurance guarantees, the food stamp program, food inspection services, timber sales from U.S. property, and others. In addition, the USDA is responsible for the health and safety of the Nation's food supply.

In 1994, USDA was reorganized pursuant to the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994, Public Law 103-354. As part of this reorganization, several previous agencies were consolidated and/or renamed. For purposes of this section, the following agency changes are relevant: the new Consolidated Farm Service Agency (CFSA) encompasses both the old Agricultural Stabilization and Conservation Service (ASCS) and the farm loan programs of the old the Farmers Home Administration (FmHA); the new Natural Resources Conservation Service (NRCS) encompasses the old Soil Conservation Service (SCS); the new Rural Utilities Service (RUS) encompasses the electric and telephone programs of the old Rural Electrification Administration (REA) and the water and waste facility loan programs of FmHA; the new Rural Housing and Community Development Service (RHCD) encompasses the rural housing and community lending programs formerly administered by FmHA; and the Food and Consumer Services Agency ("FCS") encompasses the old Food and Nutrition Service

CONSOLIDATED FARM SERVICE AGENCY MAKES ILL-ADVISED LOANS AND FAILS TO COLLECT MILLIONS IN DEBTS OWED

Farmer Loan Programs (formerly under FmHA)

CFSA administers loan programs that provide farm credit assistance to individuals and entities who cannot obtain credit elsewhere. As of June 30, 1994, approximately 875,000 borrowers owed CFSA about \$32 billion in direct loans, with an additional \$6.4 billion owed to private lenders that are guaranteed by CFSA.

As of March 31, 1995, CFSA's outstanding principal on active direct and guaranteed farm loans was \$17.8 billion: \$11.9 billion in direct loans (\$5.6 billion held by delinquent borrowers) and \$5.9 billion in guaranteed loans (\$211 million held by delinquent borrowers).¹ Poor loan program management has led to substantial losses:

- Between 1989 and 1995, \$12.4 billion in principal and interest was lost through forgiving direct loan borrowers; \$300 million was lost from forgiving guaranteed loans.

- Between 1989 and 1995, CFSA made \$448 million in additional direct and guaranteed loans to delinquent borrowers.²

CFSA assistance is intended to be temporary, moving farmers toward commercial credit. CFSA incurs a loss on a direct or guaranteed loan when a borrower defaults and the proceeds from selling collateral do not equal the outstanding loan amount plus the costs of acquiring and selling off collateral. Again, the numbers continue:

- Between 1991 and 1994, CFSA lost \$6.3 billion (\$6.1 billion on direct loan forgiven debt; \$200 million through payments to lenders on guaranteed loans), with an additional \$4.8 billion in guaranteed and direct loans held by borrowers unlikely to meet their loan obligations.

- Of the overall \$17.8 billion in guaranteed and direct loans, \$4.6 billion of direct and \$200 million of guaranteed loans were delinquent.³

The problems here are obvious: (1) additional loans are being made to borrowers whose previous delinquent debts were forgiven and to borrowers who are delinquent on existing loans; (2) lenders are allowed to use guaranteed loans to refinance existing customers' debts and to guarantee most of the loans at the maximum rate of 90 percent regardless of risk; (3) loan terms and conditions are rewritten without requiring borrowers to make payments; (4) borrowers' delinquent debts are being forgiven; and (5) farmland sold as collateral does not go to the highest bidder—limiting return and increasing CFSA's holding costs.

Fortunately, the common-sense changes made to USDA's farm lending programs by the Federal Agriculture Improvement Act of 1996 will force USDA to make improvements in the Federal farm lending area through much-needed statutory changes in lending guidelines and collection of delinquent debts.⁴

Loan Resolution Task Force

The Loan Resolution Task Force (LRTF) was established in June 1994 at USDA following testimony in February 1994 by USDA officials declaring they intended to collect every dime that was owed to resolve more than 7,000 delinquent accounts (of which 850 accounts exceeded \$1 million). Nearly 150 persons from Federal, State and county CFSA offices were assigned to the LRTF for a 2-year period. However, the U.S. Department of Agriculture Office of Inspector General (OIG)⁵ was highly critical of the LRTF:

- Management controls were not in place to monitor and track progress being made in resolving the delinquent accounts. As a result, the task force was unable to revise its strategies and timeframes to resolve the delinquent accounts and manage returns to the Government.

- As of December 31, 1994, 855 accounts were delinquent \$1 million or more. As of July 7, 1995, there were 6,115 delinquent accounts, of which 776 were delinquent \$1 million or more.

- OIG's review of 25 delinquent accounts with outstanding indebtedness totaling \$28,044,877 showed resolution through debt settlement (15 by cancellation and 10 by compromise); only

\$621,050 was recovered (2.2 percent of the outstanding indebtedness).

RURAL HOUSING AND COMMUNITY DEVELOPMENT SERVICE (RHCD)
LOAN FUNDS USED IMPROPERLY

RHCD administers rural housing assistance to individuals and entities who cannot obtain credit elsewhere. It includes the Rural Rental Housing (RRH) program.

For fiscal year 1993, OIG studied 285 statistically selected RRH projects to determine if the loan funds were properly used and if the projects complied with the provisions of the loan agreements. The following was found:⁶

- An estimated \$11 million was used for unauthorized or questionable purposes.
- For about 42 percent of the projects reviewed, the borrowers accumulated excess funds in reserve accounts of nearly \$43 million. Loan agreements generally require that any excess be applied to the balance of the loan.
- About 35 percent of the projects continued to receive an interest credit subsidy even though reserve accounts were fully funded and the need for continued subsidies was questionable. An estimated \$5.8 million of unneeded interest credit subsidy was paid annually to borrowers.

For fiscal year 1994, OIG reviewed 13 management companies with 458 projects in 25 States and Puerto Rico. OIG found that 13 management companies misused over \$918,000 in RRH funds, representing approximately 14 percent of the operating and maintenance expenditures for the projects audited. Specifically:

- Management companies charged \$354,000 in unallowable expenses to the projects, including duplicate management expenses, excessive site management fees, improper markups, and miscellaneous charges for personal expenses, holiday parties, bonuses, and gifts.
- Six management companies misused \$524,000 of reserve and tenant security deposit funds, including \$125,000 being used as collateral for a commercial loan.
- An RRH borrower in Indiana submitted fictitious invoices for work never performed, resulting in a \$1.7 million loss.
- The president of a New York real estate management company illegally received over \$913,000 in builders' profits from RRH projects and stole almost \$250,000 from the projects' laundry accounts.
- An RRH borrower in Michigan unlawfully spent \$800,000 from accounts pledged to CFSA.⁷

FOREST SERVICE: BELOW-COST TIMBER SALES

The House Government Operations Committee's 1992 staff report on government management, citing the testimony of the former director of the Congressional Research Service's Natural Resources Division, stated that timber sales from 120 national forests totaled more than \$7 billion over the previous 14 years, with 50 percent being sold at prices lower than what it cost the Government to conduct the sales and construct the \$300 to \$500 million worth of roads into the forests to access the timber.

The 104th Congress, in an attempt to get details about the costs and revenues associated with timber sales, enlisted the assistance of the General Accounting Office (GAO). Specifically, Budget Committee Chairman John Kasich and Resources Committee Chairman Don Young requested that GAO obtain data showing the costs and revenues of management activities being carried out at each of the national forests for fiscal years 1992 through 1995.⁸

However, the Forest Service was unable to provide GAO with revenue and cost data for each of the national forests because of shortcomings in its accounting and financial information systems, a deficiency that has been repeatedly identified and reported by OIG over the past several years.⁹ In other words, the Forest Service cannot actually determine whether there are below-cost timber sales in any particular forest, because they cannot determine the costs and revenues of a particular forest.

The inability of GAO to get the necessary data from the Forest Service is really no surprise. The most recent fiscal year audit (1994) of the Forest Service by OIG found severe deficiencies in their accounting procedures.¹⁰ In brief, the OIG found misstatements of accounts receivable, misstatements of accounts payable, ineffective controls over the gathering and reporting of program performance measures, a lack of total integration of all accounting functions within the ledger, ineffective controls over the quality of field-level data, and inappropriate reimbursable agreements with USDA's Office of the General Counsel.¹¹

One can conclude from this that the Forest Service is poorly managed and that taxpayer dollars are being wasted as a result. Data are so poorly organized that at the current time there is no reliable way for either the Congress or the American taxpayer to know the extent to which "below-cost" timber sales are occurring.

FOOD AND CONSUMER SERVICES (FCS)

Food Stamp Program

The food stamp program is estimated to cost \$26.4 billion in fiscal year 1996 and to provide benefits to an average of 27 million people each month.

A 1992 report by the House Government Operations Committee stated that the program was losing at least \$1 billion dollars per year. The same types of problems identified in 1992 have persisted:¹²

- The coupon-based system is vulnerable to waste and abuse, and there are no reliable data available to precisely determine the full extent of the problem.
- Errors in determining eligibility and benefit levels result in overpayments of \$2 billion per year. Additionally, a large quantity of food stamps are used in trafficking for non-food items, in many cases drugs and guns.
- Forty-two percent of overpayments in 1993 occurred due to caseworker error, the result of large caseloads, high turnover, inadequate training, poor supervision, complexity of regulations, and the difference in eligibility requirements between food stamps and Aid to Families with Dependent Children, which caseworkers also must administer.

- Fifty-eight percent of overpayments in 1993 were caused by a failure to verify information provided by recipients, such as income and household information.
- Retailer authorization by the Food and Consumer Services (FCS) is not sufficient to prevent corrupt retailers from being authorized to redeem food stamps. Additionally, once stores are authorized, the FCS does not adequately monitor them to prevent trafficking in food stamps or other violations, nor does FCS ensure that stores that go out of business have their authorized redemption numbers in the program computer deactivated.
- A considerable number of food stamps are used as a second currency to purchase non-food items. The nature of this abuse combined with the 27 million people receiving benefits precludes any accurate estimate of the amount of trafficking. Loss estimates range from \$100 million to \$3 billion annually.¹³

Political polling with appropriated funds

During an investigation of the USDA's Food and Consumer Services Team Nutrition project and contracts, GAO found a subcontract that was unrelated to the overall prime Team Nutrition contract. This subcontract was with Lake Research, a polling firm run by Celinda Lake, a well-known Democratic pollster. Over a dinner meeting (February 16, 1995) with Ellen Haas, the Under Secretary for Food, Nutrition, and Consumer Services, Celinda Lake was hired to run four focus groups in Topeka, KS, and Indianapolis, IN, the home States of the Chairmen of the House and Senate Agriculture Committees. USDA paid \$33,000 from money appropriated for the food stamp program to gather opinions from people who are registered to vote, voted in the last Presidential election, are between the ages of 30 and 65, and who are white. The opinions of these "swing voters" were sought on food stamp program reforms and changing the name of the food stamp program.

The first report from Celinda Lake summarized the findings from the four focus groups. It referred to "voters," "our side," and the "opposition," and "key members of the Agriculture Committee." USDA employees reviewed the report and eliminated all references to "voters" and other political issues, and in some instances changed the meaning of the report. The final Lake report reflected all of the changes made by USDA to the draft report.

GAO found that:

. . . USDA did not comply with the Federal Acquisition Regulations and the Paperwork Reduction Act and used a flawed methodology that would not allow the contract's stated purpose to be achieved. On the basis of these problems, we believe that USDA exercised questionable judgment in conducting virtually every aspect of this work. It would be a cause for concern if—on the basis of the results of this research—USDA made changes to a program that affects millions of American citizens.¹⁴

GAO made a number of other findings:

- The Lake contract was improperly awarded because it did not go through the competitive bidding process that the Federal Property and Administrative Services Act of 1949 requires;
- The polling conducted by Lake did not comply with the Paperwork Reduction Act, which requires an agency to publish a notice in the *Federal Register* any time it plans to collect information from the public and obtain approval from the Office of Management and Budget;
- The Lake contract was political in nature: it really had nothing to do with legitimate food stamp program research, evidenced by the massive amount of editing done to Lake's report by USDA that actually changed the meaning of the report;
- The sites for the focus groups were selected by personnel in the office of the Under Secretary for Food, Nutrition, and Consumer Services, not by Lake Research;
- USDA political appointees were generally uncooperative during the GAO investigation, as evidenced by the fact that GAO had to ask certain employees the same questions two or three times in order to clear up the inconsistencies; and
- During the course of the investigation, many career employees in FCS expressed concern and fear about possible reprisals for assisting GAO with its investigation. A 27-year veteran of GAO stated that this was the first time this level of concern had been expressed by Federal employees during any GAO investigation in which he had been involved.¹⁵

This kind of action, while not involving a large amount of money, certainly indicates that the current management of FCS is not only misguided, but is also being motivated by factors that have no place in a cabinet-level agency.

MISMANAGING TELECOMMUNICATIONS AND TECHNOLOGY INVESTMENTS AND PERMITTING ABUSE

USDA has failed to achieve savings in the telecommunications area that are easily within reach and also has failed to prevent the abuse of telephone services:

- USDA has hundreds of field office sites with multiple agencies using separate and often redundant telecommunications services. Consolidating equipment at these locations would result in telecommunications savings of as much as \$400,000 to \$800,000 per month;¹⁶
- USDA is not effectively managing its \$100 million annual telecommunications investment. USDA agencies waste millions of dollars each year paying for unnecessary services, equipment and services procured but not utilized, and commercial carrier services costing three times what they would under the FTS 2000 program. These problems exist because the Office of Information Resources Management has not fulfilled its responsibility to manage telecommunications and ensure that resources are properly used, costs are effectively controlled, and Federal requirements are fully met;¹⁷ and
- USDA does not have adequate controls for ensuring that its telephones are used properly. A 4-month review of calls in Washington, DC, alone showed over 600 inappropriate collect calls worth \$2,600 accepted by USDA from individuals at correctional institu-

tions (many of these calls were routed long-distance to phone sex and adult party lines in the Dominican Republic). Additionally, there was one instance of hackers breaking into USDA's telephone system through a contractor's voice mail equipment, resulting in \$40,000 to \$50,000 in unreimbursed international long-distance calls being billed to USDA.¹⁸

Computer purchases mismanaged

There are several shortcomings associated with USDA computer purchases within CFSA and the Forest Service. However, the Clinton administration has been unsuccessful in correcting any of these deficiencies and has, in fact, made several of them worse.

In April 1993, USDA established a consolidated, multi-agency program called Info Share to improve operations and delivery of services to customers of the farm service and rural development agencies. In August 1993, USDA received a whopping \$2.6 billion delegation of procurement authority from the General Services Administration to spend on computer hardware and software and telecommunications equipment during fiscal years 1994 through 1999.

However, there have been major problems with this initiative, starting with the overall inability of USDA to engage in the business process reengineering (BPR) necessary to implement such a major undertaking. GAO states:

USDA is not performing the key BPR steps necessary to reinvent the farm service and rural development agencies. First, senior USDA officials are not directly involved in managing the BPR effort and directing the change. Second, USDA is not adequately analyzing the current business processes and establishing improvement goals. Third, USDA is not providing the training and expertise necessary to guide BPR efforts. Instead of following these steps, *USDA is managing Info Share principally as a vehicle to acquire new information technology rather than as an opportunity to fundamentally improve the way the farm service and rural development agencies do business. Accordingly, the Department's plan to acquire new technology before completing its BPR effort is likely to result in USDA spending hundreds of millions of dollars to further automate the current way these agencies do business.* At the same time, while USDA may need to replace some of its aging technology as it reengineers business processes, the Department has not identified its needs for this interim period and the most cost effective option for meeting these needs.¹⁹ (emphasis added)

For fiscal years 1993 and 1994, Info Share related expenditures paid by partner agencies were \$38,018,210 and \$44,375,175 higher than reported by USDA as the direct costs of Info Share.²⁰ Other problems persist, including lack of coordination and communication, inadequate staffing, inability to monitor progress, improper contract awards, and security vulnerabilities.²¹

In December 1995, USDA announced a "refocusing" of the Info Share initiative, with the new role of the Info Share staff to be merely a facilitator for USDA agencies to provide expertise on in-

formation technologies acquired separately by each agency. In other words, Info Share was canceled after having consumed hundreds of millions of dollars with no apparent results. According to the OIG, this approach is destined for failure:

We have found that the partner agency views and expectations for the Info Share program do not agree with the Info Share program manager's views. Also, partner agencies have moved forward on [information resource management] and BPR projects without coordinating with the Info Share staff. . . . In addition, we found that the Info Share staff and [the Office of Information Resources Management] have duplicative responsibilities and objectives; there is confusion among the partner agencies, . . . minimal efforts have been made to record and save outcomes of the prior Info Share program's major projects and strategies and action has not been taken on many of the recommendations made by OIG.²²

Not only has the Clinton administration been unsuccessful in making any measurable improvements in USDA's ability to actually execute an information technology purchase that makes sense, is cost effective, and was planned with an agency's needs and customers in mind, it has actually exacerbated the problem by allowing Info Share to be disbanded, which will certainly result in more of the same: hundreds of millions of dollars spent on outdated hardware and software, with possibly no ability for multiple-agency use.

USDA field office consolidation

USDA's field office consolidation and business modernization effort has once again been placed under the leadership of the agencies through USDA's Food and Agriculture Council. The realignment was described by USDA's Assistant Secretary for Administration as an effort to move implementation activities, business process reengineering, and change management efforts closer to the field delivery system. A recent GAO review of the agencies' plans revealed new budgets and time schedules for telecommunications, technology, and support services acquisitions. However, USDA has not yet completed the fundamental business analyses needed to make good technology investments and has not been able to produce any studies that show how these acquisitions will result in measurable improvements in the delivery of services or reductions in redundant administrative management processes.

ENDNOTES

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²¹ Department of Agriculture, Office of Inspector General, *Monitoring of the Info-Share Program*, Report No. A/50530-1-HQ (January 1995), p. ii.

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Department of Commerce

OVERVIEW

The Department of Commerce's (DOC) mission is to ensure and enhance economic opportunities for all Americans by working in partnership with businesses, communities, and workers. It promotes American competitiveness in the world economy, administers programs to prevent unfair foreign trade competition, and provides research and support for business and government planners. In addition, through the National Oceanic and Atmospheric Administration (NOAA), the Department of Commerce runs the National Weather Service and is responsible for studying and monitoring the planet's physical environment and oceanic resources. The Department of Commerce spends nearly \$3.5 billion dollars a year and employs nearly 35,000 Federal employees.

The most serious management problems at DOC include the planning, by the Bureau of the Census, for the year 2000 decennial census, the National Weather Service's Advanced Weather Interactive Processing System costing taxpayers \$175 million more than the original estimate of \$350 million, abuses of government-issued credit cards, and poor management of travel expenses.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION (NOAA)

*Maintaining the NOAA fleet is unnecessary and more expensive than available alternatives*¹

The National Oceanic and Atmospheric Administration (NOAA) owned and operated fleet should be decommissioned and NOAA should contract with the private sector and increase coordination with other vessels for its research and other needs. Compared to modernizing the fleet, this would be cheaper and at least equivalent to the support currently provided to NOAA scientists.

There is no doubt that the Federal Government needs access to hydrographic services, updated nautical maps and charts, research vessels and the other services available through NOAA's fleet of 25 ships (18 of which were active in fiscal year 1993 and 1994). Yet the fleet is reaching the end of its useful life. Rather than modernizing it, the fleet should be decommissioned.

There are a number of alternatives to accomplish this objective which NOAA should explore. The Office of Inspector General has found that with proper planning, NOAA can transition from government-owned vessels to outsourcing. Private contractors can meet NOAA's hydrographic and fishery research requirements immediately. Specialized research vessels that remain in-house, if any, can be operated by a contractor or an academic institution.

Further, NOAA could coordinate with University-National Oceanographic Laboratory System (UNOLS) vessels, which are part of a cooperative effort between the Navy, the National Science Foundation, and 58 academic institutions. The purpose of UNOLS is to coordinate scheduling and access to the research vessels that

comprise its fleet. The cost of operating the UNOLS fleet of 26 ships in 1995 was \$50 million.

By contrast, the Inspector General conducted an analysis of the cost to operate NOAA vessels. Not only are NOAA vessels more expensive than UNOLS vessels, but the OIG found that NOAA's in-house costs average more than \$21,000/day per ship.²

Most vessels in the NOAA fleet were built in the early to mid-1960's. Concerned over the aging fleet, Congress passed the NOAA Fleet Modernization Act of 1990, which directed NOAA to propose a plan within 18 months for fleet modernization. In 1993—over a year behind schedule—NOAA proposed a \$1.9 billion modernization plan but failed to request money to implement it. In 1995, NOAA floated a draft revision to the modernization plan which would have brought the cost down to \$1 billion. This year, NOAA is working on a “revision to the revision.”

In summary, the time for modernizing NOAA's aging fleet is long passed. Because cost-effective alternatives are available, maintaining the NOAA fleet is not necessary for NOAA to fulfill its mission. Further efforts to modernize the fleet will waste millions of taxpayer dollars.

*Advanced Weather Interactive Processing System (AWIPS) behind schedule and over budget*³

The Advanced Weather Interactive Processing System (AWIPS) is a critical component of the National Weather Service's modernization effort. However, this program has been plagued by delays and cost overruns.

According to the Department of Commerce Office of Inspector General, “In 1985, NOAA estimated that the National Weather Service's modernization program (AWIPS) would cost \$350 million and be completed in 1995. As of 1995, the NOAA estimate had risen to \$525 million, with a 1999 completion date. We believe that AWIPS will probably cost over \$625 million and take nearly twice as long as originally planned.”⁴

The Department of Commerce testified before the House Science Committee in early Spring 1996, and indicated that the department could meet the \$525 million estimate for AWIPS completion. Only a month later, the department reversed itself and informed the Science Committee that it would *not* be able to stay within the estimate.

The Commerce Department appropriations bill passed by the House on July 26, 1996 caps the total amount for completion of AWIPS at \$525 million.⁵

Further, NOAA has made AWIPS availability a condition for closing National Weather Service field offices, which diminishes the cost savings expected from the entire modernization effort. This is a waste of taxpayer dollars because existing systems can sustain operations without compromising services. Therefore, office closures can proceed even if AWIPS is not yet available.⁶

BUREAU OF THE CENSUS

The Bureau of the Census has devoted inadequate staff and resources to integrating the planning of the decennial census for the year 2000, and failure to address various policy issues regarding

reliance on Federal administrative records is likely to delay completion of census results.

Managerial Disorganization Endangers Decennial Census

The Bureau of the Census neglected to create a permanent position of Director of the Decennial Census for the year 2000 until November 1994. This position has no permanent staff, budget or offices and no authority to direct actions of other divisions of the Census Bureau to carry out the upcoming census.⁷

The decennial census is a tremendous undertaking that requires years of planning and development to achieve effective implementation. Top managers and officials at the Bureau of the Census have not given adequate attention to the management of their organization in a way that will optimize agency and employee productivity. In hearings held in October 1995 before the Committee on Government Reform and Oversight, the Inspector General said the Bureau lacked an effective organization for planning and implementing the census for the year 2000. Specifically, the IG charged that the Bureau lacked a full-time staff assigned to leading, directing, and integrating both planning and implementation. The Bureau's decennial planning and implementation are highly matrixed, with functions distributed across many divisions. According to the IG, progress is difficult because the work is produced by numerous, narrowly focused units and is not incorporated into a cohesive design.

During the period the IG evaluated, the Bureau indicated that it would reorganize after the final design of the census was finalized in December 1995. However, as of August 1, 1996, the IG indicated that the Bureau still has not responded to the management and organizational concerns. Further delay will adversely impact the ability of the Bureau to effectively implement activities leading up to the decennial census in the year 2000.

Overlooking privacy concerns and statistical over-counting

In preparation for the decennial census for the year 2000, the Bureau is planning to tap into the data bases of other Federal agencies, such as the IRS and Social Security Administration, to supplement the count of nonresponding households and compile missing responses. Unfortunately, the Census Bureau does not have agreements with other Federal agencies to obtain this data, nor has it addressed vital privacy concerns associated with its access to confidential files without a citizen's consent. In addition, the Bureau has not resolved concerns regarding how it would avoid over-counting individuals residing in "nonresponding" households.

The Bureau says it is calling for the extensive use of administrative records to support the goals of a more complete enumeration with less differential in the results and lower costs. Unfortunately, the data bases that the Bureau wishes to examine contain confidential information to which it is not necessarily entitled. Also, those data bases have been developed in varying formats and for different needs and purposes. The data from the Internal Revenue Service will not mesh seamlessly with that of the Social Security Administration or Aid to Families with Dependent Children (AFDC).

The Bureau contends that use of administrative records is necessary to reduce its work load before beginning the followup operation on nonresponding households. The Bureau believes that by using this additional data it can complete missing information from approximately 5 percent of the households that do not respond to the census questionnaire. It also claims that its use of administrative records is needed to augment the two sampling procedures that the Bureau intends to implement during the 2000 Census. The use of sampling, even without administrative records, has been found by the committee to be problematic for purposes of apportionment as the Constitution mandates.⁸ While these problems are addressed in a separate committee report, they include issues with the method's accuracy, subjectivity, and constitutionality.

DEPARTMENTAL ADMINISTRATION

Abuse of Government-issued credit cards and poor management of travel expenses continues⁹

In 1992, the Department of Commerce Office of Inspector General (OIG) inspected the use by Department employees of the Government-issued Diner's Club charge card. The Inspector General found that employees had misused the card for personal purchases and failed to pay charges in a timely manner, and supervisors failed to monitor or curb card abuse. The contract with Diner's Club expired in late 1993, and a new contract with American Express took effect on November 30, 1993.

In 1995, the OIG audited the use of Government-issued American Express cards, and identified numerous instances of card misuse by employees. Further, the Department of Commerce has not taken adequate action to collect payment of outstanding travel advances from advisors or consultants who traveled on Department business at Department expense.

The rules for use of Government-issued American Express cards are explicit. Use is limited to expenses incurred for officially authorized Government travel. Automatic teller machine (ATM) cash advances and purchases made in retail stores are limited to official travel business. Charge card bills are to be paid in full on or before the next statement billing date, and employees are required to make proper and timely payments for each financial obligation. Further, employee card holders are required to sign a statement attesting to the fact that they have read and understand policies and procedures related to the use of the American Express charge card.

The Department of Commerce Office of Inspector General completed the report, "Departmental Travel Expenses Need Better Control and Oversight" on August 18, 1995. That report reviewed American Express card activity at just four Commerce agencies (Census Bureau, International Trade Administration, National Oceanic and Atmospheric Administration, and the Office of the Secretary) and identified 293 employees with delinquent accounts (60 days or more past due) and 567 employees who "appeared to have used the card for personal charges or questionable ATM advances . . . [including] purchases of liquor, jewelry, flowers, books and music; and payment of computer on-line service fees and automobile insurance."¹⁰ The OIG cited lack of management and over-

sight by Commerce Department agencies as a primary reason for the abuse.

Managers in the Department's agencies are responsible for designating employees to serve as "coordinators" to administer the charge card program. Coordinators are responsible for monitoring card activity and reporting suspected misuse to the appropriate bureau manager. The OIG found that coordinators were unable to provide an explanation of various delinquent accounts or otherwise inappropriate use of the charge cards, in part due to the overwhelming number of card holders. In the August 1995 report, the OIG stated that "the NOAA coordinator had difficulty responding to our request because she is the only one who actually reviews charge card use by the 5,000 to 6,000 card holders in NOAA."¹¹

*Small purchase and bankcard programs lack oversight*¹²

Commerce employees have been encouraged to use bankcards, instead of the small purchase system, to acquire supplies and services costing less than \$25,000. The objective is to reduce overhead and therefore the overall cost of small purchases. However, the program lacks adequate internal controls and management oversight. The bankcard program is not saving money, and indeed, may be costing money.

The value of purchases made under the bankcard program, through which bankcards are used for office purchases, rose from \$30 million in fiscal year 1993 to \$47 million in fiscal year 1994.¹³ From fiscal year 1991 through fiscal year 1995, the amount expended per Department full-time equivalent employees (FTE) increased by 67 percent—from \$3,470 to \$5,791.¹⁴ This steep increase in costs raises serious questions about the management and oversight of the bankcard program.

Further, because data is often not segregated by bureau, individual bureau trends are impossible to determine. Commerce agencies that do maintain data use varying collation and retrieval methods, making direct comparisons difficult.

*Commerce agencies are wasting money on unnecessary facilities*¹⁵

There are a number of examples where Commerce Department agencies, in particular the NOAA and the National Institute of Standards and Technology (NIST), are wasting taxpayer dollars on office space, laboratory space, or facilities they do not need.

NIST, for example, operates two large laboratory facilities—one in Gaithersburg, MD and one in Boulder, CO. As part of a 10-year, \$450 million Capital Improvements Facilities Plan (CIFP), NIST has proposed constructing advanced technology laboratory space at the Boulder facility. However, because the need for advanced technology space in Boulder will be limited, the agency should consolidate all plans for an advanced technology laboratory in Gaithersburg.¹⁶

Further, with respect to the Gaithersburg portion of the CIFP, the Commerce OIG has reported that NIST will waste \$31 million over 10 years on unnecessary leased space. NIST leased this space "to provide transition space to accommodate NIST staff during the renovation of the chemistry laboratory and other lab facilities. However, agency officials later decided to build a new chemistry

lab and have postponed other renovations for some years. Therefore, we do not believe that this leased space is now needed.”¹⁷

The OIG also has found that NOAA does not need to construct two new facilities: (1) a building near Juneau, Alaska, projected to cost \$43.5 million, that would consolidate National Marine Fisheries Service activities, and (2) the Lafayette research center, a laboratory on a university campus in Louisiana with construction costs of \$12.5 million, equipment costs of \$4 million, and annual operating costs of up to \$5.5 million. NOAA’s own May 1995 laboratory review has confirmed that the Lafayette facility is unnecessary.

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¹¹ *Id.*

¹² Department of Commerce, Office of Inspector General, Semi-annual Report to Congress (March 1996), p. 72.

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¹⁴ Department Of Commerce, Office of Inspector General, Semi-annual Report to Congress (March 1996), p. 72.

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Department of Defense

OVERVIEW

The Department of Defense (DOD) employs 1.4 million active duty personnel in the Navy, Army, Air Force, and Marine Corps, another 841,000 civilians, and an additional 931,000 members of the various reserve components to defend the security of the Unit-

ed States, uphold the national interest, and safeguard internal security. The Department of Defense spends approximately \$290 billion a year.

The most serious management problems at the Department of Defense involve contract and inventory management, and overpayments and inadequate financial accountability. Problems with contract and inventory management are a major focus of GAO's "High Risk" work.

As described hereafter, DOD has fundamental management problems that exist in the following areas: (1) information technology; (2) information systems security; (3) defense financial management; and (4) environmental compliance. Whatever the amount of Defense spending, resources can be saved by improving management practices at the Department and eliminating costly and duplicative programs and methods.

INFORMATION TECHNOLOGY

Defense mismanagement of information technology

Today the Department of Defense (DOD) faces huge challenges in effectively managing its diverse operations as it downsizes its forces and activities. Trimming operational support costs by designing more efficient work processes, integrating essential data systems, and automating more program and administrative operations is essential to achieving productivity gains.¹

Today's sophisticated and complex weapons and command, control and communication (C3) systems are highly dependent on the ability of their computers and software to work reliably. DOD, however, is not effectively managing the development and support of computer software for administrative; command, control and communications; and weapons systems. Software information technology and computer resources are critical to the success of DOD missions, yet software problems have continually plagued DOD over the past several years. It is estimated that 7 out of 10 major systems in development today are encountering software problems. Furthermore, virtually every C3 and administrative system that the General Accounting Office has reviewed disclosed significant software problems. These problems have caused significant cost overruns and performance deficiencies, which resulted in the systems often not meeting DOD's needs. DOD has reported spending over \$9 billion annually for information systems and technology. Given DOD's increasing dependence on computers, information technology, and problems encountered in developing and supporting software intensive systems, improved DOD management is imperative.²

Congressional directives to reform information technology

In an attempt to improve management within the department before acquiring expensive new information technology systems, the Information Technology Management Reform Act of 1996 was included in the National Defense Authorization Act of 1996 as a bipartisan measure to gain the support of Congress, the Department of Defense (DOD), and the administration for solving some critical aspects of the mismanagement of information technology at DOD.

Only with the continuing support of all the parties involved in this legislation can we expect to see significant cost savings, efficiency, and improved management of DOD's information technology systems.

The Information Technology Management Reform Act of 1996 is intended to enable agencies to acquire information technology faster and for less money. The act establishes a Chief Information Officer (CIO) in each of the executive agencies, including Defense, and requires agencies to change the way they do business before making investments in information technology. The CIO's will serve as senior information technology managers to ensure that performance measures are applied and used, and expenditures conform to budget and program management decisions. Each agency is held accountable for the results of its information technology investments.

The Office of Management and Budget (OMB) will be responsible for holding agencies accountable for poor performance through the budget process. The Director of OMB is responsible for developing guidance for, and ensuring there is a process that analyzes and tracks the risk and results of all major information technology investments consistent with the Government Performance and Results Act and the Paperwork Reduction Act.³ This provision will improve management initiatives by encouraging the use of performance and results-based management by agencies in making decisions regarding the acquisition and administration of information technology systems.⁴

CONTRACT MANAGEMENT

Defense contract management is in disarray

The Department of Defense (DOD) spends the most money of any Federal Government agency through contracts with private companies. Yet the Defense Department also wastes enormous amounts of this money by failing to manage its finances properly. Major DOD financial management problems include failing to track contractor payments and overpaying contractors.

The Defense Department has major problems tracking its finances. In October 1994, the General Accounting Office reported that DOD had at least \$24.8 billion of payments which could not be properly accounted for.⁵ This poor job of financial management often causes payments to be made where they are not legitimate, and conversely, often causes payments not to be made when the payments are legitimate. This poor financial management system also makes it difficult for Congress to track the effectiveness of its appropriations to DOD, and for DOD to track the true cost of the items it buys.

Because of the poor financial tracking, DOD often significantly overpays its contractors. GAO reports that during fiscal year 1994, DOD overpaid an estimated \$746 million to contractors.⁶ Furthermore, the DOD accounting systems were so inadequate that they detected very few of these overpayments—the contractors themselves reported virtually all of these overpayments. If honest DOD contractors returned \$746 million dollars in overpayments which DOD did not detect, many millions more may have gone unreported

by less scrupulous contractors. Overpayments cost the Government thousands of dollars in interest each day. Underpayments are also costly as DOD is required to pay interest on valid invoices that are paid late.⁷

Obviously, this loose DOD financial management system is vulnerable to waste and fraud. One former naval supply officer simply established a fictitious company and billed the Government for \$3 million over almost 4 years for items that were never delivered. The financial management system did not discover that these items had never been delivered. He was only caught when he invoiced items for delivery to a decommissioned ship—had he not done this, it is likely that he would still be receiving DOD payments for nothing.⁸

These major financial management problems need to be corrected, and Congress is taking steps to correct them. The Federal Acquisition Reform Act of 1996, enacted in this Congress, simplifies the contract management process and reduces regulations which make it unnecessarily complex. This will help simplify DOD's financial management. Also, Congress continues to hold oversight hearings and inquiries into DOD financial management, and through this oversight Congress continues to help correct these problems.

INFORMATION SYSTEMS SECURITY

Information security risks at Department of Defense

The Department of Defense's (DOD) computer systems are put at risk by unauthorized access and tampering every day. The Department is depending more and more on high-performance computers linked together in a vast collection of networks, many of which are connected to the Internet. The Defense Department estimates that as many as 250,000 "attacks" may have occurred last year alone. Equally worrisome are the Defense Information Systems Agency's (DISA) internal tests results; in assessing vulnerabilities, DISA attacked and successfully penetrated Defense systems 65 percent of the time.⁹

Hackers have been responsible for stealing and destroying sensitive data and software. They have installed "back doors" into computer systems which allow them to regain entry into Defense systems. They have "crashed" entire systems and networks, denying computer service to authorized users. In the Air Force's premier command and control research facility in Rome, two hackers attacked the facility's computer systems over 150 times. During the attacks, the hackers stole sensitive air tasking order research data. In the Rome case, the Air Force Information Warfare Center estimated that the attack on the Rome lab alone cost the Government over half a million dollars.¹⁰ Even more critical than the cost and disruption caused by these attacks is the potential threat to national security. Computer attacks are capable of disrupting communications, stealing sensitive information, and threatening our ability to execute secure military objectives.

According to the General Accounting Office, many factors combine to make information systems security a huge challenge for the Defense Department: the vast size of its information structure, its

reliance on computer systems and increasing amounts of sensitive information, rapid growth of the Internet, and increasing skills among hackers coupled with technological advances in their tools and methods of attack.¹¹

A 1996 GAO report on Information Security at the Department of Defense concluded that Defense's policies relating to computer systems attacks are outdated and inconsistent. They do not set standards or require actions for important security activities, such as periodic vulnerability assessments, internal reporting of attacks, correction of known vulnerabilities, and damage assessments. Computer users throughout the Department are often unaware of fundamental security practices, such as using sound passwords and protecting them.¹²

The fact that these vital security measures are absent at the Department signifies a need for Defense to implement aggressive measures to detect systems attacks, and to prioritize its needs in information security protection. Top management at DOD needs to ensure that sufficient resources are devoted to information security and that corrective measures are successfully implemented.

DEFENSE FINANCIAL MANAGEMENT

During 1995, articles in the national press¹³ and congressional hearings focused the Nation's attention on shortcomings in financial management throughout the Department of Defense (DOD). The Committee on Government Reform and Oversight Subcommittee on Government Management, Information, and Technology, concerned because problems in financial management inflate administrative costs and leave the department vulnerable to fraud, waste, and abuse, held a hearing on November 14, 1995, to examine how the financial management problems were affecting the DOD's reporting of financial information.

DOD cannot produce reliable financial information and is reporting inaccurate data. Because of its poor accounting systems and lack of sound internal management controls over the accuracy of data input, it has been unable to comply with the requirements of the Chief Financial Officers (CFO) Act of 1990 and is unlikely to be able to comply with the more comprehensive requirements of the Government Management Reform Act (GMRA). The GMRA requires audited financial statements for the entire department for fiscal year 1996, and government wide audited financial statements for fiscal year 1997.

Under GMRA, the DOD is required to produce financial statements, have them audited by an independent auditor, the General Accounting Office, the agency Inspector General, or an independent public accounting firm, and get an opinion from the auditor on the statements. There are two kinds of opinions, qualified or unqualified. The best is an unqualified opinion. A disclaimer of opinion means that the auditor cannot verify that the financial statements are accurate.

The DOD has 27 entities (departments, agencies, corps, and funds) in all, although typically only about 6 are audited each year. Of the six entities within DOD audited for fiscal year 1994, four received disclaimers, one received a qualified opinion, and only one, a relatively minor trust fund, obtained an unqualified opinion.¹⁴

Since the early 1990's, the DOD has been getting disclaimers of opinion on all but a few minor trust funds.¹⁵

The CFO Act required an annual audit of only the financial statements of trust and revolving funds such as the Defense Business Operations Fund (DBOF). The CFO Act also called for several agencies to have annual audits as part of a pilot project. The Army and the Air Force were pilot agencies and have gained experience preparing financial statements and getting audit feedback since 1992. However, the Army, the Air Force and DBOF are still unable to get an opinion, even a qualified one, on their financial statements, because records are missing or inadequate.

Even the entities that have been audited for some years, such as the DBOF, the Army, and the Air Force, have never received anything better than a disclaimer of opinion. The Department of Defense appears to be finding it difficult, if not impossible, to improve its financial management to the point where reliable financial information can be used to produce auditable financial statements. As of the fiscal year 1995 reports,¹⁶ the Army, the Air Force and DBOF still have deficient internal controls and inadequate accounting and financial information systems. The Navy lacks even basic internal controls and produces financial reports that are grossly inaccurate.

The committee continues to urge the DOD to upgrade and modernize its accounting systems and establish a sound system of internal controls to ensure that errors prevented or detected and corrected quickly. These steps will improve the accuracy of the financial information produced and lead to financial statements that offer a reliable assessment of DOD's financial situation.

DEPARTMENT OF DEFENSE INVENTORY MANAGEMENT

Keeping the wrong items in the wrong place at the wrong time

The Department of Defense (DOD) maintains a large inventory of supplies and equipment for peacetime and wartime usage. In fact, DOD's inventory is almost twice as large as necessary because it includes large amounts of excess and unneeded items. According to the General Accounting Office, DOD ". . . does not have adequate oversight of its inventory, financial accountability remains weak, requirements continue to be overstated, and DOD can be more aggressive in implementing modern commercial practices."¹⁷ All of these problems add up to tens of billions of dollars of unnecessary and nonproductive defense costs each year.

DOD stores about \$36 billion of unneeded inventory, which is almost half the total DOD inventory of \$77 billion, according to GAO.¹⁸ This excessive inventory has been caused by a number of factors. First, DOD has downsized significantly, yet it has not significantly reduced its inventory. There is no need to maintain the same large inventory for a smaller force. Second, DOD has retired many weapons systems in the last few years, yet they continue to keep spare parts and other items for these systems. Third, DOD lacks an effective inventory management system, so they cannot determine what items they have, what items they truly need, and what items are extra. And fourth, DOD consistently overestimates its future needs, resulting in excessive inventories. All of these fac-

tors combine to make an inventory far in excess of DOD's legitimate needs.

DOD needs to adopt modern inventory management techniques and tools, but they have not made this a priority. Modern companies rely on an accurate inventory control system, rapid procurements, and rapid transportation to reduce inventories and the high storage costs they entail. DOD, however, still uses highly centralized and inefficient processes of inventory management. Large, centralized, and inefficient storage centers stockpile large numbers of items because they fear it could be years before they could staff a procurement to obtain replacement items. Field users stockpile items and overestimate their requirements because they distrust the storage centers and cannot tolerate long transportation delays. And procurement officials routinely overbuy items because they fear delays and problems if they wait for later reprocurments. Many of these problems would be solved by implementing modern inventory management techniques readily available in the private sector.

Congress has encouraged DOD to correct these problems and has taken steps to help DOD in correcting them. By passing the Federal Acquisition Reform Act of 1996, Congress made the process of procuring items significantly easier. This will help reduce the "lag time" between when an item is needed and when it is procured, and thus it will help to reduce the number of spares needed to cover the "lag time." Congress has also required DOD to consider and test best inventory practices such as inventory consolidation and reduction, prime vendor delivery, and logistics outsourcing.¹⁹ If DOD would adopt the efficient inventory management processes advocated by Congress, these improvements would virtually solve the excess inventory problem.

DEPARTMENT OF DEFENSE RESOURCE MANAGEMENT FAILURE

DOD wastes resources on the wrong missions

Most Americans appreciate that the primary mission of the Department of Defense is to defend America and American interests against armed attacks. Americans want a military strong enough to defend them against attack today and in the future. Unfortunately, the current administration does not appreciate the mission of DOD, and consequently, they have squandered precious resources on the wrong missions. Despite congressional concerns, the administration's mismanagement of DOD resources threatens to open serious holes in the defenses of America and her allies.

In the post-cold war world, America faces many new threats from a variety of nations employing a multitude of tactics and technology. Clearly, DOD must adapt to these new post-cold war threats with innovative strategies, tactics, technologies, force structures, and equipment. Although the administration's national military strategy is to be able to fight two major regional contingencies simultaneously, they have neither developed the force structure nor allocated the resources to do this. This serious lack of capability to implement our strategy is becoming apparent in both short term and long term effects on our military units.

In the short term, an inadequate military force structure is being stretched to its limits just to meet its peacetime requirements. Due to many peacekeeping commitments, our military faces many peacetime deployments for long periods of time, such as in Bosnia, Somalia, Iraq and the Middle East. Many military personnel must spend months away from their families on long deployments, only to deploy again soon after returning home because there simply are not any other personnel to take their places. The high cost of these deployments add to the already high costs of training exercises to keep our armed forces prepared for battle at any moment. The administration has neglected to budget even for routine training necessary for the upkeep of our forces, much less the costly deployments of U.S. forces. In the short term, the administration's budget has led to resource shortfalls as an overstretched military tries to maintain its numerous peacetime commitments.

In order to stem short term problems, the administration has jeopardized modernization of the military. They have underfunded the development of future DOD systems and other modernization efforts by billions of dollars to subsidize current initiatives. The administration has consistently underestimated the cost of future modernization (by \$150 billion in fiscal year 1994),²⁰ and it has neglected to properly allocate resources to future modernization. GAO found that in the fiscal year 1996 DOD budget request, “. . . \$27 billion in planned weapon system modernization programs have been eliminated, reduced, or deferred to the year 2000 and beyond.”²¹ Unless the administration restores the priority of defense modernization, our military may soon face a technologically and numerically superior foe. At that time, as at the time of our entry into World War II, the cost of modernization will not only be measured in the hundreds of billions of dollars; it will also be measured in terms of human casualties and fatalities.

The administration failed to manage resources for both short term and long term defense priorities. They have underallocated the forces and resources necessary for their national military strategy of simultaneously fighting two major regional contingencies, with the result that our military is today overstretched to accomplish its stated mission. Mismanagement of resources causes a serious lack of confidence in Congress in the administration's defense planning, and it provides a growing confidence to the foreign enemies of America.

DEFENSE EMPLOYEE RELOCATION AND TRAVEL MANAGEMENT

Making employee relocation and travel less traumatic and expensive

The Department of Defense (DOD) requires considerable relocation and travel of its many employees every year. However, DOD manages this process with cumbersome regulations and needless administrative red tape, which make travel and relocation traumatic for the employee and expensive for the Government. Congress is now considering legislation to make Federal employee relocation and travel more efficient and less expensive.

By any standard, DOD spends an enormous amount on employee relocation and travel. The General Accounting Office determined that DOD spent about \$3.5 billion in fiscal year 1993 on employee

relocation and travel.²² Despite spending this huge amount, arcane regulations still make relocation and travel difficult and expensive for DOD employees. An example of this is the Federal travel regulation requiring employees to list each long distance call made while traveling for the Government and to certify that each call was made for official business. This regulation may have been warranted when it was first written in 1939 and long distance calls were very expensive, but the regulation is cumbersome and counterproductive today. Today, certifying these phone calls often costs more than the phone calls themselves. The Federal travel regulations are full of such archaic and arcane rules which drive costs up and frustrate employees.

On top of the huge spending directly on employee relocation and travel, DOD also spends a much larger amount than the private sector on the administrative processing of employee relocation and travel. A typical private sector travel voucher is simple and requires about \$15 in labor costs to complete, while completing the complex Government travel voucher costs up to \$123 in labor costs.²³ Also, the private sector typically audits a voucher for errors prior to its payment. DOD audits the voucher after its payment, requiring many extra steps to revise the payment and possibly recoup improper payments if errors are discovered. The GAO demonstrated that DOD post-payment audits are conducted in 100 percent of expense reports while in the private sector, they are audited at random. DOD travel regulations are 1,357 pages long, while private sector large company's regulations ranged from two to 11 pages and DOD has 700 travel processing centers compared to one in each of the two large firms studied by the GAO.²⁴ The GAO also suggested that additional administrative costs of preparing, processing, and auditing travel vouchers add about \$500 million to the already enormous direct costs of DOD employee relocation and travel.²⁵

Fortunately, Congress is finalizing legislation to improve the employee relocation and travel system governmentwide. H.R. 3637 would simplify travel vouchers, provide incentives for efficient travel practices, and eliminate arcane regulations which unnecessarily drive up complexity and costs. S. 1745, the Senate version of the National Defense Authorization Act for fiscal year 1997, includes similar language. It is expected that the minor differences between these two bills will be resolved, and the language will be included as part of the final conference agreement on the National Defense Authorization Act for fiscal year 1997.

The GAO estimates that by making the Government relocation and travel system more like that of the private sector, Defense-wide annual savings could reach \$875 million.²⁶ These reforms will at the same time make relocation and travel more user friendly for DOD employees and, therefore, truly represent a "win-win" situation for the taxpayer, the DOD employee, and the Federal budget.

ENDNOTES

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³ The National Defense Authorization Act of 1996 (Public Law 104–106, Division E).

⁴ Department of Defense, Office of Inspector General Report, Semiannual Report to Congress (April 1, 1995 to September 30, 1995), p. 49.

⁵ General Accounting Office, *High Risk Series: Defense Contract Management*, GAO/HR–95–3 (February 1995), p. 24.

⁶ *Id.*, p. 18.

⁷ General Accounting Office, *Addressing the Deficit, Options for Deficit Reduction*, GAO/OCG–96–5 (May 1996), p. 40.

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¹⁰ General Accounting Office, *Information Security: Computer Attacks at DOD Pose Increasing Risks*, GAO/AMID–96–84 (May 1996), pp. 22–23.

¹¹ General Accounting Office, *Information Security*, GAO/T–AIMD–96–92 (May 22, 1996), pp. 4–5.

¹² General Accounting Office, *Computer Attacks at DOD Pose Increasing Risks*, GAO/AMID–96–84 (May 1996), p. 32.

¹³ Hearings before the Subcommittee on Government Management, Committee on Government Reform and Oversight, November 14, 1995.

¹⁴ Department of Defense, Chief Financial Officer Reports for FY 1994.

¹⁵ Department of Defense, Chief Financial Officer Reports for FY 1992–5.

¹⁶ Department of Defense, Chief Financial Officer Reports for FY 1995.

¹⁷ General Accounting Office, *High Risk Series: Defense Inventory Management*, GAO/HR–95–5 (February 1, 1995), p. 13.

¹⁸ *Id.*, p. 6.

¹⁹ National Defense Authorization Act for Fiscal Year 1996, Sections 360, 391, and 392 (June 1, 1995).

²⁰ General Accounting Office, *Future Years Defense Program: Optimistic Estimates Lead To Billions in Overprogramming*, NSIAD–94–210 (July 29, 1994).

²¹ General Accounting Office, *Future Years Defense Program: 1996 Program Is Considerably Different From the 1995 Program*, NSIAD–95–213 (September 15, 1995).

²² General Accounting Office, *Travel Process Reengineering: DOD Faces Challenges in Using Industry Practices to Reduce Costs*, GAO/AMID/NSIAD–95–90 (March 8, 1995), p. 3.

²³ General Accounting Office, *Governmentwide Travel Management: Federal Agencies Have Opportunities for Streamlining and Improvising Their Travel Practices*, GAO/T–AIMD–96–60 (March 8, 1995).

²⁴ General Accounting Office, *Travel Process Reengineering: DOD Faces Challenges in Using Industry Practices to Reduce Costs*, GAO/AMID/NSIAD–95–90 (March 8, 1995), p. 12.

²⁵ *Id.*, p. 6.

²⁶ General Accounting Office, *Travel Process Reengineering: DOD Faces Challenges in Using Industry Practices to Reduce Costs*, GAO/AIMD/NSIAD-95-90 (March 8, 1995), p. 17.

Department of Education

OVERVIEW

Created in 1979, the Department of Education (ED) is one of the newest and smallest Cabinet-level departments. With an annual appropriation of \$32.3 billion, its 4,787 employees have the following missions: (1) to provide financial aid for education and monitor its use; (2) to fund and pursue education-related research and information dissemination; (3) to ensure equal access to education and enforce Federal statutes prohibiting discrimination in federally funded programs and activities; and (4) to provide national leadership in identifying and focusing attention on major educational issues and problems.

ED administers an array of student financial assistance programs under Title IV of the Higher Education Act of 1965, as amended. These programs provide grants, loans, and work-study support to postsecondary education. In fiscal year 1995, the Federal Government provided over \$35 billion to about 7 million postsecondary students. Of this total, \$14.3 billion (41 percent) went to guaranteed student loans and \$5.4 billion (or 15 percent) was paid in Pell grants.¹ Since its creation, the Department has doubled its budget from around \$15 billion to over \$32 billion. Over 200 categorical programs are administered within the Department today.

ED also continues to have the highest percentage of political appointees among individual departments. As of September 1995, ED had a ratio of one political employee for every 33 civil service employees. The next lowest ratio was at the Department of Housing and Urban Development with one political employee for every 100 civil service employees. Political appointees include Presidential appointees requiring Senate confirmation, noncareer Senior Executive Service appointees, and Schedule C appointees.²

According to the Department's Inspector General, the three most significant problems facing ED are (1) the absence of performance standards for its programs and operations, (2) weaknesses in the design and operation of student financial assistance programs, and (3) weaknesses in the Department's financial management systems.³ Student loan programs, with annual losses of over \$2 billion, remain the single highest-risk of ED's operations.⁴

ED is making progress in addressing some of its core management problems. It is implementing many recommendations by its IG and GAO for improvements in student assistance program management. ED also is moving to develop comprehensive and reliable financial management and information systems. Student loan losses, while still very high, have declined significantly in recent years. On the other hand, ED has neglected its responsibilities in one key area of student assistance program oversight—"gatekeeping."

Given the pervasive nature of its problems, much work remains to be done if ED is to become an effective and efficient operation. Further, its progress may be hampered by long-standing weak-

nesses in such areas as management organizational and structure and human resource practices.

ED IS NOT MEETING ITS GATEKEEPING RESPONSIBILITIES

One key component in the administration of Title IV of the Higher Education Act is screening educational institutions which seek to participate in student financial assistance programs in order to ensure that only schools providing quality education and training have access to Title IV funds. This screening process is referred to as "gatekeeping."⁵ The ED Inspector General has emphasized that "it is vital to the efficiency of [student assistance programs] to have strong front-end controls like effective gatekeeping, rather than rely on back-end institutional monitoring and enforcement mechanisms."⁶ However, ED has take a passive approach to gatekeeping. As a result, gatekeeping has not been effective in screening out schools that are financially unstable, offer educational programs of questionable value, experience high default rates, and employ abusive practices such as misleading advertising.

The lack of measurable outcome-oriented performance standards, and the resulting lack of adequate performance information, represent a fundamental weakness in gatekeeping. Accrediting agencies, which are subject to approval and regulation by ED, are supposed to ensure the quality of training so that students and taxpayers get their money's worth from the training purchased. However, the accrediting agencies have been reluctant to establish performance standards and measures, and ED has been unwilling to require them to do so. Without enforceable performance standards, schools that fall short of their own accrediting agency standards, even in such basic areas as graduation and job placement, may continue to participate in student assistance programs.⁷

The problem is most severe in the case of for-profit vocational schools, which have much higher student loan default rates than nonprofit institutions.⁸ Under the current method of funding vocational training, a participating school can enroll as many students as possible and disburse as much student financial aid as is available. However, because there are no performance standards for student achievement, there is little incentive for a school to be concerned about how many of its students graduate and find jobs. School recruiters can promise glamorous, high-paying careers to prospective students, but graduates often receive much less than was promised.⁹

A May 1995 ED Inspector General report on a review of accrediting agencies found that agencies were not using performance measures to assess and improve the quality of education offered by schools. The report concluded that neither the accrediting agencies nor ED could tell whether the \$8.8 billion spent annually on post-secondary education was achieving results or how many of the 2 million students obtained training-related jobs.¹⁰

The IG review disclosed that a number of schools it investigated overstated their job placement rates by 54 to 270 percent.¹¹ Both the IG and GAO have raised concerns that the schools may be training students for jobs that do not exist. About \$725 million in Title IV funds are spent annually to train cosmetology students in numbers that routinely exceed demand. For example, 96,000 cos-

metologists were trained nationwide in 1 year, adding to a labor market already saturated with 1.8 million licensed cosmetologists. In that same year, only about one-third of all licensed cosmetologists found jobs.¹² The IG reported that one cosmetology school in Louisiana received over \$2.8 million in Title IV funds for 673 students enrolled over a period of approximately 3.5 years. Of the 673 students, only 19 actually received State licenses, at a cost to the taxpayers of almost \$148,000 per license.¹³

The statutory purpose of vocational training assistance is to prepare students for gainful employment.¹⁴ The lack of performance standards, particularly standards to measure whether Federal assistance is meeting this fundamental purpose, cheats students as well as taxpayers. Many students enroll in vocational training programs, incur significant debts, and are then unable to obtain employment because they have been trained in fields where jobs are not available. These students often feel victimized and default on their loans. By virtue of such defaults, they are ineligible for additional assistance and are thereby disadvantaged even more in their career pursuits.¹⁵

In an attempt to deal with the problem, the 1992 Higher Education Act Amendments provided new tools to screen out unworthy institutions and eliminate their eligibility for Title IV funds. The amendments directed ED to establish standards for recognizing accrediting agencies and required the accrediting agencies to have institutional standards in 12 areas. The agencies have resisted establishing such standards on the basis that this responsibility should rest with ED.¹⁶ However, ED did not meet its responsibility under the law. The Department did not issue final regulations to implement the 1992 amendments until April 1994.¹⁷ The regulations it finally did issue simply restated the statutory language without providing the accrediting agencies any additional direction.¹⁸ In recent congressional testimony, the IG stated:

We believe that the Department's regulations are not what the 1992 HEA Amendments contemplated; nor will they enable the Department to attain clear, measurable and binding performance standards to help meet the requirements of the Government Performance and Results Act of 1993 (GPRA). The GPRA mandates federal program accountability by requiring federal agencies to establish performance goals that are objective, quantifiable and measurable by fiscal year 1999. The Department currently must rely on accrediting agencies to establish and enforce such performance goals. However, without assessing the institutional performance data collected by the agencies from member schools, the Department's ability to comply with the GPRA may be significantly jeopardized.¹⁹

Given ED's unwillingness to act, the IG concluded that major gatekeeping improvements have been limited to those areas where Congress has legislated bright-line standards for the Department to implement without much discretion.²⁰

ED HAS EXPERIENCED CHRONIC PROBLEMS IN OVERSEEING STUDENT AID PROGRAMS

Student assistance programs, which make up by far the largest share of ED's budget and resources, have been plagued for years by fundamental management problems. According to the IG, student loan programs "continue as the number one high-risk area for the Department."²¹ GAO included the entire inventory of student financial aid programs on its High-Risk list. Student loan defaults have declined in the past several years, but still cost the taxpayers dearly. In fiscal year 1994—a relatively good year and the most recent year for which figures are available—the Federal Government paid out about \$2.4 billion to make good its guarantee on defaulted loans.²² As described below, student assistance program problems arose in many areas.

Federal Pell grant program abuses

The IG describes the Pell grant program as "basically an honor system," which is designed by ED to rely on participants to assure that awards go only to eligible students in attendance, Federal funds are administered properly, required refunds are made, and expenditures are accurately reported to the Department.²³ As a result of this approach, the program is rife with abuse. GAO reported on the use of false documents on students by participating schools. These schools submitted documentation to the Department for (1) students who never applied for grants, (2) individuals who never enrolled in or attended the schools, and (3) students who were ineligible. Some schools also misrepresented their academic programs and other eligibility criteria.²⁴ A September 1994 IG report found that over 45,000 Pell grant recipients had falsely claimed to be U.S. citizens. These ineligible individuals received over \$70 million in Pell grants and another \$45 million in other guaranteed loans.²⁵

Ineligible students obtain aid and default

A 1995 GAO report revealed that in 1 year, of 43,519 students who were eligible for additional loans, 20,210 students defaulted on 23,298 subsequent loans. The amount outstanding on the subsequent loans (which included interest and principal) exceeded \$56 million. GAO also identified 101,327 students who previously defaulted on a student loan and were, therefore, ineligible for Federal student aid. Nevertheless, the data showed that they may have received 139,123 Pell grants, totaling approximately \$200 million. Of these ineligible students, 73,934 received one grant; 19,838 received two grants; and over 7,555 received three or more grants.²⁶

Students are overpaid in loans

It is estimated that since 1982, over 2,000 students have received loans for more than their Cost of Attendance (COA). The overpayments ranged from less than \$100 to over \$13,000; the average amount was \$1,200. The overpayments totaled \$2.4 million. The Department's system for tracking student loans was not used to ensure that students receive financial aid equal to or less than their COA and relies on the schools to ensure compliance with Federal requirements. When guaranty agencies submitted COA data, they

did so after students received aid. GAO also found that for the 1982–1992 period, about 8.6 million out of approximately 32 million loan records in the Federal Family Education Loan Program data base showed no data for COA.²⁷

Weaknesses in controls over postsecondary vocational training

As discussed previously, this area represents one of the most serious shortcomings in ED's stewardship of student assistance. Students attend schools that are incapable of administering student aid funds properly and provide an educational experience that is unlikely to result in employment and higher earnings. ED's abdication of its "gatekeeping" responsibilities is a major cause of the problem.

Ability-to-benefit

To be eligible for Title IV assistance, students without high school credentials must pass an approved test. The purpose of the test is to determine their ability to benefit from the training programs. The IG's office has found a great deal of abuse in the area of ability-to-benefit testing. The tests are administered and scores are set by the schools, which have an incentive to admit the maximum number of students to collect the maximum amount of Federal aid.²⁸ Some schools set the passing score below the score recommended by the test publisher, thereby defeating the purpose of the test and allowing the admission of students with questionable ability to benefit from the training. In the 1992 Higher Education Act Amendments, Congress authorized ED to specify the passing score on independently administered tests. However, the Department failed to publish final regulations implementing this authority until December 1995. The regulations were finally issued 6 months after the IG highlighted ED's delay in a letter to Congress.²⁹

Schools fail to pay refunds

Another problem is the failure on the part of the schools to pay refunds on student loans where borrowers default on loan obligations through no fault of their own. By failing to pay loan refunds, schools are keeping money they have not earned for services they have not rendered. When done intentionally, this amounts to theft of public funds. Students are being victimized by the failure of schools to pay refunds; when loan defaults result, the taxpayers are victimized as well.³⁰

In general, the outlook for student loan programs is improving. A number of legislative reforms have been enacted in recent years. Also, to its credit, ED is in the process of implementing many recommendations by the IG and GAO to address the host of management problems that have beset the programs. Given the pervasive nature of the problems, however, much work remains to be done—especially an evaluation of whether the actions taken result in a materially improved program.

ED'S ADMINISTRATION OF PROGRAMS IS FRAGMENTED AND BESET BY
LONG-STANDING MANAGEMENT PROBLEMS

Fragmentation in the structure and administration of ED's programs hinders the Department in carrying out its missions effectively. This is due, in no small measure, to the piecemeal approach through which the programs have been enacted into law. However, ED has exacerbated the situation by its piecemeal approach to program administration. Programs targeting similar initiatives have sometimes been administered by different offices within ED, creating overlap and coordination problems. Implementing the Government Performance and Results Act would help ED identify program duplication and streamline its managerial organization.

The IG recently reported that there are at least 19 different programs at the Department that address early childhood education. In addition, three other Federal agencies operate another 22 programs in this area. According to the IG, these programs are administered with little or no collaboration. The IG recommended that ED develop a national policy to focus the disparate resources devoted to this area.³¹ Also, critical decisionmaking information is often not shared among program managers. For example, program managers who oversee one category of student aid do not know whether applicants have defaulted on other federally funded loans or grants.³²

A striking example of fragmentation is the strategy ED consciously adopted to implement the Federal Direct Student Loan Program (FDSLPL). ED's strategy, in effect, fenced off FDSLPL from the other student loan programs. This fragmented approach divided related functions rather than coordinating them, and limited ED's ability to provide adequate attention and oversight to the other student aid programs. In a June 1996 report, the IG recited a list of bureaucratic complications, intrigues, and undesirable consequences that resulted. Among other problems, ED's approach—

- created an organizational culture that mirrored the uncooperative and uncollaborative behavior demonstrated at the top levels of the organization, as various staff aligned themselves with one of the two leaders;
- fostered an environment where middle managers were reluctant to elevate conflict; and
- exacerbated low employee morale and unproductive competition between the Office of Student Financial Assistance Programs and the Direct Loan staff.³³

In accordance with the IG's recommendations, ED is now moving to integrate the FDSLPL with other student assistance programs. However, it appears that such problems could easily recur in ED's management environment. The same June 1996 IG report reiterated a number of core problems identified in a 1993 GAO management review of ED which, according to the IG, "are still true of OPE [the Office of Postsecondary Education] today." The Department—

- lacks a clear vision of how to best marshal its resources to effectively achieve its mission;
- has a history that is replete with long-standing management problems that periodically erupted, became the focus of congress-

sional and media attention, and subsequently diverted attention from the policy agendas;

- lacks continuous, qualified leadership, and has yet to successfully implement all of the fundamental managerial reforms recommended by a joint OMB/ED task force in 1991;

- has a long-standing practice of filling key technical and policy-making positions with managers who, lacking requisite technical qualifications, were ill-equipped to carry out their managerial responsibilities;

- has management structures and systems that have inadequately supported its major initiatives, such as student aid; and

- does not adequately recruit, train, or manage its human resources to ensure that workers can accomplish the Department's mission and implement Secretarial initiatives.³⁴

The June 1996 IG report highlighted a number of human resource management problems at ED. The Department has not identified the skills its work force needs, nor has it targeted recruitment and training to compensate for limited staff resources and increasing program responsibilities. Ironically, the education and training of ED's own staff are significantly deficient. For example, some senior managers in the Program Systems Service office did not appear to have degrees in computer science or related curricula, formal systems training, or recent experience working with other computer systems.³⁵ The IG expressed similar concerns about staff in Program Systems Service who were responsible for contract administration. Given the amount of systems contracting involved in the administration of FDSLPL and the magnitude of upcoming awards for other systems work, the IG warned that absence of sufficient qualified staff in this area will pose a significant risk to the Department.³⁶

Other problems are ED's practice of placing unqualified managers in key technical and policymaking positions, and its inability to keep qualified staff in permanent positions. For example, ED relies excessively on temporary details of staff, thereby preventing stability and adding confusion.³⁷ For example, as of February 1996, the Office of Postsecondary Education had 34 positions in headquarters filled by staff members serving in an "acting" supervisory capacity. These 34 positions represented 38 percent of all of its headquarters supervisory positions at the GS-13 level or higher.³⁸

ED SUFFERS FROM POOR FINANCIAL MANAGEMENT SYSTEMS

Based on serious problems revealed by its work in recent years, the ED Inspector General described the Department's financial management data systems as "deficient or nonexistent."³⁹ ED's automated financial management systems are antiquated and have numerous functional and technological problems. Such problems make it difficult and labor-intensive to produce accurate and timely data for decisionmaking and to produce reliable department-wide financial reports.⁴⁰

The problems include incompatible data exchanges and lack of integration between subsidiary systems. In 1994, \$27 billion in loan subsidies, grants, and administrative costs were supported by these systems. ED's financial management systems are considered high-risk by OMB and are listed as a material non-compliance in

the Department's Federal Managers' Financial Integrity Act report.⁴¹

Major financial management problems affect the Federal Family Education Loan Program (FFELP). The FFELP is the largest component of student assistance programs, accounting for 72 percent of the total \$29 billion provided in Federal funds during the academic year 1993–94. In that year, FFELP guaranteed over \$21 billion in loans to 6.5 million students.⁴² The Department's IG and the GAO have reported that ED pays lenders millions of dollars of loan interest subsidies on the basis of unaudited summaries of billings, and, due to lack of reliable financial information, makes billions of dollars in similar payments on an "honor system." According to GAO, these long-standing problems stem in part from ED's priority of getting loans and grants to recipients with little emphasis on financial accountability.⁴³

The IG recently completed an audit of FFELP's financial statements for fiscal years 1994 and 1993. The result was a disclaimer, based on the same problems identified in prior years:

- unreliable loan data continues to prevent the Department from reasonably estimating FFELP program costs;
- controls are not in place to verify that billing reports submitted by guaranty agencies and lenders are reasonable; and
- the financial reporting system does not ensure that financial statements and other management reports are reliable.⁴⁴

GAO reviewed the IG's audit of the FFELP financial statements and concurred in its findings, including the disclaimer of opinion.⁴⁵ GAO added that its own work revealed weaknesses in the ability of FFELP's information system to protect data from unauthorized use. These weaknesses posed a threat to safeguarding assets, maintaining sensitive student loan data, and ensuring the reliability of financial management information.⁴⁶

The Department is making progress in addressing its financial management problems. It is developing the Education Central Automated Processing System and a National Student Loan Data System to replace current antiquated and ineffective systems. These systems are not yet fully functional, however, and much work remains to be done.⁴⁷ For example, the usefulness of these systems depends on the accuracy and validity of the underlying data, which needs to be tested.⁴⁸

ENDNOTES

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² Congressional Research Service, 1995 data supplied by the Office of Personnel and Management (September 12, 1996).

³ Department of Education, Office of Inspector General, *Significant Problems Facing the U.S. Department of Education* (June 20, 1995), p. 3.

⁴ General Accounting Office, *High-Risk Series: Student Financial Aid*, GAO/HR-95-10 (February 1995).

⁵ Department of Education, Office of Inspector General, *Gatekeeping in the Student Financial Assistance Programs* (June 6, 1996), p. 1.

⁶*Id.*

⁷*Id.*, p. 9.

⁸General Accounting Office, *Higher Education: Ensuring Quality Education From Proprietary Institutions*, GAO/T-HEHS-96-158 (June 6, 1996), pp. 2-3.

⁹Department of Education, Office of the Inspector General, *Significant Problems Facing the U.S. Department of Education* (June 20, 1995), p. 3.

¹⁰Department of Education, Office of the Inspector General, *Managing for Results: Review of Performance-Based Systems at Selected Accrediting Agencies*, Final Report, ACN 06-30004 (May 8, 1995), pp. 4, 9.

¹¹*Id.*, pp. 6-7.

¹²General Accounting Office, *Higher Education: Ensuring Quality Education From Proprietary Institutions*, GAO/T-HEHS-96-158 (June 6, 1996).

¹³Department of Education, Office of the Inspector General, *Gatekeeping in the Student Financial Assistance Programs* (June 6, 1996), p. 10.

¹⁴*Id.*, p. 2.

¹⁵Department of Education, Office of the Inspector General, *Significant Problems Facing the U.S. Department of Education* (June 20, 1995), p. 3.

¹⁶Department of Education, Office of the Inspector General, *Gatekeeping in the Student Financial Assistance Programs* (June 6, 1996), p. 6; Department of Education, Office of the Inspector General, *Managing for Results: Review of Performance-Based Systems at Selected Accrediting Agencies*, Final Report, ACN 06-30004 (May 8, 1995), pp. 1, 5.

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¹⁸Department of Education, Office of the Inspector General, *Gatekeeping in the Student Financial Assistance Programs* (June 6, 1996), p. 7.

¹⁹*Id.*, p. 8.

²⁰*Id.*, p. 4.

²¹Department of Education, Office of the Inspector General, *Significant Problems Facing the U.S. Department of Education* (June 20, 1995), p. 13.

²²General Accounting Office, *High-Risk Series: Student Financial Aid*, GAO/HR-95-10 (February 1995).

²³Department of Education, Office of the Inspector General (April 6, 1995), p. 22.

²⁴General Accounting Office, *High-Risk Series: Student Financial Aid*, GAO/HR-95-10 (February 1995), p. 37.

²⁵Department of Education, Office of the Inspector General, *Improving Efficiency and Effectiveness In the Department of Education* (April 6, 1995), p. 23.

²⁶General Accounting Office, *Student Financial Aid: Data Not Fully Utilized to Identify Inappropriately Awarded Loans and Grants*, GAO/HEHS-95-89 (July 11, 1995), p. 10.

²⁷*Id.*, pp. 10-11.

²⁸ Department of Education, Office of the Inspector General, *Significant Problems Facing the U.S. Department of Education* (June 20, 1995), p. 5.

²⁹ Department of Education, Office of the Inspector General, *Significant Problems Facing the U.S. Department of Education* (June 20, 1995), pp. 5–6; Federal Register, Vol. 60., No. 231, December 1, 1995, p. 61830.

³⁰ Department of Education, Office of the Inspector General, *Significant Problems Facing the U.S. Department of Education* (June 20, 1995), p. 9.

³¹ Department of Education, Office of the Inspector General, *Improving Efficiency and Effectiveness In the Department of Education* (April 6, 1995), p. 2.

³² General Accounting Office, *Student Financial Aid: Data Not Fully Utilized to Identify Inappropriately Awarded Loans and Grants*, GAO/HEHS–95–89 (July 11, 1995), pp. 9–13.

³³ U.S. Department of Education, Office of Inspector General, *Coming Together to Face the Challenges of an Uncertain Future*, Final Report, Control No: S03–60001 (June 10, 1996), p. 4.

³⁴ *Id.*, Appendix 2, p. 3.

³⁵ *Id.*, p. 8.

³⁶ *Id.*, p. 9.

³⁷ *Id.*

³⁸ *Id.*

³⁹ Department of Education, Office of Inspector General, *Significant Problems Facing the U.S. Department of Education* (June 20, 1995), p. 10.

⁴⁰ *Id.*

⁴¹ *Id.*, p. 11.

⁴² General Accounting Office, *Student Financial Aid: Data Not Fully Utilized to Identify Inappropriately Awarded Loans and Grants*, GAO/HEHS–95–89 (July 11, 1995), p. 1.

⁴³ General Accounting Office, *Federal Management: Updated Information for Congressional Oversight* (July 1994), p. 7.

⁴⁴ General Accounting Office, *Financial Audit: Education Loan Program's Financial Statements for Fiscal Years 1994 and 1993*, GAO/AIMD–96–22 (February 26, 1996), p. 8.

⁴⁵ General Accounting Office, *Financial Audit: Education Loan Program's Financial Statements for Fiscal Years 1994 and 1993*, GAO/AIMD–96–22 (February 26, 1996).

⁴⁶ *Id.*, pp. 9–10.

⁴⁷ Department of Education, Office of the Inspector General, *Significant Problems Facing the U.S. Department of Education* (June 20, 1995), p. 13.

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Department of Energy

OVERVIEW

The Department of Energy (DOE) budget for fiscal year 1996 was \$15.9 billion, and DOE had a total of 18,743 employees. As management issues are reviewed within the DOE, there is a need to

re-examine the Department's basic missions. Created in 1977 to respond to the Nation's energy crisis, DOE's priorities have shifted dramatically, first to nuclear weapons production in the 1980's and then to environmental cleanup today. DOE now is approaching new or expanded missions in such areas as industrial competitiveness, science education, safety and health, and nuclear arms and verification. Many experts believe that DOE needs to concentrate more on energy-related missions—such as energy policy, energy information, and energy supply research and development—and that many of its remaining missions should be moved elsewhere.

Notwithstanding the broad range of expert opinion that a fundamental rethinking of DOE's missions is needed, the Department has shown little interest in reviewing its missions or reforming its management practices. The Department's own "strategic plan" clings to the *status quo* by assuming that all of DOE's current missions are valid and should remain within the Department.¹ Likewise, as discussed later in this report, DOE has failed to provide its national laboratories with sorely needed guidance on what their missions should be.

DOE also has been reluctant to reform its management practices. This is particularly unfortunate because its serious management problems are many. In September 1996 testimony before the Senate Committee on Energy and Natural Resources, the General Accounting Office (GAO) provided the following overview of some of these problems:

Responding to changing missions and priorities with organizational structures, processes, and practices that had been established largely to build nuclear weapons has been daunting for DOE. For example, DOE's approach to contract management, first created during the World War II Manhattan Project, allowed private contractors to manage and operate billion-dollar facilities with minimal direct federal oversight yet reimbursed them for all of their costs regardless of their actual achievements; only now is DOE attempting to impose modern standards for accountability and performance. Also, weak management and information systems for evaluating program performance has long hindered DOE from exercising effective oversight. In addition, DOE's elaborate and highly decentralized field structure has been slow to respond to changing conditions and priorities, is fraught with communication problems, and poorly positioned to tackle difficult issues requiring a high degree of cross-cutting coordination.²

The management problems described in the following sections have been emphasized repeatedly by the Department's Inspector General, the General Accounting Office, and the Office of Management and Budget. These problems include contract management, management of the national laboratories, nuclear waste cleanup, research and development, and financial management.

DOE'S CONTRACT MANAGEMENT IS DEFECTIVE

The DOE has relied on the services of contractors to operate and manage an extensive complex of nuclear weapons research pro-

grams, production facilities, and multi-program laboratories. Although these facilities are government-owned, they are operated by large industrial corporations, non-profit entities, and academic institutions. In 1995, the Department expended about \$14.5 billion for operations conducted by contractors.³ Thus, effective contract management is a critical facet of DOE's management. However, contract management weaknesses have been flagged by the Office of Management and Budget as a "high-risk" area,⁴ and have been documented in many audits by the Department's IG and by GAO.

At the core of DOE's management problems is its inability to oversee effectively more than 110,000 contractor employees, who perform nearly all of the Department's work. Historically these contractors worked largely without any financial risk, they were paid even if they performed poorly, and DOE oversight was based on a policy of "least interference."⁵ The following examples illustrate the Department's ineffective project and contract management:

- An IG audit found that DOE spent about \$29 million on a project to design, modify, and produce 87 accident-resistant containers for the Air Force. However, the project was undertaken unilaterally by DOE without consulting the Air Force. As it turned out, the Air Force did not want the containers and expressed no desire to use them.⁶

- An IG audit of the Rocky Flats Analytical Services Program found that the management and operating contractor did not evaluate alternatives to analytical services when less expensive and more efficient services were available from subcontract laboratories. As a result, about \$2.9 million in unnecessary charges will be incurred annually for data that is not timely and reliable. Rocky Flats did not ensure that the contractor's purchasing system required the contractor to evaluate alternatives and document that it chose the best method of providing services.⁷

- An audit of the Department's project to build a new high-level waste evaporator at the Savannah River Site disclosed that the project, which was to be completed in 1993, is now delayed until 2001. In addition, the cost has risen from \$44 million to \$118 million due to changing architect/engineering services, inadequate planning, staffing problems, and funding shortfalls.⁸

- The IG found that management and operating contractor overtime costs totaled about \$251 million in fiscal year 1994. Of this total amount, \$65 million was paid to higher-paid executives, administrative, and professional employees even though they were exempt from the Fair Labor Standards Act. The remaining \$186 million was paid to nonexempt employees at 1½ to 2 times their hourly rate of basic pay. The IG report described a number of ways in which overtime could be reduced and better controlled.⁹

The Department's project and contract management problems are evident in the failure of many of its major systems acquisitions. Historically, DOE has been unsuccessful in managing a number of its major acquisitions—projects that cost \$100 million or more. These projects, which are crucial to the success of DOE's missions, include accelerators for high-energy and nuclear physics, nuclear reactors, and nuclear waste processing technologies. Since 1980, DOE has undertaken more than 80 major acquisitions. However, the number of major acquisition projects that are terminated prior

to completion far exceeds the number actually completed. Many of these projects have large cost overruns and delays. Some of the root causes for these dismal results are: constantly changing DOE missions; a flawed system of incentives that sometimes rewards contractors despite their poor performance; and lack of DOE personnel staff with the proper skills to oversee contractors.¹⁰

According to GAO, which is in the process of evaluating DOE contracting practices, the Department is now reforming its practices to make them more business-like and results-oriented. However, GAO is “unsure whether the Department is truly committed to fully implementing some of its own recommendations.”¹¹ GAO’s skepticism was prompted by the Secretary of Energy’s May 1996 decision to extend without competition the University of California’s three laboratory contracts, which are currently valued at about \$3 billion. The GAO observed:

. . . DOE’s decision to extend, rather than “compete” these enormous contracts—held by the University continuously for 50 years—violates two basic tenants of the Department’s philosophy of contract reform. First, contracts will be competed except in unusual circumstances. Second, if current contracts are to be extended, the terms of the extended contracts will be negotiated before DOE makes its decision to extend them. DOE justified its decision on the basis of its long-term relationship with the University. However, the Secretary’s Contract Reform team concluded that DOE’s contracting suffered from a lack of competition, which was caused, in part, by several long-term relationships with particular contractors.¹²

DOE FAILS TO MANAGE ITS LABORATORIES EFFECTIVELY

The Department’s nine laboratories have over 50,000 employees and annual budgets that total about \$6.5 billion. DOE estimates that it has invested more than \$100 billion in the laboratories over the last 20 years. Most of the labs were established during or shortly after World War II to develop nuclear weapons. DOE owns the labs but contracts with universities and private sector organizations for their management and operation.¹³ While the achievements of the labs have been impressive, their management by DOE has been largely ineffective. In particular, DOE has failed to provide mission guidance, has managed the labs on a piecemeal rather than a national basis, and may have engaged in administrative oversight of the labs that is both excessive and ineffective.

In recent congressional testimony, GAO provided the following summary of DOE’s management shortcomings with respect to the labs:

. . . DOE has not ensured that work at the national laboratories is focused and managed to make the maximum contributions to national priorities. First, DOE has not established clear missions for the laboratories or developed a consensus among laboratory and government leaders on the laboratories’ appropriate missions in the post-Cold War environment, even though past studies and special task forces have called for such action. DOE has exacerbated

this problem by treating the laboratories as separate entities, rather than as a coordinated national research system with unified goals. Second, DOE's fragmented management approach has impeded the ability of the laboratories to achieve their current research missions and administrative responsibilities.¹⁴

As indicated above, many studies have pointed to the need to reassess the missions of the labs in light of current conditions. Many experts believe the labs make vital contributions to DOE and the Nation, which can continue with better management direction and focus on their missions; however, DOE has persistently failed to provide the needed direction. GAO concluded that "the lack of proper departmental mission direction is compromising both the labs' effectiveness in meeting traditional missions and their ability to achieve new national priorities."¹⁵ GAO added that DOE's piecemeal lab-by-lab management approach—as opposed to treating the labs as a single research system with diverse objectives—fails to capitalize on one of the labs' greatest strengths—combining multidisciplinary talents to solve complex, cross-cutting issues.

Instead of giving the labs the substantive direction and management they need, what DOE apparently does provide them is administrative "micro management." GAO reported that DOE's day-to-day administrative oversight of the labs is costly and ineffective:

While DOE has recognized the need to expand oversight of the laboratories, the Department's method of doing so poses a strategic dilemma for DOE and laboratory managers. DOE created many new oversight offices, each having the authority to impose new requirements, which involve interpretation and the development of compliance plans, actions, and monitoring. The guidance and direction from these offices is not always consistent, and laboratories are forced to meet similar requirements from many different sources. Some laboratories are subjected to hundreds of reviews annually. Moreover, DOE has not set priorities for compliance with its environmental requirements, forcing the laboratories to treat each requirement as equally important. Consequently, DOE has no assurance that the laboratories address more pressing concerns first, or with enough attention. As a result, laboratory officials are kept from managing their research most effectively, according to many experts.¹⁶

Inspector General reviews confirm these problems. A laboratory quality testing assurance program found that department contractors were performing redundant reviews of laboratories that provide analytical services. In one case, a laboratory was reviewed for quality assurance 11 times in 1 year by various contractors, when only one review was necessary. In addition, the reviews were not consistent and the contractors did not share information with the Department or other contractors. The redundant reviews cost the Department about \$1.2 million annually.¹⁷

An audit of the Lawrence Livermore's waste treatment facility found that over a 10-year period, major changes were made to the facility plan that greatly transformed how the facility would meet

the mission needs. As a result, the initially proposed \$38 million waste treatment facility project may cost as much as \$140 million and is significantly different than the one approved by the Congress.¹⁸

DOE HAS MADE LITTLE PROGRESS IN NUCLEAR WASTE DISPOSAL

As the missions of the DOE have changed, it has assumed the task of managing the environmental problems created by decades of nuclear weapons production. This requires environmental restoration, waste management, and facility transition and management at 15 major contaminated facilities and more than 100 small facilities in 34 States and territories. The estimate of total DOE cleanup costs has risen from about \$100 billion in 1988 to \$230 billion, with a high end estimate of \$350 billion.¹⁹ Nuclear waste cleanup has been recognized by a wide range of sources as one of the Department's most serious problem areas. DOE's environmental management activities have been the subject of numerous IG and GAO reviews. OMB has listed environmental management as another DOE high-risk area.²⁰

DOE received over \$34 billion between 1990 and 1996 for environmental activities, but it has made little progress in addressing the wide range of environmental problems at its sites. It has experienced major delays in its high-level waste programs and has yet to develop adequate capacity for treating mixed waste—i.e., materials containing both radioactive and hazardous components. It has begun deactivating only a handful of its thousands of inactive facilities.²¹

For years, DOE has concentrated on the “characterization” phase of environmental cleanup—i.e., collecting data and investigating sites—rather than the “remediation” or actual cleanup phase. As a result, over two-thirds of DOE's 856 cleanup projects are still in the characterization phase. Only about 16 percent of the projects are now in the remediation phase, and physical cleanup has been completed for only about 13 percent of the projects. In the waste management area, DOE has experienced repeated delays and cost increases. For example, the Defense Waste Processing Facility at DOE's Savannah River Site has thus far experienced a cost increase of over \$3 billion and a schedule slippage of about 5 years. Major technical problems pervade all aspects of DOE's remediation efforts at its Hanford Site, which has experienced a cost escalation from \$14 billion to about \$36 billion.²²

GAO has identified many ways to reduce the costs to clean up the nuclear weapons complex. For example, DOE usually assumes that all of its facilities will be cleaned up for unrestricted use; however, because many of the facilities are so contaminated, preparing them for future unrestricted use is not a realistic objective. By incorporating more realistic land-use assumptions into decisionmaking, DOE could, by its own estimates, save from \$200 million to \$600 million annually. Also, to reduce costs DOE is now proposing to privatize portions of the cleanup, most notably the vitrification of high-level waste in the tanks at its Hanford facility.²³

GAO also noted that it cannot permanently dispose of its inventory of highly radioactive wastes from the Hanford tank farms and other facilities until it has developed a geologic repository for these

wastes generated by the commercial nuclear power industry and the DOE. Although an operational repository was originally anticipated as early as 1988, DOE now does not expect to determine until 2001 if the site at Yucca Mountain, Nevada, is suitable and, if it is, to begin repository there until at least 2010.²⁴

Legislation to reform DOE's nuclear waste disposal program is being considered in both Houses of Congress. Some experts, including DOE's own internal advisory panel, have called for moving the entire program to the private sector.²⁵ Future progress also will depend on adopting a national risk-based strategy under which DOE and the Federal regulators of environmental cleanup activities can negotiate realistic agreements and milestones under increasingly restrictive budgets.²⁶

DOE NEEDS TO IMPROVE ITS OVERSIGHT OF RESEARCH AND DEVELOPMENT WORK

Applied research and development (R&D) programs are designed to support the development of technologies to accomplish the Nation's energy objectives. These activities are a major focus of DOE's resources. In fiscal year 1995, DOE was appropriated about \$1.65 billion for applied R&D programs—almost 10 percent of its budget. However, concerns have been expressed about these programs. A 1994 report by the Congressional Budget Office concluded that few successful technologies have emerged from the Department's R&D programs. Some contend that applied research should be conducted by the private sector instead of the Government.²⁷

The R&D program also presents major cost issues. DOE currently spends approximately \$1.3 billion on research in energy efficiency technologies and renewable energy sources in an effort to reduce total energy demand, conserve natural resources, and improve national energy independence. Private industry is fully capable of investing in energy efficiency research, and many of the technologies subsidized with Federal research are not cost-effective alternatives to fossil fuel consumption. Despite many years of expensive activism on the part of DOE, studies still indicate that such technologies are not cost-effective alternatives to increased consumption. Two recent studies have pinpointed costs at between 5 and 11 cents saved. The marginal cost of producing a kilowatt-hour of electricity today ranges from two to four cents per kilowatt-hour, which means that it is still more expensive to save electricity than to produce it.²⁸ The multi-billion dollar coal mining industry receives funding from DOE's Coal Research and Development program (\$167 million) and the Clean Coal Technology Program (\$337 million). Because the coal industry already invests in research and development, a significant portion of the Federal funds go to lower priority research areas of new technologies and processes that are unlikely to be economically viable in the marketplace.²⁹

Furthermore, opportunities exist to recoup the Federal Government's investment in projects funded jointly by DOE and the private sector that yield commercially successful technologies. GAO recently reviewed four DOE offices that are engaged in over 500 cost-shared R&D projects with private sector organizations. The total cost of the 500 projects is about \$15 billion, of which DOE will contribute about \$8 billion. About 60 of these projects, representing

a total government investment of about \$2.5 billion, already are subject to provisions that require reimbursement to the Government in the form of royalties and licensing fees if they become commercially viable. GAO recommended that DOE develop a Department-wide policy requiring repayment of the government's investment in commercially successful cost-shared technologies, under appropriate arrangements that would not unduly inhibit technology development.³⁰

The Department appears to have been overly defensive, and not wholly accurate, in responding to concerns about its R&D work. DOE recently produced a report, called "Success Stories," which touted its R&D programs. However, a GAO review disclosed many defects in this report and concluded that it could not be used to assess the effectiveness of the programs. GAO found problems with the analyses used to support the benefits cited for 11 of the 15 cases it reviewed. The problems included weak assumptions underlying economic analyses, unsupported links between the benefits cited and DOE's role, and "basic math errors." One example of the latter was a case in which the DOE report claimed that a technology to enhance gas well production would increase revenues by \$20 million per well; when the math was corrected, the true figure was less than \$300,000 per well.³¹

DOE SUFFERS FROM WEAK FINANCIAL MANAGEMENT

The IG was unable to express an opinion on DOE's statement of financial position for fiscal year 1995, finding several major deficiencies. The Department did not ensure that all unfunded liabilities (recorded at \$200 billion) were properly identified. For example, although DOE prepared an estimate of its unfunded environmental liabilities, it had not estimated the cost of remediation at certain facilities. Also, DOE failed to identify additional unfunded liabilities, including an estimated \$1.9 billion for environmental, safety and health compliance. The IG's audit also found that DOE lacked adequate controls over its property and equipment. In all, the audit identified eight material internal control weaknesses.³²

One major financial management weakness is that DOE does not have a standard, effective approach for identifying excess carryover balances that may be available to reduce future budget requests. Instead, it relies on broad estimates of potentially excess balances in its individual programs. As a result, there is no assurance that DOE has reduced its carryover balances to the minimum level needed to operate its programs, thereby minimizing the need for new budget authority. This is a significant problem since DOE had \$12 billion in unobligated carryover balances from prior year appropriations as it began fiscal year 1995. During fiscal year 1995, DOE used almost \$1 billion in carryover balances to supplement its new obligational authority of about \$18 billion.³³

Over the last 3 years, GAO has identified almost \$500 million in "uncosted obligations" (amounts obligated but for which costs were not incurred) that were classified as necessary to meet the requirements of DOE's programs when they should have been categorized as available to reduce DOE's budget request. For example, at DOE's Savannah River Site in South Carolina, GAO identified \$46.2 million reserved for 15 projects at the end of fiscal year 1994

that was no longer needed because of cost underruns, reductions in the projects' scope, or cancellation of projects.³⁴

The Secretary of Energy needs to develop a more effective approach for identifying the carryover balances that exceed the requirements of DOE's programs and determining whether they are available to reduce the Department's annual budget request. These approaches would involve: (1) developing a standard goal for all programs' carryover balances that represent the minimum needed to meet the programs' requirements; (2) projecting what the carryover balances will be for all programs at the beginning of the fiscal year for which new obligational authority is being requested; and (3) comparing the programs' goals and projected carryover balances to identify the balances that exceed requirements.³⁵

ENDNOTES

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⁴ Office of Management and Budget, *Progress Report: Correcting High Risk Areas*, Analytical Perspectives on the Budget of the United States for Fiscal Year 1996, p. 289.

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Environmental Protection Agency

OVERVIEW

The Environmental Protection Agency (EPA) was established in the executive branch as an independent agency pursuant to Reor-

ganization Plan No. 3 of 1970, which was effective December 2, 1970. It was created to permit coordinated and effective governmental action on behalf of protection of the environment. The EPA has stated that its mission is to reduce environmental risks to human health and the environment, prevent pollution and foster sustainable development “in the most cost-effective, efficient ways”.¹

The EPA has featured prominently on both the Office of Management and Budget’s and the General Accounting Office’s “High-Risk” lists. Congress is committed to preserving and protecting the environment—and to doing so both wisely and effectively. Administration officials and Federal bureaucrats have not met their responsibilities to protect the environment.

BETTER PRIORITIZATION AND MANAGEMENT OF RESPONSIBILITIES
NEEDED

The Environmental Protection Agency (EPA) has not developed the strategies and priorities necessary to meet its current work load, implement its mission effectively and give the American people a safer, cleaner and healthier environment. EPA regulators have not been able to manage their scientific and regulatory responsibilities and maximize protection of human health and the vitality of natural ecosystems. Unless the management of the agency can be turned around, the gains of two decades of environmental progress will be at risk.

EPA faces many management challenges, not the least of which is focusing its resources on eliminating environmental problems that present the highest health risks. One concern is that prioritization of EPA’s efforts be based on analysis of risks to human health and the environment. Based, in part, on reports such as the National Academy of Public Administration’s (NAPA) *Setting Priorities, Getting Results*,² the Superfund program was seen as dedicating resources on low threats to health and the environment. Later studies supported this view and helped spur an interest in Superfund reform. Though Superfund reform has yet to occur, administratively the agency has done little to mitigate the waste of public and private resources to accomplish hazardous site cleanup. The NAPA report said:

The rate of environmental progress will slacken considerably unless there are profound changes in the legal foundation and management structure of EPA, a continued devolution of responsibility for administering environmental programs, and a serious attempt to integrate programs to combat pollution.³

and

EPA’s management systems and organizational structure have impeded efforts to set priorities and allocate resources effectively. EPA is a fragmented agency: it mirrors the fragmented statutes, and it lacks effective mechanisms to mobilize the agency’s resources in a consistently coherent fashion.⁴

Clearly, EPA should clean up hazardous waste site according to the degree of hazard, rather than according to the ease of cleanup. Many sites are being mitigated now merely to remove them from the National Priorities List (NPL). It is welcome news that the President wants to clean up more Superfund sites. However, EPA needs to be more accountable to the public and responsible for taking action to make the environment cleaner and safer.

GAO has urged the agency to improve the effectiveness of environmental programs, and has recommended that one way to accomplish this goal would be to set risk-based priorities. In this way, the EPA could achieve the greatest amount of protection of public health and the environment as possible, given its resources. The EPA, itself, has noted that “[t]here has been little progress in setting priorities across the spectrum of environmental problems. . . .”⁵ GAO has also called for a more flexible, incentive-based regulatory system based on performance goals.⁶

These findings are of interest because the use of performance-based goals and results is required under the Government Performance and Results Act of 1993 (GPRA) which the EPA is required to implement. GPRA is designed to help agencies measure the results of its programs, such as the relative hazard presented by a toxic waste site, rather than its activities, e.g. number of inspections of a toxic waste site. While GPRA is not a cure-all for the agency’s management difficulties, greater compliance with GPRA would help the agency set priorities and evaluate its progress in reaching agency goals. The EPA has made progress developing performance measures, but has not integrated these changes into the day-to-day business operations of the agency, to validate its performance measures and to consult with Congress about its proposed performance plan and goals. Despite the many actions taken by EPA to implement GPRA, there have been few results.

INFORMATION TO JUDGE PROGRAM OUTCOMES IS LACKING

The Environmental Protection Agency (EPA) lacks the information necessary to determine whether its programs are having any measurable effect on environmental quality.⁷

Although the ultimate objective of environmental programs is to clean up or preferably prevent unacceptable levels of pollution, EPA has not had the information necessary to judge or measure its success in making a cleaner, safer, healthier environment. Environmental regulations must be founded on accurate scientific data dealing with key issues such as the different pathways by which pollutants come into contact with people and the environment, the concentrations at which they cause damage, and the effectiveness of alternative strategies to prevent their effects. However, quality scientific data on these and other issues are lacking, a problem that also occurs in the agency’s water, pesticides and other programs. Data management problems, particularly the agency’s reliance on numerous separate and distinct information systems, have exacerbated these difficulties.

Despite the fact EPA collects and analyzes vast amounts of data to support the agency’s environmental enforcement and protection mission, and claims to use that information to evaluate whether its programs are accomplishing their intended goals, the agency does

not have a program to manage information to meet agency goals based on good scientific methodology, nor does EPA have an inventory of reporting and recordkeeping requirements imposed upon the public.

Federal environmental statutes focus on single sets of pollutants affecting the air, water or ground, and accordingly, EPA has tended to collect information on pollution risks in a disaggregated manner. At the same time, the agency recognizes that a multi-pollutant approach to assessing environmental risks would assist in making decisions resulting in a healthier environment. In fact, the EPA acknowledged problems with its scientific data and processes in its 1994 Federal Manager's Financial Integrity Act (FMFIA) report.⁸ In this report, EPA identified several significant material weaknesses in facilities, equipment and data management. One material weakness addresses EPA's lack of top management commitment of sufficient resources for Information Resources Management activities. This weakness is very important, especially given that EPA data show uncollected Superfund cost recovery receivables totaled about \$498 million at the end of fiscal year 1994⁹—and that number has been increasing steadily.

While EPA has developed some indicators, such as national air quality standards, the agency has generally relied on "activity measures" such as number of inspections to gauge its progress. EPA has historically relied on activity based measures because of the inherent technical difficulties in establishing linkages between program activities and environmental improvements and because of a lack of information on ambient environmental conditions. By its own admission the agency said:

The media-specific (i.e., air, water, land) nature of environmental laws and EPA's resulting administrative structure have fragmented EPA's response to environmental protection. Too often, our piecemeal approach to pollution has ended up simply moving contaminants around—from air, to water, to land—rather than reducing and preventing pollution.¹⁰

As further evidence of this problem, the Inspector General for the EPA noted that the agency spent nearly \$2 million overseeing the Superfund site of a major Department of Defense contractor, but had not evaluated the quality of laboratory data used for making public health risk assessments, developing cleanup alternatives and designing the remedy. The contractor spent around \$100 million on studies and cleanup without ensuring the quality of its underlying data or complying with the data quality requirements in its consent decree.¹¹

Currently there is no inventory of EPA's reporting and recordkeeping requirements, who must report, what must be reported. No environmental management system can achieve its results without an inventory of its current information requirements and their relevance to agency appropriations requests and the achievement of scientifically and economically supported goals. Despite reinvention promises, the agency has not established information collection, use and dissemination priorities and strategies for management that supports cost-effective risk-reduction. The agency should view in-

formation as a tool for problem analysis and prioritization, and scientific and economic justification of its programs and regulations.

SUPERFUND: CONTINUING MANAGEMENT PROBLEMS ARE HAMPERING
CLEANUP EFFORTS

Despite growing agency budgets and repeated environmental concerns expressed by the Congress, management problems continue to hamper Superfund cleanup efforts. The Superfund program was created in 1980 pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) to provide what began as short-term cleanup at abandoned hazardous waste sites. Final costs for the cleanup have not been determined, but a recent estimate by the General Accounting Office indicates that the hazardous waste problem has grown to \$75 billion for non-Federal sites and to as much as \$400 billion for Federal facilities.¹² As of March 1995, EPA reported 15,723 superfund cleanup sites of which 1,363 are considered the most hazardous.¹³ Thousands more sites are expected to be added to the list.

Superfund management problems were also examined in hearings before the Subcommittee on National Economic Growth, Natural Resources and Regulatory Affairs. The subcommittee reports that a total of about \$30 billion has been spent on Superfund, about half of which was financed by taxpayer funds appropriated by the Government. Between \$1.3 and \$1.5 billion is spent annually by the Government and spending at the non-Federal level is twice that amount. EPA has more than 1,000 Federal employees who work on a full-time basis on Superfund at its offices in Washington. Many more personnel are assigned to Superfund tasks in EPA field offices and regional offices.

Currently, the Superfund program has cleaned up only 25 percent of all the sites on the National Priorities List (NPL) of the most hazardous waste sites. EPA has removed (or deleted) only 8 percent of sites from the list. At the same time, the pace of cleanup has not changed over the life of the program, despite administration claims to the contrary. In fact, claims that program results have improved are misleading. The agency Inspector General noted that prolonged agency study and cleanup design times and liability battles caused major delays in Superfund cleanups extending average cleanup time from 12 to 15 years.¹⁴ Thus the large number of sites added to the list during the early years of the program are just now being completed—but only after more than a decade in the system.

Cleanup statistics have not improved during the last few years. Only 68 sites were declared “construction complete” (the barometer by which EPA measures the number of cleanups completed) last year—the high for the past 3 years. EPA projects similar levels for the next 4 to 5 years of the program. It is interesting to note that for 1992, the number of completed projects was 82.

Also, the average site cleanup times have not improved. The General Accounting Office has shown that, not including preliminary studies and negotiations with potentially responsible parties, the study, design and cleanup stages of a Superfund sites averaged 8.6 years.¹⁵ The data for 1995 shows that the “new” average is 8.5 years—a barely perceptible drop.

The liability and financing system for Superfund contributes significantly to program delays. Negotiations over “shares” of liability, who pays and what remedy should be used add an average of 3 years to the cleanup process. The EPA Inspector General stated that liability negotiations consume time and delay completion of cleanup of Superfund sites.¹⁶

Many of EPA’s administrative reforms concentrate on streamlining the current liability system. The agency repeatedly proposed ways for expediting settlements for *de minimus* parties and parties that cannot afford to pay significant cleanup costs on the NPL. The number of parties in the liability system has grown rapidly despite the fact that the number of sites on the NPL has declined somewhat. EPA’s statistics demonstrate that there are still between 80,000 and 100,000 parties involved in the Superfund liability system.

Further confusing the agency’s ability to implement more settlements for these parties is EPA’s poor data and computer system capabilities and inability to identify who actually qualifies for a *de minimus* settlement. The General Accounting Office concluded that EPA’s data was so inconsistent and incomplete that it was unable to provide good estimates of the number of *de minimus* parties now involved in Superfund litigation.¹⁷ GAO estimated that there are at a minimum about 8,500 to more than 25,000 *de minimus* parties at 175 non-Federal Superfund sites and about 15,000 to 40,000 or more potentially responsible parties at 245 non-Federal municipal co-disposal landfills sites. The GAO said that because EPA’s data are incomplete, its estimates are likely to be understated.¹⁸

RISK PLAYS LIMITED ROLE IN ALLOCATING RESOURCES

In theory, EPA focuses clean up efforts first on the most contaminated Superfund sites. In practice, however, EPA has not implemented a priority-based program for cleaning up non-Federal or Federal Superfund sites on the basis of their relative risk. It is essential that EPA ensure that cleanup resources go to the sites that present the greatest threat to human health and the environment. While the agency recognizes these problems and is making some changes in procedures to correct them, it was only within the past 3 months that the EPA released its first ever list of prioritized non-Federal sites ready for clean up. EPA has encountered internal obstacles to following through with a priority-based cleanup program, making its implementation of prioritization difficult.¹⁹

Similarly, a priority-setting system for allocating funds for cleaning up Federal hazardous waste sites across agency lines had not been properly developed.²⁰ GAO reported that there may be as many as 51,000 Federal Superfund sites.²¹ Agencies with large numbers of Federal facilities have not developed a consistent process for assessing and rating the relative risks of hazardous waste sites, allowing less hazardous and extremely dangerous sites to be similarly classified. In the case of Federal facilities, the Federal Government is both the polluter and the party responsible for cleanup. Three agencies have the greatest number of polluted sites, namely the Department of Defense, the Department of the Interior and the Department of Energy. GAO reported that the Federal Government’s liability for its own Superfund cleanup may be as

high as \$400 billion, making it the size of the Savings and Loan bailout and the biggest public works project in the history of the United States.²²

The GAO also learned that the EPA has not identified the Federal facilities presenting the greatest risks to public health and the environment, much less prioritized the list for purposes of cleaning up the most hazardous sites first.²³ That may prove to be a daunting task because in the listings of its identified Superfund sites, the Department of Defense's system does not permit risk distinctions among many of its sites.²⁴ And, interagency comparisons of risks prepared by the Departments of Interior and Energy would not be meaningful because different criteria were used to evaluate risks by those two agencies.

SYSTEM ENHANCEMENTS NEEDED TO IMPROVE SUPERFUND
EFFICIENCY IN RECOVERING COSTS

Future improvements in EPA's cleanup costs will depend largely on the agency's sustaining its efforts in this area and on constructive changes being made to the Superfund authorizing legislation. EPA's automated information systems are a vital component of efficient cost recovery. Currently, financial and records management efforts do not efficiently support cost recovery, which is a critical part of the agency's business and the operation of Superfund. EPA is taking steps to improve automated support for cost recovery but many problems remain and billions of dollars are owing to Superfund.²⁵

For example, data contained in EPA's central computer systems is insufficiently detailed, and sometimes inaccurate or incomplete. Records management systems do not provide for documentation, which, without efficient retrieval of supporting cost and work-performed documentation, can result in unrecovered costs. The agency's main financial system is not sophisticated enough to address the complexity of agency repayment agreements. Neither of the two main financial management systems can trace information or store data at the "operable unit" level.²⁶ As a result, agency staff are often required to augment data obtained from agency financial management systems with data which is obtained manually in order to properly assign the correct amount of costs in operable units. During the course of a cleanup, there may be thousands of individual transactions and many thousands of documents. To trace these costs to individual operable units, staff must identify all costs that have been recorded and accumulated by the site and manually segregate the costs by operable unit.²⁷

EPA staff have also expressed concerns over the integrity of the data in the main financial management system. In 1994, the EPA Inspector General expressed similar concerns regarding data integrity and inaccuracies, including critical cost and site identification information, in the agency's financial information systems.²⁸ For example, staff in three regions stated that they identified instances of duplicative data. In one such case, one region initially overstated costs for a potentially responsible party by about \$822,000. While staff corrected the overstatement prior to final negotiations, they determined that the error was due to a cost figure that had been duplicated in the financial system.²⁹ Two regions provided exam-

ples of missing or invalid data. This was confirmed by a report generated by the EPA's Financial Management Division showing about 10,500 transactions totaling about \$129 million in expenditures for which, according to EPA officials, the site/project identification field was missing.³⁰

Many of these problems exist because the EPA's central financial system does not contain adequate application controls. This problem was confirmed by the agency Inspector General in a report dated February 1995. The Office of Inspector General stated that it could not assess application processing controls due to a lack of technical system documentation.³¹ Data integrity problems could continue to adversely affect the efficiency of performing cost recovery until EPA fully addresses the need for documented system controls. Actions taken to date by EPA are not sufficient to track costs and account for complex Superfund expenses. As long as data is inaccurate and staff must depend instead on tedious, manual document searches, they will not be able to rely upon the systems to provide all the information they need to execute cost recovery tasks efficiently.³²

WEAKNESSES IN CONTRACT MANAGEMENT PERSIST

EPA relies heavily on contractors to clean up Federal Superfund sites, provide computer and data collection services and supply materials, but the agency's actions to address serious deficiencies in its contract management have been insufficient to solve its problems. The Office of Management and Budget identified Superfund contract management problems as so serious that they were highlighted on the most recent OMB "High-Risk" list included with the President's Budget. OMB stated that EPA contract management had "persistent widespread problems in contract management".³³ OMB also stated that, because of poor contract management at EPA, environmental program effectiveness and efficient use of financial and human resources were at risk. Contract management problems in EPA also persist despite the attention given this issue by the National Performance Review.³⁴ So serious was this problem that the National Performance Review concluded "agency oversight has become lax, leading to vague work instructions, nebulous lines of authority and individual responsibility."³⁵

Of some additional interest is OMB's decision to remove EPA contract management from its "High Risk" list citing that the agency was taking actions to alleviate contract management problems. For a period of time, the agency Inspector General (IG) continued to consider contract management a high risk area for its purposes, though the IG recently removed contract management from its list of most serious concerns. In addition to deleting EPA's contract management from its "High-Risk" list, OMB also decided to terminate the list altogether. Problems cannot be solved by not counting them, however. OMB and the agency Inspector General's conclusion that contract management problems have been solved prior to evaluating the results of agency actions may be premature and are in conflict with the spirit of the Government Performance and Results Act.

By contrast, the General Accounting Office (GAO) continues to view EPA contract management as a high risk area. Recognizing

that EPA has taken actions to reduce contract management problems, the GAO argues that in the absence of a thorough evaluation of the actual achievements made by EPA, contract management remains a area of major concern. As a result, EPA contract management continues to be on the GAO's High Risk review list.

EPA makes extensive use of cost-reimbursable contracts in the Superfund program. These contracts require EPA to reimburse contractors for all allowable expenses. Accordingly, contractors continue to have little incentive to control costs. The agency has even allowed contractors to perform oversight work that it should have been doing, such as preparing agency decision documents or reviewing payroll.³⁶ In view of the EPA's dependence upon contractors, the top agency managers and officials have not focused enough attention on contract management, and greater oversight and evaluation needs to be exercised in this area.

SUPERFUND AUDITS AND INDEMNIFICATION

While the agency has implemented some changes in its contract management, uncertain progress has been made in reducing the risk to Superfund contract dollars resulting from insufficient or untimely audits.³⁷ Backlogs of requests by procurement officials for audits to verify the accuracy of contractor's charges have grown significantly. Auditing these contractors is critical to assure that unallowable costs, such as entertainment, alcoholic beverages or unauthorized travel is not charged to accounts. For a period of time the agency was also granting unlimited indemnification to contractors, without proof of uninsurability. That practice opened Superfund to excessive risk.³⁸ While the agency made some attempts to limit indemnification of contractors as standard contract language, it did so merely by publishing guidelines, rather than through notice and comment rulemaking procedures as approved in the Administrative Procedures Act. Guidelines, unfortunately, do not have the full force and effect of regulations.

IG AUDIT OF SERIOUS CONTRACT MANAGEMENT PROBLEMS

In March 1996, the EPA Office of the Inspector General published an extensive report on problems with the agency's management and oversight of selected contracts awarded to a major EPA contractor. The IG found instances where the products and services were either inadequate, untimely or of questionable value. For example, the Green Lights program did not meet program expectations for participation and was mismanaged by its contractor. Three of the indoor air quality projects went on year after year, greatly exceeding their original budgets and due dates. The Local Government Reimbursement program was so small that it was unreasonable to contract out its administration. The following is a discussion of some problems the Inspector General found.³⁹

THE GREEN LIGHTS PROGRAM

The EPA spent \$12.2 million on contracts to promote and market the program the Green Lights Program through one of its primary contractors in fiscal years 1994 and 1995. This is a voluntary, non-regulatory program to reduce air pollution. The IG found the con-

tractor spent money promoting the program through placing advertisements in expensive publications such as *Fortune* and *Business Week*, and permitting “field visits” to Hawaii. The program measured its “success” by the number of participants. Of the more than 1,500 entities listed as participants of the program, 75 percent of them did not participate actively or had problems implementing the program. Many either never participated in the program or only made minor progress. Many failed to file progress reports. While the agency placed great importance on the prominence of participants, they often failed to reveal that those entities often lacked actual participation in the program. The IG said, “Admittedly, the program is essentially a marketing venture, so it is understandable that EPA would highlight the enlistment of such prominent participants. However, we believe that it was misleading to promote such enlistments. Based on the agency’s letters, some of these prominent participants had yet to actually participate three and four years after having signed up.”⁴⁰ In one instance, EPA actually informed itself that it could not evaluate its own progress because it had failed to submit reports to itself.

In another instance, one participant received two letters from EPA on the same day. The first letter congratulated the participant on passing its second anniversary. The second letter terminated the participant from the program because it had failed to submit a progress report. Despite the termination, 9 months later the entity continued to be listed as a “participant” in the Annual Green Lights status report.

RELiance ON CONTRACTORS INCREASED THE AGENCY’S VULNERABILITY TO DELAY

EPA’s heavy reliance on a contractor to support the “Indoor Air Quality” projects dramatically increased the agency’s vulnerability to delays and escalating program costs. This problem was exacerbated because the agency did not plan the program in advance. The Inspector General found that, indoor air quality projects lingered on for years, greatly exceeding their original budgets. Of three audited projects, original budgets ranged from a low of \$28,000 to a high of \$31,000, but actual costs were as much as \$736,000. Among these three contracts, one was incomplete more than 6 years after it began, one was canceled after 5 years, and the only one completed took 6 years and cost of more than twenty-six times the original estimate. In each of these cases, the EPA placed too much reliance on contractors to finish the projects on-time and within budget. The agency allowed the indoor air projects to continue years after their scheduled due dates, which is completely unacceptable. Clearly, EPA management should take additional steps to ensure that projects are adequately planned so that they can be completed at a fair cost to the taxpayers.

EXCESSIVE ADMINISTRATIVE COSTS FOR THE LOCAL GOVERNMENT REIMBURSEMENT (LGR) PROGRAM

The EPA’s management of the Local Government Reimbursement (LGR) program was inefficient, as well as ineffective, the agency’s Inspector General reported. The purpose of the LGR program is to help local governments defray the costs of responding

to hazardous substance threats (such as oil spills, chemical plant explosions or fires at landfills) through reimbursements of up to \$25,000 per response. The program is coordinated by the American Association of Retired Persons' (AARP) Senior Environmental Employment Program. Ironically, during fiscal year 1994, the EPA spent more money promoting the program, than it did on actual reimbursements to local governments. While the agency paid its contractor to organize conferences to advertise the program, the response from local governments was lukewarm. Agency personnel in public information programs were unaware of LGR's existence.

During the period of the audit, the EPA reimbursed \$45,000 to local governments but paid \$363,000 to the contractor to administer and promote the program. EPA was unable to determine exactly how much of that amount was spent on LGR activities. The IG believes, however, that the amount may have been somewhat large because, in fiscal year 1995, the agency paid approximately \$300,000 to support the LGR program and reimbursed local governments only \$94,794.⁴¹

During 1994, the contractor was paid to put on conferences in Florida, Hawaii and Colorado. At times, arranging logistics cost far in excess of what either EPA or the contractor originally estimated. For example, the number of professional level 4 hours (the highest, most costly grade level hours) allowed under the contract was 50 by EPA's estimate, 225 by the contractor's estimate but the actual number of hours charged to the contract was 838.5. Nevertheless, the high administrative costs of the LGR program were unreasonable in relation to the low response to the program. To spend such high amounts to process so few applications was not cost effective.

COMMITTEES UNDER THE FEDERAL ADVISORY COMMITTEE ACT (FACA)

More attention to good management practices would help the agency in other areas as well. For example, the Inspector General reported that despite the administration's policy to decrease the number of Federal advisory groups, committees formed pursuant to the Federal Advisory Committee Act (FACA), the EPA has only reduced its committees from 31 to 22. Of the 22 FACA committees at the EPA, only 8 were statutory in 1995 and in 1996, only 6 were statutory.⁴² Ironically, the cost of those committees has increased 84 percent, from \$4.9 million at the beginning of the Clinton administration, to \$9 million in 1995. Also, there is an inverse relationship between the "reduced" number of committees and the number of FTE's supporting the activities of those committees. During the current administration, the number of employees involved in FACA committees has increased from 37.57 employees to 65.22 FTE's. Seventy percent of those FTE's are GS/GM-14's and above. The Inspector General has reported that the cost of the employees alone has risen from \$2.2 million to \$3.6 million, or a 64 percent increase. The IG also noted that most of the EPA's costs spent during 1995 were for operational committees, which were not required by statute.⁴³

GOVERNMENT PROPERTY IMPROPERLY PROVIDED TO CONTRACTORS

The Environmental Protection Agency has obtained hundreds of passenger vehicles without statutory authority to do so. In addi-

tion, the agency recently reported \$138.3 million in Government property (including tools, equipment and furniture and passenger and other vehicles) held by contractors, despite regulatory requirements that contractors furnish all necessary property.⁴⁴

Agencies are not authorized to acquire passenger motor vehicles, unless specifically permitted by appropriation act or other law. The Federal Acquisition Regulations (FAR) prohibit Federal agencies from providing vehicles to contractors. In violation of this restriction, the EPA has acquired a fleet of 523 vehicles, 287 of which were being used as passenger vehicles. This is in clear violation of statutory restrictions. EPA argued to its Inspector General that these acquisitions were necessary because Superfund contractors said they were unwilling to permit the wear and potential contamination to their own vehicles.

The IG reported that as of February 1996, the EPA had 229 active contracts providing \$138.3 million in Government property to contractors, including 392 EPA-owned vehicles and other vehicles leased from the General Services Administration (GSA). The property also includes the EPA's shuttle bus service at Headquarters. EPA's contractor provides drivers for buses and vans leased from the GSA. Also scientific equipment used at EPA laboratories by contractors was transferred by the agency. The Office of Acquisition Management acknowledged that it has become an agencywide routine practice to provide property (including vehicles) to contractors, in spite of Federal acquisition regulations.

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Executive Office of the President

OVERVIEW

The Executive Office of the President includes, among its major components: the White House Office; the Office of Management and Budget; the Council of Economic Advisers; the National Security Council; the Office of the United States Trade Representative; the Office of National Drug Control Policy; the Office of Administration; and the Office of the Vice President. Funding for the Executive Office of the President and funds appropriated to the President totaled about \$279.2 million for fiscal year 1996. The total budget request for fiscal year 1997 amounted to about \$286.3 million.¹

As the 1992 Government Operations Committee staff report correctly stated: "Sound management must flow from the top—from the President on down."² The President, by his actions and those of his immediate staff, sets the tone for the rest of the executive branch. The actions of the current administration in this regard have been well documented and speak for themselves. A number of White House activities have been the subject of lawsuits, investigations by the Independent Counsel, and oversight by this committee and other congressional committees.

Many of these activities have been addressed elsewhere and need not be repeated in detail here. At a minimum, however, it is fair to observe that the White House has set a poor example of manage-

ment for the rest of Government. Indeed, White House officials have acknowledged serious management failures. Remarkably, they even have asserted mismanagement as an excuse for some of their more egregious actions. Their actions make a compelling case for greater accountability on the part of the White House to the public and the taxpayers.

Effective management of the executive branch also requires strong leadership and capacity from within the Executive Office of the President. Here too, the current administration has regressed. The management role and capacity of the Office of Management and Budget—traditionally precarious in view of the agency’s competing budget responsibilities—have declined substantially in recent years. This decline appears to result, in part, from the administration’s “OMB 2000” reorganization in 1994. Further, the enormous cuts in the Office of National Drug Control Policy (ONDCP) in 1993 virtually hollowed out that office and set back the War Against Drugs.

One administration initiative that deserves credit for at least highlighting management issues is the National Performance Review (NPR). While the NPR has accomplished little by way of verifiable cost savings or fundamental management improvements, it has focused attention on the importance of management reform and perhaps raised consciousness levels within the executive branch.

Finally, the administration and the Congress have collaborated to achieve important statutory reforms in a number of management areas. These include the Government Performance and Results Act and several financial management reform laws. The 104th Congress has enacted additional statutory reforms in such areas as government procurement, use of information technology, and debt collection practices (See Section VII of this report). It is vital that these reforms be implemented effectively and that such collaborative efforts continue if we are to make progress in addressing the daunting management problems that face the Federal Government today. Effective implementation of these laws will require strong central leadership and capacity within the Executive Office of the President.

LACK OF ACCOUNTABILITY IN THE WHITE HOUSE

White House Counsel’s Office

Traditionally, the Office of the Counsel to the President has supported the institution of the Presidency by providing the President and the White House staff with legal advice and assistance on a wide range of subjects. The office, which has been lead and staffed by some of the Nation’s most respected attorneys, could point to a distinguished record of performing these functions. From the early days of the current administration, however, the office has been transformed into what is, in effect, a private law firm designed to serve the individual and political interests of the President and the First Lady. One incident after another has demonstrated that the highest priorities of the current White House Counsel’s Office are shielding the activities of the occupants and staff of the White House from legitimate congressional and public scrutiny, engaging

in political damage control, and otherwise advancing political agendas.

Early indications of the transformation in the White House Counsel's Office came with the appointment of two Arkansas attorneys and former law partners of the First Lady to key positions in the office. With the change in majority control in the 104th Congress, the White House hired numerous additional attorneys, apparently for the purpose of responding to congressional investigations into alleged personal and official misdeeds by the President, the First Lady and others. Several attorneys were hired to interview key witnesses in congressional investigations, share information, negotiate over access to documents with congressional investigators and Independent Counsel staff, and even prepare suggested questions and opening statements for minority members to deliver during congressional hearings. One senior attorney was hired just to respond to press inquiries. None of these new staff members reports to the White House Counsel; instead, they report to the Deputy Chief of Staff and the First Lady.

Among other examples, abuses of the role of the White House Counsel's Office are illustrated by its conduct in the Travel Office affair, the FBI Files fiasco, and efforts to shield the operations of the Health Care Task Force from public scrutiny. The committee regrets and condemns the misuse of the White House Counsel's Office in recent years. The committee recognizes, of course, that White House lawyers necessarily serve as advocates and defenders of the President, and that there often is a thin line between the President's official and political interests. However, the committee is convinced that the current White House Counsel's office has repeatedly and blatantly crossed that line, becoming essentially a political tool of the administration.

Travel Office and FBI files

The committee is issuing separate reports on the Travel Office and FBI Files, respectively, that will discuss these matters in detail.³ With respect to the Travel Office, White House attorneys participated extensively in the effort to terminate seven long time Government employees, and then participated in a White House "internal review" of their own activities. They pressured the Federal Bureau of Investigation (FBI) to undertake an ill-considered and inappropriate investigation of the Travel Office. They also worked aggressively to limit and control outside investigations of the Travel Office firings and their aftermath. In part as a result of their missteps, a relatively small mistake mushroomed into a multi-year, highly embarrassing scandal.

With respect to the FBI files, the improper use of these sensitive files resulted in part from the employment of otherwise competent attorneys hired to perform duties for which they had no prior experience or expertise. White House Associate Counsel William Kennedy was put in charge of a security process and allowed several unqualified political operatives (campaign aides Craig Livingstone and Anthony Marceca) access to an unlimited amount of sensitive Federal Bureau of Investigation information. With the active participation of the White House Counsel's Office, the FBI has been

politicized by the requests for the files and by several episodes that have occurred during the subsequent investigation.

Health Care Task Force

On January 25, 1993, in one of his first official acts, President Clinton appointed the First Lady to head the White House Task Force on National Health Care Reform. The mission of the Health Care Task Force (HCTF) was to develop legislation to be submitted to Congress by April 30, 1993. From the outset that its mission was shrouded in secrecy in terms of who was on the Task Force and what, exactly, it was doing.

In a letter to President Clinton dated February 1, 1993, Representative Clinger, then-ranking minority member of the House Government Operations Committee, exercised the committee's oversight authority with respect to the Federal Advisory Committee Act (FACA), 5 U.S.C. App. The act is designed to prohibit Federal officials from crafting policy in conjunction with private citizens behind closed doors. Specifically, FACA requires public openness and accountability on the part of any advisory committee that is not composed entirely of full-time Federal officers or employees.

Representative Clinger noted that since the First Lady was not a Federal official, the HCTF should be considered subject to FACA and its meetings should be open to the public. Meanwhile, there was a growing public awareness that other private citizens were participating in secret meetings. Then-White House Counsel Bernard Nussbaum denied the FACA violations, but several public interest groups filed a lawsuit against the First Lady and the 12 other Cabinet and White House officials who ran the Task Force to force them to open their meetings to the public. Such openness would seem most appropriate given that the Task Force was to determine the role of the Federal Government in the health care industry, which represents fully one-seventh of the U.S. economy and touches the lives of each and every American directly.

In what Mr. Nussbaum later referred to as an "aggressive" defense, the White House Counsel's Office devised a strategy of obfuscation and stonewalling, particularly with respect to the composition of the Interdepartmental Working Group—a component of the HCTF. This strategy even resulted in misleading the Department of Justice attorneys assigned to defend the lawsuit. In March 1993, Ira Magaziner, Senior Advisor to the President for Policy Development, signed an affidavit which stated that, other than representatives of some large, private, tax-exempt foundations, all of the members of the White House Interdepartmental Working Group were Federal employees.⁴ This affidavit was filed with the court by Department of Justice attorneys, who failed to conduct an independent investigation to confirm the facts in support of the White House's motion to dismiss the lawsuit.

The U.S. District Court for the District of Columbia held that the First Lady was not a Federal official, and, therefore, the HCTF was subject to FACA.⁵ The Court of Appeals reversed this decision, holding that the HCTF was not subject to FACA. However, the Court of Appeals remanded the case for further factual inquiry to determine whether the Interdepartmental Working Group in itself constituted a FACA advisory committee.⁶

The discovery proceedings that followed showcased the stonewalling tactics of the Counsel's Office. In a decision ordering compliance with the plaintiffs' discovery requests, the Federal trial judge stated: "Defendants have submitted meritless relevancy objections in almost all instances, and incomplete and inadequate responses in most instances. . . ." ⁷ The judge characterized one of the Government's responses to a discovery request as "preposterous." The judge described as "[e]ven more egregious" the Government's claim that lists of Working Group meeting participants that the White House itself had prepared "should not be understood as fully exhaustive or completely accurate lists. . . ." ⁸

The White House eventually relented and released information about the Working Group, and the lawsuit was dismissed as moot. However, the published information contradicted the claim by White House officials that the Task Force was composed entirely of Federal employees. The district court's decision dismissing the case observed:

We now know, from the records produced in this litigation, that numerous individuals who were never federal employees did much more than just attend working group meetings on an intermittent basis, and we now know that some of these individuals even had supervisory or decision-making roles. The extent to which these individuals were subjected to conflict-of-interest scrutiny is also questionable. ⁹

The claim that all Working Group members were Federal employees had been central to the White House's legal defense in its efforts to avoid application of the FACA to the Task Force, with its attendant accountability and public access requirements. When this claim was revealed to be false, the trial judge referred Mr. Magaziner to the Justice Department for consideration of criminal prosecution. ¹⁰ After a lengthy investigation, U.S. Attorney Eric Holder concluded that Mr. Magaziner should not be prosecuted.

A host of other problems dogged the HCTF. When the identities of the members became public, it also was revealed that some of the non-Federal employee members had business and other financial interests that were directly implicated by the Task Force's work. Many members of entitlement-oriented special interest groups were given White House passes to attend meetings without completing either FBI or Secret Service background checks. The 100 day timeframe for writing legislation to provide "universal care" to all Americans proved unworkable, and it would take at least 8 months for President Clinton to outline his proposal to a joint session of Congress in September 1993. Not until March 1994 would the House Ways and Means Committee vote on health care reform. By the following August, administration and congressional leaders would concede that there was no chance of passing universal health care during the 103d Congress. While the White House originally claimed that the Task Force would cost only \$100,000, a GAO report eventually documented costs of almost \$10 million. GAO cautioned that even this information was incomplete. ¹¹

White House Communications Agency

The White House Communications Agency (WHCA) was established in 1941 in order to provide national security-related communications support to the President. In response to reports of possible fraud, waste, and abuse at the WHCA, this committee's Subcommittee on National Security, International Affairs, and Criminal Justice initiated a comprehensive independent review of WHCA operations. After the White House refused to cooperate with a GAO audit, the subcommittee arranged for the Department of Defense Inspector General to conduct the review.¹² The Defense IG issued two reports on the WHCA, and the subcommittee held two oversight hearings.

The IG concluded that the WHCA, which now consists of over 800 military personnel and has a budget in excess of \$100 million, has expanded its activities well beyond its original mission. For example, the IG found that in 1 year the WHCA provided the White House almost \$8 million worth of services that exceeded its stated mission and would have been more appropriately funded by the Executive Office.¹³ The IG also found serious financial management problems and lack of accountability at the WHCA. These problems stemmed in part from the fact that while the WHCA was technically under the supervision of DOD, it received day-to-day direction from political appointees at the White House.¹⁴

Questionable procurement and personnel practices

GAO reported on a series of dubious procurement and personnel actions on the part of the White House. For example, GAO found that a sole source procurement for resume-processing services did not fully comply with Federal procurement regulations and contained insufficient evidence that the contract price was fair and reasonable.¹⁵ GAO also reported that 38 percent of the 611 personnel appointments by the Executive Office of the President between January 20 and late April 1993 were made retroactively. During the same period, 67 employees received retroactive salary adjustments.¹⁶ The report noted that granting retroactive pay raises to some of these employees would not have been permitted under normal government personnel rules, but were legal because the White House is exempt from those rules. Because of the potential for abuse, GAO suggested that Congress might wish to revisit this exemption.¹⁷

Need for greater accountability

The incidents described above highlight the need for greater accountability on the part of the White House, and the consequences of its exemption from the civil rights, labor and personnel laws that cover the private sector and now the Congress. They also highlight the absence of an investigative and oversight capacity in the White House to alert the President to potential management, ethical, and other problems.

The Travel Office affair also disclosed that ethics rules apparently do not apply to informal unpaid advisers recruited by the White House who are not appointed as "special Government employees" under 18 U.S.C. § 202, but function as de facto employees. A special Government employee must comply with criminal conflict

of interest statutes and may be subject to financial disclosure requirements and standards of conduct. This lack of accountability fostered abuses of power by individuals who had no official status but nevertheless appeared to act with the authority of the President. The most prominent example is Harry Thomason, who had office accommodations and a White House pass, participated in meetings with officials of the Executive Office of the President, and attempted to influence policy. Mr. Thomason advocated dismissing the Travel Office employees and replacing an air charter company when that action would have promoted his own business interests.

Subcommittee Chairman Mica, of the Subcommittee on Civil Service, along with many other Members, introduced a bill—the “Presidential and Executive Office Accountability Act” (H.R. 3452)—to require the Executive Office of the President to comply with the same civil rights, labor, and employment laws that apply to the Congress and throughout the United States. H.R. 3452 also would establish a Chief Financial Officer and an Inspector General in the White House and revise the definition of “special Government employee” to ensure that it covers individuals who perform activities or functions that could give rise to conflict of interest. The bill has been ordered reported by the full committee.

THE MANAGEMENT CAPACITY OF THE OFFICE OF MANAGEMENT AND BUDGET HAS DIMINISHED GREATLY

In 1970, the former Bureau of the Budget was reconstituted as the Office of Management and Budget (OMB) in order to strengthen central management leadership and capacity in the executive branch. However, since that time and during both Republican and Democratic administrations, concerns have been voiced over the vitality of the management role in OMB. As GAO recently observed:

Throughout the history of OMB and its predecessor organization, the Bureau of the Budget, management and budget issues have competed for attention and resources. In general, budget issues have tended to squeeze out management issues.¹⁸

Interestingly, when he was chairman of the House Budget Committee, Leon Panetta introduced a bill (H.R. 2750) in 1991 to establish a separate “Office of Federal Management” in the Executive Office of the President. A 1991 report by Mr. Panetta’s Budget Committee staff noted that “the tyranny of deficit politics has required OMB to devote all of its time and resources to the budget part of its responsibilities, and there is little reason to expect real change until the budget is brought under control.”¹⁹

The problem continues today, and was exacerbated by the March 1994 reorganization of OMB called “OMB 2000.” The stated purpose of this reform was to increase attention to management issues, but instead it had the opposite effect of subordinating management issues to budget issues even more. OMB 2000 fundamentally changed the organizational structure of OMB. The former budget areas were redesignated Resource Management Offices (RMO’s). The RMOs were staffed by the former budget examiners, who now have both budget and management responsibility.

On June 28, 1994, Representative John Conyers, Jr., then-chairman of the committee, and Representative Clinger, then-ranking minority member, wrote to the Comptroller General expressing their concerns about the OMB 2000 changes as follows:

We are especially concerned that, as a result of the reorganization plan, OMB's statutory management functions (namely, the Office of Information and Regulatory Affairs, the Office of Federal Procurement Policy, and the Office of Federal Financial Management) are not diminished but further strengthened and that OMB will be better positioned to meet its critical leadership role. We further want to ensure that broad management initiatives such as the Paperwork Reduction Act, the Chief Financial Officers Act, and the Government Performance and Results Act be fully and effectively implemented.

Their concerns proved to be well-founded. As part of the reorganization, the Office of General Management was abolished. The three statutory offices were weakened by the transfer of about one-third of their staffs to the RMOs.²⁰ A report by this committee, based on a series of hearings held in early 1995 by the Subcommittee on Government Management, Information, and Technology, stated by way of summary: "The capacity available to the President in the Office of Management and Budget to reform or improve management has steadily declined and now barely exists, despite a competent Director of OMB and a Deputy Director for Management, whose talents in this area are underutilized. Federal management organization, oversight authority, and general influence have been consistently overridden by recurring budget crises and budget cycle demands, despite conscientious intention to give 'Budget' and 'Management' equal voice within OMB."²¹

A February 1996 hearing before the Subcommittee on Government Management, Information, and Technology indicated that the situation at OMB has not improved. The consensus opinion of the expert witnesses testifying at the hearing was that:

- The intensity of budget pressures makes it unrealistic to expect OMB to find the time and energy to provide sustained leadership for major management initiatives.
- OMB no longer has much capacity to provide meaningful advice or leadership to departments and agencies or to Congress on reorganization issues.
- OMB no longer has the capacity to assess the total impact of government regulations on local communities, businesses, and families.²²

The hearing highlighted several problems. Statutory reports, such as those required under the Chief Financial Officers (CFO) Act, are being transmitted from OMB to Congress months late and with no analysis or any other added value supplied by OMB. At the time of the hearing, only 14 of the 24 agency CFO Act reports had been received by the committee. The average time it took to get the report through OMB was nearly 5 months. In many cases, all that OMB added was a transmittal letter from the Director.²³ The Defense Department's CFO Act report for fiscal year 1994 was not

transmitted to Congress for more than 6 months after its submission to OMB.²⁴

The quality of reports also has suffered. For example, OMB's 1995 Federal Financial Management Status Report & Five-Year Plan overstated the number of unqualified opinions on audited financial statements reported by the Department of Defense. OMB's 1996 Status Report greatly exaggerated delinquent tax debt collection results for fiscal year 1995 by relying on data other than that used by IRS. OMB reported tax debt to be about \$24 billion less than IRS data showed, and OMB overstated by more than \$1 billion the amount of delinquent tax debt IRS collected in 1995. The debt collection portion of OMB's annual status reports omits any mention of outstanding criminal debt, which, according to available estimates, now amounts to between \$5 and \$6 billion.²⁵

OMB's inattention to management issues appears in other areas as well. Management staff at OMB have not ensured that agencies are developing performance measurement systems necessary to comply with the Government Performance and Results Act (GPRA). OMB has not yet approved any pilots required by the second stage of the GPRA, which requires the Director of OMB to designate not less than five agencies as pilot projects on managerial accountability and flexibility for fiscal years 1995 and 1996. This is because the first round of pilots were generally weak, and were only recently critiqued by OMB and returned to the agencies. OMB's problems in carrying out its central role in GPRA implementation are distressing, but hardly surprising since OMB has devoted only one staff position to work specifically on GPRA. Effective implementation of GPRA is vitally important to improving government management. The committee finds OMB's lack of support for this effort inexcusable and alarming.

OMB's Office of Information and Regulatory Affairs (OIRA) is failing to carry out its statutory responsibilities. GAO recently testified that OIRA has not satisfied its mandate under the Paperwork Reduction Act of 1995 to keep Congress "fully and currently informed" concerning why it has not set paperwork burden reduction goals.²⁶

In addition to its own statutory lapses, OMB seems unwilling to ensure that agencies comply with the law. A recent example was OMB's approval of a plan by the Department of Energy to offer a new round of "buyouts" to its employees long after the statutory deadline for buyouts had expired. The plan was patently illegal, as the Office of Personnel Management had advised OMB in advance of its approval, and as the Comptroller General later ruled.²⁷ Following a hearing by the Subcommittee on Civil Service, at which both majority and minority members also challenged the legality of the proposal, OMB finally was forced to withdraw its approval.

In a particularly unfortunate abdication of management responsibility, OMB has abandoned its initiative to maintain and oversee a "high-risk" list of programs particularly susceptible to fraud, waste, and abuse. OMB's high-risk initiative began in 1989 and was pursued vigorously until the current fiscal year. Just last year, the agency refined its High-Risk list to 57 areas in order to better focus on the most important problems. OMB's most recent (and

last) progress report, which devoted an entire chapter in the Analytical Perspectives portion of the fiscal year 1996 budget, stated:

By focusing on a smaller number of important items, OMB intends to provide assurance to the public and the Congress that significant problems are being aggressively addressed. This approach will also allow OMB and the agency to ensure that appropriate resources are provided to solve the problems.²⁸

In a rather stark reversal, the high-risk initiative was quietly dropped this year with only a passing comment. The fiscal year 1997 budget noted that six agencies are conducting pilots designed to streamline management reporting, and stated that these pilots “eliminate the need to separately identify and track ‘high risk areas’—the Government’s serious management challenges.”²⁹ This statement is dubious on its face. It becomes wholly implausible when one considers that the six pilot agencies, taken together, account for only seven of OMB’s 57 high-risk areas. Two of the pilot agencies have no high-risk areas at all. In the committee’s view, OMB’s abandonment of the high-risk initiative is a major step backward and sends a terrible message to agencies about OMB’s level of interest in or commitment to improving the Government’s most serious management challenges.

DRASTIC REDUCTIONS IN THE AUTHORITY AND RESOURCES OF THE OFFICE OF NATIONAL DRUG CONTROL POLICY HAVE IMPEDED THE WAR AGAINST DRUGS

This committee has conducted extensive oversight of the War on Drugs through its Subcommittee on National Security, International Affairs, and Criminal Justice. The problems afflicting the Drug War are discussed in detail in a separate section of this report. One problem that merits discussion in this section is the fate of the Office of National Drug Control Policy in recent years.

The Anti-Drug Abuse Act of 1988 (Public Law 100-690, title I, subtitle A) established the Office of National Drug Control Policy (ONDCP) in the Executive Office of the President and created the position of ONDCP Director, known as the “Drug Czar.” Among other things, the Act required the ONDCP Director to present to the President and Congress an annual strategy with measurable goals and a Federal drug control budget. The Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103-322, title X) strengthened ONDCP’s role in budget formulation in order to improve resource targeting, policy consistency, and overall counter-narcotics coordination.³⁰

Notwithstanding its vital missions, ONDCP bore the brunt of funding and staff cuts made by the President in 1993 in an effort to downsize the White House staff. The committee’s recent comprehensive report on the Drug War summarized the extent and impact of these cuts as follows:

Expert witnesses concurred that the sudden, unilateral 1993 cut by President Clinton in ONDCP staff by more than 80 percent from 146 staff to 25, and a simultaneous reduction in the fiscal year 1994 ONDCP appropriations from \$101.2 million to \$5.8 million, has never fully been

rectified, and continues to contribute both to the perception that the administration places a low priority on anti-drug efforts, and to the reality that ONDCP is unable to perform all previous functions, especially on interdiction policy.³¹

The administration's lack of interest in the work of ONDCP was apparent in other ways as well. For example, the President failed to produce the 1993 annual strategy required by law; instead, only a terse "interim" strategy was issued. The President delayed the appointment of an ONDCP Director until half way through 1993, and failed to appoint an ONDCP Deputy for Supply Reduction.³² As this committee's report observed, according to a wide cross section of drug policy experts, lack of Presidential leadership and involvement has contributed to the recent alarming reversals in youth drug use trends and other indicators of progress in combating illegal drugs.³³

THE NATIONAL PERFORMANCE REVIEW IS A LAUDABLE INITIATIVE, BUT HAS PRODUCED FEW CONCRETE RESULTS

The National Performance Review (NPR) initiative, which was conducted under the auspices of Vice President Gore, proceeded in two phases. In NPR Phase I, agencies were asked to come up with ideas for management improvements. The NPR's initial report, *From Red Tape to Results: Creating Government That Works Better and Costs Less*, was issued in September 1993 and contained 384 major recommendations.³⁴ After the 1994 elections, the Vice President launched a second phase. NPR Phase II required the agencies to re-evaluate their missions and "reinvent" themselves, to justify their existence, and to recommend improvements and cost saving proposals. Phase II culminated in a September 1995 report entitled *Common Sense Government: Works Better and Costs Less*, which included 180 more recommendations.³⁵

While the administration deserves credit for undertaking NPR, this initiative has produced few verifiable savings or fundamental reforms in Government operations. NPR Phase I took a bottoms-up approach, incorporating many recommendations that agencies already formulated through their efforts under the Government Performance and Results Act of 1993 and similar laws, and recommendations that GAO had been making for years. However, NPR did not address many critical management issues. NPR failed to consider nearly three-fourths of what GAO regarded as the most important management problems in 23 agencies. It also failed to consider a number of areas on GAO's and OMB's high-risk lists.³⁶

The September 1995 NPR report stated that \$70 billion in savings would result from implementing these new recommendations during the period from fiscal year 1996 to fiscal year 2000. It also claimed that "reinventing government" had reduced the size of Government. However, these savings are unverifiable and staff cuts have resulted from many factors unrelated to NPR. At least 70 percent of the cuts came from downsizing in the Department of Defense—reductions that had nothing to do with the NPR and everything to do with the end of the cold war and subsequent base

closures.³⁷ Many program eliminations resulted from actions taken by Congress over the past 3 years.

The NPR did not include any objective external evaluation of its success or failure. In compiling its reports, the NPR took at face value information provided by the agencies on whether they have implemented their recommendations. There has been no objective assessment of overall savings as a result of the NPR recommendations, particularly with respect to the NPR Phase II.

In a report that evaluated the status of the 384 major recommendations in NPR Phase I, the GAO found that only 4 percent of the recommendations had been fully implemented by December 1994.³⁸ Two years later, another GAO report found that only 24 percent had been fully implemented.³⁹

This committee, the Senate Governmental Affairs Committee, and the House Budget Committee sought to have GAO evaluate NPR Phase II savings claims of over \$100 million, but GAO was forced to drop the project. GAO stated that, for a variety of reasons, "it would be difficult or impossible, to verify most of the NPR Phase II savings estimates."⁴⁰ According to GAO, this resulted from a variety of factors. Some of the recommendations involved major institutional reforms, but provided few details on precisely how agency operations and programs would change. Information and data used for the original NPR Phase II estimates would not be easily available and might in some cases be impossible to reconstruct. It would often be impossible to evaluate the savings associated with policy changes accurately. In many cases, the budgetary impact of individual policy changes could not be isolated accurately from the impacts on spending of related policy changes, subsequent legislation, other administrative actions, changes in the economy, and behavioral responses.

In the committee's view, NPR has not been a wasted exercise. It highlighted many management problems that have plagued the government for some time and provided a renewed focus on them. The failure of NPR to achieve more is disappointing, however, particularly since many of its recommendations for administrative and management changes were fairly modest. The relatively low rate at which such recommendations have been implemented is also disappointing since the recommendations in effect come from the White House and their implementation is in the hands of agencies subject to its direction.

ENDNOTES

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⁴U.S. District Court for the District of Columbia. *Association of American Physicians and Surgeons, Inc., et al. v. Hillary Rodham Clinton, et al.*, Civil Action No. 93-399. Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment. Declaration of Ira Magaziner, Attachment 1, pp. 1-13.

⁵*Association of American Physicians and Surgeons, Inc. v. Clinton*, 813 F. Supp. 82 (D.D.C. 1993).

⁶*Association of American Physicians and Surgeons, Inc. v. Clinton*, 997 F.2d 898 (D.C. Cir. 1993).

⁷*Association of American Physicians and Surgeons, Inc. v. Clinton*, 837 F. Supp. 454, 457 (D.D.C. 1993).

⁸*Id.*

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Federal Emergency Management Agency

OVERVIEW

The Federal Emergency Management Agency (FEMA) was established in 1979 to consolidate disaster response throughout the Federal Government. FEMA distributes the President's Disaster Relief Fund, the source of most assistance following major natural disasters. Appropriations for FEMA total \$701 million and the agency is staffed by approximately 6,000 positions.

FEMA has problems managing the moneys it distributes. It gives public assistance grants to rebuild entities that should be ineligible for such funds. FEMA provides unnecessary funds for the renovation of lavish parks and recreation facilities throughout the country. Perhaps most urgent, however, is the lack of overall efficiency of FEMA's management of the Disaster Relief Fund.

ECONOMY AND EFFICIENCY OF OPERATIONS ¹

In 1995, in response to a request from Senator Christopher Bond, FEMA's Inspector General conducted an audit of FEMA's Disaster Relief Fund. A large portion of the audit focused on the economy

and efficiency of operations at FEMA. The Inspector General provided substantial insight into many of the areas in which waste and abuse occurs at FEMA.

Management of human resources

When a disaster occurs, FEMA staffs the effort with permanent full-time employees and reservists. Because full-time employees and reservists are paid travel and per diem costs, FEMA spent \$38 million in 1994 alone for the expenses of these employees. Major savings would result from FEMA's use of local employees to staff disaster relief operations, or from transitioning from per diem employees to local hires sooner.

The disaster relief operation that occurred as a result of the Northridge earthquake employed 1,400 employees in February 1994 and decreased to 130 employees in February 1995. At an average per diem of \$128, FEMA's Inspector General estimates that FEMA could have saved approximately \$1,961,000 if it had utilized a greater percentage of local labor sooner in the relief effort.²

FEMA should allow more flexibility in hiring temporary, local employees to staff its onsite operations.

Mission assignments

FEMA often dictates that other Federal agencies complete work on disaster relief, called mission assignments. When FEMA pays for the services provided by other agencies, it does not ensure that services were actually completed or that property was actually delivered. FEMA often lacks the proper documentation to support the payments it makes.

The Stafford Act requires States to contribute up to 25 percent of the costs of direct Federal assistance resulting from mission assignments. For the Houston flood, the State's share of mission assignments was estimated to be \$254,000. For the Georgia flood, the State's share of mission assignments was estimated to be between \$2 million and \$8 million. According to FEMA's Inspector General, FEMA Headquarters does not know whether the regional offices have collected these amounts.³

Further, FEMA needs to close-out mission assignments in a more timely manner. As of the date of a July 1995 Inspector General report, 187 mission assignments were still open.⁴ These were assignments from disasters declared before fiscal year 1994. The fund set aside for payment of these assignments totaled \$143 million. Until these mission assignments are closed-out and other Federal agencies submit final bills to FEMA, that money can not be used for other disaster activities.

Small projects

The Stafford Act provides that public assistance grants for less than \$35,000 require no accounting for costs. The only requirement is that the grantee certify that the work is completed. Grants of this nature account for almost 30 percent of all public assistance awards. \$47 million was granted under small projects as a result of Hurricane Andrew. \$103 million was granted under small projects as a result of the Northridge earthquake.

In routine audits of this program, FEMA's Inspector General found numerous examples where funds granted for small projects went for purposes other than disaster related repairs. In one instance, a small project grant for emergency services and repairs went instead for computer purchases and beautification projects. A grant for sewer line repair went to install lighting at a city park. A grant for the repair of parking lots went to the purchase of computers.⁵

FEMA specifically requires that a grantee not account for the expenditure of funds under a small project grant. Three States required grantees to account for excess funds. Two of the States required that excess funds be used for worthwhile projects, although not necessarily for disaster related purposes. Another State required grantees to refund excess moneys. FEMA, in accordance with its non-accountability policy, ordered the State to discontinue the refund of excess funds.⁶

Administrative allowances

When a State receives a grant from FEMA, it has the right to receive an administrative allowance to cover the costs of grant administration. In addition, a State can apply for State management grants to cover other administrative costs.

Today, grantees receive funds far in excess of those needed to administer grants. For instance, using data from the Public Assistance Summary Report, FEMA's Inspector General estimates that excessive administrative fees from Hurricane Andrew and the Northridge Earthquake totaled \$413,000.⁷

There are several ways in which excess administrative grants are made. Administrative allowances are computed incorrectly on damage survey reports and advances. Or, FEMA regularly makes administrative grants for management grants, funds granted specifically to pay administrative costs. Once again, FEMA does not require States to account for the funds.

FEMA MAKES PUBLIC ASSISTANCE GRANTS TO THOSE WHO ARE NOT ELIGIBLE⁸

FEMA's public assistance program makes grants necessary to rebuild public and private nonprofit structures destroyed or damaged in natural disasters. Between 1989 and 1994, FEMA made \$6.5 billion in grants for this purpose. The purposes of public assistance grants are to remove debris, protect the health and safety of the public, and restore destroyed buildings. In addition to Government buildings, public assistance grants may be made to those private nonprofit facilities that provide essential Government services. The manner in which these grants are made and the criteria used to determine eligibility brings to this program a high level of waste.

The amount of money distributed for the purposes of public assistance programs has increased dramatically in the past few years. In 1991, FEMA obligated approximately \$301 million in public assistance costs. In 1994, FEMA obligated approximately \$2.15 billion in public assistance costs. This amounts to a more than seven fold increase, while the number of disasters actually decreased from 39 in 1991 to 37 in 1994.⁹

When FEMA agrees to fund the repair of structures damaged in disasters, there is often dispute concerning the extent to which the structure should be repaired. Some believe that the damaged structure should be brought in conformity with the building codes that were in place at the time of the disaster, while others believe that the structure should be rebuilt to withstand similar, future disasters. Another concern is the part of the structure that should be repaired. Some believe that only the part of the structure damaged by the disaster should be repaired by FEMA funds, while others believe that FEMA funds should encompass a broader renovation of the structure. In one instance, FEMA determined that a hospital was eligible for \$3.8 million in funds. The hospital sought \$64 million. Finally, as a result of this dispute over which codes should govern the hospital's repair, FEMA paid \$29.3 million.¹⁰

Public assistance grants have gone, in the past, to facilities that were abandoned at the time of the disaster, or were leased by private entities at that time. For example, the Williams Building in San Francisco was largely vacant at the time of the Loma Prieta earthquake, and was unsuitable for renting; however, FEMA granted \$7 million to repair this building. Also as a result of the Loma Prieta earthquake, FEMA granted \$2 million to repair the old Gilroy City Hall, which was being used as a restaurant and meeting facility. The Los Angeles Coliseum, an entertainment center, stands to receive approximately \$91 million. None of the aforementioned facilities provide the services intended to be addressed by the public assistance program.¹¹

Nonprofit facilities eligible for public assistance grants are limited to those that provide essential Government services, but interpreting the definition of essential Government services has been difficult for FEMA. In 1993, FEMA attempted to limit grants to those private nonprofit facilities that provided health and safety services. Nonetheless, in 1994, FEMA granted funds to nonprofit organizations that clearly fell outside such criteria. Because of damage from the Northridge earthquake, FEMA gave \$120,000 to a contemporary dance foundation because it taught dance to underprivileged children. FEMA gave \$1.5 million to a performing arts theater because it offered discount tickets to senior citizens and taught theater to young and senior citizens. FEMA gave \$4.8 million to an institute used as a retreat for youth of different religions.¹²

The General Accounting Office recommends that FEMA clarify the criteria for receipt of public assistance program funds.¹³ Limiting the nonprofit organizations eligible for these funds would restrict the amount of funds FEMA would be obligated to distribute. Preventing distribution of public assistance funds to buildings that are abandoned or profit-making would also contribute savings to the American taxpayer.

DISASTER ASSISTANCE FOR PARK AND RECREATIONAL FACILITIES¹⁴

In the last several years, 50 of the largest disasters gave FEMA the opportunity to grant more than \$214 million in disaster assistance for parks and recreational facilities throughout the country. FEMA's Inspector General found that large amounts of money go

to repair recreational facilities used by a relatively small portion of the population.

In 1974, a law was passed to allow disaster assistance to repair park and recreational facilities. Congressional intent is clear on the point that funds should not be used for the repair of “golf courses, football or baseball fields, [or] tennis courts.”¹⁵ Nonetheless, FEMA spends millions of dollars on just that purpose. As a result of Hurricane Andrew, FEMA paid almost \$3.5 million for tree replacement at Crandon Park at The Links in Key Biscayne. Officials defended the use of the money for tree replacement in the median of the road going through the park, saying that it provided a “psychological boost” to the citizens.

The original purpose of allowing disaster assistance dollars to pay for parks and recreation facilities was to resurrect buildings used for public assemblage. In Atlantic Highlands, New Jersey, damage from a storm totaled more than \$4 million. While the building at the site was insured, the piers were not. FEMA paid to rebuild the piers, apparently in contravention of the purpose of such grants. That same law requires that organizations obtain insurance on the renovated property, but the Atlantic Highlands Marina claims that FEMA made no request to that effect.¹⁶

There can be a legitimate purpose for Federal support for some parks and recreation. However, millions of dollars are being wasted on facilities that generate substantial revenue, contain insurable property, and provide no necessary public purpose.

ENDNOTES

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General Services Administration

OVERVIEW

The U.S. General Services Administration has a dual role of providing direct administrative services to other Federal agencies and establishing policy and oversight for Government agencies in areas as diverse as procurement, property disposal, travel, and aircraft management. In fiscal year 1996, the agency received an appropriation of \$240 million. Most of the services provided by GSA are accomplished through revolving funds, most importantly the General Supply Fund, the Federal Buildings Fund, the Information Technology Fund and the Working Capital Fund. Through these cross-servicing schemes, GSA directly controls more than \$11.2 billion in disbursements. Furthermore, the agency impacts how agencies spend another \$50 billion dollars on programs for which GSA establishes governmentwide policy but has no direct involvement. In fiscal year 1996, GSA had 16,140 full-time equivalents.

GSA is primarily divided into policy and operations. In 1995, an Office of Policy, Planning and Evaluation was established, thus separating the policy and operational branches by creating a new organization. The remaining operational units of GSA include the Public Buildings Service, which provides real estate services, such as office space in Federal buildings, commercial real estate brokerage services, real property management and physical security services to Federal agencies; the Federal Supply Service, which provides various administrative services to Federal agencies, such as motor vehicle management, supply and procurement, and personal property management. Finally, the Information Technology Service oversees services such as local telecommunications services, long-distance phone services and policy regarding acquisition of information technology.

COSTLY REAL ESTATE MONOPOLY

The General Services Administration's (GSA) monopoly on real estate wastes time and money for every agency that is required to use its services. GSA maintains a costly monopoly over the provision of real property services to Federal agencies costing in excess of \$210 million per year.¹ In September 1993, to promote competition, the National Performance Review recommended eliminating the monopoly which GSA holds on Government real estate.² The General Accounting Office concurred.³

Before an agency can rent office space, it must go through the General Services Administration. GSA determines the rate the agency will pay and can take up to 65 months to get a new lease for the agency.⁴ That is five times longer than the private sector takes to finalize leases for real estate. Despite this longer time period, the only benefit an agency obtains for the delay is a more expensive lease. According to GSA's own price determinations, it pays more than the market value of the property in many cases.⁵

For example, GSA leases office space in the World Trade Center in Long Beach, California for an average of \$28.77 per square foot per year.⁶ Private sector renters, in the same building, can currently rent for \$16.50 per square foot per year. GSA spends 74 percent more than private sector renters. The Government could save

over \$680,000 per year on this one rented building if it negotiated for private-sector rates.

GSA argues that the Federal Government obtains an economy of scale through its purchasing power, leveraging the weight of Federal buying power to obtain lower rates. If that is the case, GSA could enjoy an advantage which would draw Federal customers by choice, rather than by a coercive monopoly.

The President's National Performance Review recommended that GSA allow choice among its real property clients. Neither GSA nor the Vice President has followed up on this pledge. "NPR Action Item: The President should end GSA's real estate monopoly and make the agency compete for business. GSA will seek legislation, revise regulations, and transfer authority to its customers, empowering them to choose among competing real estate management enterprises, including those in the private sector," states the First Report of the National Performance Review, which was announced with much fanfare 3 years ago. Unfortunately, the President has not followed through on this recommendation.

MOTOR VEHICLE FLEET MANAGEMENT SERVICES: WASTING \$135
MILLION PER YEAR

The Federal vehicle fleets operated by Federal agencies are very expensive. According to figures supplied by Federal agencies, accounting and consulting firm Arthur Andersen, which examined GSA's business lines under the Federal Operations Review Model, estimates that non-GSA fleets could save \$135 million per year if they could bring their costs down only to the level of GSA.⁷ Neither the Office of Management and Budget nor GSA has taken any steps to achieve these savings. Rather, GSA has focused its attention on its own fleet, to the detriment of other agency fleets, for which GSA has policy and oversight responsibility.

In addition, the Office of Management and Budget (OMB) is a serious barrier to efficient management of Federal vehicle fleets. For example, GSA and the Army discussed the GSA managing the Army's fleet of 8,000 vehicles in Europe. The Army was managing these vehicles with 450 personnel. GSA would be able to perform the same task with 50 FTE, and provide faster replacement of old vehicles. This would save \$11 million per year. GSA and Army began discussions in 1992. OMB, however, prevented the Army from transferring 50 FTE to GSA from its 450 fleet management work force. This action by OMB had the effect of blocking the deal. The delay has cost \$44 million, prevented the Government from eliminating 400 superfluous jobs, and the Army from getting new vehicles faster.⁸

EXCESS REAL ESTATE—GSA IS AN ABSENTEE LANDLORD

While the Federal Government has been downsizing, it has not been reducing the amount of physical space they occupy. According to the General Accounting Office, if agencies had given up space in proportion to their reductions in personnel, they would have reduced their space by over 16.2 million square feet.⁹ Using the average cost per square foot as a gauge, this would save \$362 million per year. Neither GSA nor OMB has made any plans to reduce the amount of real estate controlled by Federal agencies. As the num-

ber of employees declines, and the space used to house these agencies maintains its current level, Federal agencies will pay for more and more empty offices.

Reducing personnel without capturing the administrative costs associated with excess personnel is a management problem requiring the attention of management in each agency. The lack of any central focus—by GSA or OMB or anyone else in the Federal Government—on this problem has resulted in hundreds of millions of dollars in excess costs each year. These costs will continue to grow as agencies continue the process of downsizing.

DANGEROUS REDUCTION OF FEDERAL PROTECTIVE SERVICES EMPLOYEES

In 1989, Congress passed Public Law 100-440, a law which required GSA to increase by 50 officers per year the strength of the Federal Protective Service (FPS). The FPS is a Federal security force which provides protection for individuals in Federal office buildings. This is particularly crucial as violent attacks against Federal employees have occurred, such as the bombing of the Alfred P. Murrah building in Oklahoma City on April 19, 1995. This process of increasing FPS strength was to continue on an annual basis until the force reached 1,000 officers.

Instead of increasing the strength of the force, GSA oversaw a decline in FPS strength. When the administration reduced FTE positions, the force strength of the Federal Protective Service was reduced. Despite the law requiring a certain strength of FPS officers, GSA did not exempt Federal Protective Officers from downsizing by designating them as mission-critical.¹⁰

In the years before the Oklahoma City bombing, numerous officers were offered buyouts, including officers in Oklahoma City. In addition to the buyouts, FPS strength was reduced by poor retention and low pay. GSA has now sought to remedy this situation by raising pay administratively and hiring unarmed contract guards to displace Federal Protective Service workers. GSA has proposed to comply with the law by repealing it.¹¹

OVERSPENDING ON COURTHOUSE CONSTRUCTION

Federal courthouses have become enormously expensive construction projects. For example, Seattle's new Federal courthouse is expected to cost \$224 million, and St. Louis' at \$194 million, is not far behind.¹² At \$299 per square foot, the cost of the Seattle courthouse is three times more expensive than nearby State courthouses.¹³ Since courthouse construction is financed through agency payments for leased office space, which exceed its own payment for those leased buildings, GSA has an oversight role in this expensive construction, and the expense of these courthouses raise costs to all Federal agencies.

The effects of frequent changes in plans demonstrates how GSA's methods of construction can increase costs. For example, custom-made \$114-per-square-yard carpeting made the Foley Square courthouse in New York one of the most expensive recent Federal building projects.¹⁴ GAO recently studied a sample of courthouse construction projects nationwide. On three recent courthouse projects, GSA modified construction contracts to change the type or place-

ment of wood paneling, molding, benches, desks, and bookcases to accommodate requests by the Courts because the tenants changed their requirements after construction began. These changes cost taxpayers an additional \$198,000.¹⁵

Over the next decade, a General Accounting Office report warns that the Nation's taxpayers could be hit with a \$1.1 billion bill for courthouses that the judicial branch cannot fully justify because of flaws in its forecasting.¹⁶ The challenge for GSA is to protect America's taxpayers from this occurrence, but it appears that they are not meeting their responsibilities.

REFORM OF THE PUBLIC BUILDING SERVICE: PROPOSALS LACKED
FOLLOW-THROUGH

GSA contracted with the accounting and consulting firm Arthur Andersen to review the Public Building Service (PBS). After a lengthy review, Arthur Andersen proposed three options for reforming PBS. The options included: (1) Virtual Privatization; (2) Extended Privatization; and (3) Performance-based organization (PBO). Virtual privatization of the public building service would save \$565 million in annual savings through reduced administrative costs and asset-related savings.¹⁷ Others have estimated that the correct savings to be \$1 billion.¹⁸ In any case, GSA chose not to implement the option with the largest savings. Instead, GSA opted to proceed with the performance-based organization option, yet apparently decided to not pursue this choice either, because it was never forwarded to Congress as part of the Appropriations process (like other PBO proposals in other agencies).¹⁹ As a result, there has been no comprehensive reform of the PBS.

The largest single element of the estimated savings for the PBS is reducing lease payments by renegotiating existing lease contracts. GSA has implemented a program of renegotiating leases, but has been hampered by focused resources. Lease renegotiation could save taxpayer dollars if GSA would devote increased attention to performing this service for agencies. Until that happens, taxpayers will continue to pay higher than market rate rents, many of which will be for empty office buildings.

ENDNOTES

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⁸Testimony of GSA's Federal Supply Service Commissioner Frank Pugliese, before the House Committee on Government Reform and Oversight, Subcommittee on Government Management, Information, and Technology (May 10, 1996).

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Department of Health and Human Services

OVERVIEW

The Department of Health and Human Services (HHS) is the largest social service agency in the Federal Government with an annual budget of \$301 billion. HHS's mission is to protect and promote the health, social and economic well being of all Americans and in particular those least able to help themselves—children, the elderly, persons with disabilities, and the disadvantaged—by helping them and their families develop and maintain healthy, productive, and independent lives.

HHS consists of four major divisions. The Health Care Financing Administration (HCFA) oversees the Medicare and Medicaid programs serving 50 million beneficiaries. The Public Health Service

oversees a broad range of agencies including the Food and Drug Administration, the National Institutes of Health, the Alcohol, Drug Abuse and Mental Health Administration, and the Centers for Disease Control; the Administration on Aging administers the Older Americans Act. The Administration for Children and Families manages AFDC, Head Start, and the Child Support Enforcement programs.

The Department faces some enormous management problems as health care expenditures expand dramatically. Examples of the most important management problems in HHS include ineffective information technology systems, increasing levels of fraud and abuse in Medicare and Medicaid and the Administration on Children and Families' information technology management problems with the Office of Child Support Enforcement. Not the least of these management problems is the impending insolvency of the Medicare Part A Trust Fund.

MEDICARE PART A: \$7 BILLION IN DEFICIT, PROGRAM HEADED TOWARD INSOLVENCY

Good management of Medicare and Medicaid is particularly important because of the financial strain under which the programs are currently operating. Medicare Part A, the Hospital Insurance Trust Fund (HI), is the source of reimbursements for hospitals and other institutional providers for health care services to the 37 million Americans who are elderly and/or disabled. Trustees for this program have estimated that the fund will be depleted by 2001. The Trust Fund lost \$4.2 billion in the first half of the current fiscal year and is expected to accumulate a \$7 billion deficit by the end of this fiscal year—and the situation is not improving. Medicare is the Nation's largest health payer—its outlays are exceeded only by social security, defense, and interest on the national debt. It is also the fastest growing part of the budget. In less than a decade, Medicare's expenditures have more than doubled, from \$70 billion in 1985 to \$162 billion in 1994 and are estimated to be as much as \$184 billion in 1996.

The Congressional Budget Office (CBO) reported that, despite recent successes of private insurers in controlling their mounting costs, the Federal Government has been unable to restrain health care spending. With Medicare growing at 10 percent annually and Medicaid increasing by 15 percent per year, these programs are consuming an increasing share of the gross domestic product.¹ This change from a surplus to a deficit in the HI Trust Fund occurred in 1995 and projections were updated by CBO in April 1996. In the words of the administration's Medicare Trustees, including, Secretary of the Treasury, Robert Rubin, Secretary of HHS, Donna Shalala, Secretary of Labor, Robert Reich, and Social Security Administrator, Dr. Shirley Chater "The HI [Medicare Part A] program remains severely out of financial balance. . . . [t]he HI trust fund does not meet even our short-range test of financial adequacy. Moreover, income and assets are insufficient to support projected program expenditures beyond 5 years under the intermediate assumptions. Thus, without corrective legislation soon, the fund would be exhausted shortly after the turn of the century—initially

producing payment delays, but very quickly leading to a curtailment of health care services to beneficiaries.”²

MANAGEMENT INFORMATION RESOURCES INEFFECTIVE

Key HHS agencies are not managing information resources to ensure that systems are efficiently acquired and meet mission needs.³

The Department of Health and Human Services (HHS) relies heavily on information technology to help it manage a massive amount of Federal expenditures. Within HHS, key component agencies require information technology to achieve their critical missions of ensuring adequate health care and providing assistance to eligible individuals and their families.

The GAO has reported on numerous problems in HHS in managing information technology, including a lack of information resources leadership and oversight of the Public Health Service, Health Care Financing Administration (HCFA) computer acquisitions, and telecommunication network procurement planning at the Administration on Children and Families. Through fiscal year 1999, the States are planning to spend more than \$11 billion to develop and operate automated welfare information systems. The General Accounting Office (GAO) has found continuing problems with the manner in which HHS health and welfare agencies acquire and manage information technology. For example, poor monitoring of States’ efforts to develop automated welfare systems allowed millions of dollars to be spent on systems that either do not work, or do not meet program needs.

HCFA has not corrected the Medicaid program’s problems with data reported by State Medicaid information systems. In testimony given last year by the GAO, it was reported that State Medicaid agencies have claims data and records that can be used to expose a pattern of possible fraud, overuse or care that is not medically indicated. GAO found, however, that State Medicaid agencies view their data as unreliable and typically do not use their own analyses to detect fraud or abuse. Most fraud that could be exposed through examining State data, is routinely ignored, and such cases are typically identified through tips or by accident.⁴

HHS’ Office of Child Support Enforcement (OCSE) has not demonstrated leadership in guiding changes in some States’ seriously flawed automated child support enforcement systems (discussed in more detail later in this report). Development of these systems continued for years, with costs totaling over \$32 million in Federal funds before development efforts were stopped and redirected. The money spent on that system is now about \$1 billion. The General Accounting Office is currently examining the OCSE’s oversight of State programs on information collection and computer systems.

Finally, GAO’s examination of HCFA’s cost-savings estimate for its Medicare Transaction System (MTS) indicates that although the new system should generate some administrative cost savings, the amount is uncertain. Implementation is not expected until at least 2 years from now and make take longer. GAO also noted that risks associated with HCFA’s planning and acquisition strategy for the MTS could result in the new system not achieving intended benefits and in cost increases and schedule delays.⁵ It should be noted, that the Medicare Transaction System has the potential to increase

the overall efficiency of the Medicare program. It will allow HCFA to take advantage of advanced technology, track patient data and claims, consolidate disparate computer systems, and better coordinate program information.

MEDICARE AND MEDICAID FRAUD

Medicare and Medicaid are the fastest growing programs in the Federal budget. In fiscal year 1994, the Government spent over \$440 million a day or \$162 billion per year on Medicare. The Congressional Budget Office estimates that under current policy, Medicare will reach about \$380 billion by 2003. The proportion of health care spending attributable to waste, fraud and abuse is difficult to quantify, however, health care experts have estimated that 10 percent of national health spending is lost to these practices.⁶

Ten percent applied to Medicare's estimated \$180 billion in spending for the current fiscal year is \$18 billion, an amount that increases and becomes even more devastating as the program grows. Medicaid is similarly open to fraud and abuse and State Medicaid officials believe program fraud may be as high as 10 percent.⁷

Medicaid is the third largest social program in the Federal Government. This joint Federal-State program pays for medical costs and pharmaceuticals for certain groups of low-income individuals. This program is a life-line to the poor and elderly disabled who cannot afford acute or long-term care. Federal spending for Medicaid in fiscal year 1995 was approximately \$89 billion⁸ and the program served 36.2 million individuals. Medicaid is administered by the States and each State designs its own program along Federal guidelines. States are mandated, however, by the Federal Government to provide specific services to specified groups, and within limits may set their own payment rates.⁹

Because of its size, structure, target population and state-by-state variations, Medicaid is very vulnerable to fraudulent activities and false billings. As with the Medicare program, States believe that the introduction of managed care for Medicaid beneficiaries offers some hope of decreasing fraud related to overbilling or providing unnecessary services.¹⁰

Flawed payment policies, weak billing controls and inconsistent program management have all contributed to Medicare and Medicaid's vulnerability to waste, fraud and abuse. Instances of scams, abuses and fraud are well documented in the programs. Insurers have owed Medicare millions of dollars for mistaken payments and to maximize profits, providers continue to exploit loopholes and billing control weaknesses. Medicaid is further compromised by drug fraud that, by earlier estimates could consume as much as \$1 billion in Federal costs to the system in the program in the current fiscal year.¹¹

The General Accounting Office reports that HCFA has moved to counteract some of these abuses. For example, the agency has directed its Inspector General to work cooperatively with the Department of Justice and the Federal Bureau of Investigation to focus management resources on the elimination of fraud in Operation Restore Trust. This cooperative effort has shown some promise and demonstrates what can be accomplished when an agency focuses its

attention on management practices. While it has not been fully implemented, the aforementioned Medicare Transaction System also holds promise in reducing fraud associated with the Federal health care systems. In view of the importance of the MTS to eliminating wasteful practices of these programs, the House Appropriations Committee recommended full funding of the MTS for fiscal year 1997 while expressing concerns regarding the potential for cost over runs and implementation delays.¹²

Even greater attention to management of these programs is essential to deter a drain on program funds. The GAO revealed that HCFA is aware that health care scams and abusive billing practices the plague Medicare and State Medicaid programs, but the problems are difficult to eradicate. In addition, HCFA's controls against fraud and abuse have not kept pace with health care's more complicated financial arrangements and the increasingly entrepreneurial health care environment.¹³ While States are meeting with some success in curbing Medicaid fraud, the absence of Federal leadership has kept States from making the best use of the resources they do have to combat fraud.¹⁴

Medicare's vulnerability to billions of dollars in unnecessary payments stems from a combination of factors. Medicare, for example, pays higher than market rate for certain services and supplies. Documented overpayments for more than 40 surgical dressings are one such example.¹⁵ The program's collection of anti-fraud and abuse controls do not systematically prevent the unquestioned payment of claims for improbably high charges or manipulated billing codes. And, Medicare's checks on the legitimacy of providers are too superficial to detect the potential for scams. Medicaid is also vulnerable to abusive providers who take advantage of program incentives to over provide services.¹⁶

These weaknesses are exacerbated by difficulties in prosecuting and recovering losses as well as its limited likelihood of penalizing perpetrators of fraud.¹⁷ The General Accounting Office reports that providers who defraud or otherwise abuse health care payers have little chance of being prosecuted or having to repay fraudulently obtained money. Few cases are pursued as fraud, and when they are, many are settled without conviction, penalties are often light and providers frequently continue in business.¹⁸ Unfortunately these efforts are too slow to be effective in curbing unnecessary costs or deterring further fraud and abuse of the program.

Various health care management strategies help private payers alleviate these problems, but these strategies are not generally used in Medicare. The Federal program's pricing methods and controls over utilization, consistent with health care financing and delivery that existed 30 years ago, are not adequate to deal with the major financing and service delivery changes that exist now. To a certain extent, the predicament inherent in public programs—the line between adequate managerial control and excessive oversight by government—helps explain the dissimilarity in the ways Medicare and private health insurers administer their respective “plans”. There is no excuse, however, for inadequate monitoring of programs, services or products, and there are many actions HCFA could be taking, and should be taking to reduce overpayments to providers.¹⁹ Medicaid fails to collect data it needs to curb abusive

practices, unlike payers of private health care. Private payers would use payment controls to flag improbable charges, but in Medicaid those warnings are often disregarded as unreliable or ignored. For example, Medicaid was billed by a psychiatrist for 4,800 hours of service in a single year—billings that would indicate the physician worked almost 24 hours per day.²⁰ In another instance, one clinical laboratory bought massive quantities of blood from the poor and billed Medicaid \$3.6 million for expensive, unordered blood tests.²¹

Vast sums of money are lost to fraud and abuse in Medicare and Medicaid, two programs of vital importance to the lives of millions of Americans. So pervasive is the problem that the Subcommittee on Human Resources and Intergovernmental Relations held hearings solely on the problem of excluding fraudulent providers from Medicare and Medicaid on June 15, 1995 and again on September 5, 1996. The General Accounting Office, the agency Inspector General and other experts have concurred that fraud and abuse should be a major concern to the Department of Health and Human Services.

MEDICARE CLAIMS PROCESSING

Broad discretion given to Medicare's claims processing contractors has resulted in uneven implementation of fraud and abuse controls that the agency has attempted. This problem has been compounded by HCFA's contractor management. HCFA does not have the information necessary to ensure that contractors are adequately protecting Medicare payments from health care service provider exploitation or fraud. In addition, HCFA is unable to explain why some contractors pay many more claims for certain procedures than do other contractors because it does not know what criteria its contractors use to identify claims ineligible for payment.²² Further, HCFA makes little use of management reports submitted by contractors that describe their claims review activities. For example, HCFA did not probe a contractor report that showed a 53 percent drop—amounting to almost \$27 million—in the amount of savings that were being achieved through claims review.²³ HCFA, unlike private sector payers, pays substantially higher than market rates for many services and products. The HHS Inspector General reported that Medicare paid between \$144 to \$211 for home blood glucose monitors when drug stores across the Nation were charging less than \$50 for the same product—or even offering them free as a marketing incentive. Because of regulatory and legislative constraints and agency delay, it took HCFA 3 years to reduce the price to \$59. The Inspector General estimated that this delay in reducing the price cost Medicare \$10 million.²⁴ Another example of Medicare paying inflated charges was a bill for \$8,415 for therapy to one nursing home resident, of which over half were charges added by the billing service for submitting the claim. This bill-padding is permissible because, for institutional providers, Medicare allows almost any patient-related costs that can be documented, regardless of the fair-market value of those services.²⁵

HCFA is billed for services through private contractors with whom the agency has agreements to handle claims screening and processing. Contractors also audit providers. While Medicare con-

tractors use a number of automated controls, many improbably high charges continue to be paid on a regular basis and are unquestioned by Medicare. One contractor, for example, paid \$23,000 when the correct payment should have been \$1,650. Medicare also paid a psychiatrist over a prolonged period for claims that represented, on average, nearly 24 hours a day for services. The contractor's automated controls did not flag either of these questionable billings.²⁶

Screening guidelines should be established to ensure Medicare does not continue to pay claims for medically unnecessary services. HCFA should hold its contractors accountable for implementing local policies and prepayment screens in order to control payments for widely overused procedures. According to GAO, if the use of auto-adjudication screens were expanded to all of Medicare's Part B contractors, the savings would likely be in the hundreds of millions of dollars.²⁷

MEDICAID PRESCRIPTION DRUG DIVERSION

In studying prescription drug diversion in the Medicaid program, the General Accounting Office found diversion of drugs to be a widespread and persistent problem in many States, often occurring in conjunction with other types of fraud such as overbilling for office visits, lab tests, and other services that were not medically necessary.²⁸

GAO found that prescription drug fraud took many forms, one of the most prevalent of which were the so-called "pill mills," in which physicians, clinic owners and pharmacists collude to defraud Medicaid by prescribing and distributing drugs mainly to obtain reimbursement. Patients are often parties to these schemes, and allow providers to use "their Medicaid recipient numbers for billing purposes in exchange for cash, drugs or other inducements."²⁹ Clinics sometimes provided Medicaid recipients with completed prescription forms that were traded for merchandise from local pharmacies, or sold on the street to the highest bidders. Some pharmacists would routinely add medications to customers' orders, and keep the additional drugs for themselves or to sell to others.

As alluded to earlier in this report, State Medicaid agencies generally do not rely on analysis of automated paid claims data as a primary source for identifying potential drug diversion. In California, for example, the GAO found that a pharmacist was billing and being reimbursed by Medicaid for dispensing large volumes of drugs. For 3 years, the volume was improbably high, sometimes 20 prescriptions for one customer per day. The State's reporting system did not flag an investigation of the pharmacist nor any of the customers who were on Medicaid.³⁰ Medicaid data and existing reports are also viewed by many States as cumbersome, unreliable and difficult to analyze. Rather than rely on their own reports, State agencies often depend on tips from informants to pursue fraud.³¹

Many States have Medicaid Fraud Control Units (MFCU's) which investigate instances of intentional wrongdoing, and in the case of provider abuse, may take administrative action against unscrupulous providers. Some MFCU's have authority to prosecute

these cases though others must refer cases to other agencies with prosecutorial authority.

Individuals who are convicted of crimes can be excluded from the program, but for those cases pursued as fraud, the outcome is neither timely nor satisfactory. Of the cases studied by the GAO, almost half took more than 2 years until adjudication and penalties were mild. Cases involving license revocation, suspension or probation took much longer to resolve (GAO said up to nearly 7 years) until the licensure agency took action. Few perpetrators of fraud went to prison, and more than half of the convicted professionals experienced no licensure action, not even probation.³² While investigations proceed slowly, losses to the program mount—losses that could be put to better use providing more or better services for Medicaid recipients. Drug diversion investigations and cases can stall at any one of the various agencies through which it must pass—the State Medicaid agency, the MFCU, the Federal, State or local prosecutor's office. This is particularly true when case backlogs are too large to accept new cases.

HCFA recognizes that prescription drug diversion is a problem. The agency established the Medicaid Drug Utilization Review (DUR), an automated system that examines drug use and potential exploitation. About half of the States have a DUR in place, and while DUR's do not stop pill mills, they are a good first step in dealing with drug diversion problems. DUR's, of course, are dependent on good management practices, quality data collection and dependable information technology.

GAO believes that HCFA should assume a leadership role with the States in orchestrating and encouraging efforts to oppose fraud and abuse and raising State sensitivity to the financial benefits of reducing instances of fraud by conducting concerted assessment and guidance activities. In particular, HCFA could foster the development and implementation of measures intended to prevent program fraud. The agency could also help States address the overarching concerns revealed by the GAO such as determining whether and how State laws, Federal regulations and other factors discourage prosecution or attempts to recover payment of claims subsequently determined not to be permitted under law.³³ In fairness, the HCFA Administrator has appointed an individual to be the agency Fraud and Abuse Coordinator and to work with both Federal programs and the States to resolve obstacles preventing elimination of fraud or abuse. However, to be truly effective, such a position must have authority. A merely political position, with no real authority subsequent to the departure of the current HCFA Administrator, cannot have a long-term impact on problems as intractable as fraud and abuse. Bureaucratic positions, in particular, entropy in the absence of clear mission, statutory authority and budget.

MEDICARE REHABILITATION THERAPY

An entire industry has grown and flourished out of the Federal requirement to assess nursing home residents for their need for rehabilitation therapy services. From 1990 to 1993, claims submitted to Medicare for these services tripled to \$3 billion and continue to grow at a rapid pace. Some of this cost growth is attributable to the excessive rates Medicare pays for therapy services. For exam-

ple, Medicare has been charged rates as high as \$600 per hour, though physical, occupational and speech therapists' salaries range from under \$20 to \$32 per hour.³⁴ Medicare's open-ended definition of reimbursable costs and the absence of clear billing rules account for this situation. Combined, these two weaknesses enable skilled nursing facilities and therapy companies to pad the amount of administrative costs for which they are reimbursed by Medicare. Loose payment and billing rules also allow providers to pass on these inflated charges with little or no scrutiny.³⁵

One questionable business practice is that of therapy companies using a skilled nursing home's provider number to bill Medicare. Under such an arrangement, the therapy company bills Medicare as if the patients had received services in that nursing facility, though the patients may be anywhere in the country. This practice benefits therapy companies by enabling them to evade Medicare controls that might flag over-billing. For example, one therapy company divided a Texas patient's \$10,950 claim for physical therapy between nursing homes that submitted their claims to two different Medicare processing contractors, one in North Carolina and one in Florida.³⁶

While HCFA has made some progress in standardizing vendor billing identification numbers, much remains to be done to simplify provider identification and billing through the use of a universal vendor, or billing, number in all Federal health care systems. In the Health Care Portability and Accountability Act of 1996, Congress directed the Secretary of Health and Human Services to formulate standards to guide implementation of a uniform system of health care provider identification.

Sometimes shell therapy companies are established to enhance opportunities to over-bill. A Georgia Medicare contractor reported that the program authorized a company to bill for therapy services, even though it had no salaried therapists and was essentially a storefront office operated by one clerical employee.³⁷ The company billed Medicare for services provided to nursing home residents through two therapy agencies with which it subcontracted. The company's contractual relationship with the nursing home entitled it to add to its claims an 80 percent markup over what the company paid the therapy agencies. As a result, a company that appeared to exist solely for the purpose of billing Medicare added in one fiscal year about \$135,000 in administrative charges to the costs of the therapy services.³⁸

HCFA has been aware of these problems for years, but did not advise claims processing contractors of certain irregular billing practices and of actions they could take to minimize billing problems. While HCFA is in the process of establishing certain reimbursable cost guidelines, judging from similar efforts in the past, drafting and implementing will take years.

MEDICARE HMO'S: NOT ACHIEVING THE GOAL OF REDUCING MEDICARE COSTS

Despite efforts of the agency to control costs through use of health maintenance organizations (HMO's), Medicare overpays the HMO's it uses.

In the early 1980's, Congress created the Medicare risk contract program to take advantage of potential cost savings associated with utilizing health maintenance organizations. Medicare enrolls participants in HMO's for a predetermined capitation rate fee in return for providing necessary medical services. Within certain specified limits, risk HMO's can profit if their cost of providing services is less than the predetermined payment, though they risk a loss if their costs are higher overall. Generally, Medicare pays a flat 95 percent of the estimated average cost of treating the patient in a fee-for-service setting to an HMO. Those HMO costs, however, vary by geographic region of the country, by the age, sex, Medicaid eligibility of the enrollee and whether the enrollee is in an institution such as a nursing home. Individuals who choose to enroll in an HMO tend to be significantly healthier than patients in fee-for-service settings, about 5 percent healthier than other patients.³⁹

Because HMO enrollees are generally healthier than other patients, HCFA's use of the risk contract HMO's has not been successful in reducing program costs. The General Accounting Office and others have reported that there are two principal reasons for this. First, HCFA's risk adjustment methodology has proved insufficient to prevent HMO's from benefiting from favorable selection. Because HMO enrollees are healthier (and less expensive) than other patients in a fee-for-service setting, HCFA has paid more to HMO's for beneficiaries' treatment than it would have spent had those individuals remained in a fee-for-service setting. Second, in many areas, Medicare's 5 percent "discount" from fee-for-service costs is too modest. By failing to reflect local market conditions and greater HMO efficiencies, the capitation rate causes Medicare to pay more than it should for services.⁴⁰

In addition to flaws in the method HCFA uses to pay HMO's, both the HHS Inspector General and the General Accounting Office have found other serious problems with the management of Medicare HMO's. For example, the HHS Inspector General found that overpayments totaling \$70.5 million had been made for beneficiaries who were erroneously classified as eligible for Medicaid, on the understanding that health care costs for Medicaid beneficiaries are higher than those who are just eligible for Medicare.⁴¹ This problem was exacerbated because the interface between HCFA computer systems did not recognize those beneficiaries who had lost their Medicaid eligibility.

HOME HEALTH CARE

The expansion of the health care delivery system in recent decades has widened the opportunity for profiteering. Since Medicare was enacted in 1965, the delivery of health care services has become more complex, but fraud and abuse controls have not kept pace with the medical environment. The HHS Inspector General determined that HCFA has not limited or controlled home health care benefits as have other payers who are similar to Medicare, in their criteria for eligibility, quality monitoring and the means used to pay providers. Other payers use a variety of techniques to control home health care costs, including targeting patient needs and managing cases for beneficiaries with chronic care needs.

HCFA has not implemented similar controls. For example, the Office of the Inspector General found during one audit that 26 percent of home health agency claims approved for payment in Florida by fiscal intermediaries did not meet Medicare reimbursement requirements. As a result, the IG estimated that \$16.6 million of the \$78 million payment was unallowable. This problem occurred, the IG said, because physicians did not always review or actively participate in developing the plans of care that they signed, beneficiaries were not aware of home health agency claims paid on their behalf and intermediary reviews of claims were not sufficient to detect unallowable claims.⁴²

DURABLE MEDICAL EQUIPMENT

Suppliers of durable medical equipment (prosthetic devices, wheelchairs, orthotics, etc.) have persistently participated in schemes to bill Medicare or Medicaid for equipment never delivered, higher-cost equipment than that actually delivered, totally unnecessary equipment or supplies or equipment delivered in a different State from that billed, in order to obtain higher reimbursement. Despite new regulations published by HCFA, the Department of Health and Human Services, Office of the Inspector General continues to uncover the actions of unscrupulous suppliers. In the most recent Semiannual Report of the Office of the Inspector General of the United States Department of Health and Human Services, eight cases of fraud involving durable medical equipment were settled or convictions were obtained. These cases totaled more than \$9.91 million in funds lost to the Government. Many other investigations remain outstanding, as well as yet-uncovered cases of durable medical equipment fraud.⁴³

Medicare also tends to lose large amounts of money to suppliers of durable medical equipment that should never have been authorized to serve program beneficiaries in the first place. This problem has become more acute as durable medical equipment suppliers, which are less scrutinized or more transient than doctors and hospitals, use elaborate, multilayered corporations to bill the program. However, HCFA has recently taken steps to improve the application process by which suppliers are identified with the program. The recently established National Supplier Clearinghouse began issuing supplier numbers to providers submitting claims for durable medical equipment, prosthetics, orthotics, and supplies. To apply for a supplier number, the provider must complete a detailed application, but privacy concerns preclude the Clearinghouse from verifying the accuracy of Social Security and tax identification numbers required on the application. Also, the Clearinghouse does not routinely perform background checks on the owners or verify that supplier facilities really exist.⁴⁴ The number of durable medical equipment providers is growing rapidly, and in many respects the requirements remain superficial.

ADMINISTRATION ON CHILDREN AND FAMILIES

Child support enforcement: \$1 billion for a computer system that is not improving program performance

The Federal Government has contributed approximately \$1 billion into automated systems of the States for purposes of tracking progress in collecting child support and gathering other data but the system is not meeting mandatory requirements nor improving collection of outstanding child support. Because of shortcomings in this important computer system, \$34 billion in outstanding child support may be at risk due to State statutes of limitations and poor collection services.

The Department of Health and Human Services, Administration on Children and Families administers the Office of Child Support Enforcement (OCSE). OCSE provides direction, guidance and oversight of State child support enforcement programs and activities authorized under Title IV, part D of the Social Security Act. Child support enforcement legislation requires States to develop programs for establishing and enforcing support obligations by locating absent parents, establishing paternity when necessary, and obtaining child support. One estimate of the amount of child support payments due nationwide is \$34 billion. A key component of coordinating these actions is efficient and state-of-the-art computer systems that the Office of Child Support Enforcement can use to communicate with State offices and monitor their progress. The Family Support Act required States to have automated systems in place by 1995, and that deadline has been moved back to October 1997 because the original deadline has not been met.

Since the Federal Government has devoted this funding to automation, States collect on only 19 out of every 100 cases.⁴⁵ This is a dismal record which will not improve until the efficiency of the computer tracking system improves.

Computer technology alone will not solve the poor performance of the OCSE, however. OCSE is an pilot project for purposes of the Government Performance and Results Act of 1993, but is behind schedule in setting demanding but realistic long-term and measurable outcomes for the national program and State programs, setting valid performance indicators and measures and using them to improve the performance of their program. OCSE has been put on notice about its need to employ the principles of GPRA to improve program performance. In late 1994, the General Accounting Office urged the agency to incorporate the GPRA in its daily management of the program to help the OCSE develop management tools needed to improve the performance of the program and the assistance it provides in both AFDC and non-AFDC cases. Attention to properly implementing GPRA could make a significant difference in the agency's evaluation of problem areas—including mismanagement of computer systems—and correction of those problems.

The Federal Government has a large stake in the success of child support enforcement efforts, not only because of the millions of Federal tax dollars expended so far, but because of the heavy burden on our welfare system when the computer systems fail. The Department of Health and Human Services, Office of Child Support Enforcement claims the States have primary responsibility for sys-

tem development, but regardless, the law and regulations require OCSE to assess each State's progress and allows for suspension of funding if no progress exists. It is clear that the Administration on Children and Families should focus more management resources on this program.

JOB OPPORTUNITIES AND BASIC SKILLS PROGRAM LITERACY TRAINING
CONTRACT: \$40,584 PER GED DIPLOMA

The Inspector General at the Department of Health and Human Services investigated a job training program based at the University of Mississippi.⁴⁶ The IG learned that between February 1993 and December 1994, this program, which cost \$15.3 million, was only 8 percent effective in training participants to pass a High School Equivalency Diploma Examination (GED). For \$15.3 million only 720 of 4,300 participants (16 percent) even took the GED examination. Of the 720 individuals who took the test, a mere 377 (52 percent) passed the examination. The cost per diploma of this program was \$40,584.

The State contracted with the University of Mississippi to operate its Learn, Earn and Prosper (LEAP) program designed to help participants in the Federal Job Opportunities and Basic Skills (JOBS) training program increase their literacy, earn their GED and prepare for employment. The IG found that the contract did not include criteria to measure participant outcomes and hold the University accountable under the contract. In addition, the Inspector General discovered that more than \$747,000 (nearly \$666,000 Federal share) in contract expenditures did not meet Federal requirements, and over \$1 million of the expenditures warranted further review.⁴⁷

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Department of Housing and Urban Development

OVERVIEW

The Department of Housing and Urban Development (HUD) insures or guarantees mortgage financing through its \$497 billion Federal Housing Administration (FHA) loan portfolio; guarantees about \$485 billion in mortgage-backed securities through the Government National Mortgage Association; provides about \$25 billion to subsidize rentals and to operate and modernize residences for lower-income households; and provides \$5 billion annually in Community Development Block Grant assistance.¹

HUD's pervasive management problems have been recognized by OMB, GAO, the Department's Inspector General, and others. OMB placed 7 of the Department's programs and activities on its most recent "high risk" list of areas that are especially vulnerable to waste, fraud, abuse, and mismanagement. In January 1994, GAO

placed the entire Department on its “high risk” list based on a number of long-standing department wide problems.²

In March 1996, GAO reported to the House Appropriations Subcommittee on HUD that management at the Department had not improved:

Today, despite the promise of reform, reinvention, and transformation initiatives aimed at solving HUD’s problems, much more remains to be done. HUD is very much an agency in limbo: Few of the proposals in HUD’s reinvention blueprint have been adopted.³

The report added that “for the foreseeable future, the agency will be high-risk in terms of its programs being vulnerable to waste, fraud, and abuse.”⁴

At the appropriation hearing, the HUD IG echoed GAO’s pessimistic assessment of the state of HUD management:

The management problems . . . at HUD are extreme. And there should be no expectation that those problems can be solved in a matter of a couple of years.⁵

Ironically, the IG added that the preoccupation with “reinventing” HUD during the past 3 years had detracted from addressing the Department’s management problems:

[T]his discussion of reinvention . . . is another diversion from solving the management problems, because we are all caught up in talking about policy.

And, meanwhile, the mechanisms to get something done are of a real secondary nature.⁶

A July 1994 report on HUD by the National Academy of Public Administration provided the following summary of where HUD stands and where it may be headed:

The U.S. Department of Housing and Urban Development (HUD) is at a crossroads. It can become an effective public institution or it can continue down the now familiar road of poor performance.

* * * * *

The department should be preserved only if it can demonstrate the capacity to manage its resources responsibly, and if the administration, Congress, and HUD can put aside the past to look toward how the department can best help communities meet their needs in a flexible fashion. If, after five years, HUD is not operating under a clear legislative mandate and in an effective, accountable manner, the president and Congress should seriously consider dismantling the department and moving its programs elsewhere.⁷

Congress is addressing those problems that require a legislative solution. Bills to reform HUD have passed both the House (H.R. 2406) and the Senate (S. 1260). Among other things, the bills would fundamentally alter public housing programs by giving more choice to tenants and provide greater flexibility through such means as block grants and vouchers allowing for tenant-based

rather than project-based assistance. Whether the necessary management improvements are made remains to be seen.

HUD SUFFERS FROM WEAK INTERNAL CONTROLS, AS WELL AS
INADEQUATE FINANCIAL MANAGEMENT AND INFORMATION SYSTEMS

OMB, GAO and the IG have consistently viewed weaknesses in internal controls, financial management, and information systems as fundamental management deficiencies at HUD. In listing HUD's financial systems as a high-risk area, OMB stated that HUD lacks an integrated financial management system, and existing systems suffer from inefficiencies, incompatibilities, and internal control problems.⁸ According to GAO, weaknesses in internal controls are a long-standing problem at HUD and have resulted in billions of dollars of losses and wasteful spending.⁹ GAO noted that HUD's most serious internal control weaknesses concern its \$13 billion grant and subsidy payments to Indian and public housing authorities, including \$9.5 billion in operating subsidies and Section 8 rental assistance. As a result of these weaknesses, HUD has no assurance that federally subsidized units are occupied by eligible lower-income families or that tenants are paying the correct rents.¹⁰

GAO recently reported that despite HUD's efforts to improve its accounting systems, 60 of HUD's 88 financial management systems don't comply with OMB requirements.¹¹ According to GAO, full integration of HUD's systems "remains years away."¹² In the same vein, the HUD IG's March 1996 semiannual report observed:

Much work remains to complete the development and integration of HUD's accounting and financial management systems. . . . HUD systems are not yet capable of verifying tenant reported income data for determining funding eligibility in assisted housing programs; and information for essential program management and loss mitigation efforts in HUD's significant multifamily housing programs area is still not readily available in automated form.¹³

Illustrating these systemic problems, on June 30, 1995, outside auditors issued a disclaimer on HUD's fiscal year 1994 consolidated financial statements because of internal control weaknesses and uncorrected deficiencies in accounting systems.¹⁴

Continuing the pattern, the HUD IG issued a report in August of this year disclaiming an opinion on the reliability of the Department's fiscal year 1995 financial statements.¹⁵ In particular, the report stated:

Material control weaknesses affect more than \$18 billion in subsidy funds disbursed annually by HUD through its Section 8, Section 202/811, Section 236 and Operating Subsidy programs. As a result, HUD lacks sufficient information to ensure that federally subsidized housing units are occupied by eligible families and that those families living in such units are paying the correct rents. . . .¹⁶

The report further noted that this was the fifth year that HUD had been subject to the financial statement audits, and that most

of the material weaknesses and other reportable conditions were the same as those included in the prior year reports.¹⁷

According to GAO, the lack of adequate information and financial management systems, including computerized systems, is pervasive throughout HUD and affects all major programs and operations. HUD continues to be plagued by poorly integrated, ineffective, and generally unreliable information systems that do not satisfy management needs or provide adequate control. Progress in these areas has been impeded by ineffective planning and management oversight.¹⁸ A recent illustration of this problem is HUD's request for \$845 million to pay performance bonuses to grantees at the close of fiscal year 1997. GAO pointed out that HUD lacked the performance measurement and information systems necessary to support such bonuses.¹⁹

HUD'S ORGANIZATIONAL STRUCTURE CONTRIBUTES TO ITS MANAGEMENT PROBLEMS

GAO has reported that HUD's organizational problems of overlapping and ill defined responsibilities and authorities in its headquarters, regional offices, and field offices; lack of consensus on program priorities; and poor communication of policy updates and management directives contribute to department-wide management problems. According to GAO, HUD faces monumental challenges, the most basic of which is trying to change an organizational culture that has become reactive and defensive.²⁰ GAO's high risk report on HUD pointed to "a fundamental lack of management accountability and responsibility."²¹

Prompted by the National Performance Review, HUD has undertaken a number of reorganization and restructuring initiatives. However, the concepts underlying these initiatives have changed repeatedly. Some of the concepts—like the proposed "community catalyst role" and the "place-based approach"—are, as the IG put it, "lacking in practical definition."²²

In 1993, HUD reorganized its field structure along program lines, so that the program Assistant Secretaries each directed field staff. According to the IG, this organization is not appropriate for carrying out HUD's new vision of a seamless, community-first, place-based program delivery structure. While HUD is now attempting to modify the structure, the IG views the modifications as inefficient, and notes that the same approach has been tried by other Federal agencies with limited effectiveness.²³

The IG recently surveyed HUD field staff on the results of the reorganization started in 1993. Field staff reported that, they endorsed elimination of the regional management level, "communication and cooperation among the program offices had suffered badly; and the promised empowerment of field program staff by HUD headquarters had not materialized." Meanwhile the IG reported that there is little focus on streamlining and reorganizing HUD's considerable headquarters staff, which number over 2,500. According to the IG—

HUD's staff morale and reputation can ill afford further costly interruptions in program delivery and performance through repeated reorganizations and changes in program

direction. As a *sine qua non* of reinvention, HUD must set and stabilize its organization and program delivery structure.²⁴

POOR RESOURCE MANAGEMENT EXACERBATES HUD'S OTHER
MANAGEMENT PROBLEMS

GAO's High Risk report stated that "an insufficient mix of staff with the proper skills has hampered the effective monitoring and oversight of HUD programs and the timely updating of procedures."²⁵ GAO identified staff inadequacies as one of the four fundamental deficiencies leading to its designation of HUD as a high risk department. GAO noted that the Department's IG and other HUD officials had repeatedly pointed to staff inadequacies as hampering the performance of key departmental functions. Price Waterhouse also noted these deficiencies in its financial statement audit of HUD.²⁶

HUD's resource management is an OMB-designated high risk area. According to OMB, the Department's methods of formulating resource needs and utilizing available resources are inadequate.²⁷

The HUD Inspector General pointed to deficient resource management as one of three "systemic issues" facing the Department.²⁸ For example, according to the IG, decisions relating to HUD's "re-invention" proposals, including decisions on the staff allocations between field offices and headquarters, have been made without sufficient analysis.²⁹ The IG recently summarized this problem as follows:

As a result of HUD's continuing resource management weaknesses, there is little assurance that HUD's \$1 billion annual salaries and expenses budget is efficiently and effectively used to further HUD's mission and minimize program risks. OIG audit work continues to find that many critical program functions are not being adequately performed, and that there are continuing imbalances in staffing to workload ratios from office to office.³⁰

The need for HUD to address its resource management weaknesses becomes even more critical as the Department's budget and staffing levels decline.

MULTIFAMILY HOUSING PROGRAMS ARE MISMANAGED

HUD continues to have fundamental problems in overseeing its \$47.7 billion multifamily housing portfolio. For a large proportion of this housing, the government pays more to house lower-income families than what is needed to provide them decent and affordable housing. These properties also expose the government to substantial current and future financial liabilities from default claims. Almost one-fourth of the multifamily properties are "distressed"—i.e., they fail to provide sound housing and lacked the resources to correct deficiencies or they are likely to fail financially. It has been estimated that at least 15 percent of the properties have severe physical problems that threaten the tenants' health and safety.³¹

GAO identified three "fundamental and interrelated problems" with HUD's oversight of its multifamily housing portfolio:

- A large number of defaults on FHA-insured loans have occurred in the past and are expected to continue into the future, partly because FHA has not effectively managed its insured loan portfolio.
- In many cases, the cost to the government of providing Section 8 project-based subsidies is excessive. For example, about three-fourths of Section 8 new construction and substantial rehabilitation properties receive rents exceeding those in the marketplace.
- Subsidy costs associated with project-based Section 8 assistance are already high and are rising. For example, CBO estimated that simply preserving existing units will require about \$22 billion in budget authority each year.³²

The shortcomings of multifamily housing programs are illustrated by the problems besetting HUD's insured Section 8 portfolio (now totaling about \$17.5 billion in unpaid loan balances), which consists of rental housing properties that receive both Federal mortgage insurance and Section 8 rental subsidies. GAO recently summarized these problems as follows:

The basic problems affecting the insured Section 8 portfolio are high subsidy costs, high exposure to insurance loss, and the poor condition of many properties. These problems stem from one or more of several basic causes. These include (1) program design flaws that have contributed to high subsidies and put virtually all the insurance risk on HUD; (2) HUD's dual role as mortgage insurer and rental subsidy provider, which has resulted in the federal government's averting claims against the FHA insurance fund by supporting a subsidy and regulatory structure that masked the true market value of the properties; and (3) weaknesses in HUD's oversight and management of the insured portfolio, which have allowed physical and financial problems at a number of HUD-insured multifamily properties to go undetected and uncorrected.³³

HUD NEEDS TO IMPROVE ITS OVERSIGHT OF PUBLIC HOUSING

Public Housing Authority (PHA) management is yet another OMB-designated high risk area at HUD.³⁴ Problems in PHA management identified by GAO include unmet needs for capital improvement, physical deterioration, high vacancy rates, and high concentrations of poor and unemployed persons.³⁵ According to recent GAO testimony:

. . . the overall results of HUD's focused technical assistance program that targeted the large, troubled authorities have been inconsistent. During the past year, 4 troubled authorities have come off the original list of 17, and 4 others have made substantial improvements in their performance scores. However, the other nine authorities—accounting for over 70 percent of all housing units managed by troubled authorities—have not shown appreciable improvement. Furthermore, the performance of four of the nine declined this past year, despite HUD's intervention and technical assistance.³⁶

Before 1995, HUD's limited oversight allowed some PHAs to provide substandard services for years. HUD has now improved its oversight and taken over some PHAs. However, requirements for HUD to take stronger action against troubled PHAs may strain its resources and limit its ability to conduct effective oversight of the remaining authorities that are not troubled.³⁷

According to the IG, HUD needs to establish a "program management culture that no longer tolerates blatant abuses and substandard performance in programs intended to serve low-income persons."³⁸ In the past year, HUD has initiated more aggressive actions to remedy some of its most egregious program problem areas, including actions against several longstanding large, troubled PHAs, as well as owners of financially and physically troubled insured and assisted multifamily housing projects. However, these efforts have been largely directed by headquarters management. The IG added that—

The need for an improved HUD program enforcement culture is still frequently evidenced in the lack of management action on the results of OIG audit findings of waste, abuse and funding misuse in HUD programs.³⁹

Recent IG audits of HUD-funded public housing resident initiatives illustrate these weaknesses. In testimony before this committee's Subcommittee on Human Resources and Intergovernmental Relations, the HUD IG summarized the situation as follows:

. . . OIG audits and investigations through the years have generally found that HUD funded resident initiatives suffer from inadequate mission objectives, management controls, program coordination, performance measures, program oversight, and substantive results. Much of the funding has been inefficiently and ineffectively utilized. The programs are good candidates for elimination and/or consolidation.⁴⁰

For example, a 1995 IG audit found that despite technical assistance grants totaling \$22 million to 328 Resident Management Councils, only 15 of the Councils were performing most of the management functions for their projects. Eight of these 15 Councils already managed their projects before the program began.⁴¹

A particularly egregious example is HUD's participation in an August 1995 National Tenants Organization (NTO) convention held at a resort hotel and casino in Puerto Rico, which was billed as "a vacation that will be unforgettable!"⁴² The IG found that 97 percent of the convention's estimated cost of \$335,000 came from federally funded or related sources, including direct Tenant Opportunity Program grant funds as well as other HUD grant funds for PHA operating subsidies and modernization activities.⁴³ According to the IG, the convention activities consisted primarily of "internal NTO organizational business and social activity, and political rallying against Republican public housing proposals, and for NTO and HUD supported program proposals."⁴⁴ The IG review concluded that HUD officials played a key role in planning and conducting the convention, and that HUD's participation violated its own Departmental guidance.⁴⁵

ENDNOTES

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² General Accounting Office, High Risk Series, *An Overview*, GAO/HR-95-1 (February 1995), p. 23, 68-69; General Accounting Office, High Risk Series, *Department of Housing and Urban Development*, GAO/HR-95-11 (February 1995), p. 6.

³ General Accounting Office, *Housing and Urban Development: Limited Progress Made on HUD Reforms*, GAO/T-RCED-96-112 (March 27, 1996), p. 1.

⁴ *Id.*

⁵ Hearings before the Subcommittee on VA, HUD, and Independent Agencies of the House Committee on Appropriations, 104th Cong., 2d Sess., *Part 6: Department of Housing and Urban Development* (1996), p. 74.

⁶ *Id.*

⁷ National Academy of Public Administration, *Renewing HUD: A Long-Term Agenda for Effective Performance* (Summary Report) (July 1994), pp. vii-viii.

⁸ Office of Management and Budget, *Progress Report: Correcting High Risk Areas*, Analytical Perspectives on the Budget of the United States for Fiscal Year 1996, p. 289.

⁹ General Accounting Office, *Federal Management: Updated Information for Congressional Oversight* (July 1994), p. HUD-6.

¹⁰ General Accounting Office, *Housing and Urban Development: Limited Progress Made on HUD Reforms*, GAO/T-RCED-96-112 (March 27, 1996), p. 4.

¹¹ *Id.*

¹² *Id.*, p. 5.

¹³ Department of Housing and Urban Development Office of Inspector General, *Semiannual Report to the Congress As of March 31, 1996*, p. 7.

¹⁴ General Accounting Office, *Housing and Urban Development: Limited Progress Made on HUD Reforms*, GAO/T-RCED-96-112 (March 27, 1996), p. 4.

¹⁵ Department of Housing and Urban Development Office of Inspector General, *U.S. Department of Housing and Urban Development: Report on Fiscal Year 1995 Financial Statements*, 96-FO-177-0003 (August 16, 1996).

¹⁶ *Id.*, p. 1.

¹⁷ *Id.*, p. 3.

¹⁸ General Accounting Office, *Federal Management: Updated Information for Congressional Oversight* (July 1994), p. HUD-1.

¹⁹ General Accounting Office, *Housing and Urban Development: Comments on HUD's FY 1997 Budget Request*, GAO/T-RCED-96-205 (June 17, 1996), pp. 1-2, 5-8.

²⁰ General Accounting Office, *Federal Management: Updated Information for Congressional Oversight* (July 1994), p. HUD-9.

²¹ General Accounting Office, *Department of Housing and Urban Development*, GAO/HR-95-11 (February 1995), p. 7.

²² Department of Housing and Urban Development Office of Inspector General, *Semiannual Report to the Congress As of September 30, 1995*, p. 4.

²³ Department of Housing and Urban Development Office of Inspector General, *Semiannual Report to the Congress As of March 31, 1996*, p. 5.

²⁴ Department of Housing and Urban Development Office of Inspector General, *Semiannual Report to the Congress As of September 30, 1995*, pp. 3–4.

²⁵ General Accounting Office, *Department of Housing and Urban Development*, GAO/HR-95-11 (February 1995), p. 7.

²⁶ *Id.*, pp. 14–15.

²⁷ Office of Management and Budget, *Progress Report: Correcting High Risk Areas*, Analytical Perspectives on the Budget of the United States for Fiscal Year 1996, p. 290.

²⁸ Hearings before the Subcommittee on VA, HUD, and Independent Agencies of the House Committee on Appropriations, 104th Cong., 2d Sess., *Part 6: Department of Housing and Urban Development* (1996), p. 46.

²⁹ Department of Housing and Urban Development Office of Inspector General, *Semiannual Report to the Congress As of March 31, 1996*, p. 5.

³⁰ *Id.*, p. 6.

³¹ General Accounting Office, *Housing and Urban Development: Limited Progress Made on HUD Reforms*, GAO/T-RCED-96-112 (March 27, 1996), p. 6; General Accounting Office, *Housing and Urban Development: Major Management and Budget Issues*, GAO/T-RCED-95-86 (January 19, 1995), p. 4.

³² General Accounting Office, *Housing and Urban Development: Major Management and Budget Issues*, GAO/T-RCED-95-86 (January 19, 1995), pp. 5–6, 9.

³³ General Accounting Office, *Multifamily Housing: HUD's Proposals for Reengineering Its Insured Section 8 Portfolio*, GAO/T-RCED-96-210 (June 27, 1996), pp. 1–2.

³⁴ Office of Management and Budget, *Progress Report: Correcting High Risk Areas*, Analytical Perspectives on the Budget of the United States for Fiscal Year 1996, p. 290.

³⁵ General Accounting Office, *Housing and Urban Development: Comments on HUD's FY 1997 Budget Request*, GAO/T-RCED-96-205 (June 17, 1996), pp. 10–12.

³⁶ General Accounting Office, *Housing and Urban Development: Limited Progress Made on HUD Reforms*, GAO/T-RCED-96-112 (March 27, 1996), p. 11.

³⁷ General Accounting Office, *Housing and Community Development: Public and Assisted Housing Reform*, GAO/T-RCED-96-25 (October 13, 1995), p. 9.

³⁸ Department of Housing and Urban Development Office of Inspector General, *Semiannual Report to the Congress As of March 31, 1996*, p. 8.

³⁹ *Id.*

⁴⁰ Statement of Susan Gaffney, Inspector General, Department of Housing and Urban Development, before the Subcommittee on Human Resources and Intergovernmental Relations, House Com-

mittee on Government Reform and Oversight, *Public Housing Resident Initiatives* (November 9, 1995), p. 1.

⁴¹ Department of Housing and Urban Development Office of Inspector General, *Audit of Technical Assistance Grants To Support Public Housing Resident Management and Self-employment Programs*, 95-AT-101-0001 (February 28, 1995), p. iii.

⁴² Undated letter signed by Maxine Green, Chairwoman of the National Tenants Organization, p. 1.

⁴³ Statement of Susan Gaffney, Inspector General, Department of Housing and Urban Development, before the Subcommittee on Human Resources and Intergovernmental Relations, House Committee on Government Reform and Oversight, *Public Housing Resident Initiatives* (February 29, 1996), p. 2.

⁴⁴ *Id.*, p. 4.

⁴⁵ *Id.*, pp. 6, 9.

Department of the Interior

OVERVIEW

The Department of Interior (DOI) manages Federal natural resources, including 500 million acres of public land and some 50 million acres of Native American reservations. DOI's mission is the conservation, development, and regulation of mineral and water resources, as well as the preservation of national parks and wilderness areas. Interior also supervises governments in U.S. territories and coordinates Federal and State recreation programs. The Department employs a staff of 67,177 with an annual budget of \$7 billion.

The major areas of waste and abuse include the poor accounting and questionable personnel practices within the National Park Service, the millions of dollars owed to the Minerals Management Service for oil company production on Federal lands in California, the Bureau of Land Management falling behind in maintaining its land structures, and finally the Bureau of Indian Affairs has failed to effectively manage the Indian Trust Fund accounts.

NATIONAL PARK SERVICE PLAGUED BY POOR MANAGEMENT

Tasked with conserving the Nation's natural and cultural resources by managing and maintaining 368 park units covering 380 million acres¹ for today's use and future generations, the National Park Service (NPS) has a poor record of management in the past several years. Poor management runs the gamut from poor accounting to questionable personnel practices.

The NPS financial and property management system has enough problems that substantiating NPS' estimated \$6.6 billion in assets and \$68 million in liabilities is rather difficult. In terms of substandard bookkeeping, NPS property records show paying \$800,015 for a \$150 vacuum cleaner, \$700,035 for a \$350 dishwasher, \$79 million for a \$793 mobile radio, and, incredibly, a mere 1 cent for the purchase of a brand new fire truck valued at \$133,000. Overall, the NPS has recently overestimated the value of its personal property to the tune of more than \$90 million.²

The NPS has trouble keeping track of its property as well. A recent audit noted that a total of 16,277 items—from washing ma-

chines to binoculars—worth \$27 million were missing and could not be accounted for.³ At one particular NPS office, 49 firearms could not be found.⁴

Golden parachutes

As was the case with many Federal agencies, the National Park Service provided buy-outs of up to \$25,000 each to dozens of employees who were already at or past retirement age. The agency subsequently negotiated agreements with these same individuals to remain on the job for a year or more. In a particularly egregious example of abuse, the NPS Director created new special assistant positions in his office for two former regional directors so they could continue to draw their SES salaries. The former Southeast Regional Director, who supervised all the parks in 9 States, is now working on an international task force on the environment in the Gulf of Mexico. The former Pacific Northwest Regional Director's SES job was "abolished" under an agency-wide reorganization, but he now serves as a special assistant to the Director for international tourism.

Personality profiles for every supervisor in the agency

The agency has entered into a contract to prepare a personality profile of every supervisor in the agency at a total cost of about \$1.6 million. Under this program, each supervisor mails a questionnaire to about a half dozen people who answer questions about the nature of the supervisor's personality. How the agency intends to use this information is unclear. The most disturbing part of this program is that each park is required to fund the cost of this inventory, including travel to the training session, out of its own funds, at a cost of about \$500 per person. NPS is weighing the possibility of extending this program to all 15,000 permanent employees in the agency.⁵

Lack of priority-setting hurts the American public

In August 1995, in response to a request by the House and Senate Chairmen of the committees with responsibility over the NPS, GAO delivered a report on the state of the parks. It reported that the agency was at a crossroads and that drastic action was needed to protect the future of the parks. Specifically, GAO found that the agency had no system to ensure that the \$1.4 billion allocated to the agency was being spent on the highest priority needs. NPS lacks the necessary financial and program data to match park conditions with available funds. In other words, instances such as visitor facilities being shut down at one park while new ones are being opened at other parks continue to happen.

Proposing new parks at the expense of the existing park system

The Clinton administration has endorsed the establishment of a half dozen new park areas and major expansions of a dozen or more existing park areas at a cost of tens of millions of dollars. In many cases, this is a departure from the position taken by agency professionals from previous administrations. In a time of limited funding, these expansion proposals come at the expense of existing national parks, including Yellowstone, Yosemite, and others.

Due to years of diverting money from park maintenance to new park acquisition, the overall level of visitor services—campgrounds, trails, facilities—has deteriorated to a sorry level. The current maintenance backlog rests at over \$4 billion.⁶ There may be a way out, however. Operational shortfalls and maintenance backlogs result, in no small measure, because of an unwillingness to institute necessary fee reform. In 1919, the entry fee at Yellowstone was \$10; today the fee remains \$10.⁷ Despite being given the authority by Congress to institute a 3-year fee demonstration program allowing participating parks to keep 80 percent of new collected fees⁸ for their own use, the Clinton administration refuses to institute this program. Park maintenance and operation suffer accordingly.

PROBLEMS AT THE BUREAU OF RECLAMATION

The Yuma Desalination Plant

Several years ago, officials of the Bureau of Reclamation, an agency of the Department of the Interior, decided to put the Yuma Desalting Plant in Arizona in ready reserve status at a cost of about \$6 million annually.⁹ This desalting plant was constructed to help the United States meet its obligations under a 1944 treaty with Mexico to deliver 1.5 million acre-feet of Colorado River water of a certain quality to Mexico.

The plant is no longer state-of-the-art, and cannot be retrofitted. If the plant were to be operated at full capacity, the annual operation and maintenance costs would be almost \$30 million, about double the amount originally anticipated.¹⁰ The Bureau of Reclamation has determined that for the next several years, without operating the desalting plant, the United States can meet its treaty obligations to Mexico.

In June 1994, in testimony before a Senate subcommittee, a former Interior official stated that, “the Bureau of Reclamation is evaluating long-term options for meeting water quality obligations to Mexico. Operation of the desalting plant is extremely expensive, and more cost-effective, long-term options may be available. Reclamation plans to consult with the Basin States and other interested parties in carrying out its evaluation.”¹¹

Over 2 years have passed and millions of dollars have been spent since this testimony. When questioned about the status of the plant, the Bureau of Reclamation responded that while it has consulted with the Basin States on specific occasions, a consensus resolution has not been achieved. Therefore, the Bureau intends to continue to hold the plant in ready reserve status. In addition, the agency states it is evaluating possible alternative uses of the plant that may help offset some of the plant’s costs. It is unclear how long this evaluation has been taking place, or when it will be concluded.¹²

In the meantime, in the President’s fiscal year 1997 budget proposal for the Bureau of Reclamation, there is a request for another \$6 million to keep the plant in ready reserve.¹³

Glen Canyon Dam EIS/“spike flow” experiment

Environmental studies on the operation of Glen Canyon Dam on the Colorado River and on the Grand Canyon, begun under the

Reagan administration, have cost over \$72 million since 1984.¹⁴ In 1991, the Bush administration instituted interim operating criteria for Glen Canyon Dam designed to protect the resources of the Grand Canyon. Those interim operating criteria, as well as the environmental studies, were subsequently codified in the Grand Canyon Protection Act of 1992.

The final environmental impact statement (EIS) on Glen Canyon Dam operations contained a preferred alternative that would modify the operating criteria for the dam in a way that would allow for more power production. Despite the scientific basis for the preferred alternative, certain groups have publicly expressed opposition to those modifications. We should be concerned that good science guide the Secretary's decision when he issues the record of decision on this EIS.

The final EIS on Glen Canyon Dam operations recommended a research "spike flow" to produce a "flood" in the Grand Canyon for habitat restoration and beach building along the Colorado River. There were months of preparation and development of a scientific research program for this "spike flow," which occurred for more than a week beginning on March 26, 1996. The spike flow cost nearly \$4 million: \$2.5 million in foregone power revenues and \$1.3 million for research costs.¹⁵ This should have been a serious research effort, and if it had been, it would have been impossible to analyze the data generated by this flow in a few short days; yet, the Secretary declared this research flow a success within days after the flood flows were stopped. In fact, a determination of the success of the research flow requires long-term monitoring of the downstream resources and an analysis of the monitoring data.

There were also numerous quotes in the press around the time of the Glen Canyon research flows indicating that Interior Secretary Bruce Babbitt would like to utilize such floods at other Federal dams around the country. These declarations of intent were also made before the scientific results of the research flows at Glen Canyon were known. It is also unclear—given that the Department must operate these facilities in accordance with State water law and interstate compacts—that the Department has the authority to implement such flows elsewhere, particularly in the Colorado River.

Deferred maintenance of power generation facilities

A number of water users, interest groups, and power customers have contacted the House Resources Committee with concerns about the impact of deferred maintenance at power generation facilities operated by the Bureau of Reclamation. The Bureau has indicated that it is having no problem securing the amount of funding necessary to finance appropriate operations and maintenance (O&M). However, at the same time it is notifying customers of drastic cutbacks in O&M funding at certain facilities. At other facilities, the agency is pursuing loans or advance payments from firm power customers to conduct needed repairs.

The Bureau believes it has adequate authority to pursue this off-budget financing. Although the concept of greater customer involvement may have some validity, these arrangements overlook several problems:

- The authority on which the Bureau is relying is a 1921 statute that appears to have been set up originally as an exception but which the Bureau is now trying to make the rule (taken at face value it would go a long way toward eliminating the need for the appropriations process);
- Agency oversight by the Congress would be greatly limited;
- Customers have little bargaining power in negotiations;
- Plans by the Bureau to expand generating capacity without participation of the States could cause a problem for State Public Utility Commissions that are attempting to structure competition in their States and determine generating capacity within the State;
- Private power utilities see this as an attempt by the Federal Government to compete with them in violation of Federal law; and
- The Bureau's direct financing proposal will short-circuit the rate-setting process, which is ostensibly done by the Power Marketing Administrations with Federal Energy Regulatory Commission oversight.¹⁶

MINERALS MANAGEMENT SERVICE FAILS TO RECTIFY HUGE OIL ROYALTY UNDERPAYMENTS

In 1991, six oil companies involved in a suit with the State of California and the city of Long Beach reached settlements totaling \$345 million to end court actions by the State and city alleging undervaluation of oil, which has the effect of reducing the amount of the royalty due. In light of this settlement, the Department of Interior's Minerals Management Service (MMS) performed an exercise to estimate the size of any potential royalty underpayments resulting from Federal lands in California. This preliminary effort was followed by a 2-year interagency study. In May 1996, the interagency task force consisting of MMS, the Department of the Interior's Office of the Solicitor and the Departments of Energy and Commerce confirmed that there was a serious undervaluation problem. The interagency task force estimated that lessees underpaid royalties by up to \$856 million in California alone for the period 1978 to 1993 by paying royalties based on prices that did not represent fair market value for Federal oil.

After 2 years of agency delay, the Minerals Management Service announced that it would accept some of the task force recommendations and attempt to collect only \$440 million of the \$856 million figure. The figure was reduced largely due to mismanagement of global settlements reached between the oil companies and the Department of the Interior. Also, the MMS will not examine whether the underpayment problem exists in other States, despite administration officials conceding that royalty underpayments in other States might reach \$1.2 billion.¹⁷

During the time the task force report was being developed, MMS was engaged in global settlements (which allowed two oil companies with large underpayments to avoid payment) with the full knowledge that there were substantial problems with underpayments in California in this program.¹⁸ These agreements may have extinguished the claim of the Federal Government to collect these amounts owed. Apparently, the Inspector General also recognized that these agreements did not protect the interests of the United States. In a draft report, the Inspector General notes that the roy-

alty settlements were not conducted in accordance with "Minerals Management Service Settlement Negotiation Procedures." The report faults MMS for including "no documentation for the estimated values of the issues concerning the underpayment of royalties to be negotiated. . . ." ¹⁹ In addition, the report faults MMS for writing down amounts owed for no apparent reason:

Prior to negotiations, one of the Service's Royalty Management Program divisions estimated the value of a particular issue to be negotiated in a global settlement to be about \$439 million. However, the list of issues and values prepared by the negotiation team prior to negotiations estimated that the same issue was valued at \$78 million. Documentation in the settlement file was insufficient to explain the \$360.4 million difference in the estimated values of this issue. ²⁰

Based on Department of Interior statistics, this mismanagement and poor judgment at the Minerals Management Service will cost \$2.05 billion.

BUREAU OF LAND MANAGEMENT (BLM) MISMANAGED

Approximately 270 million acres of natural resource land are managed by BLM, serving the interests of ranching, timber production, mining, and recreation for 70 million people each year. ²¹ In addition, BLM maintains 2,415 structures ranging from sewer systems to fire stations, 1,150 recreation sites, 59,000 miles of roads, 14,000 miles of trails, and 287 bridges. ²²

BLM, like its brother agency, the National Park Service, is rapidly falling behind in maintaining its land and structures. In its 1995 budget request, BLM reported a \$258 million backlog in maintenance needs. In contrast, during 1993, BLM's maintenance costs were only \$27.1 million. ²³

The problem of maintenance is not merely one of poor allocation of resources, however. An examination of just \$9 million worth of purportedly maintenance-related expenses found that \$2.1 million was spent on other activities such as firefighting, personnel relocation, and other decidedly non-maintenance activities. To cover their tracks, BLM officials intentionally mislabeled expenses as maintenance-related to give the impression that those funds were not being diverted into other areas. ²⁴

Unrealized processing fees

In 1989, BLM promised to start collecting higher processing fees for the documentation corporations and others must complete in order to engage in mineral exploration or development on BLM-controlled land. Over 5 years later, this promise is still unfulfilled, those fees still are not in effect, and the U.S. Government has lost in excess of \$47 million in revenues. Until the proper fees are put in place, this situation will continue to cost the Government \$7.6 million in annual revenues. ²⁵

In the interim, BLM officials claim they have been trying to streamline the certification process from an initial list of 125 potential revenue-producing documents down to 59 and then trying to compute average processing costs for each document. Ironically,

auditors found that \$5 million of the \$7.6 million in annual revenues could be generated by just 4 of the documents.²⁶

Unwarranted overtime

BLM's criminal investigators received as much as \$1.3 million in unwarranted overtime during a 2-year period; 58 of 63 field agents received the maximum amount of administratively "uncontrollable" overtime despite the fact their hours did not qualify as irregular, unscheduled, or critical work. Instead, agents claimed overtime for commonplace tasks such as training sessions, attending meetings, and completing paperwork.²⁷

Further, all but one of the BLM special agents routinely took their Government vehicles—mainly expensive 4-wheel-drive vehicles—home. Most agents claimed they needed the vehicles in order to respond to emergencies, despite the fact that not one incident was reported requiring an agent to respond outside of regular hours. This practice of taking vehicles home in anticipation of overtime emergencies that likely would not occur cost the taxpayers an additional \$600,000 over a 2-year period.²⁸

ENDNOTES

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³ *Id.*

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⁵ National Park Service Leadership Seminar, Briefing Statement. February 28, 1996.

⁶ General Accounting Office, *National Parks: Difficult Choices Need to be Made About the Future of Parks*, GAO/RCED-95-238 (August 1995), p. 4.

⁷ House Committee on Appropriations, Subcommittee on Interior and Related Agencies, Rep. Ralph Regula, chairman. Dear Colleague (uncirculated). July 26, 1996.

⁸ *Id.*

⁹ *Water Problems Facing the Lower Colorado River Area*, Hearing before the Senate Subcommittee on Water and Power, Committee on Energy and Natural Resources, June 8-9, 1994, p. 28.

¹⁰ *Id.*

¹¹ *Id.*

¹² Department of the Interior, Bureau of Reclamation, Letter from Eluid L. Martinez, Commissioner to John T. Doolittle, chairman Subcommittee on Water and Power Resources, May 20, 1996.

¹³ Department of the Interior Budget Justifications, Bureau of Reclamation, FY 1997, p. 69.

¹⁴ Department of Interior, Bureau of Reclamation, Upper Colorado Region Power Office, information provided to the Congressional Research Service (September 16, 1996).

¹⁵ Department of Interior, Bureau of Reclamation, *Upper Colorado Region, Glen Canyon Dam: Beach/Habitat-Building Test Flow* (February 1996), p. 53.

¹⁶ House Committee on Resources Subcommittee on Water and Power Resources, Oversight of Western Area Power Administration (WAPA) Transmission Construction Projects and Issues Concerning Deferred Maintenance of Power Generation Facilities at Bureau of Reclamation Sites, March 19, 1996.

¹⁷ Testimony of Robert Berman, Economist, Office of Policy Analysis, Department of the Interior, before the Subcommittee on Government Management, Information, and Technology, June 17, 1996.

¹⁸ During testimony in a hearing on this topic on June 17, 1996, Robert Berman, Economist, Office of Policy Analysis, Department of the Interior, testified that he issued a memorandum expressing his concern that MMS was entering into global settlements with no consideration given to the underpayment issue. This memorandum was issued prior to the global settlements, but apparently went unheeded.

¹⁹ Negotiated Royalty Settlements, Minerals Management Service, U.S. Department of the Interior, Office of Inspector General, p. 4.

²⁰ *Id.*

²¹ O'Brien, Randy, Vice-President, Wilderness Society. Prepared Statement before the Committee on Appropriations, Subcommittee on Interior and Related Agencies, Rep. Ralph Regula, chairman. March 14, 1996.

²² Collins, Chris. Your Taxes at Work. *Gannett News Service*, September 24, 1994.

²³ *Id.*

²⁴ *Id.*

²⁵ Collins, Chris. Your Taxes at Work. *Gannett News Service*, March 4, 1995.

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Department of Justice

OVERVIEW

The Department of Justice's appropriations totaled approximately \$14.7 billion for fiscal year 1996. The fiscal year 1997 budget request for the Department was about \$16.6 billion. Most of the Department's funding is derived from general discretionary appropriations. The remainder comes from the Violent Crime Reduction Trust Fund.¹

The House-passed appropriations bill for fiscal year 1997 (H.R. 3814) provided the Justice Department a total of \$16.3 billion, including increases above the President's 1997 request for the Department's law enforcement components and programs.² This funding level represents a one-third increase in DOJ programs over the past 2 years, including a 46 percent increase for the Immigration and Naturalization Service to combat illegal immigration, a 27 per-

cent increase for the Drug Enforcement Administration to fight the war on drugs, a 20 percent increase for the FBI to fight violent crime and terrorism, and a 68 percent increase in funding to assist State and local law enforcement.³

The House Appropriations Committee report on H.R. 3814 noted, however, that the resources provided to DOJ are not always used effectively:

The Committee recommendation for the Department of Justice reflects the continuing commitment of the Congress to provide resources for the Nation's top domestic priority—fighting crime. . . . The Congress has done its part to dedicate resources, during a time of severe fiscal constraint, to the Department of Justice. But despite the Committee's emphasis on providing resources and despite the importance of the problems of crime, drugs and illegal immigration, the Department of Justice has failed to use these resources for the intended purposes in the following ways: (1) the FBI and DEA have still not hired the agents and support staff provided in 1995; (2) critical law enforcement systems such as NCIC 2000 and the Integrated Automatic Fingerprint Identification System (IAFIS) are not complete and are significantly over budget; (3) INS has not removed illegal aliens residing in the United States at rates promised, thereby having little, if any impact on the population levels of illegal aliens living here; (4) and funding to combat domestic violence—Violence Against Women Grants—to this day are not in the hands of State and local organizations that are prepared to address this problem. The Committee finds this unacceptable and expects that serious attention be given to the management of these resources to provide the needed staff, critical systems and funding to law enforcement that is vital to addressing the crime and drug problem.⁴

The Justice Department also has long-standing problems in the areas of debt collection and management of forfeited assets. The Immigration and Naturalization Service is beset by management problems that affect the entire range of its operations. Further, as the Appropriations Committee report suggests, DOJ has chronic infrastructure weaknesses in financial and information management that limit its ability to apply its resources most efficiently and effectively.

DOJ DOES A POOR JOB OF COLLECTING DEBTS DUE THE GOVERNMENT

In general, the Federal Government does a poor job of collecting the immense debt it is owed. According to OMB, the Government's accounts receivable as of the close of fiscal year 1995 totaled \$334 billion. Of that amount, OMB reported that almost \$125 billion was delinquent debt.⁵ The amount of delinquent debt has climbed steadily since fiscal year 1991.⁶

Government debt collection is plagued by pervasive management deficiencies. These deficiencies extend well beyond the Justice Department, as discussed in other sections of this report. However, Justice bears a major share of the responsibility. OMB designated

the Justice Department's debt collection efforts a high risk area. According to OMB, Justice lacks a reliable debt collection information system to support management of litigation and collection activity. OMB noted that DOJ collected over \$1 billion in 1994, but placed Justice's civil claims receivable inventory for that year at over \$15 billion.⁷

Criminal debt collection is a particularly vexing problem. This debt consists of fines, restitution orders, special assessments, and court costs imposed on persons convicted of Federal crimes. These criminal monetary penalties—consisting primarily of fines and restitution—are important tools in the criminal justice system, and serve both punitive and remedial purposes. Most criminal fine payments go to the Crime Victims Fund, which is used for grants to support victim assistance programs. Restitution orders are designed to compensate identifiable victims for financial loss suffered as a result of the defendant's crime.⁸

Outstanding criminal debt has grown exponentially over the past decade from about \$300 million in 1985 to nearly \$6 billion in 1995.⁹ Yet, collection rates are extremely low. As of June 1994 the 50 largest criminal debtors had paid only \$4.1 million—or 0.5 percent—of the total of over \$800 million they owed.¹⁰ It is hard to tell how much of the outstanding criminal debt is actually collectible. One basic problem, according to GAO and the Justice IG, is that Government information systems are inadequate to determine how much debt is presently due and owing and how much is collectible. In fact, the Government is unable even to reconcile criminal debt balances maintained by the courts and by U.S. Attorney offices across the country.¹¹ A recent GAO report noted:

Criminal debtors have been allowed to make payments directly to victims or to local offices of one of three different agencies within judicial districts—the Clerk of the Court, probation office, or U.S. Attorney's Office . . . This has created a fragmented process for tracking and collecting criminal debt and resulted in a lack of standardized procedures, discrepancies among agency collection records, and duplication of effort.¹²

Another basic problem appears to be a general lack of interest throughout the Federal criminal justice system in pursuing criminal debt. One recent report noted that:

The public perception of the courts and the justice system's credibility to impact crime and criminals is seriously eroded by the appearance of failure to aggressively collect monetary punishments.¹³

Sadly, there are indications that this perception is all too accurate. A report by the Justice IG found that, in addition to data problems, debt collection efforts suffer because of the low priority that U.S. Attorneys give them. Prosecutors did not actively share financial information about debtors with personnel in their offices who were responsible for debt collection.¹⁴ Also, some U.S. Attorney Offices were not applying interest and penalties to outstanding criminal debts as prescribed by Department regulations, thereby lessening the debtors' incentive to pay.¹⁵ The report contained the

following disturbing comment by a senior DOJ official responsible for debt collection oversight:

The prosecutors just don't think in terms of fines and restitution or how it will be collected as they are working a case. In fact, prosecutors really don't care about fine collection. They should start looking for dollars immediately upon receiving a case. The single greatest weakness in criminal debt collection is apathy on the part of the Assistant U.S. Attorneys. We may just be able to improve criminal debt collection in the Department if it was a critical element of the USAO's workplan.¹⁶

A particularly tragic and telling example of the management problems and attitudes that impede criminal debt collection is the fate of the National Fine Center (NFC). The Criminal Fine Improvements Act of 1987 (Public Law 100-185) transferred responsibility for processing criminal fines and assessments from the Justice Department to the Administrative Office of the United States Courts. Pursuant to the Act, the Administrative Office, working with Justice, sought to establish the NFC as a centralized and automated system capable of tracking criminal debts and receiving and processing debtor payments. After close to a decade of failed efforts and wasted expenditures of millions of dollars from the Crime Victims Fund, the NFC project has now been abandoned. The consulting firm of Coopers & Lybrand recommended termination of the project, upon concluding that its failures were "overwhelmingly the result of cultural and environmental issues" emanating from the courts and the Justice Department.¹⁷ These "cultural and environmental issues" refer to the decentralized and largely autonomous nature of the Federal courts and U.S. Attorney offices, and the apparent inability of either the Federal judiciary or the Justice Department to achieve the degree of cooperation necessary to get the job done.

In the recently enacted Debt Collection Improvement Act of 1996 (Public Law 104-134, section 31001), Congress supplied additional tools to enhance debt collection efforts. The Justice Department, as well as other executive and judicial branch agencies, must supply the will to use these tools vigorously and effectively.

ADMINISTRATION OF THE ASSETS FORFEITURE PROGRAM REMAINS HIGH-RISK

The Justice Assets Forfeiture Fund consists of cash and other property used in criminal activity that has been confiscated, or "seized," by Federal law-enforcement authorities. The Justice fund, which is administered by the U.S. Marshals Service (USMS) and had an inventory of \$1.6 billion at the end of 1994, was designated a high risk area by OMB.¹⁸ According to OMB, asset forfeiture information systems are inadequate; current procedures do not adequately record the value of assets received; and cash should be placed in Treasury deposit fund accounts more expeditiously. GAO also included the Justice fund (along with the similar Treasury fund) on its high risk list. According to GAO, enhancements to seized property tracking systems and development and implementation of additional procedures are necessary to ensure adequate

accountability and stewardship over seized property. GAO also reported that Justice and Treasury have not pursued plans to consolidate their forfeited asset management and disposal programs despite a statutory mandate to do so. GAO estimated that consolidation of the two funds would reduce administrative costs by 11 percent annually.¹⁹

The Justice IG reported several years ago that USMS was holding property for long periods of time, thereby contributing to the deterioration of its value, and that contractors hired by USMS to maintain and dispose of property routinely failed to perform work or overcharged for the work they did. According to the IG, these concerns are resurfacing in a pending review of USMS' management of a seized gambling casino in California known as the "Bicycle Club," which USMS has held for almost 6 years.²⁰

The IG also reported that the Justice Department's proposed system to consolidate seized asset tracking for all agencies, known as "CATS," is experiencing substantial cost escalations and schedule delays. The original cost of \$24 million has ballooned to over \$106 million. The scheduled implementation date has slipped from December 1992 to December 1996. The IG doubts that the current deadline will be met. According to the IG, participating agencies have become increasingly frustrated with DOJ's lack of progress. The IRS has expressed an intention to withdraw, and the Customs Service already is developing its own system.²¹

Under the "equitable sharing program," the Justice Department annually provides about \$230 million from the Fund to State and local agencies that participated in the seizure or forfeiture of assets. However, a series of IG audits questioned millions of dollars of equitable sharing fund expenditures by these agencies.²²

INS CONTINUES TO EXPERIENCE SERIOUS MANAGEMENT SHORTCOMINGS

Fundamental management weaknesses at the Immigration and Naturalization Service (INS) have been widely reported by GAO and others. Last year GAO pointed out that, while INS is making some progress, many of its management problems persist. Among others, GAO listed the following management challenges facing INS:

- The backlog of aliens requesting asylum is large and growing.
- The demand for naturalization and other benefits is such that INS cannot meet its own processing time goal in some districts.
- The identification and removal of criminal and illegal aliens is an enormous problem.
- The flow of aliens across the Southwest border continues and violations of the conditions of legal entry are commonplace.²³

The Justice Department's IG testified at this year's appropriations hearings that INS "continues to be the highest-risk component" of the Department.²⁴ INS even has trouble taking advantage of increased resources provided by Congress. For example, while Congress provided for a substantial increase in Border Patrol agents, the IG reported that INS would have difficulty training and equipping the large influx of new agents. It now appears that INS is on track to train the new agents, but only at the cost of delaying

advanced training for the senior agents who must supervise the new agents and make sure they perform their duties properly.²⁵

According to the IG, “INS faces a critical situation in dealing with its sadly deficient management information systems.”²⁶ For example, the IG found that much information developed on persons suspected of engaging in illegal activities at the border could not be used because of weaknesses in the way INS compiled and maintained the data.²⁷ At seven sites visited by the IG, 120,000 Employment Authorization Document records were omitted from the Central Index System, which is used to determine eligibility for benefits and for employer verifications.²⁸ In a particularly egregious example, a review of cases in which aliens illegally obtained INS documents, benefits, and legal status by furnishing bribes showed that INS did not take action against the aliens or even correct the fraudulent records. Thus, not only were these illegal aliens not prosecuted, but they got to keep the fraudulent documents, maintain their fraudulently conferred status, and continue receiving benefits.²⁹

Unfortunately, employee misconduct is a serious problem at INS. The IG investigates over 900 criminal and serious misconduct cases in INS each year. Two-thirds of the 374 arrests by the OIG in the past 3 years involved INS corruption. For example, an INS inspector was convicted of facilitating the smuggling of \$78 million worth of cocaine into the United States. A number of INS employees have been caught selling employment authorization cards and other documents. Employees also have been found guilty of civil rights violations.³⁰

The IG emphasized that, in order to reduce employee misconduct, INS senior management must impose tough punishments and send strong signals that misconduct will not be tolerated.³¹ However, senior management does not set the best example. A recent IG report confirmed allegations that senior INS field managers intentionally misled the Congressional Task Force on Immigration Reform by creating a false picture of conditions at detention facilities in Florida during a visit by the Task Force. Among other things, INS officials released or moved detained aliens to cover up overcrowding and brought in extra staff to give the appearance of greater efficiency.³² Many of the released aliens had not received Public Health Service medical clearances, and a number of others had criminal records.³³ According to the IG report, the INS field managers lied to its investigators, destroyed evidence, and otherwise obstructed its investigation of the deception perpetrated on the Congressional Task Force.³⁴ According to press reports, Border Patrol supervisors are now being investigated for allegedly falsifying arrest records and intelligence reports in an effort to show better results for Operation Gatekeeper—an increased deployment of agents along a portion of the California-Mexico border.³⁵

INS’ deportation activities also have serious flaws. The IG described the agency’s program to deport non-detained aliens as “largely ineffective.”³⁶ The program resulted in the removal of only about 11 percent of such aliens.³⁷ Also, INS routinely releases apprehended aliens, some of whom are violent criminals or fugitives. An IG review found that 257 released fugitives had a total of 685 arrests, including many arrests for violent and drug-related

crimes.³⁸ Finally, the IG found that INS did not fully utilize its Institutional Hearing Program to remove criminal aliens upon completion of time served in State prisons. As a result, INS has incurred millions of dollars in additional processing and detention costs.³⁹

INS has failed to collect \$47 million in fines. The IG reported that INS systematically reduces civil penalties imposed under the Employer Sanctions Program to 42 cents on the dollar, thereby undermining employer sanctions enforcement and causing a revenue loss to the Treasury of \$41 million. In addition, during 1 year alone, INS failed to initiate or impose at least \$6 million in visa fines for numerous violations committed by transportation carriers.⁴⁰

SEVERAL DOJ COMPONENTS SUFFER FROM FINANCIAL MANAGEMENT
WEAKNESSES

Several Justice Department components have experienced problems with their financial management systems. OMB placed financial management at two of these components—the Immigration and Naturalization Service and the United States Marshals Service—on its high-risk list. The Justice IG also has reported on financial management weaknesses on the part of these two components.

Immigration and Naturalization Service (INS)

In listing INS' financial system weaknesses as high-risk, OMB noted that the agency's accounting system processes over \$2 billion annually. Among its other problems, OMB noted that INS lacks reliable information in its financial reports, fails to comply with administrative financial controls, and has significant weaknesses in controls over payments and obligations. The specific areas of weakness included management of fee accounts, bonds, and inspectional overtime.⁴¹

The Justice IG has reported on some of the same problems. The IG concluded that INS financial records are not adequate for OIG auditors to express an opinion on its accounting records. According to the IG, the auditors lacked assurances that INS' records contained current, uniform and accurate information.⁴² Specifically, OIG audits of INS fee accounts for fiscal years 1991 and 1993, as well as a fiscal year 1993 audit of an INS bond fund all resulted in disclaimers due to the condition of the accounting records. The audits identified significant weaknesses in internal controls and compliance with laws and regulations.⁴³

The IG also has found problems with INS' management of overtime pay. The IG found abuses and management weaknesses with respect to overtime paid to inspectors, for which INS spends about \$30 million annually and which can provide up to 16 hours of pay for as little as 1 hour of work on Sundays and holidays. In fact, the potential for abuse was so high and the management so weak that the IG recommended abolishing this form of overtime. The IG also found that INS had not corrected problems causing inconsistencies and possible errors in the payment of administratively uncontrollable overtime, and concluded that payment of this overtime required "intense scrutiny."

U.S. Marshals Service (USMS)

Financial management at USMS also was listed as an OMB high risk area, based on inadequate financial management systems and material non-conformance in fund control and asset value reporting. According to OMB, the USMS accounting system processes over \$1 billion annually.⁴⁴ Likewise, the IG has reported on internal control weaknesses leading to fraud and other problems in USMS activities. For example, the IG found that USMS inspectors were able to embezzle over \$350,000 in Government funds due to vulnerabilities in the witness security program. The IG also found deficiencies in the fee collection practices of USMS districts. It found confusion and inconsistency among USMS districts in calculating fees, billing for services, and controlling collections.⁴⁵

INFORMATION MANAGEMENT AND SECURITY AT DOJ ARE DEFICIENT

OMB and GAO have identified the lack of reliable information systems as a problem with regard to several areas of activity at the Justice Department. Information system weaknesses play a major role in the key DOJ management problem areas described earlier in this report. According to GAO, the Justice Department is not effectively managing its information technology resources and needs Department-wide leadership and sustained oversight to correct the weaknesses.⁴⁶

As discussed previously, INS information systems suffer from many deficiencies. INS now is undertaking a billion-dollar management technology program. While this effort is laudable, the program will require close oversight. In fact, the IG has described the program as “the highest-risk endeavor in the entire Department.”⁴⁷ The IG also stated that INS faces an enormous challenge in training its staff to use the new information technology tools.⁴⁸

GAO reported on the absence of comprehensive information systems in connection with monitoring the performance of U.S. Attorneys. Due to the unreliability of some data and the lack of other data, DOJ’s Executive Office for U.S. Attorneys could not fully use its information systems to determine how U.S. Attorneys were addressing national and local prosecutorial priorities. Some existing measures of U.S. Attorneys’ caseloads and workloads appeared to be inaccurate. The information systems did not collect other useful information for determining how U.S. Attorneys addressed national and local priorities and managed their resources. GAO also reported that data maintained by U.S. Attorney offices did not accurately reflect the caseloads and workloads of all the offices.⁴⁹

Redundant drug intelligence centers exist within the Justice Department. The National Drug Intelligence Center, funded through DOJ and DOD at \$34 million annually, overlaps with the DEA’s El Paso Intelligence Center, which has an annual budget of over \$20 million. The FBI’s regional drug intelligence squads, costing about \$14 million a year, were established without consideration of existing systems. Finally, DOJ’s Office of Justice Programs provides about \$14 million annually to fund intelligence systems for State and local governments. As the Justice IG concluded, consolidation of drug intelligence activities would save millions of dollars annually and also streamline the intelligence function.⁵⁰

Information security also is a problem at the Justice Department. OMB placed computer security at DOJ on its high risk list, and the Department itself reported this area as a material internal control weakness. According to OMB, the Department maintains inadequate security over departmental ADP sites and systems, thereby putting at risk the confidentiality of sensitive litigation and law enforcement information.⁵¹ The IG also has reported on computer security problems at DOJ. The IG identified security weaknesses in the INS Central Index System, some of which were described previously in this report. The IG also found vulnerabilities in FBI computer security control practices.⁵²

ENDNOTES

¹ House Committee on Appropriations, Report to accompany H.R. 3814, *Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Bill, Fiscal Year 1997*, H. Rept. No. 104-676, 104th Cong., 2d Sess. (July 16, 1996), pp. 184 and 8.

²*Id.*, p. 8. See also 142 Cong. Rec. H8150 (daily ed., July 23, 1996).

³*Id.*

⁴*Id.*, pp. 8-9.

⁵ Office of Management and Budget (OMB), Federal Financial Management Status Report & Five Year Plan, Appendix I: *Status Report on Credit Management and Debt Collection* (June 1996), p. 53. Even these large figures probably are too low. For example, OMB understated the amount of delinquent tax debt by at least \$20 billion and overstated by \$1 billion the amount of delinquent debt that IRS collected in fiscal year 1995. See the discussion of IRS debt collection in the Department of the Treasury section of this report.

⁶*Id.*, p. 47.

⁷ OMB, *Progress Report: Correcting High Risk Areas*, Analytical Perspectives on the Budget of the United States for Fiscal Year 1996, p. 291.

⁸ General Accounting Office, *Restitution, Fines, and Forfeiture: Issues for Further Review and Oversight*, GAO/T-GGD-94-178 (June 28, 1994), p. 2.

⁹ Coopers & Lybrand, *Independent Assessment of the Mission, Goals, Plans, & Progress to Date for Implementing the National Fine Center* (May 27, 1996), pp. IV-1.

¹⁰ *Restitution, Fines, and Forfeiture: Issues for Further Review and Oversight*, note 8, p. 9.

¹¹ *Id.*, p. 1. See also Department of Justice, Office of Inspector General (DOJ IG), *Audit Report: Criminal Debt Collection Efforts Within the Department of Justice*, No. 93-19 (September 1993).

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¹³ *Independent Assessment of the Mission, Goals, Plans, & Progress to Date for Implementing the National Fine Center*, note 9, p. IV-2.

¹⁴ *Audit Report: Criminal Debt Collection Efforts Within the Department of Justice*, note 11, p. 20.

¹⁵ *Id.* pp. 22, 25.

¹⁶ *Id.* p. 18.

¹⁷ *Independent Assessment of the Mission, Goals, Plans, & Progress to Date for Implementing the National Fine Center*, note 9, p. I-1.

¹⁸ *Progress Report: Correcting High Risk Areas*, note 7, p. 291.

¹⁹ General Accounting Office, *Asset Forfeiture: Historical Perspective on Asset Forfeiture Issues*, GAO/T-GGD-96-40 (March 19, 1996), pp. 7-8. See also General Accounting Office, High-Risk Series, *Asset Forfeiture Programs*, GAO/HR-95-7 (February 1995).

²⁰ Hearings before the Subcommittee on Commerce, Justice, State, and the Judiciary, House Committee on Appropriations, 104th Cong., 2d Sess., *Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations for 1997* (Part 6) (1996), p. 571.

²¹ *Id.* p. 572.

²² *Id.* pp. 571-572.

²³ General Accounting Office, *INS: Update of Management Problems and Program Issues*, GAO/T-GGD-95-82 (February 8, 1995), p. 1.

²⁴ Hearings, note 20, p. 561.

²⁵ *Id.* pp. 562-563.

²⁶ *Id.*, p. 563.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*, p. 564.

³⁰ *Id.*, pp. 567-569.

³¹ Hearings, note 20, pp. 567-570.

³² See generally DOJ IG, Department of Justice, *Alleged Deception of Congress: The Congressional Task Force on Immigration Reform's Fact-finding Visit to the Miami District of INS in June 1995* (June 1996), pp. 4-10.

³³ *Id.*, pp. 7-8.

³⁴ *Id.* p. 3.

³⁵ Center for Immigration Studies, *Immigration Review*, No. 26 (Summer 1996).

³⁶ DOJ IG, *Semiannual Report to Congress, October 1, 1995-March 31, 1996*, p. 23.

³⁷ *Id.*

³⁸ DOJ OIG, *Semiannual Report to Congress, April 1, 1995-September 30, 1995*, p. 19.

³⁹ *Id.*

⁴⁰ Hearings, note 20, p. 591.

⁴¹ *Progress Report: Correcting High Risk Areas*, note 7, p. 292.

⁴² Hearings, note 20, p. 563.

⁴³ *Semiannual Report to Congress, October 1, 1995-March 31, 1996*, note 36, p. 30.

⁴⁴ *Progress Report: Correcting High Risk Areas*, note 7, p. 292.

⁴⁵ *Semiannual Report to Congress, October 1, 1995-March 31, 1996*, note 36, pp. 11, 28.

⁴⁶ General Accounting Office, *INS: Management Problems and Program Issues*, GAO/T-GGD-95-11 (October 5, 1994), p. DOJ-9.

⁴⁷ Hearings, note 20, p. 558.

⁴⁸ *Id.*, p. 559.

⁴⁹ General Accounting Office, *U.S. Attorneys: More Accountability for Implementing Priority Programs Is Desirable*, GAO/GGD-95-150 (June 23, 1995), p. 3.

⁵⁰ Hearings, note 20, p. 593.

⁵¹ *Progress Report: Correcting High Risk Areas*, note 7, p. 293.

⁵² *Semiannual Report to Congress, April 1, 1995-September 30, 1995*, note 38, p. 19.

Department of Labor and the National Labor Relations Board

OVERVIEW

The Department of Labor's (DOL) mission is to promote the welfare of wage earners, improve working conditions and train workers for profitable employment. DOL is one of the largest regulatory agencies in the Federal Government and it enforces over 130 labor statutes on job safety, employee benefits, minimum wages, unemployment insurance, job training, labor-management relations, employment discrimination and conducts programs to collect and analyze labor statistics.

The National Labor Relations Board is an independent agency created by the National Labor Relations Act of 1935 (NLRA) as amended by the Taft-Hartley Act and the Landrum-Griffin Act. The purpose of the NLRA is to protect the right of employees to self-organization and collective bargaining through representatives of their own choosing and to engage in concerted activity or to refrain from such activity. The budget for the NLRB in 1995 was \$174 million, 78 percent of which is spent on compensation for its approximately 2,000 employees. Only about 11 percent of the private-sector work force is unionized.

DOL spends \$31 billion annually and employs over 15,000 full-time employees. Key components of DOL are the Bureau of Labor Statistics, the Employment and Training Administration, Labor Management Standards, Occupational Safety and Health Administration, Mine Safety and Health Administration, Pension and Welfare Benefits Administration, and Veterans Employment and Training Services.

The Department of Labor job training programs are inefficient because they duplicate many other similar Federal job training programs. Studies have also shown such programs to be ineffective thus, robbing program participants of the hope of a better job through training. Deficient audits of pension plans can conceal violations of law and endanger the retirement security of American workers. Also of extremely serious concern is the failure by the Department to adequately address the growing problem of labor racketeering. A poor record of debt collection continues to be a problem for the Department.

Serious questions have been raised regarding partisanship at the National Labor Relations Board which has biased decisions and actions taken there.

FEDERAL JOB TRAINING PROGRAMS: PROGRAMS DUPLICATE EFFORT AND WASTE TAXPAYER FUNDS

In 1994, the General Accounting Office reported that there were 163 Federal job training programs located in 14 departments and

spending over \$20 billion annually.¹ While many of these programs are in other departments, the Department of Labor has taken a leadership role in Federal job training programs. As a consequence, the proliferation of job training programs continues today.

These programs may have well-intentioned purposes, which include helping adult dislocated workers or disadvantaged youth find employment or obtain training to compete in the labor force. Collectively, however, they create confusion and frustration for their clients and administrators, hamper the delivery of services tailored to the needs of those seeking assistance and create the potential for duplication of effort and unnecessary administrative costs. Many of the programs overlap by targeting the same client populations, such as dislocated workers, Native Americans, the economically disadvantaged or at-risk youth. Numerous programs have the same or similar goals, such as reducing welfare dependency, easing worker dislocation or preventing students from dropping out of school. Although these programs frequently provide the same categories of services, they are administered through a patchwork of separate structures for the delivery of services, which are sometimes duplicated again at the State and local levels. The main beneficiaries of this Federal money are the administrators, bureaucrats and grantees executing these duplicative programs, not those disadvantaged individuals in need of job training.

In addition, the programs lack basic tracking and monitoring systems needed to ensure that assistance is provided efficiently and effectively. Past efforts to "fix" the system have fallen short of solving its substantial problems. Major structural overhaul and consolidation of employment training programs is needed. Congress has attempted to consolidate as many as 128 Federal education and training programs.

Furthermore, a nationwide controlled study of the Job Training Partnership Act (JTPA) programs reported no significant effect of JTPA on earnings or employment rates after 5 years.² By the fifth year, each of the four treatment groups studied (adult men, adult women, male youth and female youth) had earnings and employment rates that were nominally higher than those of the control group; however, because none of the fifth-year differences were statistically significant, GAO could not attribute the higher earnings to JTPA training rather than to chance alone.³

For example, the effect of JTPA training on young men was worse than it was even on young women. The program had zero impact on employment and a 7.9 percent negative effect on earnings. Although the program increased the hourly wage of adult women by a modest 3.4 percent, it had no significant effect on women who were on welfare or were high school drop outs. This program demonstrates that the effectiveness of Federal job training programs are marginal, at best, and cost, in the aggregate more than \$20 billion annually.

JOB TRAINING PROGRAM INEFFICIENCY: ANOTHER EXAMPLE

In 1995, the Department of Labor's Inspector General concluded a financial and performance audit of a program to train migrant and seasonal farm workers. The OIG found that the Department of Labor wasted more than \$10 million on this program that sub-

sidized farmers to train migrant and seasonal farm workers to perform the same menial tasks they were trying to escape. This is another example of the failure of Federal job training programs to affirmatively help their clients. Money intended for helping the disadvantaged is stuck in the pockets of bureaucrats and grantees. Programs are being mismanaged and are not helping those in need of their services.

For the three program years ending in June 1994, the local Department of Labor and Human Relations had a goal to place 564 participants in unsubsidized employment. However, after the expenditure of \$5.2 million on this activity, only 67 participants, or 12 percent of the goal, were placed in unsubsidized employment. Furthermore, of the 67 placements, only 37 were placed in occupations related to their training, and only 17 were retained in training-related occupations in excess of 90 days.

These facts translate into an average cost per placement of about \$77,000; for a training-related placement costs were around \$140,000; and training-related placement in which employment exceeded 90 days of cost \$305,000 per participant, according to the Inspector General.⁴ The OIG concluded program performance was "extremely poor" and questioned \$1,764,658 out of total program expenditures. In addition, the OIG said that the local welfare program and another Federal job training program designed to assist economically disadvantaged individuals had the unintended effect of making it more difficult for the migrant and seasonal farm worker program to achieve its overall objectives.

PENSION AND WELFARE BENEFITS ADMINISTRATION: LIMITED SCOPE
AUDITS AND LIMITED PENSION PLAN SECURITY

There are significant deficiencies in audits of private employee benefit plans which are putting American retirement programs at risk. These audits present such a threat to the fiscal health of pension plans that the Office of Management and Budget included this on its "High Risk" list for the President's Budget for fiscal year 1996. The Department of Labor's Pension and Welfare Benefits Administration (PWBA) is charged with protecting America's 700,000 private-sector pension plans, and 6 million welfare plans covering 150 million workers and over \$3 trillion dollars.

The Employee Retirement Income Security Act of 1974 (ERISA) established safeguards to protect the assets of private employee benefits and ensure that plan participants receive the benefits to which they are entitled. Under ERISA, pension plans having 100 or more participants must obtain an annual financial statement audit by an independent public accountant (IPA).

Audits of plans are a key safeguard for protecting the assets held by plans and ERISA cannot be materially enforced without them. Reviews by the DOL Office of Inspector General and the General Accounting Office (GAO) have caused increasing concern regarding the inadequacy of these independent audits. Although classified as audits, these reports sometimes contain disclaimed opinions and limit liability for the auditor who prepares them. They may be "limited in scope" and not identify ERISA violations, disclose known violations or they may be unreliable in meeting ERISA requirements. Nearly 20 percent of audits examined in 1992, the year

for which the most recent data is available, failed to comply with one or more of the established professional standards, and 33 percent of independent qualified public accountant audits failed to comply with one or more of ERISA's reporting and disclosure requirements and had "audit weaknesses so serious that their reliability and usefulness were questionable."⁵ This error rate remains unacceptably high.⁶ A follow-up report is due to be released by the DOL Office of Inspector General this fall.

The failure to verify the existence of plan investments in limited scope audits, or to assure the accuracy of asset valuations, the nature of investments and their degree of risk, can lead to pension plan failures and the loss of millions of dollars in funds, jeopardizing the economic security of retirees and plan participants who may not have yet retired. Reporting requirements are the primary mechanism to detect and deter such waste and abuse. Effective monitoring and enforcement cannot occur if the reporting system fails to provide all essential information regarding the plan's investments and possible prohibited transactions. As a result, the reporting system envisioned by Congress in 1974, when ERISA was passed, cannot serve its purpose of becoming the primary protection for pension plan participants.

OPPOSING LABOR RACKETEERING NEEDS TO BE A PRIORITY AT THE
SECRETARIAL LEVEL

Repeated reports of the Department of Labor Office of the Inspector General show that labor racketeering continues to plague American labor unions. In hearings before the Committee on Government Reform and Oversight on July 11, 1996, the current Inspector General said: "Our investigations have also disclosed that labor racketeering is not the exclusive province of the more traditional La Cosa Nostra (LCN) crime families. Rather, there are many other organized groups that have infiltrated the workplace."⁷ Despite the criminal nature of this problem, the numerous instances of corruption and the magnitude of loss to union members, the Secretary and Deputy Secretary of Labor do not place sufficient priority on combating organized crime in labor unions. In fact, in response to recommendations of the Inspector General made on March 24, 1995 regarding improvement of Departmental enforcement against racketeering, then-Deputy Secretary of Labor Thomas Glynn complained that developing coordinated Departmental criminal enforcement would be "complicated . . . difficult, time-consuming and costly. . . ."⁸

Despite the recommendations of the 1985 President's Task Force On Organized Crime, the work of the Secretary of Labor's 1990 Enforcement Task Force, and more than 5 years of in-depth oversight by the Inspector General, Departmental enforcement activities remain weak, inconsistent and without an integrated approach to common criminal enforcement issues.

The Office of the Inspector General examined six recent instances of union-related racketeering and fraud in its most recent semiannual report. These are a examples of egregious problems of corruption in labor unions today.

Marine Engineers Beneficial Association (MEBA)

Three former officials of the Marine Engineers Beneficial Association of America, District #1 (MEBA / National Maritime Union) participated in a scheme to steal \$2 million in union funds and engage in election fraud and extortion of political action fund contributions. These individuals also participated in a scheme to pay themselves phony severance payments when MEBA merged with the National Maritime Union. *“This investigation identified long-standing election fraud and coercive political action fund solicitation practices in the maritime industry. The investigation showed that the union officials sought only to benefit themselves . . . and failed to uphold the high calling of their union offices.”*⁹ (Emphasis in the original.)

General Building Laborers Union

The former head of the General Building Laborers Local 66 in New York reported that a member of the Luchese organized crime family participated in a conspiracy to steal millions in union welfare funds by inflating construction costs and kickbacks from contractors on the training center. In addition, this individual arranged for a fraudulent \$4 million loan to finance the construction project. As a result, the lender has foreclosed on the union’s recently built training center and Local 66’s offices. *“[This union leader] used his position as a union leader to enrich himself, members of his family, and business associates at the expense of the union benefit fund and the union membership. Local 66 members are currently being taxed \$1.00 per hour by the union to recover the money stolen . . . in an effort to keep the benefit fund solvent.”*¹⁰ (Emphasis in the original.)

International Longshoremen’s Association

The administrator for two union welfare funds embezzled more than \$500,000 from the International Longshoreman’s Association (ILA) in Jacksonville. This union official defalcated funds from the ILA’s Welfare and Pension Fund and the local Container Royalty Fund. This plan covers approximately 1,000 members of the union. An assistant union administrator was also involved in the scheme to defraud the funds and the rank-and-file members. The officials issued themselves unauthorized bonuses and various other unauthorized payments. In addition, the two issued checks to themselves from the Royalty Fund totaling more than \$307,000 which would otherwise have been distributed to longshoremen who had worked 700 hours or more in the Port of Jacksonville. According to an ILA representative, *“the \$307,000 embezzled from the Royalty Fund directly resulted in the loss of between \$500 and \$600 to each qualified union member who worked the Jacksonville waterfront.”*¹¹ (Emphasis in the original.)

Chicago Truck Drivers, Helpers and Warehouse Workers Union

The former president of the Chicago Truck Drivers, Helpers and Warehouse Workers Union (CTDU) engaged in racketeering by receiving over \$416,000 in kickbacks and extortion payments in connection with \$15 million in pension fund investments. In addition, this individual received over \$140,000 in kickback payments for the

fund's investment of \$1 million in a coal project in Indiana. Kickback payments were then split with the union vice president, who was also the union's legal counsel and pension plan trustee. *Again, these union officials used their office to benefit themselves at the expense of their union brethren and failed to uphold the public's trust and the high calling of union leadership.* (Emphasis added.)

Allied Novelty and Production Workers Union

The president of Joint Board 18 and Local 118 of the International Union of Allied Novelty and Production Workers, embezzled more than \$125,000 from several different union funds. Two accomplices also participated in the scheme to defraud the union. The scheme involved the payment of construction project kickbacks on renovation of an office building. Funds were kicked back to the union officials through the help of one of the accomplices, an accountant. *Once again, rank-and-file union members were victimized by corrupt union officials enriching themselves at the expense of honest union members.* (Emphasis added.)

Fraudulent labor union scheme

Two former officials of a now-defunct New York union local formed a union solely for the purpose of selling fraudulent health insurance to small employers. The individuals even went so far as to file union reporting and disclosure forms with the Department of Labor's Office of Labor Management Services (OEMS) but were still not discovered by the Department of Labor until they defrauded union "members" and employers of approximately \$350,000 in kickbacks from insurance brokers who conducted business with phony welfare funds. This union welfare fund was placed under control of a court-appointed independent fiduciary when the fund had accumulated \$6 million in unpaid medical claims from its members. *Honest labor union member continue to be victimized by corrupt union leaders.* (Emphasis added.)

DAVIS-BACON ACT: USE OF FRAUDULENT WAGE DATA

Through mismanagement and the use of fraudulent wage data to inflate construction costs, the Davis-Bacon Act is adding hundreds of millions to the cost of Federal construction contracts. The Davis-Bacon Act, passed in 1931, requires that each contract for construction, alteration or repair of public buildings or works in excess of \$2,000 to which the United States is party—or under 77 related laws in which the United States shares the financing—pay the prevailing wage. The Act was intended to discourage non-local contractors from successfully bidding on Federal Government projects by hiring cheap labor from outside the project area, thus disrupting the prevailing local wage structure.

For many years, the General Accounting Office has called for the repeal of the Davis-Bacon Act, charging that changes in the economy, the construction industry, and the passage of other wage laws have made the Act obsolete.¹² For the past 17 years, the GAO has noted that the wage data used by the Department of Labor were inaccurate and inflationary. In 12 wage areas where the GAO determined that rates were higher than prevailing wages, the higher wage costs ranged from a low of 5 percent to a high of 123 per-

cent.¹³ Estimated cost savings from repealing the Act range between \$150 million¹⁴ to “several hundred million” per year in unnecessary costs to American taxpayers.¹⁵ Charges of a vastly changed socio-economic landscape and the Act’s general inflationary effect continue to be true.

In May 1996, the GAO confirmed that use of inaccurate wage data by the Department of Labor is a serious problem.¹⁶ The use of fraudulent wage data to inflate wages on Federal construction projects, particularly in the State of Oklahoma, has been documented in hearings before the U.S. Congress.¹⁷ Oklahoma completed an investigative report in 1994 on general wage decisions issued by the U.S. Department of Labor for heavy construction in Oklahoma County and several other counties in and around Oklahoma City. Cases were selected at random for investigation. In each of the first three cases investigated, the Oklahoma Department of Labor discovered elements of fraud—fictitious projects and ghost employees—each of which had been perpetrated by interested parties and which had the effect of inflating wage rates for federally financed construction projects. The State has since uncovered nearly 100 cases of fraudulent activities in Davis-Bacon wage surveys.

While the State of Oklahoma has made a concerted effort to eliminate fraud in the operation of the Act, it has encountered resistance by the United States Department of Labor in correcting the use of fraudulent wage data for use on federally financed construction projects. In late 1995, the DOL withdrew the prevailing wage determinations for two Oklahoma cities and referrals of the case were made to the Departmental Inspector General’s Office and to the Criminal Fraud Division of the Department of Justice, but only after the 104th Congress had exposed the scandal. Missouri and Colorado are also in the process of investigating possible Davis-Bacon fraud in their States. When these investigations are completed we may find that Oklahoma’s Davis-Bacon Act problems are symptomatic of a much larger nationwide problem.

DEBT COLLECTION: MILLIONS IN OUTSTANDING DEBTS LABOR IS NOT
COLLECTING

The most recent semiannual report of the Inspector General for the United States Department of Labor covering the period October 1, 1995 through March 31, 1996 shows that the agency has failed to collect debts owed to it. As of March 31, 1996, the Department of Labor’s beginning balance was \$136,132,453 in collection with an additional \$256,422,976 under appeal. Its ending balance totaled \$348,606,848, which consisted of \$84,543,034 in delinquent payments, \$34,207,918 in current money owed and \$229,855,896 in assessments, debts and fines under appeal. The Department of Labor “wrote off” nearly \$11 million as uncollectible. As a result of this and other large, outstanding debts, Congress passed the Debt Collection Improvement Act of 1996, to attempt to correct the root problems of this administration in failing to collect payments to the government.

BALANCE OF INTERESTS NEEDED AT THE NATIONAL LABOR RELATIONS BOARD (NLRB)

Despite the tradition of impartiality and even-handedness in administration of the National Labor Relations Act (NLRA), the President has nominated to the five-member National Labor Relations Board several individuals who advocate union positions to alter the balance in established labor law. The NLRB was established in 1935 to administer and enforce the National Labor Relations Act which was passed that year. Its primary function is to facilitate the exercise of workers' rights to form and join unions and bargain collectively, or to refrain there from. Congress intended that the NLRB perform as an impartial referee among frequently conflicting interests.

On January 19, 1996, the President gave a recess appointment to Sarah Fox, former staff counsel to the International Union of Bricklayers and Allied Craftsmen, and Chief Labor Counsel to Senator Edward M. Kennedy (D-MA) when it was clear that she would not be confirmed by the Senate. This appointment brings to three the total number of partisan advocates on the five-member Board nominated by the President.

In addition to Member Fox, these include Board member Margaret Browning, the former counsel to the Building and Construction Trades Union and Chairman William Gould, a former professor of labor law, who has departed from Board tradition by testifying and making speeches advocating banning permanent replacements for economic strikers and defeating the worker-management cooperation bill known as the TEAM Act.

The President made a second recess appointment in August 1996. This time to John Higgins, long-term Federal employee and now former-Acting Inspector General of the National Labor Relations Board. Despite these adverse odds, the public relations office at the NLRB hails the appointment of Mr. Higgins, who is being appointed as a Republican, as evidence of the "agency's role as an impartial enforcer of the law"¹⁸ There is one vacancy on the Board.

Election fraud

In a clear example of bias, a senior level NLRB official continued directing that union elections be held at a food-processing plant even though he knew that the union organizers seeking the election had committed "massive fraud" in the words of the Federal district court for the Eastern District of North Carolina.

To obtain an NLRB election, a union must first file authorization cards collected from at least 30 percent of the workers expressing a desire to organize. At a Perdue Farms facility in Lewiston, North Carolina, the United Food and Commercial Workers Union (UFCW) filed 800 authorization cards claimed to have been signed by Lewiston workers. Half had been forged. After being told of the forgery, NLRB Regional Director Willie L. Clark dismissed objections and directed a third election, despite the fact that the union had been rejected in two earlier votes. The Federal district court then issued an injunction ordering Clark and the National Labor Relations Board not to hold further elections until such time as the

FBI and other Federal agencies are given the opportunity to investigate.¹⁹

This case raises serious questions about the relationship between certain employees of the NLRB and organized labor. It also raises questions about the current management in the NLRB and its leadership that may have created a climate encouraging misconduct. The NLRB is responsible for ensuring that union representation is a matter of employee choice.

The UFCW petitioned the Board to conduct a representational election at the processing plant in Lewiston, in May 1995. The UFCW filed 800 authorization cards, which it claimed had been endorsed by plant workers. This number would surpass the required 600, 30 percent of the 2,000 employees. Nevertheless, on June 28, 1995, the union petition was rejected on a vote of 952–851. In February, 1996, the NLRB Regional Director decided that Perdue Farms had violated an NLRB rule that was established after the June 28, 1995 election, and ordered a new election to be held.²⁰

Prior to that election, however, two UFCW organizers confessed to having forged 400 of the 800 authorization cards, under orders from the local UFCW president. This would have reduced the number of cards to only 400—200 short of the number required by law to hold elections. The NLRB ordered the second election to go forward. The union was defeated by an even larger margin, this time it was defeated on a vote of 947–755. In April 1996, the company was informed by representatives of the Board that a third election would be held.

In the intervening period, the U. S. District Court for the Eastern District of North Carolina issued a temporary restraining order against any further NLRB consideration of elections at Perdue until it had conducted an “appropriate investigation” of fraud charges—as required by the National Labor Relations Act—to the satisfaction of the court. The court said:

The fraud allegations are as compelling of [the need for] an investigation as might ever be imagined, and yet the NLRB has admittedly failed to meet this bare-minimum standard (i.e. NLRB case-handling guidelines).²¹

The new leadership of the AFL–CIO has made membership a top priority. As it devotes staff and resources into increasing its membership, the NLRB ought to assure the public that any membership increases are the result of choice by workers rather than coercion from Government agencies. This case raises serious doubt that American workers can depend on the Board for protection against coercive unionization. The court observed:

The public interest in holding free and fair elections is beyond question. Employers and employees alike are ill-served by appearances that their public servants are unwilling to investigate substantial allegations of massive fraud in labor elections. The public desires to know that its rights to democratic representation will be ensured by those charged with keeping the election process honest.²²

Weakening the right to secret ballot elections

Despite objections from its Regional Director, the National Labor Relations Board, in *Shepard Convention Services v. NLRB*, attempted to deny workers the right to a secret ballot election. The NLRA generally guarantees workers the right to a secret ballot election. Occasional absentee ballots are allowed for extraordinary cases, such as long-haul truckers who tend not to be in the same location long enough to vote in elections. In the past, the NLRB argued against using absentee or mail-in ballots because participation, according to NLRB statistics, was low. Activists tend to take the time to fill out the forms, rather than all workers and the likelihood for coercion from the employer or union is greater.

The leadership of the AFL-CIO is opposed to secret-ballot elections and has advocated basing representation solely on the basis of authorization cards obtained by its organizers. In secret ballot elections, workers support the union between 50 to 60 percent of the time. The AFL-CIO, as a means of increasing its wins, supports basing representation on signing authorization cards which are passed around the workplace by organizers.

Chairman of the National Labor Relations Board, William Gould, has made statements to the effect that he could tentatively accept the arguments of some unions in favor of a wider use of the postal or mail ballots in NLRB conducted elections. The secret ballot election can still be undermined, *sub silentio*, through promoting the use of mail-in ballots, and that is what occurred in the *Shepard Convention Services* case.

This case gave the Board an opportunity to expand the use of circumstances under which mail balloting was permissible, and the Board ordered such ballots. Of a total of 438 employees eligible to cast votes, 17.5 percent, or 77 cast valid ballots. Between two unions, 40 employees supported one union, 23 workers supported the second union and five employees voted for no union. The NLRB legitimated the election on the basis of the 11 percent of employees who supported the first union.

The Court of Appeals said, "Had the Board left the [regional director's] decision intact, as its regulations required, voter turnout might well have been higher."²³ It could hardly have been lower. The court further found that the NLRB "undertook to second-guess the Regional Director in violation of its own regulations."²⁴ As such, the court struck down the attempt by the NLRB to deny rank and file workers their right to a secret ballot election.

ENDNOTES

¹ General Accounting Office, *Multiple Employment Training Programs, Major Overhaul Is Needed*, Testimony of Clarence C. Crawford (March 3, 1994).

² General Accounting Office, *Job Training Partnership Act: Long-Term Earnings and Employment Outcomes*, GAO/HEHS-96-40 (March 1996).

³ General Accounting Office, *Job Training Partnership Act, Long-Term Earnings and Employment Outcomes*, GAO/HEHS-96-40 (March 1996).

⁴U.S. Department of Labor, Office of the Inspector General, Semiannual Report to the Congress, October 1, 1995 through March 31, 1996.

⁵General Accounting Office, *Employee Benefits, Improved Plan Reporting and CPA Audits Can Increase Protection Under ERISA*, GAO/AFMD-92-14, p. 3.

⁶U.S. Department of Labor, Pension and Welfare Benefits Administration, Assessment of the Quality of Employee Benefit Plan Audits, 1996 draft, p. 3.

⁷Testimony of Charles C. Masten, Inspector General U.S. Department of Labor, Before the Subcommittee on Human Resources and Intergovernmental Relations, Committee on Government Reform and Oversight, U.S. House of Representatives, July 11, 1996, p. 1.

⁸Memorandum from Deputy Secretary of Labor Thomas Glynn to Inspector General Charles C. Masten, "Final Status Report on Efforts to Improve Departmental Criminal Enforcement Programs, Report No. 17-95-005-50-598," February 14, 1996.

⁹United States Department of Labor, Office of the Inspector General, *Semiannual Report to the Congress*, October 1, 1995-March 31, 1996, p. 22.

¹⁰*Id.*, p. 23.

¹¹*Id.*, p. 25.

¹²General Accounting Office, GAO-HRD-79-18, *The Davis-Bacon Act Should Be Repealed*.

¹³*Id.*

¹⁴Citizens Against Government Waste, 1995 "Prime Cuts" Summary Fifty Ways to Leaner Government.

¹⁵General Accounting Office, GAO-HRD-79-18, *The Davis-Bacon Act Should Be Repealed*.

¹⁶General Accounting Office, GAO/HEHS-96-130, *Davis-Bacon Act: Process Changes Could Raise Confidence That Wage Rates Are Based on Accurate Data* (May 31, 1996).

¹⁷Testimony of Brenda Reneau, Oklahoma Labor Commissioner, Before the U.S. House of Representatives, Committee on Economic and Educational Opportunities, June 20, 1996.

¹⁸As reported in the Bureau of National Affairs, Daily Labor Reporter, "White House Selected John E. Higgins To Fill NLRB Vacancy As Recess Appointee", September 4, 1996, p. A-9.

¹⁹*Perdue Farms v. N.L.R.B.*, No.2: 96-CV-27-BO(1) July 23, 1996.

²⁰*Perdue Farms v. N.L.R.B.*, No.2: 96-CV-27-BO(1) July 23, 1996.

²¹*Perdue Farms v. N.L.R.B.*, No.2: 96-CV-27-BO(1) July 23, 1996.

²²*Perdue Farms v. N.L.R.B.*, No.2: 96-CV-27-BO(1) July 23, 1996.

²³*Shepard Convention Services, Inc. v. N.L.R.B.*, 85 F.3d 671, p. 675 (D.C. Cir. 1996).

²⁴*Shepard Convention Services, Inc. v. N.L.R.B.*, 85 F.3d 671, p. 674 (D.C. Cir. 1996).

National Aeronautics and Space Administration

OVERVIEW

The National Aeronautics and Space Administration (NASA) was established in 1958 as the Federal agency responsible for the exploration of space with manned and unmanned vehicles and the research of flight within and outside the Earth's atmosphere. NASA also arranges for the utilization of American scientific and engineering resources with other nations engaged in aeronautical and space activities for peaceful purposes. NASA's budget is \$13.693 billion, and the agency has a staff of 21,300.

NASA has serious problems using funds as effectively as possible. The agency wastes millions of dollars on poor property controls, unnecessary spending on agency aircraft and data archive centers, and shuttle maintenance that could be performed more efficiently.

NASA LACKS PROPERTY CONTROLS WHILE LENDING PROPERTY TO
EMPLOYEES AT THE JET PROPULSION LABORATORY¹

The Jet Propulsion Laboratory is a research and development center whose sole purpose is the exploration of the solar system. It is a division operated by the California Institute of Technology. With a cost of approximately \$1 billion, this government-owned facility employs 6,400 people. According to the General Accounting Office, NASA's equipment at the Jet Propulsion Laboratory is poorly controlled.² Only one person at NASA's Management office is assigned the responsibility of overseeing the property control system at the Jet Propulsion Laboratory.

A property control system is required by the Federal Acquisition Regulation. In addition to regulations on lending property to employees in the Federal Acquisition Regulation, NASA has even more stringent regulations regarding the loaning of property. These regulations allow for the loaning of property only on a temporary basis and only for mission work or "other government purposes." In addition, no equipment may be purchased for the sole purpose of loaning it.

As of September 1993, 4,000 pieces of equipment were on loan to employees of the Jet Propulsion Laboratory. Ninety-six percent of this property was computer equipment valued at approximately \$7.6 million. This represents a 40 percent increase in loaned property in just 2 years.³

The computer equipment loaned included 150 laser printers, color monitors, modems, and approximately 250 laptop computers. In addition to computer equipment, a wide variety of other equipment was on loan, including cellular telephones, telephone answering machines, video cassette recorders, televisions, cameras and camcorders. Management officials told the General Accounting Office that the system of lending equipment relied on trust, although they knew that much of the equipment was for the personal use of the employees.⁴ Property is being purchased for the sole purpose of lending to employees and is routinely held by the employees for more than 2 years. The General Accounting Office cites several examples of the abuse apparent at the Jet Propulsion Laboratory:⁵

- One scientist has custody of three lap-top computers, valued at more than \$18,000. He attests that one of the computers is rarely used, and is kept in case one of the other computers fails.
- One analyst admits that she keeps a computer, monitor and printer solely for word processing, and has no work requirement for the computer.
- Another scientist keeps a computer valued at more than \$5,000, although he rarely uses it.

Jet Propulsion Laboratory lending practices are in direct contravention of NASA's expressed property regulations. Indeed, there appears to be little policy in conformity with the Federal Acquisition Regulation. At a value of \$7.6 million, the Jet Propulsion Laboratory lends too much property to its employees, and for the wrong reasons.

PERFORMING SHUTTLE MAINTENANCE IN FLORIDA WOULD SAVE
AMERICANS HUNDREDS OF MILLIONS ⁶

Today, regular maintenance on the space shuttles is performed in Palmdale, CA. The shuttles operate largely from Kennedy Space Center in Cape Canaveral, FL. The extra expense of moving the shuttles to California for regular maintenance is prohibitive.

Each space shuttle must undergo structural inspections every 3 years. Each of these inspections is done at the Palmdale facility and performed by the Rockwell Corporation. Primary shuttle operations are kept at the Kennedy Space Center and performed by the Lockheed Company. According to NASA's Inspector General, the shuttle program could save \$30 million in maintenance costs each year and \$480 million over the life of the program.⁷

Performing maintenance inspections at Palmdale requires 185 contractors at \$8.6 million. An additional \$25.8 million in extra costs brings the total cost of maintenance at Palmdale to \$34.4 million. To perform the maintenance at Kennedy Space Center, the cost would be only \$8.8 million.⁸

Maintenance of the shuttles at Kennedy Space Center would eliminate the costs associated with ferrying the vehicles to and from Palmdale, California. Fuel costs and flight servicing costs total \$4.1 million. Costs for the transportation and per diem of employees required for the transport total \$300,000. These costs would be avoided if maintenance were done in Florida, and maintenance time would be reduced by 4 months.⁹

NASA'S DISTRIBUTED ACTIVE ARCHIVE CENTERS, WHICH HOUSE THE
EARTH OBSERVING SYSTEM DATA AND INFORMATION SYSTEM, EX-
PEND FUNDS IN VIOLATION OF CONGRESSIONAL INTENT ¹⁰

The goal of the Earth Observing System (EOS) program is to promote scientific understanding of the Earth's system on a global scale. The Earth Observing System Data and Information System (EOSDIS) is an element of the Earth Observing System and serves as the mechanism for generating, archiving, and distributing Earth Science data. Distributed Active Archive Centers (DAAC) are located at institutions or facilities that have expertise and ongoing research in specific Earth science disciplines and have been selected to carry out the responsibilities for processing, archiving, and distributing EOS and related data.

Although the budget for the EOS program has been reduced from \$17 billion in 1991 to \$7.25 billion in 1994, funding for the DAAC's has increased by 16 percent, from \$254.9 million in 1993 to \$295.9 million in 1995. The number of DAAC's has increased from seven to nine, and NASA has allowed some to expand their facilities. NASA must scale back the program to conform with the reality of fiscal austerity.¹¹

Further, DAAC's have been expending funds beyond their legislative mandate. The 1994 Conference report of the Appropriations for the Departments of Veterans Affairs, Housing and Urban Development, and Sundry Independent Agencies, Boards, Commissions, Corporations and Offices, states that "NASA is directed . . . to provide no funds for the construction of non-NASA facilities."¹² Because DAAC's are supposed to use the existing facilities of their host institutions, there is no budgetary intent to build new facilities. Nonetheless, seven of the nine DAAC's have used NASA funds to build or rent expanded facilities. Two DAAC's have built new facilities; five are leasing facilities. This is a clear violation of congressional intent.

In one instance DAAC funds were used to expand the Earth Resources Observation System Data Center, a Department of the Interior project. In 1994, the Center spent \$600,000 in NASA funds, and plans to spend another \$4.2 million by 1998.¹³ Other DAAC's, including those managed by the Marshall Space Flight Center and the Alaska Synthetic Aperture Radar Facility, leased facilities with DAAC funds. Today, Marshall Space Flight Center, having left an offsite facility, leases part of a building in contravention of congressional intent, and pays a disproportionate amount of the rent.¹⁴

The Earth Observing System must be reconfigured to meet current budgetary constraints, and NASA must conduct better oversight of the funds which exist to perform specific, congressionally mandated functions. Otherwise, the program will be left with little or no funds with which to conduct operations.

NASA MISMANAGES USE OF GOVERNMENT AIRCRAFT¹⁵

NASA has approximately 160 airplanes. The cost of operating these aircraft in fiscal year 1992 was approximately \$93 million. NASA has a poor record of using these aircraft in an economical fashion.

NASA aircraft was used on numerous occasions at a higher cost than using commercial airlines. The NASA Inspector General estimates that travel using seven of the eight mission management aircraft cost \$5.8 million more than commercial flights would have cost. At a value of \$10.6 million, the aircraft could have been sold and the money used for other purposes. For every mission management aircraft reviewed by the Inspector General, the cost of commercial aircraft would have been considerably less than NASA aircraft.

In another example of NASA's poor management of its fleet of airplanes, the Inspector General notes that NASA assumed a lease of a DC-9 for more than it cost to purchase an aircraft. NASA did not perform a lease versus purchase analysis to determine how much the decision to lease would cost. The Inspector General esti-

mates that NASA could have purchased the aircraft for \$1.75 million less than it will spend to lease the same aircraft.

NASA should implement better management policies to deal with its aircraft and enforce those policies already in place. Further, NASA should use commercial air travel whenever practical.

ENDNOTES

¹ General Accounting Office, Report to Congressional Requesters, "NASA property: Poor Lending Practices at the Jet Propulsion Laboratory," Report Number NSIAD-94-116, April 18, 1994.

² *Id.*, p. 1.

³ *Id.*, p. 4.

⁴ *Id.*, p. 6.

⁵ *Id.*, p. 9.

⁶ Inspector General, National Aeronautics and Space Administration, "Impacts of Performing Orbiter Maintenance Down Periods at KSC Versus Palmdale," Report Number KE-96-001, October 24, 1995.

⁷ *Id.*, p. 1.

⁸ *Id.*, pp. 10-11.

⁹ *Id.*, p. 11.

¹⁰ Inspector General, National Aeronautics and Space Administration; "EOS Data and Information System: Distributed Active Archive Centers," Report Number GO-96-001; March 19, 1996.

¹¹ *Id.*, p. 12.

¹² *Id.*, p. 37.

¹³ *Id.*, p. 37.

¹⁴ *Id.*, p. 39.

¹⁵ Inspector General, National Aeronautics and Space Administration; "NASA Aircraft Management," Report Number LA-95-001; March 28, 1995.

Office of Personnel Management

OVERVIEW

The Office of Personnel Management (OPM) administers a merit system for Federal employment that includes recruiting, examining, training, and promoting people on the basis of knowledge and skills, regardless of their race, religion, sex, political influence, or other nonmerit factors. The Office's role is to ensure that Federal employees provide the highest quality products and services to the American public. Through a range of programs designed to develop and encourage the effectiveness of the Federal employee, the Office supports government program managers in their personnel management responsibilities and provides benefits to employees and to retired employees. OPM employs 4,210 staff and has an annual budget of \$40 million.

The recent management problems within OPM include gross mismanagement of the buyout program authorized by Congress including illegal buyouts, privacy violations, manipulating work force downsizing, underfunding of the civil service pension system and lobbying on official (government) time.

ILLEGAL BUYOUTS TO FEDERAL EMPLOYEES

The Office of Management and Budget (OMB) approved illegal buyout payments to 217 Federal employees, amounting to more than \$5 million in losses to the Treasury. OMB authorized an additional 1,200 illicit buyouts, which could have cost as much as \$30 million more. These were halted after the Subcommittee on Civil Service investigative hearings held on May 23 and June 11, 1996. Responsibility for this action rests directly with the Deputy Director for Management at the Office of Management and Budget who permitted extension of the buyout program in clear violation of law.

The Federal Workforce Restructuring Act of 1994 required that buyouts paid to Federal employees be approved no later than March 31, 1995. After the buyout authority expired, the Department of Energy devised a legal opinion that twisted the clear language of the statute to give the appearance that agencies might be able to extend buyout offers for as long as another 2 years. On October 4, 1995, OMB Deputy Director for Management John Koskinen approved Energy's plan to extend additional buyout authority.¹

OMB subsequently allowed both the Department of Commerce and the Department of Transportation to issue additional illegal buyouts. Congress first learned of these extended buyouts in a Washington Post column of May 2, 1996. The Subcommittee on Civil Service conducted hearings on May 23, 1996, and June 11, 1996 to assess the authority and the extent of these buyouts. Amazingly, the Department of Commerce conducted a 1-day extension of buyout offers during the first day of these hearings.

The GAO provided a June 6, 1996, legal opinion for the subcommittee that refuted the Department of Energy's opinion² that extending buyouts would comport with the law. After the June 11, 1996 hearing, OMB agreed that no additional buyouts would be approved using this Department of Energy opinion.

INVASIONS OF FEDERAL EMPLOYEE PRIVACY

In clear violation of privacy concerns, the Office of Management Budget and Office of Personnel Management has given Federal labor unions access to employees' home addresses. Alleging that Federal employee unions were unable to communicate with employees in bargaining units during the government shutdowns, then-OMB Director Alice Rivlin wrote to AFGF National President John Sturdivant to commit all Federal agencies to provide employees' home addresses to the unions claiming them as members.³ The Office of Personnel Management complied swiftly.

The Subcommittee on Civil Service received numerous phone calls from Federal employees who did not want the unions to have their home addresses, and claiming that OPM's compliance opened the door to unwarranted invasions of privacy. One employee claimed that she had secured court orders to prevent an abusive former husband from learning her home address, and she feared that he would be able to get this information from friends in the local union. Other employees claimed that, once the unions have the addresses, nothing could stop them from using them improperly, for example for mailing partisan election material.

OPM has asserted that the unions have described a valid purpose for seeking the information, but has ignored the privacy concerns of its employees. In view of the fact that both in the aggregate and in many bargaining units, unions represent a minority of Federal workers OMB and OPM ought never to have permitted this invasion of privacy. And unions already have the home addresses of Federal employees who have chosen to be their members. Once this threshold has been crossed, Federal workers could find a great number of otherwise protected information released, without their express permission, to the unions. Will OMB and OPM release home phone numbers to the unions so that nonmembers can be solicited for political contributions at their homes? Will the unions have access to Federal employee's performance evaluations? This action constitutes gross mismanagement and abuse of the discretionary authority of both OMB and OPM.

MANIPULATING THE DOWNSIZING OF THE FEDERAL WORKFORCE

The Federal Workforce Restructuring Act of 1994 required the elimination of 272,900 full-time equivalent positions from the Federal civilian work force by 1999. These reductions were to be achieved by generally downsizing the Federal Government and specifically targeting administrative and supervisory positions. NPR claimed that technological and procedural improvements could allow for the elimination of many accounting, administrative, budgeting, procurement, personnel, and first-level supervisory positions. NPR targeted reductions of 50 percent of personnel performing these functions at all agencies.

The administration is generally exceeding its aggregate work force reduction targets. Through 1996, however, three-quarters of the work force reductions come from the Department of Defense. The DOD reductions result from the congressionally mandated Base Realignment and Closure Commission (BRAC) and not from reinventing government. For fiscal year 1997, the President's budget, proposes a 2,000 FTE increase in non-Defense agencies. As a result, at the end of fiscal year 1997, Defense cuts will account for more than 80 percent of Federal personnel reductions in the Clinton administration. This constitutes a hollowing of the Department of Defense at a time when the President has crises simmering in Bosnia, Iraq, North Korea, Taiwan, Cuba, Haiti, Chechnya and the Middle East, to name a few.

The General Accounting Office has reviewed the work force reduction targets set by the NPR, and concluded that agencies both established lower targets than NPR and failed to meet their own targets. GAO documented that many of the administrative functions that were to have been reduced, have increased as a portion of the work force.⁴ Although the administration has written and spoken about its proposals to close offices, eliminate functions, and reduce duplication, OMB testified before the Subcommittee on Civil Service at the June 11, 1996 hearing on buyouts, that it has not tracked the FTE reductions associated with its proposals and that there is no efficient method of gathering such information.⁵

Agencies claim that NPR recommendations could not be applied rigidly, and each has distanced themselves from NPR targets. The

administration also claims that attempts to close offices and activities have been impeded by Congress.

INEPT MANAGEMENT OF BUYOUT PROGRAM

The Federal Workforce Restructuring Act of 1994 authorized agencies to pay “voluntary separation incentive payments,” (buyouts) to reduce the Federal work force. OPM testified before the Subcommittee on Civil Service that, as of March 31, 1996, Federal agencies paid more than 110,500 buyouts to former Federal employees. Ironically, nearly 90 percent of buyouts in non-Defense agencies went to employees who were already eligible for either optional or early retirement, and therefore employees who took buyouts moved directly from collecting a salary to collecting pensions, with a \$25,000 bonus. This transition cost taxpayers more than \$2.8 billion.

There are abundant indications that the money was not well spent. Although the law required a position to be cut for each buyout used, reductions did not necessarily come from the agency using the buyout. The bulk of reductions in the Federal work force came from the Department of Defense. For other agencies, buyouts had little relation to work force cuts. The Department of Justice used 835 buyouts while increasing its work force by more than 7,000 FTE. The Department of the Treasury used 346 buyouts while increasing more than 200 FTE in 1995. EPA bought out 487 permanent employees in 1995 while reducing fewer than 100 positions.

Worse than not achieving work force reductions, the buyouts have not accelerated retirement rates beyond 3 percent of the work force per year—a historical attrition average that is considerably below the 10 percent attrition rate that private firms rely on to manage normal work force changes. The buyouts have nurtured a sense of entitlement among the work force, and the Subcommittee on Civil Service of the Committee on Government Reform and Oversight has received numerous calls from Federal employees who resent not having gotten “their” buyout, who “threaten” not to leave until they get one, or who allege that the buyouts offered by managers were allocated on an arbitrary, capricious, or malicious basis.

OPM NOT UTILIZING PERFORMANCE MEASURES

The Office of Personnel Management is not using performance measures and standards to manage the delivery of service it provides, nor of the performance and productivity of its workers. Civil Service Reform Act of 1978 recognizes the need for performance measures and emphasizes that, when feasible, organizational and individual performance should be appraised in terms of timeliness, quality and efficiency. The Government Performance and Results Act of 1993 (GPRA) also requires that OPM set performance goals, develop a strategic plan and measure its performance toward achieving those goals beginning in September 1997.

To help ensure that operations are managed properly and customers are served satisfactorily, an organization needs performance measures and standards against which to judge itself. The General Accounting Office has reported that many key OPM services lack

the full range of potential performance measures and standards. The quality of services provided by some sections of OPM is uneven, making the implementation of performance measurement even more important.⁶

In the past, OPM has tended to measure its inputs or activities, rather than its outcomes, or performance. Measuring inputs, rather than outcomes has applied even at the level of individual performance evaluations. OPM employees have been judged by how many forms or applicants are processed, rather than by a combination of how well forms are filled out or the caliber of applicants chosen for jobs and the speed with which clearances were processed.

OPM could realize substantial performance improvement by systematically analyzing its performance data, but it will have no data to examine unless greater attention is given—at the Director's level—to implementing the GPRA. The agency is seriously behind schedule in implementing the Act, in developing performance measures that can be validated, in consulting with Congress on its goals and on drafting its GPRA performance plan. Actions taken to date on GPRA show an unacceptable lack of commitment to implementing the Act and preparing for performance management and performance budgeting stages of the Act. While OPM is attempting to restructure some of its operations, the entire organization could benefit from the discipline that performance measurement and performance plans could impose.

To date, OPM has made little progress in addressing the concerns raised by the GAO over its use of performance measures. Currently the agency has focused a great deal of its resources toward measuring program and service success through customer service surveys. That action is insufficient to meet the most fundamental requirements of the GPRA. The American public—and Federal employees and annuitants—deserve to know how effectively personnel programs are being operated.

FINANCIAL MANAGEMENT PROBLEM: UNDERFUNDING OF THE FEDERAL RETIREMENT SYSTEM

The Federal pension system consists of two programs, the Civil Service Retirement System (CSRS) which covers Federal employees hired prior to 1984, and the Federal Employees Retirement System (FERS) covering employees hired after 1984. A total of 2.8 million active individuals participate in the systems, with 1.5 million individuals are covered by CSRS and 1.3 million individuals are in FERS. Currently 2.3 million individuals receive annuities. CSRS has 2.2 million annuitants and survivors and FERS has approximately 48,000. The current Federal work force consists of approximately 2 million workers, or 300,000 fewer than there are retirees.

The Federal Civil Service Retirement System is seriously underfunded. The General Accounting Office reports that benefit obligations of the CSRDF and other Federal plans have a \$1.2 trillion liability.⁷ According to the Office of Personnel Management's 1995 Annual Report on the Civil Service Retirement and Disability Fund (CSRDF) in 1996, the outlay for monthly payments for retirees of the Federal Government is estimated to be \$39 billion. For the same period, cash receipts into the Fund were estimated to be \$10 billion (including receipts from the Postal Service), or \$29 billion

less than were deposited in the fund. Transfers from the General Treasury make up the difference. Federal annuities are projected to grow, while cash receipts will stay relatively the same. In 2025, cash received by the Fund is estimated to total only \$3.6 billion, but outlays will grow to \$166.2 billion. And by 2035, cash receipts will be \$5.6 billion while outlays will exceed \$218 billion. This increasing burden on the overall financial stability of the Federal retirement system signals a serious financial management problem for the government.

A principal effect of underfunding most pension plans is that agencies' budgets have not included the full cost of their pension obligations. This is changing because the Federal Accounting Standards Advisory Board issued an exposure draft entitled, *Accounting Liabilities of the Federal Government* (November 7, 1994). It will require that the accrued liability of Federal Government defined benefit pension plans, such as those in CSRDF, be reflected in Federal Government financial statements. The funded status of Federal pension funds is of great concern because of the large number of dedicated—both currently employed, retired employees and their survivors—who depend on these funds for income maintenance. Ironically, the same Federal Government that owes \$1.2 trillion on its pension plans requires private sector plans to fully fund their pensions, not just with promises to pay, but with real assets.

As Federal retirement programs are scrutinized, equity among workers and retirees must be a guiding principal. Any changes in the programs have an impact on employee and retiree morale, upon recruitment and retention of a talented and experienced Federal work force, and the the government's future capacity to provide the vital services performed by its employees.

The past 4 years have been a seesaw for Federal employees, retirees and their survivors. Federal workers and the survivors of retirees have been unable to have any confidence in the stability of either their employment, or their retirement system. The formation of FERS was supposed to reform these defects and achieve stability. Unfortunately, as a result of the budget deficit, and now of the requirement that agencies show their unfunded vested liabilities on their budgets, the size of the Federal retirement system's unfunded liability will make it an enduring concern in efforts to balance the Federal budget.

USE OF OFFICIAL TIME BY UNIONS FOR LOBBYING: A CONFLICT OF INTEREST

Federal employees are Congress, while on official government time. Current law, at 18 U.S.C. 1913, specifically prohibits lobbying with appropriated money.

To allow Federal employees or unions to lobby, recruit or distribute propaganda on taxpayer time creates a conflict of interest between unions, the President, and the Congress, which undermines the nonpartisan character of the Federal civil service. Unfortunately, that statute, is ignored and unenforced in the current administration. Instead, because of title 5 U.S.C. section 7131 (d), lobbying on official time is increasing and in fact, being mandated as a provision in agency collective bargaining agreements. Title 5

U.S.C. section 7131(d) contains a broad clause that is being interpreted to permit unions and any bargaining unit employee represented by the union to be granted official time (government time) to engage in “any other matter covered by [5 U.S.C. Chapter 71, Labor-Management Relations]”. Section 7131(d) has been interpreted to include lobbying on government time.

For example, in 1993, the Federal Labor Relations Authority found that a union’s proposal for official time to lobby Congress was negotiable. The FLRA ruled that the activity of “visiting, phoning and writing to elected representatives in support of or opposition to legislation which could affect the working conditions of the employees represented by the union” was a “representational activity”, and that providing “official time for representational activity involving the exercise of employee rights . . . was negotiable under section 7131(d)” of the Federal Service Labor-Management Relations Statute.⁸ More recently, in December 1995, the Federal Service Impasses Panel (FSIP) summarily dismissed 18 U.S.C. 1913 as a bar to direct union lobbying on government time, and ordered the defendant agency to include in its collective bargaining agreement a provision that permits the Federal union officials to lobby Congress without having to take leave.⁹

To permit lobbying on official time is in direct violation of 18 U.S.C. 1913 and the Director of the Office of Personnel Management should immediately direct the FLRA and the FSIP to enforce that section of the U.S. Code. Federal employees and unions have every right to present their views to Congress or the executive branch, but it is wrong to compel taxpayers to subsidize lobbying activities when these employees should be working.

EX-IMBANK ABUSE OF PERSONNEL MANAGEMENT SYSTEMS RELATED
TO RETENTION BONUSES AND BUYOUTS

Federal civil service law authorizes agencies to pay retention bonuses to uniquely skilled employees who would be difficult (and costly) to replace. This authority is not used extensively. A December 1995 GAO report¹⁰ documented that only 374 retention bonuses were authorized by all government agencies in 1994; with 248 at the Department of Defense and 100 at the Export-Import Bank. This made the Export-Import Bank’s use of the retention bonuses disproportionate to all other Federal agencies.

In response to the GAO report, the Office of Personnel Management intervened and temporarily withdrew the Export-Import Bank’s authority to award retention bonuses. OPM determined that the procedures used to approve these bonuses were inconsistent with regulations. OPM restored the delegated authority after it was satisfied that the Export-Import Bank had revised its procedures.

Additional research by the Subcommittee on Civil Service of the House Government Reform and Oversight Committee, revealed that, in four instances, the Export-Import Bank paid retention bonuses to people who also were paid buyouts. In three of the four cases, the retention bonuses were approved after the buyouts were authorized.

Martin Kamark, Acting President of the Export-Import Bank was reported to have argued that GAO had merely found a long-stand-

ing abuse of the payroll system and that he was correcting problems left over from the previous administration. GAO's report, however, demonstrates that the Export-Import Bank did not begin paying such retention bonuses until 1994.¹¹

CONVERSION OF POLITICAL APPOINTEES IN VIOLATION OF MERIT SYSTEM PRINCIPLES.

In violation of the principles of a merit system, Office of Personnel Management Director Jim King created a new position, Director, Partnership Council, and filled the vacancy by appointing Chief of Staff Michael Cushing to the job. Cushing's previous experience had been in political positions in the Federal Government. And, he had a long-standing political and professional relationship with the Director. Although the responsibilities of the office emphasize a political priority of the administration, the position was created and filled as a career appointment, suggesting an effort to improve this administration's strategy for labor-management relations on future administrations. This is a clear act of "burrowing in" the Federal service, an action to which the Clinton administration and the previous Congress objected bitterly at the conclusion of the previous administration, and took legal action against some converted employees. It is also highly suspect that political and personal favoritism may have factored into this conversion from a political to a career job.

ENDNOTES

¹Memorandum for OMB Deputy Director for Management John Koskinen, from Gary Bennethum, Energy Branch Chief, and Cyndi Vallina, Policy Analyst, "Subject: DOE Buyout Reprogramming" (September 28, 1995). This memo is part of the Subcommittee on Civil Service's June 11, 1996 hearing record. Director Koskinen's initials approving this memo are dated October 4.

²General Accounting Office, "FEDERAL DOWNSIZING: Delayed Buyout Policy At DOE is Unauthorized" (June 11, 1996). GAO/T-GGD/OGC-96-132. The legal opinion letter dated June 6, 1996.

³Letter from Alice M. Rivlin, Director, OMB to Mr. John Sturdivant, President, American Federation of Government Employees (March 21, 1996).

⁴General Accounting Office, "FEDERAL DOWNSIZING: Better Workforce and Strategic Planning Could Have Made Buyouts More Effective," GAO/GGD-96-62, August, 1996.

⁵John A. Koskinen, testimony before the Subcommittee on Civil Service Hearing (June 11, 1996).

⁶General Accounting Office, *Federal Management: Updated Information for Congressional Oversight*, Office of Personnel Management, pages OPM-5-OPM-7, July 1994.

⁷General Accounting Office, *Public Pensions: Summary of Federal Pension Plan Data*, GAO/AIMD-96-6, February 1996.

⁸*NFFE, Local 122 v. U.S. Department of Veteran's Affairs*, 47 FLRA 118 (1993).

⁹Department of Defense, Nevada National Guard, Carson City, Nevada and Silver Barons and Silver Stage Chapters, Association of Civilian Technicians, Case Nos. 95 FSIP 147 and 95 FSIP 148 (December 28, 1995).

¹⁰ General Accounting Office, *Retention Allowances: Usage and Compliance Vary Among Federal Agencies*, GAO/GGD-96-32.

¹¹ General Accounting Office, *Retention Allowances: Usage and Compliance Vary Among Federal Agencies*, GAO/GGD-96-32, p. 5.

Postal Service

OVERVIEW

The U.S. Postal Service is a \$59 billion independent establishment of the executive branch. In addition to postal revenues, it receives an annual appropriation of about \$100 million. As of November 1995, the Postal Service had 855,471 employees. The basic function of the Postal Service is to provide postal services to bind the Nation through the personal, educational, literary, and business correspondence of the people.¹ The Postal Service is directed by a Board of Governors composed of 11 members. Nine of the members, known as Governors, are appointed by the President, by and with the advice and consent of the Senate, and not more than five of them can be from the same political party. The Governors elect a chairman from among the members of the board. The Governors appoint and have the authority to remove the Postmaster General, who is a voting member of the board.

As described hereafter, the Postal Service has significant management problems in several areas of its operations. However, its most serious management weakness is an organizational one—the absence of an office of Inspector General (IG) that is both independent of Postal Service management and unencumbered by internal management responsibilities.

Pursuant to the Inspector General Act of 1978 (Public Law 95-452) and related legislation, independent Presidentially appointed inspectors general have been established for most executive branch entities. These IG's conduct and supervise audits and investigations; recommend policies to promote economy, efficiency, and effectiveness; and prevent and detect fraud and abuse in their agencies' programs and operations. By law, the IG's are responsible for keeping agency heads and the Congress fully informed of agency problems and corrective actions. The nearly 20-year history of the Inspector General Act demonstrates that the American public has benefited from the work of these dedicated public servants in identifying and correcting fraud, waste and abuse in government activities.²

Although the Postal Service is the largest civilian entity in the executive branch, it is unique among all other government agencies in that its Inspector General serves as part of agency management and carries out management functions as head of the Postal Inspection Service. This structure is fundamentally flawed in that the IG serves as a member of the Postal Service's management team, but at the same time is expected to perform independent oversight of Postal Service management. Additionally, this IG cannot provide independent oversight of the Postal Inspection Service—the agency's important law enforcement division—because the IG heads that division.³ Under the current scheme, therefore, the Inspection Service is not subject to the same objective review as other Federal law enforcement entities.

Reported abuses by the Postal Inspection Service in its failed drug stings in Cleveland and elsewhere in recent years, as well as numerous complaints to this committee's Subcommittee on the Postal Service about the investigatory practices of the Inspection Service, are prime examples of the need for independent oversight. In addition, it is notable that the specific Postal Service management problems described in this report—including contracting abuses by the Postal Service and problem-plagued implementation of its \$5 billion automation initiative—are based entirely on findings by the GAO rather than the IG. This further suggests that the current IG is not sufficiently independent and/or is too preoccupied with internal agency duties to conduct comprehensive oversight of the Postal Service.

There is also some evidence that, because of its subordinate position in the management structure, findings and recommendations by the Inspection Service may not have been given sufficiently serious consideration by the Postal Service itself. The Subcommittee on the Postal Service has received numerous communications from rank and file postal employees regarding their concerns and distrust of the Postal Inspection Service and its inability to be an independent and objective watchdog within their agency.

In summary, the current statutory structure compromises the independence and integrity of the Office of Inspector General. During the 103d Congress, the House passed legislation (H.R. 4400) to establish an independent IG for the Postal Service.⁴ The Subcommittee on the Postal Service is now conducting hearings on H.R. 3717, the Postal Reform Act of 1996, which includes provisions for an independent office of Inspector General.

AUTOMATION IS TAKING LONGER AND SAVING LESS THAN EXPECTED⁵

The Postal Service must overcome difficult, if not insurmountable, obstacles to successfully complete its program to fully automate mail processing by the projected date of 1998. Barcoding of letter mail and automatic sorting of letters to homes and businesses, referred to as "delivery point sequencing," has proven to be more difficult than the Service expected; consequently, the project is behind schedule. Also, the savings from automation continue to be small compared to overall labor costs and more difficult to achieve than the Service anticipated. This is an extremely significant problem in light of the fact that by 1997, the Postal Service plans to deploy up to 14,000 pieces of automation equipment costing about \$5 billion.

For example, in 1994, the Service estimated the budget impact from automation to be savings of \$41 million, or less than one tenth of a percent—a relatively insignificant amount compared with cost increases due to higher mail volume (\$716 million) and the higher cost of labor (\$1.1 billion) in 1994. Automation, while producing some savings, is unlikely to be the remedy envisioned by Postal Service management for reversing the tendency of postal costs to outpace inflation.

IMPROVED OVERSIGHT IS NEEDED TO PROTECT THE PRIVACY OF
ADDRESS CHANGES⁶

Through the National Change of Address (NCOA) program, the Postal Service collects and widely disseminates change-of-address information reported by postal customers. To do this, the Postal Service uses 24 licensees, primarily mail advertising and credit information firms, to provide the address-correction service. The licensees pay the Postal Service to receive and use the electronic master NCOA file, and Postal Service-approved computer software that is used for updating mailing lists. The licensees are to use NCOA data to provide address services to other private firms and organizations in accordance with the standards and procedures specified in the licensing agreement.

The Postal Service's oversight of NCOA program licensees and controls over the release of NCOA data have not been adequate to prevent, detect, and correct potential breaches of the licensing agreement and potential violations of the Federal Privacy Act (5 U.S.C. 552a). Specifically, the GAO identified the following weaknesses in the Postal Service's licensee oversight activities:

- Inadequate "seeding" of NCOA files to identify unauthorized uses of addresses. ("Seeding" is a commonly used practice in the mailing industry to control proprietary information. A "seed" record planted in a file can be used to detect the inappropriate release of a record or file.)
- Ineffective audits of the performance of software that licensees use to match their mailing lists with NCOA files.
- Inadequate reviews of NCOA advertisements that licensees propose to use.
- Deficient process to investigate complaints about the NCOA program. (Postal Service officials were unable to provide GAO any documentation concerning complaints received or investigated.)

Postal Service officials said they believe that neither the Privacy Act nor the Postal Reorganization Act of 1970 limit licensees' use of address data that have been properly updated or corrected through the NCOA service. However, GAO concluded that use of NCOA-linked data by a licensee to create a new-movers list would violate the Privacy Act. The Postal Service did not explain in the acknowledgment form signed by customers of licensees that NCOA data are not to be used to create or maintain new-movers lists. Unless the Postal Service enforces these limitations, it cannot be assured that the use of NCOA-derived data is limited to the purpose for which it was gathered or that the privacy of postal customers is protected.

INADEQUATE INTERNAL OVERSIGHT RESULTING IN PROBLEMS IN SOME
MAJOR PURCHASES⁷

After reviewing seven major Postal Service purchases, GAO found that they resulted in excessive delay and wasted about \$89 million in cost incurred for the acquisition of unusable property and in penalties assessed against the Service. GAO also found that, in each instance, Postal Service officials either agreed to forgo required reviews in the purchase process or failed to resolve conflict-

of-interest situations. The \$89 million wasted on these purchases, which totaled about \$1.3 billion, consisted of the following:

- \$32 million paid in penalties to injured parties to compensate them for damages caused by the conflicts of interest during awards for air transportation and automation equipment;
- \$12.5 million for a building located in St. Louis, which as of August 1995, the Postal Service was trying to dispose of;
- \$14.7 million for a building site in Queens, which turned out to be unusable due to contamination; and
- \$29.5 million for a building located in the Bronx, which was essentially unusable for its intended purpose.

The Postal Service can improve its purchasing organization and methods to help safeguard against such occurrences in the future, and the Service has actions under way to do so. For example, the Postal Service has consolidated three independent purchasing units under a single purchasing executive who plans to improve the purchasing process and the training and ethics awareness of purchasing personnel. In addition, after years of ethics deficiencies identified by the Office of Government Ethics, Postal Service senior management has begun improving its ethics programs to ensure full compliance with applicable ethics laws and regulations. Despite these initiatives, however, continued oversight by the Congress, the Inspector General, and Postal Service management is needed to ensure that these reform initiatives help prevent the recurrence of these problems.

WEAK MAIL ACCEPTANCE INTERNAL CONTROLS CAUSE REVENUE
LOSSES ⁸

The Postal Service has inadequate internal controls over postage paid on presorted/barcoded mailings submitted by business customers. As a result, the Postal Service has no assurance that it is receiving payment for approximately \$8 billion in discounts provided to bulk business mailers. The Postal Service does not know the full extent of losses, and has not developed a means for identifying losses. Required verifications are not being performed by Postal Service staff, and Postal Service management has not sought the necessary information to oversee this area of its business. When dealing with this amount of money, it is not enough to assume that losses aren't occurring if they are not reported. The need for strong internal controls is demonstrated by several instances of bribery, fraud, and other criminal activity perpetrated upon the Postal Service. In August 1994, the head of a direct mail consulting business pled guilty to bribing postal workers who allowed him to conduct mass mailings while paying little or no postage. For example, bulk mailings of 1,800 fliers were conducted, but only 300 were claimed to be mailed. He faces up to 5 years in prison, a fine of \$250,000 and restitution. The scam deprived the Postal Service of \$7.5 million in revenues over a period of years. Four other businessmen pleaded guilty to involvement in the "bulk-rate" scheme. They will owe more than \$600,000 in fines and \$4.6 million in restitution.⁹

In a scheme involving employees from another mail consultant, four men were indicted for tampering with postage meters. They were able to steal \$4 million by printing postage meter stamps

without charge.¹⁰ Similarly, a former college mail services director pleaded guilty to mail fraud when it was discovered that she defrauded the Postal Service of \$69,000 by submitting phony postage meter strips for reimbursement. Court documents alleged she illegally collected the money when she created unusable postage meter strips in various denominations with the college's postal meters.¹¹

In June 1996, the GAO recommended that the Postmaster General direct bulk mail acceptance program supervisors and managers to report periodically to appropriate Service levels on the operation of the bulk mail acceptance system, initiatives to improve the system, and the progress and effectiveness of related improvements so that management can be reasonably assured that:

- mail verifications, including supervisory reviews, are done and that the results are documented as required;
- mailings resubmitted following a failed verification are reverified and errors are corrected;
- acceptance clerks and supervisors are provided with adequate, up-to-date procedures, training, and tools necessary to make efficient and objective verification determinations;
- information on the extent and results of verifications, including supervisory reviews, is regularly reported to appropriate levels, including Postal Service headquarters, and that such information is used regularly to assess the adequacy of controls and staffing, training needs, and acceptance procedures; and
- risk becomes the prominent factor in determining mailings to be verified.¹²

Also, the GAO recommended that the Postmaster General direct bulk mail acceptance program managers to develop methodologies that can be used to determine system-wide losses associated with accepting improperly prepared mailings.¹³

PERFORMING REMOTE BARCODING IN-HOUSE COSTS MORE THAN CONTRACTING OUT¹⁴

In September 1995, the GAO estimated that in-house barcoding of about 2.8 billion images cost about \$4.4 million, or 6 percent more than if the images were processed by contractors. On the basis of data provided by the Service, the GAO projected that the cost differential would increase to about 14 percent, or about \$86 million annually (not adjusted to inflation) to process 23 billion letters. Remote barcoding is a part of the Service's letter mail automation efforts that began in 1982. The Service made a decision in July 1991 to contract out remote barcoding based on a cost analysis that showed contracting out would result in an expected savings of \$4.3 billion over a 15-year period.

In November 1993, the Postal Service reversed its decision to contract out the remote barcoding function as a result of an arbitration award. The Service expected that agreeing to use postal employees for remote barcoding would improve its relations with the American Postal Workers Union (APWU), representing postal clerks. In 1995, however, the Postal Service said that it was disappointed in the lack of progress with APWU in building productive labor-management relations. In contrast, APWU said that the use of postal employees is providing the opportunity for the Postal

Service and APWU to cooperate in establishing and operating remote barcoding sites.

ENDNOTES

¹General Accounting Office, *Compendium of Budget Accounts, Fiscal Year 1997*, GAO/AIMD-96-113 (July 1996), p. 137; GAO, *Government Corporations: Profiles of Existing Government Corporations*, GAO/GGD-96-14 (December 13, 1995), p. 178-179.

²General Accounting Office, *Inspectors General: Action Needed to Strengthen OIG's at Designated Federal Entities*, GAO/AIMD-94-39 (November 30, 1993), p. 2-3.

³General Accounting Office, *Postal Inspection Service*, GAO/AIMD-94-103R (April 14, 1994).

⁴The report on H.R. 4400 by the former House Committee on Post Office and Civil Service, *Postal Inspection Service and Inspector General Act*, H. Rept. No. 103-561, 103d Cong., 2d Sess. (1994) (Part I), describes in detail the need for this legislation.

⁵See generally, General Accounting Office, *Postal Service: Automation Is Taking Longer and Producing Less Than Expected*, GAO/GGD-95-89BR (February 22, 1995), p. 2.

⁶See generally, General Accounting Office, *U.S. Postal Service: Improved Oversight Needed to Protect Privacy of Address Changes*, GAO/GGD-96-119 (August 13, 1996).

⁷See generally, General Accounting Office, *Postal Service: Conditions Leading to Problems in Some Major Purchases*, GAO/GGD-96-59 (January 18, 1996).

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⁹"Man Pleads Guilty in Postal Service Fraud," Fort Lauderdale Sun-Sentinel (August 24, 1994), p. 3B.

¹⁰"Four Men Accused of Pocketing \$4 Million in Postage Fraud Scheme," Boston Globe (February 24, 1995), p. 25.

¹¹"Roseville Woman Pleads Guilty to Mail Fraud," Minneapolis Star Tribune, November 15, 1994, p. 5B.

¹²*U.S. Postal Service: Stronger Mail Acceptance Controls Could Help Prevent Revenue Losses*, GAO/GGD-96-126 (June 25, 1996), p. 21.

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Social Security Administration

OVERVIEW

The Social Security Administration (SSA) administers the Federal retirement, survivors, disability, and health insurance programs for the aged, disadvantaged, and physically and mentally disabled. It is responsible for studying the problems of income maintenance and health care. SSA spends \$362 billion annually. Social Security payments provide income maintenance to approximately 43 million individuals.¹ SSA is a large, complex and changing organization. Over the next two decades the size of the bene-

fiary population and the agency's workload will increase as baby-boomers begin to retire.

The Social Security Administration was established as an independent agency in the executive branch of government by the Social Security Independence and Program Improvement Act of 1994, which became effective on March 31, 1995. SSA has made some progress toward solving its management problems, but numerous opportunities exist to improve. While SSA has had in place a *General Business Plan* for several years, the agency is making only minute progress toward integrating the requirements of the Government Performance and Results Act into its daily operations. This is in spite of the fact that the entire agency is a GPRA pilot project. As evidence of weak management, officials of the Social Security Administration have failed to consult with the Ways and Means Committee in setting agency goals for purposes of GPRA. SSA cannot hope to proceed with finalizing its GPRA strategic plan, much less implementing it, unless it has set program goals.

In addition to the failure of officials at SSA to focus on their statutory obligation to comply with the provisions of the Government Performance and Results Act, some of the more prominent management problems within the SSA are the use of Social Security trust funds to finance union activities, mismanagement of systems modernization, untimely and inaccurate eligibility determinations, and financial data recording problems.

SYSTEMS MODERNIZATION NOT EFFECTIVELY MANAGED

The Social Security Administration has not effectively managed the modernization of its information systems to achieve its goals of providing the Nation with timely, efficient, and reliable service.²

The Social Security Administration relies heavily on its automated information systems to provide quality services and timely and accurate benefit payments that affect nearly every U.S. citizen. SSA has spent over \$4 billion operating and modernizing its computer systems since 1982 and has made some progress improving its service in several areas. However, SSA still depends upon manual processes to perform much of its work. In fact, SSA estimates that it has automated only 40 percent of its operations.³ The agency's current initiatives call for an additional investment in automated systems of over \$1 billion. After many years of modernization, SSA has yet to establish a clear, long-range vision to guide its use of information technology. SSA has been automating existing practices in a piecemeal fashion, without regard to the fundamental improvements that will be needed in the next century. SSA risks being overwhelmed by the huge increase in beneficiaries expected over the next 20 years. Unless automation absorbs the impact of these dramatically increasing workloads, SSA may find that its staff is unable to provide an acceptable level of service to the public.

The Social Security Administration has yet to link its automation efforts, which could cost \$5 to \$10 billion over the next 10 years, with its planning and reengineering efforts. Without this linkage, SSA will risk billions of dollars on computer-system solutions that may fall short of adequately supporting operational needs and improving public service. SSA also has not completely assessed the

costs and benefits of its reengineering and systems efforts, including tests of proposed solutions.⁴

As recently as June 1996, the SSA's Inspector General said in his review of the SSA's software development for the distributed data processing environment, that the agency:

has no reasonable assurance that when the [system] is implemented, it will fully support the planned changes to SSA's operation. In addition, SSA may not be able to take full advantage of the capabilities of the distributed environment that is being acquired at a cost of \$1.1 billion.⁵

The agency Inspector General also noted that it will continue to review selected automated processing systems, particularly those that are vulnerable to fraud, controlled access to and safeguarding of data, software development and maintenance, adequacy of systems capacity, and associated risks of new technology.⁶

ELIGIBILITY DETERMINATIONS ARE NEITHER TIMELY NOR ACCURATE

The SSA is experiencing significant problems in managing its disability programs, including the initial and appellate decision-making levels, to achieve the goals of providing timely and correct eligibility decisions.⁷ Proper administration of this program is vital to those individuals who depend on Disability Insurance income maintenance payments.

Evidence from SSA's quality assurance reviews shows a decline over the last few years in the accuracy of disability decisions, particularly those decisions to deny benefits, made for SSA by State Disability Determination Service (DDS) agencies. Such a decline has accompanied significant increases in work loads and production for the State agencies.⁸ The increases in errors reported by SSA's quality assurance program appear to support concerns raised by the General Accounting Office and some State administrators over the last few years about the impact of budget and productivity pressures on case development. Many claimants denied at the initial level have to wait until their cases are presented before an administrative law judge (ALJ) to be allowed benefits. The success rate, for those claimants that appeal to ALJs, is about 63 percent, an increase from the 50 percent rate of 10 years ago.⁹

In the late 1980's, the GAO warned SSA about placing burdens on the disability insurance program. However, claim backlogs and processing times reached an all time high in the early 1990's. State DDS agencies were not able to keep up with the high rate of claims for benefits, which have continued to grow. The Social Security Administration has undertaken initiatives to keep up with claims, but high workloads have stressed many State DDS agencies considerably. Service remains poor and the agency continues to perform continuing disability reviews (CDR) at levels far below those mandated by law.¹⁰ GAO has reported to the agency that, as a result of not reviewing continuing disability cases, as much as \$2.5 billion would be paid to ineligible beneficiaries through 1997.¹¹

SSA's plan to reduce program backlogs consists of two components. The short-term disability project calls for reducing State disability determinations by over 100,000 pending cases and reducing the Office of Hearings and Appeals' pending cases by over

100,000—or half of the current backlog—by the end of this calendar year.¹²

Reduction of case backlogs is a laudable goal, but it is disturbing that this initiative involves removing over 300 trained staff attorneys and paralegals from their support function as decision writers for the administrative law judges who hear disability appeals, and placing them in the role of claims adjudicators. They perform this function without supervision of an administrative law judge and have authority only “to issue fully favorable decisions”.¹³

This initiative is being perceived as an effort to “pay down” the backlog and will result in immense pressure to pay claims that will be forced by production goals.¹⁴ The attorneys and paralegals are not receiving additional training before taking on this adjudicator function. Replacing experienced decision writers with less experienced staff will result in even further delays in the issuance of a final written decision.

In addition, SSA introduced its “Plan for a New Disability Claims Process” to improve service delivery to persons with disabilities. Part of this plan would involve appointing a “Disability Claims Manager” as the single agency point of contact for all initial claims processing activities. Unfortunately, this part of the plan will not be implemented until fiscal year 2001. While claims-taking has been completed in the field, employees on the front line have never been asked to make complex disability decisions, nor have they been required to inform applicants of the results of their own decisions.¹⁵

Possible changes in the disability decision methodology are aimed at identifying allowances earlier through a simplified process. Regulatory requirements for a physician sign-off on all cases would be removed. Such actions have the potential to move the program from an objective, medically documented program, to a subjective, medically un-documented program in which decisions are made more quickly, but certainly less accurately. Under this scenario, case levels could hemorrhage the program.¹⁶

SSA staff have expressed concerns that the prerequisites promised to be in place before implementation, namely training, technology and standards for quality assurance, will not be in place but that they will be expected to move forward anyway.¹⁷

AGENCY FINANCIAL MANAGEMENT PROBLEMS

The SSA Office of the Inspector General has determined that the agency’s annual financial statement for fiscal year 1995 shows that a lack of sufficient controls over the recording of accrued benefit liability could result in the preparation of unreliable financial statements, and that controls in the agency’s overpayment systems are inadequate to ensure reliable accounts receivables data. Further, the SSA is not fully complying with Social Security Act requirements for performing continuing disability reviews (CDR’s).¹⁸

The audit prepared by the IG shows that for the fiscal year 1995 year-end financial statements, accrued benefit liability for the old-age survivors and disability insurance program (OASDI) did not include the value of Medicare premiums expected to be withheld from benefit payments in the month of October. Because the SSA omitted the expected withholding, the accrued benefit liability and pro-

gram expenses for OASDI were understated by \$1.4 billion. The understatement of the OASDI benefit liability occurred because of poorly worded instructions for computing liability and because there was no management or supervisory review of the accrued liability to ensure its accuracy.

Similarly, the agency's underlying systems, which generate accounts receivable data, are still material weaknesses in its financial statements under the reporting requirements of the Federal Managers' Financial Integrity Act (FMFIA). The SSA's Title II and Title XVI overpayment systems cannot identify how much is owed or collected. While the agency has undertaken a program to modernize its Debt Management System (DMS), more needs to be accomplished. The Inspector General reports that SSA has developed software to correct "forced balancing", which occurs when two payment master files do not reconcile. Currently, this software is reporting accounts receivables balances which are potentially incorrect. The Inspector General said that despite efforts to correct problems, a number of systems weaknesses remain uncorrected. "Accordingly, SSA's Title II and Title XVI accounts receivable systems cannot generate reliable accounts receivable data . . . the underlying systems still contain many fundamental weaknesses."¹⁹

Finally, the agency is backlogged in performing continuing disability reviews required under the authorizing legislation. These reviews are performed by State disability determination services which have been unable to keep up as the number of people on disability has increased dramatically. The Inspector General reports that, even with reforms made to the review process by SSA, the backlog is growing at the rate of 300,000 cases per year. In the past, medical CDR's were not required by law, but under section 208(a) of the Social Security Independence and Program Improvements Act of 1994, the agency is required to perform at least 100,000 Title XVI CDR's annually from fiscal year 1996 through fiscal year 1998. As mentioned above, serious concerns exist regarding actions the agency is taking to reduce its backlog. The IG cautions that the additional mandate may "increase the number of backlogged cases *and* the risk of failing to detect unnecessary payments."²⁰ (emphasis added).

USE OF SOCIAL SECURITY TRUST FUNDS TO FINANCE UNION ACTIVITIES

The Social Security Administration has been spending money from the Social Security Trust Funds to pay salaries of employees who perform activities devoted solely union actions and operations, sometimes on a full-time basis, instead of serving the public. From 1987 until 1993 there were 80 social security employees performing full-time union work. In 1994, however, the number skyrocketed to 145, an increase of 80 percent.²¹ The cost to fund these union activities has surged during the current administration to over \$12.6 million annually, according to the General Accounting Office.²² The trust funds currently pay for 146 individuals to work full-time on union activities, and no time on work of the Social Security Administration's important programs. One such Social Security Administration employee doing full time union work is paid over \$81,000 per year, plus benefits.²³

More disturbing is the finding that as many as 1,800 Social Security Administration designated union representatives were authorized to spend at least part of their time on union activities. In addition, the number of hours that could be confirmed as dedicated to union-related activities at the Social Security Administration ballooned to 413,000 per year.²⁴ The General Accounting Office found during its audit that the agency did not have a proper system in place to account for the hours devoted solely to union-related activities at the agency. For example, the agency does not take into consideration the amount of time that managers have had to devote to collective bargaining, grievance adjustment and other administration of union complaints or redistributing work not being performed by union representatives.²⁵

Under the terms of the SSA union contract negotiated at the beginning of the Clinton administration, the selection of union representatives and the amount of time they spend on union activities are determined by the union without the consent of local managers and supervisors.²⁶ That action cedes to the union an area traditionally reserved for management, namely, to make decisions necessary to deploy staff in order to provide products and services required by the Social Security Act and related acts administered by the SSA. The General Accounting Office learned that some field managers felt that their having no involvement in decisions about how much time is spent by individuals and who the individuals are, hinders their ability to manage the day-to-day activities of their operations.

During the period studied by the GAO, there has been a 110 percent increase in the amount of Social Security Trust Fund money devoted to union activities at the SSA while the overall size of the SSA work force has increased by just 1 percent. In view of the fact that the unions do not even represent a majority of SSA employees, these findings are disturbing.²⁷

Federal employee unions have dues-paying members who fund the activities of their organization. Dues range according to the employee's salary. But the total amount collected by the unions is estimated to be in the millions of dollars, yet the agency is subsidizing the salaries of employees to spend all their time on union business. The agency is spending an additional amount of money on computers, supplies, office space and travel for union activities.

In view of the Social Security Administration's drain on its trust funds to subsidize union salaries and activities, an amendment was added to the House Labor, HHS Appropriations bill on July 11, 1996 to bar the Social Security and Medicare Trust Funds from being used to fund the unions was adopted 421 to 3.

ENDNOTES

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²General Accounting Office, *Federal Management: Updated Information for Congressional Oversight* (July 1994).

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⁴*Id.*

⁵The Social Security Administration, Office of the Inspector General, *Review of the Social Security Administration's Software Devel-*

opment for the Distributed Data Processing Environment, A-13-95-006005 (June 1996), p. 4.

⁶The Social Security Administration, Office of the Inspector General, *Semiannual Report*, April 1, 1995–September 30, 1995, p.14. Additional source of information: The General Accounting Office, *Social Security: Sustained Effort Needed to Improve Management and Prepare for the Future*, GAO/HRD-94-22 (October 1993). Report shows that SSA was on notice to improve automated systems.

⁷General Accounting Office, *Federal Management: Updated Information for Congressional Oversight* (July 1994).

⁸*Id.*

⁹*Id.*

¹⁰*Id.*

¹¹*Id.*

¹²General Accounting Office, *Correspondence from Jane L. Ross to the Honorable Sam M. Gibbons*, GAO/HEHS-95-228R, regarding case backlogs at the Social Security Administration's Office of Hearings and Appeals (OHA) (July 28, 1995).

¹³*Id.*, p. 6.

¹⁴*Id.*, p. 7.

¹⁵General Accounting Office, *SSA Disability Reengineering: Project Magnitude and Complexity Impedes Implementation*, GAO/T-HEHS-96-211 (September 12, 1996), discussing the SSA initiative outlined as *Plan for A New Disability Claim Process*, SSA (Washington, D.C.: September 1994); see also testimony of The National Association of Disability Examiners and National Council of Disability Determinations Directors, presented before the Subcommittee on Social Security, Committee on Ways and Means, September 12, 1996.

¹⁶*Id.*

¹⁷Testimony of The National Association of Disability Examiners, presented before the Subcommittee on Social Security, Committee on Ways and Means (September 12, 1996) by Larry DeVantier.

¹⁸Social Security Administration, Office of the Inspector General, *Inspector General's Report on the Social Security Administration's Financial Statements*, A-13-95-00604 (December 1995), p. IV-5.

¹⁹*Id.*

²⁰Social Security Administration, Office of the Inspector General, *Inspector General's Report on the Social Security Administration's Financial Statements*, A-13-95-00604 (December 1995), p. IV-6; Social Security Administration, Office of the Inspector General, *Semiannual Report of the Inspector General* April 1, 1995 to September 30, 1995.

²¹General Accounting Office, *Social Security: Union Activity at the Social Security Administration*, GAO/T-HEHS-96-150 (June 4, 1996), p. 3.

²²*Id.*, p. 2.

²³*Id.*, p. 12.

²⁴*Id.*, p. 7.

²⁵*Id.*, p. 7.

²⁶*Id.*, pp. 14-15.

²⁷*Id.*, pp. 7, 11, 12, and 13.

Department of State and the Agency for International Development

OVERVIEW

The Department of State was established in 1789. Its primary objective in the conduct of foreign relations is to promote the long-range security and well-being of the United States. The Department analyzes the facts relating to American overseas interests, makes recommendations on policy and future action, and takes the necessary steps to carry out established policy. The State Department received total appropriations of about \$3.9 billion for fiscal year 1996, and has approximately 24,500 staff positions.

The United States Agency for International Development (USAID) administers U.S. foreign economic and humanitarian assistance programs worldwide in the developing world, Central and Eastern Europe, and the newly independent states of the former Soviet Union. USAID was appropriated \$465 million in fiscal year 1996, and had a staff of approximately 3,200 positions plus 5,000 contract employees.

The State Department continues to have serious internal control and financial management problems. While a third attempt is underway at the State Department to implement an Integrated Financial Management System, State has no overall management structure or agencywide information strategy plan with which to implement the system. According to GAO, State runs a high risk of perpetuating its long-standing financial management problems, detracting from its ability to meet the goals and requirements of the Chief Financial Officers Act.

In addition to the problems surrounding the State Department's Financial Management System, it continues to have problems in the management of its embassies and real estate. USAID administers programs throughout the world, and has little success in preventing waste and abuse in these programs.

THE STATE DEPARTMENT COULD MANAGE ITS EMBASSIES BETTER¹

The State Department manages approximately 160 embassies and 100 consulates at a cost of about \$2 billion annually. The U.S. embassies throughout the world manage about \$600 million worth of personal property, buy approximately \$500 million in goods and services annually, and are responsible for almost \$12 billion in housing and other real properties. Embassies also have responsibility for over \$2 million annually in accounts receivable.²

Embassies poorly manage the \$600 million over which they have control. In 1993, this committee made a series of recommendations to the State Department regarding management of personal property. One suggestion was to establish a formal inventory of Embassy property. The Property Management Branch (PMB) of the State Department visited 20 embassies, 14 of which failed to show that inventories of personal property were made. This committee also suggested that the embassies establish a "zero tolerance" policy with reference to the loss of personal property. The State Department, however, implemented a "one percent tolerance" policy.³ An embassy with personal property losses equal to or less than 1 percent of its total personal property will not be held responsible for that loss. Thus, the State Department begins its pursuit of per-

sonal property losses by waiving the loss of \$6 million dollars. The State Department is attempting to implement a software package to better manage the personal property of embassies, but the General Accounting Office warns there has been inadequate management and planning for this system.

The embassies of the United States buy approximately \$500 million in goods and services annually. To comply with laws regarding such purchases, the State Department developed a data base. However, this data base reports only the number and type of contract. Because it is not used to monitor purchasing, many embassies lack any competition in their procurement decisions. Many of those same embassies have no policy to advertise contracts to vendors.

The State Department needs to become more dedicated in its pursuit of waste in its embassies. The acceptance of at least \$6 million dollars in personal property losses and the lack of clear guidelines over procurement decisions denotes a lackadaisical attitude toward real reform. This committee has made substantive recommendations for the improvement of embassy operations. The State Department should implement them.

MILLIONS OF DOLLARS COULD BE GENERATED BY SELLING OVERSEAS
UNNEEDED REAL ESTATE ⁴

The Department of State owns more than \$10 billion in real estate at 200 locations throughout the world. The State Department receives over \$400 million annually for the purposes of buying and maintaining buildings abroad. It can also sell its real estate and use the proceeds to buy or improve other real estate and furnishings without congressional approval. State's Office of Foreign Buildings Operations (FBO) is responsible for establishing and overseeing policies and procedures for State's real property, including approving the disposition of excess, underutilized, or uneconomical properties.

As of October 1995, State had a list of over 100 properties for potential sale valued at \$467 million.⁵ Many more have questionable value and are expensive to maintain. The State Department has not developed a systematic process for identifying and disposing of excess property. As a result, FBO and embassies are sometimes unable to expeditiously reach agreement on properties to sell, move forward on sales, and determine the use of proceeds.

FBO sold almost \$53 million in real estate during fiscal year 1995. However, it did not routinely use the sales proceeds for State's highest priority real property needs, account separately for the use of the sales proceeds, or use the proceeds to offset its appropriation request for such needs.⁶

Excluding a single sale of \$133 million, which was the result of a forced sale, State Department sales averaged less than \$4 million annually from 1990 to 1993. Although sales increased in 1994 and 1995, a significant amount of property has yet to be sold from FBO's list of properties available for disposal. Both FBO's October 1994 list and a second list submitted to the Office of Management and Budget in 1995 had about 100 properties listed for sale. Properties on the 1994 list were valued at \$250 million. One year later, FBO added high-value properties in Manila, Singapore, Paris, and Bangkok to its list, bringing the total value of properties available

for sale to \$474 million.⁷ State holds other property that it could potentially sell that was not on these lists. These properties are worth millions of dollars and continue to incur high operation and maintenance costs. For example, in 1993, the embassy in Buenos Aires reported operating costs on its property had doubled to almost \$500,000 and major maintenance costs had risen to about \$1 million.⁸

The Foreign Affairs Manual requires each post to periodically identify and report on properties that are excess to post requirements, not being fully utilized, or uneconomical to retain. FBO officials cannot provide evidence to show that embassies have submitted excess property reports pursuant to this provision.

In some instances, embassies and FBO have had lengthy and costly disagreements regarding the use or sale of property and use of potential sales proceeds. In Brasilia, Brazil, the embassy and FBO had a standoff for over 2½ years over whether to sell vacant lots, which were bought in the early 1960's, and use the proceeds to renovate a 29-unit apartment building or to sell an apartment building and other property and use the proceeds to build residences on the vacant lots. The embassy emphasized that the apartment building is in an extremely poor location. Also, according to FBO officials, the lots are located in the best parts of Brasilia, and there is a stigma attached to living in apartments in Brasilia. Nonetheless, FBO indicated that it was cheaper to renovate the apartment building than to build private residences on the vacant lots. During the time of this dispute, the embassy spent \$580,000 annually to lease housing while the 29 apartments remained vacant.⁹

FBO has developed no procedure for routinely using sales proceeds to meet prioritized worldwide requirements. For example, the consulate in Lyon, France, closed in June 1992 and the consul residence was sold in April 1995 for \$613,000. In anticipation of the sale, the embassy in Paris requested in May 1992 to use the sales proceeds. Rather than making the proceeds available for priority use in other countries, the FBO has been working with the Paris embassy since 1994 to allow the embassy to retain the disputed funds.¹⁰

The State Department has the authority to retain proceeds from real estate sales. While proceeds from real estate sales are uncertain, they provide embassies with funds not justified or funded through the regular appropriation process. This process essentially creates a source of income not scrutinized within the process of congressional budgeting and oversight.

- In Alexandria, Egypt, the consulate general was closed in 1993; however, State officials retained the consulate general residence, with an estimated value of over \$1 million, in hope that the post would be reopened. State officials attempted to justify its retention on economic grounds, such as using it as a residence for a U.S. Information Agency representative. The State Department Inspector General questioned such retention as an "apparent lack of concern for the financial loss being incurred by the U.S. government." State officials then said that when the Ambassador used the residence, State would save \$20,000 in lodging costs and that the

spacious residence is ideal for representational and trade promotion events.¹¹

- In Zanzibar, the consulate was closed in 1979. Today, the consulate is being used for recreational purposes. In 1994, maintenance and salaries relating to the residence were \$32,000. The residence was used 122 nights for recreation and 36 nights for representational purposes.¹²

- In Shanghai, China, the State Department owns 2.6 acres of vacant land having an estimated value of \$4 million.¹³

- In Rabat, Morocco, the State Department paid \$435,000 for an 8-acre lot for an embassy and ambassador residence. The King of Morocco has used the lot for an orange grove since its purchase. There are no current plans to build on the property. The embassy also owns a residence, acquired in 1972, that the security officer will no longer clear for occupancy. In February 1994, the Inspector General reported that State should develop a plan to dispose of excess property in Morocco. In May 1994, the embassy reported that it had six properties that were no longer needed and should be sold, not including the 8-acre lot. In June 1995, however, the embassy indicated that it was willing to sell only two of the properties.¹⁴

- In Hamilton, Bermuda, the State Department owns a home for the consul general. In April 1994, the property was estimated to be worth over \$12 million. An FBO survey in February 1993 disclosed that the residence needed \$240,000 in major repairs. The main house is nearly 10,000 square feet and is situated on a 14-acre estate with a beach house. The State Department Inspector General has stated that "at a time of continual budget constraints, the Department cannot afford the luxury of maintaining this ostentatious piece of property." Annual operational and maintenance costs for this one residence are over \$100,000.¹⁵

- In Buenos Aires, Argentina, the State Department has maintained a 43,000-square foot mansion as an ambassador residence since 1929. Estimates of its value vary widely and range up to \$20 million. Annual operating costs are about \$500,000. The embassy has historically opposed selling the residence, indicating that it stands as a symbol of the U.S. presence in Argentina. Funding of \$5 million to \$6 million will be required to repair the house and equipment, and operating costs will require additional funding. According to the State Department Inspector General, "The residence will continue to represent a major expense which the inspectors doubt can be justified indefinitely if budgets continue to shrink."¹⁶

USAID—U.S. FOOD DONATIONS TO LESSER-DEVELOPED COUNTRIES ARE WASTED DUE TO THEFT AND POOR QUALITY¹⁷

The Public Law 480 program is a bilateral grant program whereby the U.S. Government donates agricultural commodities to least-developed, food-insecure countries. A country is considered least developed and eligible for donation of food under this program if the country meets the poverty criteria established by the World Bank for providing financial assistance or is a food deficit country characterized by high levels of malnutrition among significant numbers of its population. To qualify for food donations under a Title III program, a country must also be committed to policies which promote

food security and have a long-term plan for broad-based, equitable, and sustainable development.

Mozambique, as the poorest of nations with a per capita income of \$80, is among the nations that qualify for this program. As a part of this program, the United States donated approximately 458,000 metric tons of commodities worth approximately \$88 million.¹⁸ These commodities are to be used to generate local currency for the purpose of funding various governmental ministries, as well as supporting private voluntary organization activities. An audit by the USAID Inspector General found that while USAID had established a system to monitor the receipt, storage, and sale of commodities, the program was replete with many other problems. The Inspector General found that poor quality commodities, subsequently determined by USAID management to be "unfit for human consumption," arrived in Mozambique, resulting in a loss of \$8 million for purchase, transport, and disposal costs; pilferage of \$1,376,378 worth of commodities occurred at Mozambique ports during the unloading of shipments—often in plain view of port security guards; and the deposit of funds generated by the sale of the commodities was delayed and no method existed to ensure that the funds were used for their intended purposes.¹⁹

The audit conducted by the USAID Inspector General found numerous examples of commodity theft. The ship *Lash Atlantico* reported theft of 1,024 metric tons (mts) of corn and 58,000 empty food bags. According to the ship's officers, the theft took place in full view of the port's security guards. When the officers attempted to stop the theft, they were attacked by the thieves. The ship *Ashley Lykes* reported various instances of theft and the *Meezan I* reportedly lost 1,560 mts of corn to theft. The *George Lyras* lost 1,200 mts of corn to theft, which was done in full view of security guards. The local port authority took no action. The vessel *Kansas Trader* reported that 1,400 mts of maize, an amount that would fill 94 trucks, was missing and presumed stolen.²⁰

Reports were also made about the poor quality of commodities sent to Mozambique. The U.S. Ambassador to Mozambique reported that the shipments had a higher moisture content than was necessary to transport the commodities. As a result, the food arrived unfit for human consumption. In some instances, insect infestation was so bad that the entire cargo and ship had to be fumigated several times. This caused a waste of 33,700 mts of corn worth approximately \$8 million.²¹

The proceeds from the sale of these commodities are to be deposited into special accounts for the express purpose of accounting for the funds and ensuring that they go to purposes intended by the program. The USAID Inspector General could not assess whether local currency generated from the sale of commodities was used for its intended purposes. No audits have been performed on local currency expenditures.

USAID'S CASH TRANSFER PROGRAM FAILS TO MONITOR THE IMPLEMENTATION OF REFORMS²²

In response to an Egyptian government economic and structural adjustment program, USAID initiated the Sector Policy Reform Program in August 1992. The program was designed to distribute

\$400 million to the Egyptian government if it could establish proof that it implemented efforts to liberalize financial markets, undertake fiscal reforms, reduce controls over imports and exports, and privatize public sector enterprises. As of June 1995, USAID distributed \$380 million of the \$400 million program. This money was distributed despite the refusal of some recipients to provide proof that the required reforms had been implemented.²³

One of the principal reforms encouraged by the program was the relaxation of constraints on private financial institutions. In response to requests from auditors for documentation of this reform, USAID/Egypt reported that the Government of Egypt compiled a "comprehensive study and made recommendations for policy reform." The auditors discovered, however, that the study was actually performed by the World Bank and the recommendations were written by USAID/Egypt. In fact, the government of Egypt refused to agree in writing to implement any of the study's recommendations. The study and its recommendations were the documentation USAID/Egypt used to justify the disbursement of \$65 million.²⁴

Another reform sought by the program was a capital/asset ratio among commercial banks of at least 5 percent. USAID/Egypt sought information on each bank to ensure that the reform had been implemented. The Governor of the Central Bank of Egypt declined to proffer such information. The Governor of the Central Bank of Egypt also declined to give proof, in a later year, that these banks had achieved a capital/asset ratio of 8 percent. In the first case, USAID/Egypt made a distribution of \$65 million. In the second case, it made a distribution of \$75 million.²⁵

This program exemplifies the gratuitous grant of American taxpayer dollars to encourage reforms even when agencies cannot verify their implementation. The money was expended with little or no return on the investment.

USAID FUNDS THE SMALL ENTERPRISE CREDIT PROJECT DESPITE
QUESTIONABLE LOCAL EXPENDITURES²⁶

The Small Enterprise Credit Project was established to loan money to small businesses in Cairo, Egypt. To distribute these loans, the project provides for the establishment of branch offices of the National Bank for Development, the entity which manages the project. An audit of the program found questioned costs up to \$1,023,040.²⁷ This constitutes approximately 1/3 of the entire program.

The OIG contracted with an independent public accounting firm to audit the propriety of costs incurred by the Egyptian National Bank for Development (NBD). The audit also evaluated NBD's internal controls and compliance with applicable laws, regulations and grant terms as necessary in forming an opinion on the NBD's Fund Accountability Statement. Of the \$3,470,013 total expenditures incurred during the period, the audit identified \$1,023,040 in questioned costs billed to USAID. The audit states that these costs were either "ineligible because they are not project related, unreasonable, or prohibited by the terms of the agreement" or "not supported with adequate documentation or did not have the required approvals or authorizations."²⁸

The questioned costs cover a wide variety of instances where funds were used improperly. In one instance, the chairman, project director, and NBD officers, divided \$64,583 among themselves as bonuses without providing any basis on which these bonuses were determined. Employees outside the Small Enterprise Credit Project were apparently awarded bonuses totaling \$44,743, although no documentation established the employees receipt of this money. Bonuses to project employees totaled \$248,875, and the project could state no guidelines for awarding these bonuses.²⁹

Auditors found more questionable costs in the vehicles bought and leased by the project. The project purchased a Japanese car at \$17,102 on which it paid \$16,854 in customs duties and sales taxes. The grant under which the project functions specifically mandates that all vehicles purchased under the grant be American made. The project also leases a number of vehicles at a total cost of \$36,312. The leased vehicles, which include models dating between 1980 and 1984, if appraised at current value, would have relatively no value. Indeed, if the project continues the practice of renting these vehicles, it will surpass the amount of money necessary to purchase newer vehicles.³⁰

Several instances of questionable costs are inexplicable. \$413,487 is missing from the project's contingency fund, and the project has not provided sufficient documentation to support any contingency. The project expended funds in excess of \$14,000 on items such as curtains for automobiles, flowers, and obituaries in newspapers for the families of project personnel. The project purchased \$23,625 worth of training equipment after the significant training of employees had ceased. The expenditure was never approved, and exceeded the project's entire equipment budget by \$15,696.³¹

The aforementioned problems are particularly flagrant abuses of the funds provided by the American people to support its friends throughout the world. Many problems plague USAID's programs and waste precious dollars that, if better accounted for, could increase the efficiency and effectiveness of American assistance.

ENDNOTES

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⁶ *Id.*, p. 2.

⁷ *Id.*, p. 2.

⁸ *Id.*, p. 3.

⁹ *Id.*, p. 4.

¹⁰ *Id.*, p. 5.

¹¹ *Id.*, p. 16.

¹² *Id.*, p. 16.

¹³ *Id.*, p. 18.

¹⁴ *Id.*, p. 18.

¹⁵ *Id.*, p. 21.

¹⁶ *Id.*, p. 21.

¹⁷ Inspector General, U.S. Agency for International Development, Audit of USAID/Mozambique's Management of Public Law 480 Title III Program, Report Number 3-656-96-003, February 9, 1996.

¹⁸ *Id.*, pp. 1-2.

¹⁹ *Id.*, pp. 1-2.

²⁰ *Id.*, pp. 9-10.

²¹ *Id.*, pp. 11-12.

²² Inspector General, U.S. Agency for International Development; Audit of USAID/Egypt's Economic Support Fund, Cash Transfer Program; Report Number 6-623-96-003; December 12, 1995.

²³ *Id.*, p. 2.

²⁴ *Id.*, p. 3.

²⁵ *Id.*, p. 4.

²⁶ Inspector General, U.S. Agency for International Development; Audit of the National Bank for Development, Local Expenditures Incurred Under the Small Enterprise Credit Project, Grant Number 263-0228; Report Number 6-263-96-001-N; October 1, 1995.

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Department of Transportation

OVERVIEW

The Department of Transportation (DOT) received slightly over \$37 billion in total budgetary resources for fiscal year 1996. The President's budget requested a total of \$37.5 billion in fiscal year 1997 funding for DOT. Most of the Department's budget comes from dedicated transportation trust funds. The remainder is provided by general treasury appropriations.¹

As described hereafter, significant management problems affect several DOT components. Unfortunately, the most troubling and pervasive problems exist in the component where they can be least afforded—the Federal Aviation Administration (FAA). The FAA's deficiencies were recently highlighted in the aftermath of the tragic ValuJet accident.

With a budget in excess of \$8 billion, FAA has not suffered from a lack of resources. Rather, according to a number of expert observers, its problems stem fundamentally from a management "culture" which is internally focused and lacks any sense of accountability to the public. A July 1996 joint study by the Aviation Foundation and the Institute of Public Policy of George Mason University, entitled *Why Can't the Federal Aviation Administration Learn?*, stated:

Our research indicates that the primary problem is a culture that does not recognize or serve any client other than itself. This has fostered a system in which the normal checks and balances do not apply, so there is no accountability in the system. Furthermore, no mechanism is in

place whereby the FAA can learn from its mistakes and make effective, substantive changes.²

GAO also pointed to fundamental problems with the “culture” at FAA in the context of the serious procurement and related problems besetting its Air Traffic Control modernization efforts, which are described later in this report.

The problem is again illustrated by the personnel abuses that infect FAA, also described later. As the Aviation Foundation-George Mason study observed, “the FAA runs under the assumption that the air traffic controllers are its clients.”³ The DOT Inspector General made a similar point in a January 1996 memorandum to the FAA Administrator captioned “Environment for Abuse”:

During the last 12 to 18 months, the Office of Inspector General has advised you of at least four instances of significant [personnel] abuses by the . . . FAA. . . . While each of these abuses are very different, there is a common thread. The thread is the mind set within FAA that managers are not held accountable for decisions that reflect poor judgment. Until senior FAA management is willing to send a different message, I suspect that the pattern of abuse we identified will, unfortunately, continue.⁴

As part of last year’s Department of Transportation Appropriation Act, Congress enacted legislation to reform FAA’s procurement and personnel practices.⁵ Additional reform legislation is pending. Time will tell whether FAA can make the necessary reforms in its “culture.” However, the personnel actions taken in the wake of the ValuJet tragedy are not cause for optimism that the agency will get to the root of its problems. As the Aviation Foundation-George Mason study observed:

. . . We feel that recent actions taken to reorganize the FAA have not done anything to change the long-term structural problems that plague the organization. . . . The problems instead are much deeper than any one individual; the demotion or firing of one individual or a secretary or administrator is not a substitute for meaningful reform. Such action has the harmful effect of making people believe that the problems are caused by one individual and subsequently solved once that person has been removed.⁶

FAA’S OVERSIGHT OF AVIATION SAFETY IS FUNDAMENTALLY FLAWED

Reports by the DOT IG and GAO as well as recent congressional hearings have identified systemic deficiencies in FAA’s management and oversight of aviation safety. Among the deficiencies identified by the IG are: failure to target inspection resources to entities having the greatest risk; a substantial decrease in the number of required inspections; FAA’s refusal to adopt mandatory inspection requirements; lack of oversight of parts used throughout the industry; inadequate training of inspectors; and reluctance to conduct unannounced inspections using realistic testing techniques. Finally, the IG noted that—

. . . FAA needs to “call” the results as they are. FAA’s responses to problems suggest that FAA too often is more

concerned about the impact its decisions will have on the industry, rather than with stringent enforcement of its safety regulations.⁷

Unfortunately, the accuracy of this observation, as well as the overall state of FAA's safety oversight are illustrated by Secretary Pena's and FAA Administrator Hinson's initial declarations of in the wake of the ValuJet accident that the airline was safe—followed within days by the grounding of ValuJet. Senator Cohen, whose Senate Governmental Affairs Subcommittee on Oversight of Government Management has conducted an extensive review of FAA aviation safety issues, recently noted that these statements were particularly troublesome:

. . . The two senior officials stated that their earlier declarations about ValuJet's safety record were based on information available to them at the time those statements were made. However, when those statements were made, DOT and FAA had several documents in their possession that clearly questioned ValuJet's safety record and showed that the airline was not in full compliance with federal aviation regulations.⁸

Specific examples of safety oversight problems at FAA abound. An IG audit found that during 1 year 84 aircraft operators were inspected between 200 and 18,000 times. This included one plane that was inspected 200 times, although no significant violations had been identified. By contrast, 1,100 aircraft operators for whom inspections were required received no inspections at all during that year.⁹ On a related matter, the IG reviewed FAA's report that it accomplished 99.8 percent of its "required" inspections for fiscal year 1994. While this appeared to represent a significant improvement, the IG found that FAA had reduced the number of "required" inspections from 103,000 in 1990 to 44,000 in 1994. Thus, the number of required inspections conducted actually declined.¹⁰

The IG also has reported on deficiencies in FAA inspections. For example, while FAA mandates that aircraft maintenance and repairs be conducted in accordance with current manufacturers' manuals, FAA procedures do not require its inspectors to verify that current manuals are being used. In fact, IG audits of repair stations found many instances in which outdated manuals were in use. FAA management has rejected IG recommendations that minimum mandatory inspection requirements be established for FAA inspectors. According to the IG, FAA's position is that its inspectors are experienced professionals who should be allowed wide latitude in determining the scope of their work.¹¹

FAA's opposition to mandatory inspection standards is particularly disturbing in view of recent IG and GAO reports documenting recurring deficiencies in the qualifications and training of FAA inspectors. Both the IG and GAO have found that FAA inspectors were inspecting types of aircraft and equipment for which their training was outdated or for which they had no training at all. For example, one maintenance inspector who was responsible for inspecting 7 commuter airlines had never attended maintenance training school for the aircraft he inspected. Despite his requests for such training, FAA sent him instead for training on the Boeing

727—a plane his airlines did not use—apparently to fill available training slots.¹²

Several inspectors with responsibility to approve specialized navigation equipment had received no formal training on this equipment. A maintenance inspector who was responsible for overseeing operations and repairs of Boeing 737, 757, 767 and McDonnell Douglas MD-80 aircraft told GAO that the last training he received on maintenance and electronics was 5 years ago for the 737. Both the IG and GAO have reported that FAA inspectors making pilot flight checks either did not have the credentials (type ratings) or were not current in their aircraft qualifications in accordance with FAA requirements.¹³

Even beyond these specific examples (and many others that could be cited), GAO's work raises serious questions about FAA's training priorities. GAO recently reported that between fiscal years 1993 and 1996, FAA reduced its budget for technical training 42 percent from \$147 to \$85 million. This comes at a time when Congress has directed FAA to hire over 230 additional inspectors.¹⁴ By contrast, FAA made only modest reductions in its management training programs—which have been experienced waste, mismanagement, and corruption. For example, funding for FAA's Center for Management Development in Palm Coast, FL, decreased only about 10 percent over a period in which FAA's aggregate staff decreased by 15 percent. FAA rejected a study by its own contractor that showed the agency could save millions of dollars and eliminate duplication by closing the Palm Coast facility and transferring its functions to the FAA Academy in Oklahoma City.¹⁵

FAA'S AIR TRAFFIC CONTROL (ATC) MODERNIZATION PROJECT HAS EXPERIENCED CHRONIC MANAGEMENT PROBLEMS AND IS UNLIKELY TO FIX THE OBSOLETE ATC SYSTEM

Unquestionably, the ATC system is obsolete; the question is whether FAA has the capacity to modernize it. The results to date are not encouraging. The House Budget Committee report on the Budget Resolution for Fiscal Year 1997 summarized the state of the ATC system and the prospects for improvement as follows:

. . . [C]ontrollers still use pre-1960's equipment to guide 19,000 planes a year. According to FAA, vacuum tubes made obsolete by the transistor in 1947 are still used at hundreds of ATC sites. The system's truck-sized UNIVAC computers have one-tenth the power of today's personal computers costing less than \$2,000, and some ATC computers could not run the \$49 flight simulator computer games that are installed on millions of personal computers in homes across America.

* * * * *

The antiquated technology and Federal mismanagement are at least partially responsible for the chronic airport congestion and delays that cost travelers, industry, and the government nearly \$6 billion annually. In the next few years, as many as 40 airports will experience serious congestion affecting 80 percent of air travelers. Clearly, the

current system will not meet the Nation's air travel needs of the next century.

The current condition of the Federal Aviation Administration in many ways illustrates what happens when a Government bureaucracy tries to be a service provider, particularly in a high-volume, high-tech field such as air traffic control.¹⁶

According to FAA estimates, the Air Traffic Control (ATC) modernization project carries a price tag of \$35 billion.¹⁷ The project has been beset by problems. GAO recently observed:

Over the years, we and others have chronicled persistent cost, schedule, and performance problems associated with FAA's major systems acquisitions for modernizing the ATC system. We have found that technical difficulties and weaknesses in FAA's management of the acquisition process were the primary causes of these problems.¹⁸

GAO added the project to its high-risk list in 1995.¹⁹ OMB also included on its high-risk list FAA's "inadequate" contract administration with respect to one component of modernization project, the Advanced Automation System (AAS). OMB observed that the AAS program "suffers from cost overruns, schedule delays, and the potential for conflict of interest in FAA's monitoring of the program."²⁰

GAO noted that the AAS component, which was once the centerpiece of the modernization project, subsequently failed because FAA did not recognize the technical complexity of the effort, realistically estimates the resources required, adequately oversee its contractors' activities, or effectively control system requirements.²¹ A series of IG reports also document deficiencies in the AAS, which grew from an estimated cost of \$2.5 billion to over \$6 billion. The IG reported that—

. . . Due to inadequate oversight of software development and testing and FAA's ineffective resolution of requirements issues, the Administrator restructured the AAS Program, canceling major portions of the AAS contract and downscoping the remaining enroute and tower segments.²²

According to GAO, a root cause of the problems with ATC modernization is FAA's "culture," which features shortcomings in focus on its mission, accountability, coordination, and adaptability.²³

FAA IS PLAGUED BY PERSONNEL MANAGEMENT PROBLEMS AND
ABUSIVE EMPLOYEE PRACTICES

A recent semiannual report to Congress by the DOT IG observed:

In the current budget environment where FAA will be required to accomplish its missions with less personnel and funding, it is paramount management provide the necessary oversight to ensure programs meet their objectives in an economical and efficient manner and employees maintain a high standard of ethical conduct. However, OIG has performed audits of FAA programs and identified

an alarming number of personnel related problems and issues.²⁴

The reported personnel abuses include payment of excessive and unauthorized permanent change of station (PCS) benefits, abuses of the buyout law, wasteful workers' compensation payments, and travel abuses involving air traffic controllers.

The IG found that FAA could have saved \$18.4 million at Denver and Chicago alone by adhering to its policy requiring employees to move at least 35 miles in order to qualify for PCS benefits. In an audit of a random sample of 20 FAA employees who left the agency and received buyouts, the IG found that 17 returned to FAA under contract to do the same work they previously did or to do work done by other employees who took buyouts. These contract arrangements, which violated the buyout law, apparently were worked out before the employees left the FAA.²⁵ FAA pays about \$78 million in annual workers' compensation costs. Yet, because of ineffective monitoring by FAA, claimants have remained on the workers' compensation rolls even though physicians have found them able to return to work. The IG found that 80 percent of claimants age 55 or older were injured prior to July 1, 1980, and had been receiving benefits for more than 15 years. In one case, a controller went on workers' compensation at age 53 and now, at age 70, is still receiving benefits. A 1988 medical report noted that the employee and his wife enjoy a "country club lifestyle" in Florida, playing 3 rounds of golf a week.²⁶ This is significant because Federal workers' compensation benefits are considerably higher than Federal retirement benefits.

The IG also reviewed FAA's familiarization ("FAM") program, which allows FAA controllers free commercial airline trips allegedly for training purposes. The IG found that controllers consider FAM trips to be a "perk" and use them for personal gain. For example, a preliminary review by the IG disclosed that 83 percent of FAM tickets were arranged in conjunction with personal travel. In a particularly blatant case, Chicago controllers took 134 free FAM trips to Las Vegas over a 2-year period. The IG pointed out that while these FAM trips resulted in no monetary loss to FAA, they violated ethical standards and reflected negatively on the agency.²⁷

Many of the personnel abuses discussed above stem in part from the degree to which FAA has ceded control of the agency to its employee unions. For instance, the union agreement requires FAA to allow controllers 8 domestic FAM trips and one international trip a year, and precludes the agency from requiring that the trips take place only during duty time. Also, FAA's payment of PCS benefits for moves of less than 35 miles resulted from the agency's agreement with the union to waive the 35-mile requirement.²⁸

Indeed, the IG described FAA's current union agreement with the National Air Traffic Controllers Association as "[a] major problem impacting the effectiveness and efficiency of FAA operations."²⁹ In particular, the IG noted that FAA plans to contract out or close its 151 Level I towers by fiscal year 1997 and relocate about 1,000 controllers from these facilities. However, the union agreement allows controllers from closed Level I towers to move to facilities of their choice. The agreement further provides that relocated controllers who are unable to attain full performance at their

new facilities be given one more chance at another location and, if funds are available, be moved again at Government expense. As a result, controllers may relocate to already over staffed facilities and make existing staffing imbalances even worse.³⁰ Meanwhile, other towers and centers remain understaffed. This is an important management problem that has direct safety ramifications.

BETTER OVERSIGHT OF HIGHWAY AND TRANSIT PROJECTS IS NEEDED
TO CURB EXPONENTIAL COST OVERRUNS AND OTHER PROBLEMS

Surface transportation activities make up about 66 percent of DOT's budget. Collectively, they accounted for over \$23 billion in fiscal year 1996 funds and 6,700 full-time equivalent staff positions within the Department.³¹ The principal surface transportation components are highway projects funded from grants administered by the Federal Highway Administration (FHWA) and mass transit projects funded by Federal Transit Administration (FTA) grants. For fiscal year 1996, FHWA's budget was almost \$20 billion, and FTA had a budget of slightly over \$4 billion.³² GAO recently testified that four such projects, each of which has a price tag of over \$1 billion, have been plagued by cost increases and other problems that reaffirm the need for Federal oversight.³³

The largest of the four is the 7.5 mile Central Artery/Tunnel construction project in Boston. At a cost of over \$1 billion per mile, this is one of the largest and most expensive highway construction projects in history.³⁴ Current total cost estimates far exceed the original \$2 billion-plus figure and continue to escalate. According to GAO, Massachusetts' most recent estimate of \$7.8 billion to complete the project is severely understated. For example, the State excluded over \$1 billion in costs that were included in prior estimates and it did not account for inflation. GAO estimated that the project will cost at least \$10.4 billion, assuming that the State meets its aggressive cost containment goals.³⁵ However, GAO cautioned that if historic patterns of cost growth rather than the project's cost containment goals prevail, the total could exceed \$11 billion.³⁶ By way of contrast, the 32-mile "Chunnel" project connecting England and France cost \$16 billion.³⁷

Finally, GAO noted that to meet its ambitious schedule of completing the project by 2004, Massachusetts plans to make extensive use of advance construction projects and pay for them over the next several years. However, sufficient funds may not be available to pay the bills as they become due since Massachusetts' finance plan shows project shortfalls of \$1.9 billion from 1996 through 2000. GAO stated that "[i]t is difficult to see how DOT can approve these contracts without a definitive strategy on how the State will pay for them."³⁸

Not surprisingly, the Central Artery/Tunnel project has been the subject of many audit findings. For example, the DOT IG found management control weaknesses calling into question the validity of millions of dollars in contract change orders; payments of over \$25 million for use of police officers to direct motorists at construction sites (Massachusetts is the only State to rely exclusively on police officers for this purpose); the waste of over \$20 million to acquire properties and rights-of-way that were unnecessary for the project; and a decision to spend \$100 million more for a tun-

nel than a bridge “because of local political considerations.”³⁹ The Commonwealth of Massachusetts Auditor has reported on additional wasted project costs totaling over \$100 million.⁴⁰

GAO has cited problems with other \$1 billion-plus projects. The \$1.3 billion Cypress Viaduct Reconstruction Project in California has experienced a \$210 million increase because State officials underestimated certain costs. Also, FHWA recently approved funding to significantly realign the Viaduct without making a finding, required by its own regulations, that the realignment was economically justified. According to GAO, the \$1.11 billion Bay Area Rapid Transit (BART) extension to the San Francisco Airport is ripe for oversight and may require Federal funding beyond the amount assumed in the financing plan because necessary funds from local sources may not be forthcoming. Finally, according to GAO, the Los Angeles subway project, with a cost in excess of \$5 billion, “has experienced poor construction management and ineffective quality control programs that have resulted in cost increases and schedule delays.”⁴¹

DOT’S FINANCIAL MANAGEMENT SYSTEMS ARE IMPROVING BUT STILL
HAVE SERIOUS WEAKNESSES

In recent years, GAO has reported that the Department’s financial management systems are fragmented and non-standard. These system deficiencies impede the ability of managers to plan, budget, and evaluate performance. DOT itself identified lack of financial systems integration as well as the inaccurate and untimely preparation of financial reports as the most critical of its areas of material non-conformance with the Federal Managers’ Financial Integrity Act.⁴²

DOT recently dropped fragmented financial systems as a material deficiency because it had converted most of its components to a consolidated system called the “Departmental Accounting and Financial Information System” (DAFIS). While this represents progress, the IG reports that material weaknesses and internal control problems remain. Therefore, the IG still considers financial management system controls to be a significant issue.

According to the IG, the DAFIS system does not adequately address two material financial systems weaknesses identified by OIG’s financial statement audits. First, DOT lacks an adequate reconciliation process to validate DAFIS subsidiary account balances. This deficiency required OIG to disclaim audit opinions on five of the seven financial statements the Department has prepared on the basis of DAFIS. Second, DAFIS lacks the ability to track prior period adjustments in the manner required by OMB guidance. Until corrected, this deficiency also continues to impair OIG’s ability to render opinions on the related financial statements. The OIG has identified still other weaknesses in the internal controls associated with the Department’s current financial management systems.⁴³

The OIG’s financial statement audits of seven DOT components during fiscal year 1995 disclosed 60 reportable internal control structure deficiencies and ten instances of noncompliance with applicable laws and regulations, including one noncompliance involving \$585 million in the Maritime Administration’s Federal Ship Fi-

nancing Fund. The audits identified additional material discrepancies and noncompliance issues leading to over \$9.1 billion in account balance adjustments. For example, 40 percent of the invoices submitted to the Coast Guard for reimbursement of oil spill clean-up activities were paid without the requisite certification that the work in fact had been done.⁴⁴

ENDNOTES

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²² Office of Inspector General, Department of Transportation (DOT IG), *Inspector General Semiannual Report to the Congress, April 1, 1995-September 30, 1995*, p. 4.

²³ *DOT's Budget: Challenges Facing the Department in Fiscal Year 1997 and Beyond*, note 15, p. 31.

²⁴ *Inspector General Semiannual Report to the Congress, April 1, 1995-September 30, 1995*, note 22, p. 5.

²⁵ Hearings before the Subcommittee on the Department of Transportation and Related Agencies Appropriations, House Committee on Appropriations, 104th Cong., 2d Sess., *Department of Transportation and Related Agencies Appropriations for 1997* (Part 3) (March 1996), pp. 8-9.

²⁶ *Inspector General Semiannual Report to the Congress, April 1, 1995-September 30, 1995*, note 22, p. 5.

²⁷ Hearings, note 25, pp. 9, 48-51.

²⁸ *Id.*, pp. 56-57.

²⁹ *Inspector General Semiannual Report to the Congress, April 1, 1995-September 30, 1995*, note 22, p. 5.

³⁰ *Id.*

³¹ *DOT's Budget: Challenges Facing the Department in Fiscal Year 1997 and Beyond*, note 15, pp. 1, 4.

³² Congressional Research Service, *Transportation and the FY 1997 Budget*, note 1, pp. 16-17.

³³ *DOT's Budget: Challenges Facing the Department in Fiscal Year 1997 and Beyond*, note 15, p. 8.

³⁴ *Id.*

³⁵ General Accounting Office, *Transportation Infrastructure: Central Artery/Tunnel Project Faces Continued Financial Uncertainties*, GAO/RCED-96-131 (May 10, 1996), pp. 1, 9.

³⁶ General Accounting Office, *Central Artery/Tunnel Project: Cost and Financing*, GAO/T-RCED-96-218 (July 11, 1996), p. 2.

³⁷ Project on Government Oversight, *No Light at the End of This Tunnel: Boston's Central Artery/Third Harbor Tunnel Project* (February 1995), p. 3.

³⁸ *DOT's Budget: Challenges Facing the Department in Fiscal Year 1997 and Beyond*, note 15, p. 10.

³⁹ Hearings, note 25, pp. 10, 75, 80.

⁴⁰ *No Light at the End of This Tunnel: Boston's Central Artery/Third Harbor Tunnel Project*, note 37, p. 4.

⁴¹ *DOT's Budget: Challenges Facing the Department in Fiscal Year 1997 and Beyond*, note 15, pp. 11-15, 17.

⁴² General Accounting Office, *Federal Management: Updated Information for Congressional Oversight* (July 1994), pp. TRANSPORTATION-21-22.

⁴³ *Inspector General Semiannual Report to the Congress, April 1, 1995-September 30, 1995*, note 22, pp. 3-4.

⁴⁴ Hearings, note 25, pp. 10-11, 198.

Department of the Treasury

OVERVIEW

The Treasury Department received total appropriations of about \$10.4 billion for fiscal year 1996. The President's budget request for Treasury for fiscal year 1997 totaled approximately \$11.3 billion. The Internal Revenue Service (IRS) is, by far, the largest component of the Treasury Department. IRS' fiscal year 1997 budget request totaled almost \$8 billion, representing an increase of \$647 million over its funding level of \$7.3 billion for fiscal year 1996. The second largest component of the Treasury Department is the United States Customs Service. The fiscal year 1996 appropriation for the Customs Service totaled about \$1.46 billion, and its 1997 request was about \$1.55 billion.¹

The most serious management problems at the Department involve IRS and Customs, and relate particularly to their ability to ensure that revenues due the Government are accounted for and collected. Revenue collection problems besetting these two agencies are a major focus of GAO's "high-risk" work. In its February 1995 High Risk Overview report, GAO stated:

Fair and equitable administration of our tax laws demands that the government collect what it is owed. Yet, with annual collections currently at \$1.25 trillion, IRS and Customs, the government's principal revenue collectors, continue to be unable to adequately account for and collect all that is due the government. The result is the potential loss of billions of dollars in revenue.²

IRS has fundamental management problems in at least 4 areas: (1) collection of tax debt, (2) its own financial management, (3) its massive Tax Systems Modernization program, and (4) providing assistance to taxpayers. Customs has made progress in addressing its overall management problems. However, it still has serious deficiencies in the areas of financial and information management.

IRS DEBT COLLECTION EFFORTS ARE LOSING GROUND

IRS' efforts to collect delinquent tax debt have been described as "inefficient and unbalanced."³ GAO observed in this regard:

IRS' poor performance in resolving tens of billions of dollars in outstanding tax delinquencies has not only lessened the revenues immediately available to support government operations but could also jeopardize future taxpayer compliance by leaving the impression that IRS is neither fair nor serious about collecting overdue taxes.⁴

IRS' management of its accounts receivable has been designated a high-risk area by GAO, OMB, and the agency itself. Noting the significant gap between taxes owed and taxes voluntarily paid, OMB stated:

Developing a more comprehensive strategy for increasing tax compliance and managing accounts receivable would yield improved tax revenue. Resolving this problem is a long term challenge. This item has been expanded in scope from accounts receivable to recognize that the entire

universe of tax non-compliance offers opportunity for improvement.⁵

GAO has reported that “IRS is losing ground in collecting mounting tax receivables.”⁶ According to GAO, IRS has made negligible progress in collecting tax receivables, and the problem is worse today than when GAO designated this a high-risk area. To illustrate this, GAO noted that between 1990 and 1994, the reported inventory of tax debt increased from \$87 to \$156 billion; but by 1994, collections of delinquent taxes had actually declined from \$25.5 to \$23.5 billion.⁷

The gap between tax receivables and collections continues to grow. Receivables reached \$200 billion by the end of fiscal year 1995, while only \$25.1 billion of delinquent taxes was collected. Of the \$200 billion accounts receivable total, IRS estimates that \$113 billion represent “valid accounts receivable” and that \$46 billion represent “collectible accounts receivable.”⁸

One major factor contributing to the problem is that IRS lacks reliable information about the accounts it is trying to collect and the effectiveness of its collection activities and programs. As a result, IRS agents don’t know whether they are targeting and resolving cases in the most productive manner or whether they are spending time pursuing unproductive cases.⁹ As discussed later, even IRS’ estimates of the aggregate amounts due are unreliable.

Finally, it is questionable whether collection of delinquent taxes is a priority for IRS. Both the House and Senate Appropriations Committees took action to transfer from IRS to main Treasury funding for a second private sector debt collection program based on dissatisfaction with IRS contracting initiatives.¹⁰ The Senate Committee report pointed out that IRS’ initiative for fiscal year 1996 had been roundly criticized by private industry. The report added:

. . . The Committee is also concerned that IRS is not committed to the success of this program, nor has it established a viable program which can be expanded and used in the future. . . . The vast majority of Americans faithfully and voluntarily pay their taxes. Every effort should be made to protect them by collecting those taxes legitimately owed the Federal Government.¹¹

IRS’ OWN INADEQUATE FINANCIAL MANAGEMENT DOESN’T MEASURE UP TO WHAT IT DEMANDS OF TAXPAYERS

IRS’ significant financial management weaknesses cause errors in taxpayer accounts and an inability to adequately account for collection operations.¹² GAO aptly observed that IRS “has not kept its own books and records with the same degree of accuracy it expects of taxpayers.”¹³

Both GAO and the Treasury IG have found IRS’ financial statements to be unauditible. GAO issued a disclaimer of opinion on the reliability of IRS’ financial statements for each of the 4 fiscal years from 1992 through 1995. Its most recent financial audit listed a series of fundamental, persistent problems that remain uncorrected and, until resolved, will continue to prevent GAO from expressing

an opinion on IRS' financial statements in the future. Among these problems are:

- The amounts of total revenue and tax refunds cannot be verified or reconciled to accounting records. For example, IRS' reported total of \$1.3 trillion for revenue collections in fiscal year 1994 was \$10.4 billion more than the amount recorded in IRS master files.
- The amounts reported for various types of taxes collected (for example, social security, income and excise taxes) cannot be substantiated.
- The reliability of reported estimates of \$113 billion for valid accounts receivable and \$46 billion for collectible accounts receivable cannot be determined. Consequently, the financial statements cannot be relied on to accurately disclose the amount of taxes owed to the Government or the portion of that amount which is collectible.¹⁴

To resolve these issues, GAO has made 59 recommendations to improve IRS financial management systems and reporting, but many of the more significant recommendations have not yet been fully implemented. As GAO pointed out, solving these problems is essential to ensure taxpayers that their tax dollars are properly accounted for. The accuracy of IRS' financial statements also is key to (1) ensuring adequate accountability for IRS programs, (2) assessing the impact of tax policies, and (3) measuring IRS' performance and cost-effectiveness in carrying out its enforcement, customer service, and collection activities.¹⁵

THE IRS TAX SYSTEMS MODERNIZATION (TSM) PROGRAM IS A FAILURE

IRS is drowning in paper—a problem which severely affects the timeliness and efficiency of its operations, including processing returns, paying refunds, and responding to taxpayer inquiries. This problem can only be mitigated through electronic tax filings. The TSM program is the key to achieving IRS' vision of a virtually paper-free work environment.¹⁶ However, the reality is far from the vision. For years GAO and others have warned that TSM “is jeopardized by persistent and pervasive management and technical weaknesses,” and that “IRS continues with plans to spend billions more on TSM with little assurance of successfully delivering effective systems within established time frames and cost figures.”¹⁷

In February 1995, GAO placed the TSM program on its high-risk list. GAO summarized the problems besetting TSM as follows:

Through fiscal year 1995, IRS will have spent or obligated over \$2.5 billion on its \$8 billion Tax System Modernization (TSM) initiative to automate selected tax processing functions. Yet, the overall design for TSM is still incomplete and IRS is continuing to automate existing problem-plagued functions with limited understanding of whether or how different systems will eventually connect to improve tax processing overall.¹⁸

Likewise, the Treasury IG has listed TSM as one of several “areas of concern.” The IG noted that IRS' oversight efforts with respect to TSM have been ineffective and that IRS continues to experience recurring problems in TSM's development.¹⁹ The IRS Inspec-

tion Service also considers TSM to be a major “material weakness.”²⁰

While IRS has initiated a number of corrective actions, GAO recently reported that the agency has not made significant progress. IRS’ corrective actions are incomplete and none of GAO’s recommendations have been fully implemented. For example, one corrective action was to obtain additional help from contractors to develop and integrate TSM since IRS lacks the capability to do this. However, GAO pointed out that IRS lacks the capability to manage its current contractors successfully.²¹ “Consequently,” GAO observed, “IRS today is not in an appreciably better position than it was a year ago to ensure the Congress that it will spend its 1996 and future TSM appropriations judiciously and effectively.”²²

IRS requested \$850 million in TSM funding for fiscal year 1997—a \$155 million increase from its proposed 1996 operating level. As a result of the managerial and technical weaknesses affecting TSM, GAO expressed the opinion that IRS could not make effective use of TSM systems development funds at the present time. GAO’s concern was heightened by the fact that IRS would not provide it specific information on the agency’s plans for spending the requested \$850 million.²³ Both the House and Senate fiscal year 1997 appropriations bills substantially reduce funding for TSM.

IRS DOESN’T PROVIDE EFFECTIVE ASSISTANCE TO TAXPAYERS

The success of the U.S. tax system depends on voluntary compliance by American taxpayers. Many taxpayers need IRS’ help in understanding and meeting their responsibilities. However, IRS has problems providing timely and clear responses to taxpayers.²⁴ It appears that IRS service to taxpayers has deteriorated in recent years.

IRS walk-in sites provide free services to taxpayers such as copies of commonly used tax forms and publications, help in preparing returns, free electronic filing, and answers to tax law questions. Yet, for the 1996 tax filing season, IRS closed 93 walk-in assistance sites, reduced the operating hours of some of the 442 sites that remained open, and eliminated free electronic filing at 195 of the sites. According to IRS, the closures and cutbacks at sites were determined on the basis of their historical volume of work and their proximity to other walk-in sites. However, the net effect of these service cutbacks is demonstrated by IRS’ own data: Walk-in sites served about 1.7 million taxpayers from January through early March, 1996—about 16 percent fewer taxpayers than were served for the same period last year.²⁵

IRS’ record in providing telephone assistance to taxpayers is even more dismal. Taxpayers have long had problems reaching IRS by telephone. Only 58 percent of callers were able to get through to IRS for the 1989 tax filing season. While this percentage is bad enough, it has plummeted in recent years. GAO reported that IRS answered only 19.2 million of 236 million call attempts for tax assistance between January 1 and April 15, 1995—an “accessibility rate” of only 8 percent. The accessibility rate for the early months of 1996 still was very low—only 12.7 million—or about 20 percent—of the approximately 63.3 million calls to IRS were answered.²⁶

Even those relatively few callers who get through do not necessarily receive answers to their questions answered. The different functional areas within IRS maintain separate taxpayer data bases. As a result, the IRS employee may have to refer the taxpayer to another office, research the problem and call the taxpayer back, or tell the taxpayer to call back later. Thus, taxpayers may have to make several inquiries before locating an IRS office that can address their concern or question.²⁷

In short, getting help from IRS can be a frustrating and often fruitless undertaking. The treatment IRS gives those taxpayers who seek its help in meeting their legal obligations hardly supports a tax system that is premised on voluntary compliance.

CUSTOMS SERVICE FINANCIAL AND INFORMATION MANAGEMENT
PROBLEMS PERSIST

The Customs Service is an important revenue-collector for the government, with responsibility for about \$20 billion annually. According to GAO, while Customs has made improvements in some management and organizational areas, its financial management problems remain high-risk. In a February 1995 report, GAO observed:

Despite other improvements, Customs still needs to make significant additional efforts to correct its financial management and internal control systems weaknesses. Our audits of Customs' financial statements for fiscal years 1992 and 1993 disclosed that the agency had not yet fully resolved many of the financial management problems that we reported earlier. Although efforts are underway to address recommendations from our fiscal year 1992 financial statements audit, as of May 1994, Customs had completed actions on only 11 of 54 recommendations we made.²⁸

The Office of Management and Budget also listed Customs financial management as a high risk area.²⁹

GAO's fiscal year 1993 financial audit found that Customs has not implemented controls, systems, and processes to reasonably ensure that—

- Carriers, importers, and their agents complied with trade laws. As a result, revenue owed to the Federal Government may not have been identified and quotas and other legal restrictions may have been violated.

- Sensitive data in its automated systems, such as import inspection criteria and law enforcement data, were adequately protected from unauthorized access and change.

- Full accountability was maintained for agency assets and use of appropriated funds, and computer modernization efforts were reliably determined.³⁰

The Treasury IG's audit of Customs' financial statements for fiscal year 1994 likewise resulted in a disclaimer. The IG expressed concern that if problems identified in financial statement audits at Customs and IRS (discussed previously) continue, both the consolidated Treasury and Government-wide financial statements will be materially affected.

The OIG recently completed its report on Customs' fiscal years 1995 and 1994 consolidated financial statements, and was able to express a "qualified" opinion. While this represents an important step in the right direction, the report cautioned:

Customs' progress in correcting weaknesses identified in previous audit efforts enabled us to provide limited audit assurance for the first time. While that is significant, continued progress is critical. Our report cites five material weaknesses and seven reportable conditions in the internal control structure. Our report also cites one reportable instance of noncompliance with laws and regulations.³¹

GAO also recently reported on information management problems at Customs. In order to modernize and support its import process, Customs is developing a new computerized system known as the "Automated Commercial Environment" (ACE). However, according to GAO, this effort is "vulnerable to failure because the agency is not effectively applying best practices to mitigate the serious risks associated with such an ambitious systems modernization effort." For example, Customs selected hardware, software, and telecommunications for ACE before it redesigned its key business processes. Also, Customs is not applying specific criteria in assessing project costs and benefits.³² The House committee report on the fiscal year 1997 appropriations bill echoed these concerns:

The Committee is concerned that the issues raised by the GAO report are of the same character as the problems the Committee has found regarding the Internal Revenue Service's Tax Systems Modernization (TSM) program. In the case of both ACE and TSM, the agency has proceeded with system development before completing a blueprint.³³

Accordingly, the committee prohibited use of funds for ACE without prior approval of the House and Senate Appropriations Committees and directed Customs to submit a report responding to the points raised by GAO.

ENDNOTES

¹ See generally Congressional Research Service, *Treasury, Postal Service, Executive Office of the President, and General Government: Appropriations for FY 1997*, 96-603E (August 2, 1996), p. 14; General Accounting Office, *Tax Administration: IRS' Fiscal Year 1996 and 1997 Budget Issues and the 1996 Filing Season*, GAO/T-GGD-96-99 (March 28, 1996), p. 1, 4.

² General Accounting Office, High Risk Series, *An Overview*, GAO/HR-95-1 (February 1995), pp. 44-45.

³ General Accounting Office, High Risk Series, *Internal Revenue Service Receivables*, GAO/HR-95-6 (February 1995), p. 6.

⁴ *Id.*

⁵ Office of Management and Budget, *Progress Report: Correcting High Risk Areas*, Analytical Perspectives on the Budget of the United States for Fiscal Year 1996, p. 297.

⁶ High Risk Series, *An Overview*, note 2, p. 11.

⁷ *Id.*, p. 47; High Risk Series, *Internal Revenue Service Receivables*, note 3, p. 7.

⁸ General Accounting Office, *Financial Audit: Examination of IRS' Fiscal Year 1995 Financial Statements*, GAO/AIMD-96-101 (July 11, 1996), pp. 6, 21.

⁹ General Accounting Office, *Tax Administration: IRS Debt Collection Practices*, GAO/T-GGD-96-112 (April 25, 1996), p. 3.

¹⁰ See Committee on Appropriations, House of Representatives, *Report on H.R. 3756, Treasury, Postal Service, and General Government Appropriations Bill, 1997*, H. Rept. No. 104-660 (1996), pp. 9-10; Committee on Appropriations, United States Senate, *Report on H.R. 3756, Treasury, Postal Service, and General Government Appropriations Bill, 1997*, S. Rept. No. 104-330 (1996), p. 8.

¹¹ S. Rept. No. 104-330, note 10, p. 8.

¹² High Risk Series, *An Overview*, note 2, p. 45.

¹³ *Id.*, p. 10.

¹⁴ *Financial Audit: Examination of IRS' Fiscal Year 1995 Financial Statements*, note 8, pp. 1-2, 7.

¹⁵ *Id.*, p. 2.

¹⁶ General Accounting Office, *Tax Systems Modernization: Management and Technical Weaknesses Must Be Overcome To Achieve Success*, GAO/T-AIMD-96-75 (March 26, 1996), pp. 2, 4.

¹⁷ *Id.*, pp. 1-2.

¹⁸ High Risk Series, *An Overview*, note 2, p. 57.

¹⁹ Department of the Treasury, Office of Inspector General (Treasury IG), *Semiannual Report to the Congress, April 1, 1995-September 30, 1995*, p. 7.

²⁰ Treasury IG, *Semiannual Report to the Congress, October 1, 1995-March 31, 1996*, p. 7.

²¹ General Accounting Office, *Tax Systems Modernization: Actions Underway But IRS Has Not Yet Corrected Management and Technical Weaknesses*, GAO/AIMD-96-106 (June 7, 1996), pp. 2-3.

²² *Tax Systems Modernization: Management and Technical Weaknesses Must Be Overcome To Achieve Success*, note 16, p. 4.

²³ *Tax Administration: IRS' Fiscal Year 1996 and 1997 Budget Issues and the 1996 Filing Season*, note 1, pp. 13-14.

²⁴ General Accounting Office, *Federal Management: Updated Information for Congressional Oversight* (July 1994), p. TREASURY-23.

²⁵ *Tax Administration: IRS' Fiscal Year 1996 and 1997 Budget Issues and the 1996 Filing Season*, note 1, p. 8.

²⁶ *Id.*, p. 12.

²⁷ General Accounting Office, *Managing IRS: IRS Needs to Continue Improving Operations and Service*, GAO/T-GGD/AIMD-96-170 (July 29, 1996), pp. 5-6.

²⁸ High Risk Series, *An Overview*, note 2, p. 51.

²⁹ Office of Management and Budget, *Progress Report: Correcting High Risk Areas*, Analytical Perspectives on the Budget of the United States for Fiscal Year 1996, p. 297.

³⁰ High Risk Series, *An Overview*, note 2, p. 51.

³¹ Treasury IG, *Report on the United States Customs Service's Fiscal Years 1995 and 1994 Consolidated Financial Statements*, OIG-96-060 (April 25, 1996), p. 2.

³² General Accounting Office, *Customs Service Modernization: Strategic Information Management Must Be Improved for National*

Automation Program to Succeed, GAO/AIMD-96-57 (May 9, 1996), pp. 1-2.

³³H. Rept. No. 104-660, note 10, p. 29.

Department of Veterans Affairs

OVERVIEW

The Veterans Administration was established in 1930, and was upgraded to the Department of Veterans Affairs (VA) in 1988. A large organization, with an annual budget of \$38 billion, the Department employs a staff of 256,542. The VA operates the Veterans Health Administration, the Veterans Benefits Administration, and the National Cemetery System. Its primary objective is to administer programs for and distribute benefits to the Nation's veterans.

Problems affecting the VA involve the distribution of benefits to veterans and the management of VA employees. The system utilized to distribute benefits to veterans is replete with management problems. Often, veterans and their families receive substantial overpayments. Worse, when a veteran appeals a decision by the VA, that appeal may be the subject of a two to 3 year delay. Public frustration with these problems is exacerbated when veterans learn that VA employees will fight for the chance to be paid for days on which they did no work.

The VA should re-examine the way it distributes money and the way it examines claims in order to improve service to our Nation's veterans.

COMPENSATION AND PENSION OVERPAYMENTS ¹

The Department of Veterans Affairs pays benefits to veterans who are injured or contract disease while in the service of their country. In addition, the Department of Veterans Affairs provides pension benefits to veterans whose incomes are limited and who become disabled after their time of service.

Many factors can change the amount of payments owed to the beneficiaries of the Department of Veterans Affairs programs. Among the changes in status that can affect a beneficiary's payments are changes in marital status, income, or disability. Those who become divorced, begin receipt of Social Security benefits, or become hospitalized at a VA hospital may have their benefits reduced. The primary source of information on the reduction of benefits is the beneficiaries themselves. The VA expects the beneficiaries to notify the agency if a change in their status occurs.

In 1994, the VA discovered \$372 million in overpayments. In May 1994, the VA reported 16,995 instances in which it overpaid beneficiaries. The balance of overpayments yet to be repaid rose to \$618 million.² Many of these overpayments could be prevented.

The General Accounting Office estimates that 39 percent of overpayments result when beneficiaries begin receiving Social Security benefits.³ On average, more than 4 months pass before the VA learns that a beneficiary is receiving Social Security benefits. The VA need only track the age of its beneficiaries to know when they will be eligible for Social Security benefits and contact the beneficiaries at that point to make the appropriate adjustments to their

benefits. This simple reform could have saved the Department of Veterans Affairs approximately \$52 million in 1994.⁴

In addition to the change in status as a result of Social Security benefits, the status of beneficiaries may change as the result of several other factors. The VA has no system by which to detect such changes in status. According to the General Accounting Office, the VA could better target overpayments by collecting, analyzing, and using information on the specific causes or contributing factors of overpayments.

APPEALS BACKLOG⁵

In addition to problems concerning overpayment of benefits, the VA continues to have a significant backlog of appeals regarding payments to beneficiaries. A veteran first makes a claim for benefits to one of 58 Veterans Affairs regional offices. If the veteran is dissatisfied with the decision of the regional office, he may appeal the decision to the Board of Veterans' Appeals. According to the General Accounting Office, the VA has a backlog of over 47,000 appeals before the Board. The average wait for processing of appeals is 2½ years.

The number of appeals backlogged before the Board of Veterans' Appeals more than doubled from approximately 22,400 in 1992 to approximately 47,000 in 1994.⁶ The number of decisions rendered by the Board dropped from approximately 35,000 cases in 1992 to approximately 22,000 cases in 1994. The number of days the Board will take to render a decision on all pending appeals rose from 240 days in 1992 to 781 days in 1994. The cost per case rose from approximately \$400 in 1990 to \$1,250 in 1994.

The Department of Veterans Affairs cites judicial requirements to fully explain its decisions as one of the reasons for the increased backlog and the concomitant rise in cost per case.⁷ However, many point to the complexity of the process for making appeals as the reason for the backlog. A limit on the time in which a veteran can introduce new issues to the appeal would likely reduce the time required to process an appeal. Another proposed reform would allow the Board of Veterans' Appeals to obtain requisite information itself, rather than remand the case to the Department of Veterans Affairs Regional Office to obtain that information.

While many of the proposed reforms are controversial, and may adversely affect veterans' ability to obtain benefits, the Department of Veterans Affairs should begin to address the problem. The Board of Veterans' Appeals has set no goal for the administration of appeals, and the Department of Veterans Affairs has not implemented recommendations designed to improve interaction between organizations within the VA. The VA must begin to address the backlog of appeals, or veterans will continue to suffer as a result.

SUNDAY PREMIUM PAY COSTS MILLIONS⁸

In 1993, the United States Court of Appeals for the Federal Circuit interpreted a provision of title 5 of the United States Code to mean that employees scheduled to work on a Sunday, but actually on leave, were entitled to receive "Sunday premium pay." Sunday premium pay is equal to 1.25 times the rate of basic pay for the employee. Before this court decision, Sunday premium pay was

paid on the condition that employees actually performed work on that Sunday. After the court decision, Sunday premium pay was paid in many instances while employees were on leave.

The abuse of Sunday premium pay was in evidence at a number of Federal agencies. It was most pronounced at the Department of Veterans Affairs. Before the court decision mandating the payment of Sunday premium pay to employees who did not work on that Sunday, 9 percent of the employees of the Department of Veterans Affairs took advantage of Sunday premium pay while on leave. After that court decision, 11.7 percent took advantage of Sunday premium pay while on leave. The rise in use of leave while scheduled to work on Sunday rose higher at the Department of Veterans Affairs than at any other agency.⁹

In fiscal year 1994, 4,253 employees of the Veterans Administration were scheduled to work on Sunday. 11.3 percent of those employees exercised leave on those Sundays. The General Accounting Office estimates that the Veterans Administration paid \$4 million in Sunday premium pay to employees who were on leave.¹⁰

Of the \$146.1 million in Sunday premium pay by the five agencies reviewed by the General Accounting Office, \$17.9 million was paid to employees on leave.¹¹

ENDNOTES

¹General Accounting Office, *Veterans' Benefits: VA Can Prevent Millions in Compensation and Pension Overpayments*, GAAO/HEHS-95-88 (April 28, 1995).

²*Id.*, p. 3.

³*Id.*, p. 4.

⁴*Id.*, p. 8.

⁵General Accounting Office, *Veterans' Benefits: Effective Interaction Needed Within VA to Address Appeals Backlog, Report to Congressional Requesters*, GAO/HEHS-95-190 (September 1995).

⁶*Id.*, pp. 8, 13.

⁷*Id.*, p. 20.

⁸General Accounting Office, *Sunday Premium Pay: Millions of Dollars in Sunday Premium Pay Are Paid to Employees on Leave*, GAO/GGD-95-144; May 19, 1995.

⁹*Id.*, p. 7.

¹⁰*Id.*, p. 7.

¹¹*Id.*, p. 7.

*The War on Drugs*¹

OVERVIEW

The War on Drugs, fought by the Federal Government and many other valiant private and public entities throughout the World, is made up of many different organizations. Within the Federal Government alone, the effort consists of programs that include the Federal Court System, the Food and Drug Administration, Social Security Administration, Department of Defense, Department of Agriculture's Agricultural Research Service, U.S. Forest Service, Department of the Interior's Bureau of Indian Affairs, Bureau of Land Management, Fish and Wildlife Service, National Park Service, Department of Justice's Community Policy, Immigration and Natu-

ralization Service, U.S. Marshal's Service and Tax Division, Department of Labor, Small Business Administration, Agency for International Development, Department of the Treasury's Internal Revenue Service, U.S. Secret Service, U.S. Information Agency, and Department of Health and Human Services.

While the total antidrug budget rose from \$1.5 billion in fiscal 1981 to \$13.2 billion in fiscal 1995, the Office of National Drug Control Policy (ONDCP) reports a drop in both drug interdiction and international program funding over the past 4 years, and concedes a significant shift among demand reduction programs to treatment efforts in the same time period. Drug interdiction funding fell from \$1.511 billion in fiscal 1993 to \$1.312 billion in fiscal 1994. President Clinton's fiscal 1994 budget slashed the interdiction budget by \$200 million and by \$18 million more to \$1.293 billion in fiscal 1995. For fiscal 1996, he cut interdiction by another \$15 million to \$1.278 billion. At the same time, international, or source country, counter narcotics funding fell from a high of \$523 million in fiscal 1993 to \$329 million in fiscal 1995, recovering only slightly to \$399 million in fiscal 1996.

In an attempt to rebuild the Nation's drug war, the House of Representatives has moved to appropriate \$20 million above the President's request to the Drug Enforcement Administration and restored 75 DEA agents to focus on drug interdiction.² The House of Representatives has also increased the President's Department of Defense request by \$132 million, specifically for drug interdiction.³ House appropriators have also added \$35 million to last years' appropriations for foreign counterdrug operations.⁴ And the House of Representatives has appropriated \$25 million above the administration's request for Byrne grants, those grants that support local law enforcement efforts in the war on drugs.⁵

While there has been a substantial shift away from successful interdiction programs in the past 4 years, the White House National Drug Control Strategy identifies first on its list of "National Funding Priorities for FY's 1997-99" the "[s]upport programs that expand drug treatment capacity and services so that those who need treatment can receive it." In fiscal 1993, treatment resources stood at \$2.339 billion. The figure increased to \$2.398 billion in fiscal 1994, to \$2.646 billion in fiscal 1995, and the President's request for fiscal 1996 was at an all-time high of \$2.826 billion.

However, despite the stated aim of President Clinton's strategy, namely reduction of hardcore use by heightened emphasis on treatment, the most recent data gathered by the non-partisan Drug Abuse Warning Network from emergency rooms around the country shows that "drug related emergency room cases . . . have reached the highest levels ever, in reporting going back to 1978" and "[c]ocaine, heroin, and marijuana cases all increased sharply to record levels [in 1994]."⁶

John P. Walters, president of the New Citizenship Project and former Acting Director of ONDCP, testified on March 9, 1995 before the Subcommittee on National Security, International Affairs, and Criminal Justice of the Committee on Government Reform and Oversight. He explained the value of effective treatment. Walters testified that today's Federal "government [drug] treatment bureaucracy is manifestly ineffective." He said the Clinton adminis-

tration has, on the one hand, sought increased treatment funding, yet on the other, failed to provide sufficient treatment slots to effectuate the policy: "Although Federal drug treatment spending almost tripled between FY 1988 and FY 1994, the number of treatment slots remained virtually unchanged and the estimated number of persons treated declined—from 1,557,000 in 1989 to 1,412,000 in 1994."

Walters also noted in his testimony that the current strategy's success cannot be found in chronic, hardcore drug user numbers—since these are also rising.

Nancy Reagan, the Reagan administration's most effective spokesman for the War on Drugs, also testified before the Subcommittee on National Security at its March 9, 1995 hearing. In questioning the administration's focus on hardcore drug users, she stated that "[r]oughly 80 percent of drug users are casual users. Only 20 percent are hardcore, and most of the casual users are children and adolescents. They are ones whose lives are changed by prevention and education."

Other witnesses at the March 9, 1995 hearing were also critical of President Clinton's drug strategy. Former Administrator of the Drug Enforcement Administration Robert C. Bonner agreed with the assessment of Walters and Reagan, testifying that "[t]he Clinton Strategy badly oversells the efficacy of the treatment of hardcore drug abusers" and fails to acknowledge that "studies repeatedly indicate the low success rates associated with many programs . . ." Specifically, Bonner cited the work of Harvard University's Mark Kleinman, a former member of the Clinton Justice Department Transition Team, which shows that "even the most expensive treatment program—long-term residential treatment programs costing as much as \$20,000 per patient—have success rates as low as 15 to 25 percent."

The moneys set aside for fighting the drug war on our Nation's streets are also in jeopardy. In 1993, events in Waco pointed to an abuse of funds put aside for drug enforcement. The Bureau of Alcohol, Tobacco and Firearms (ATF) sought the assistance of U.S. Military and National Guard forces in their assault on the Branch Davidian Compound in Waco, TX. Such assistance could be provided without the need for reimbursement only if the ATF could establish that drug use or drug trafficking was taking place at the residence. In order to get reimbursed for the funds used to provide support for the assault, the ATF produced stale information to point to drug manufacturing at the residence. At no time did ATF actually believe that the Branch Davidians were engaged in the manufacture or sale of illegal narcotics. Nonetheless, ATF diverted funds from the crucial fight against drugs for the use of free military assistance in their failed assault on the Branch Davidian residence in Waco, TX.

While the Clinton administration has also increased funding for Safe and Drug Free Schools programs, it is troubling that a lack of oversight of these programs has resulted in a great deal of wasted taxpayers dollars. In an examination of this problem, the Subcommittee on National Security received expert testimony and documentary evidence that the program has been subject to serious misuse, waste and abuse of funding. At an April 6, 1995 hearing,

Congresswoman Ileana Ros-Lehtinen cited specific examples of waste. She cited a program in Michigan, where “\$10 million in Federal funds intended to provide our children a front line defense against drugs was utilized for the following: Over \$81,000 for large teeth and giant toothbrushes; over \$1.5 million on a human torso model used in one lesson of one grade, not even the drug section of the curriculum; wooden cars with ping pong balls, over \$12,300; hokey pokey song, over \$18,000; over \$7000 on “sheep eyes”; dog bone kits, \$3,700; bicycle pumps, \$11,000; latex gloves, \$122,000; over \$300,000 was spent on how we feel about sound.”⁷

The committee finds that Presidential leadership on the drug problem has been particularly weak. In 1993 and 1994, President Clinton made seven addresses to the Nation; none mentioned illegal drugs. The President’s 1993 Presidential papers reveal 13 references to illegal drugs in a total 1,628 Presidential statements, addresses, and interviews. Of 1,742 Presidential statements and other utterances in 1994, illegal drugs were mentioned only 11 times.⁸

Dr. William J. Bennett, former White House Drug Czar, testified before the Subcommittee on National Security on March 9, 1995 that “the Clinton administration has abdicated its responsibility” and “has been AWOL in the War on Drugs.” Strikingly, Bennett noted that the administration’s 1995 strategy would “cut . . . more than 600 positions from drug enforcement divisions of the Drug Enforcement Administration,” cut “more than 100 drug prosecution positions in the United States Attorney’s offices,” cut “drug interdiction and drug intelligence programs from fiscal 1994 levels,” and was “an unfocused, wasteful drug strategy that will do little to target hardcore users.”

Walters pointed to the President’s 80 percent reduction in ONDCP staff, the Attorney General’s stated goal of reducing mandatory minimum sentences for drug trafficking, a Presidential directive reducing Department of Defense support to drug interdiction efforts, the reduction in resources to transit and source countries by 33 percent (from \$523.4 million in fiscal year 1993 to \$351.4 million in fiscal year 1994), a reduction in Federal domestic marijuana eradication efforts, a call by the President’s Surgeon General for study of drug legalization, and “no moral leadership or encouragement” from President Clinton himself.

Unfortunately, drug abuse numbers continue to swell under current policies. The rate of current drug use of any illicit drug among youth aged 12–17 was found to be 10.9 percent in 1995, up from 5.3 percent in 1992.⁹ The rate of marijuana use among youth aged 12–17 in 1995 is 8.2 percent, more than double the rate compared to the 3.4 percent long-term low estimated for 1992.¹⁰ The rate of cocaine use among youth aged 12–17 increased to .8 percent, double the .4 percent in 1994.¹¹ Heroin related emergencies increased by 19 percent, from 64,013 emergencies in 1994 to 76,023 in 1995.¹² Marijuana related emergencies rose 17 percent from 40,183 in 1994 to 47,069 in 1995.¹³ LSD has reached the highest rate since recordkeeping started in 1975.¹⁴

ENDNOTES

¹ Committee on Government Reform and Oversight, "National Drug Policy: A Review of the Status of the Drug War," H. Rept. No. 104-486, March 19, 1996.

² H.R. 3814, Departments of Commerce, Justice, and State FY 97 Appropriations.

³ H.R. 3610, Department of Defense FY 97 Appropriations.

⁴ H.R. 3450, Foreign Operations FY 97 Appropriations.

⁵ H.R. 3814, Departments of Commerce, Justice, and State FY 97 Appropriations.

⁶ Preliminary Estimates from the Drug Abuse Warning Network, U.S. Department of Health and Human Services, September 1995.

⁷ *Id.*, pp. 79-80.

⁸ Presidential Papers of President William Jefferson Clinton, 1993 and 1994.

⁹ U.S. Department of Health and Human Services, New National Household Survey on Drug Abuse Warning Network Data for 1995, August 1995.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

VII. MANAGEMENT REFORMS IN THE 104TH CONGRESS

This section of the report summarizes major management reforms that have been enacted by the 104th Congress.

Beginning with its first day, the 104th Congress has enacted dozens of key congressional reforms, including numerous provisions of the Contract with America. Many of these laws make important improvements in the management and administrative operations of the Federal Government. A number of laws, such as the Federal Acquisition Reform Act and the Information Technology Management Reform Act, enhance management practices governmentwide. Others make improvements in specific program areas. In addition to paving the way for substantial management reforms in the executive branch, the 104th Congress made fundamental reforms in congressional operations. This process began with the very first law enacted by the 104th Congress, the Congressional Accountability Act of 1995.

If effectively implemented, the management reforms enacted during this Congress will result in major cost savings and improvements in the efficiency of the Federal Government. These reforms also have far-reaching effects beyond the internal operations of the Federal Government. For example, the Unfunded Mandates Reform Act curbs the practice, formerly engaged in by both the executive branch and Congress, of imposing costly requirements on State and local governments without considering their consequences. The Paperwork Reduction Act and the Small Business Regulatory Enforcement Fairness Act combat unnecessary burdens imposed by Federal regulators and facilitate compliance with legitimate regulations.

The following descriptions cover both laws enacted during the 104th Congress and resolutions adopted to reform congressional op-

erations. The descriptions are limited to laws and resolutions that deal with government management issues. By no means do they cover all of the important legislation enacted during the current Congress; nor do they cover many important pieces of management reform legislation that are now before the Congress.

CONGRESSIONAL ACCOUNTABILITY ACT OF 1995—PUBLIC LAW 104-1
(ENACTED JANUARY 23, 1995)

Applies to Members of Congress and congressional employees the major Federal workplace and civil rights laws from which previous Congresses had exempted themselves. These laws include: the Age Discrimination in Employment Act, the Americans with Disabilities Act, the Civil Rights Act of 1964, the Rehabilitation Act, the Employee Polygraph Protection Act, the Federal Labor Management Relations Act, the Fair Labor Standards Act, the Family Medical Leave Act of 1993, the Occupational Safety and Health Act, the Veterans' Reemployment Rights Act, and the Worker Adjustment and Retraining Notification Act.

Establishes a Congressional Office of Compliance, and requires its Board of Directors to review provisions of Federal laws and regulations relating to the terms and conditions of employment and access to public services and accommodations; and report on whether or to what degree such provisions are applicable to the legislative branch and, if inapplicable, whether they should be made to apply.

Requires each congressional committee report accompanying any bill or joint resolution relating to terms and conditions of employment or access to public services or accommodations to: (1) describe the manner in which its provisions apply to the legislative branch; or (2) if the provisions do not apply, include a statement of the reasons why.

UNFUNDED MANDATES REFORM ACT OF 1995—PUBLIC LAW 104-4
(ENACTED MARCH 22, 1995)

Provides that when reporting a bill with a Federal mandate, a congressional committee must request a Congressional Budget Office (CBO) cost estimate. CBO must provide detailed cost estimates for each bill reported by an authorizing committee containing mandates that have an annual aggregate impact of \$50 million or greater on State and local governments or \$100 million on the private sector. A committee must publish this CBO estimate prior to floor consideration, or a point of order against further consideration of the bill would lie on the floor.

A point of order would lie on the floor against consideration of legislation that imposes intergovernmental mandates over \$50 million unless the legislation provides that the mandate is funded. It is not in order to consider any rule waiving this point of order.

Federal agencies must prepare statements assessing the costs and benefits of proposed or final rules expected to have an annual aggregate cost to States and localities, or the private sector, of \$100 million or more. Agencies are required to consider a number of regulatory alternatives in the rulemaking process and to select the least costly, least burdensome or most cost-effective option. These provisions are subject to limited judicial review.

Further, the Act directs the Advisory Commission on Intergovernmental Relations to review existing mandates and make recommendations to Congress and the President regarding their value and whether some or all should be eliminated or changed.

DISTRICT OF COLUMBIA FINANCIAL RESPONSIBILITY AND MANAGEMENT ASSISTANCE ACT OF 1995—PUBLIC LAW 104-8 (ENACTED APRIL 17, 1995)

Establishes the District of Columbia Financial Responsibility and Management Assistance Authority (“Control Board”) to oversee the financial operations of the District of Columbia Government. The Act requires the Mayor of the District of Columbia to submit annual financial plans and budgets for the District to the Control Board. The Act also provides for the Control Board to review laws passed by the District Council and to review contracts and leases executed by the District Government to ensure their compliance with the financial plan and budget. Prohibits the District from borrowing money except with the prior approval of the Control Board.

PAPERWORK REDUCTION ACT OF 1995—PUBLIC LAW 104-13 (ENACTED MAY 22, 1995)

Amends and strengthens the Paperwork Reduction Act of 1980. Requires the Office of Information and Regulatory Affairs (OIRA), in the Office of Management and Budget, to develop an information collection budget specifying the total number of paperwork “burden hours” imposed by executive agencies. Targets a 40 percent reduction in governmentwide paperwork burdens over the next 6 years by requiring OIRA to set goals of at least a 10 percent governmentwide reduction for each of fiscal years 1996 and 1997, and a 5-percent reduction for each of the following 4 fiscal years.

Extends the Paperwork Reduction Act to cover paperwork burdens imposed on educational and nonprofit institutions, Federal contractors, and tribal governments.

Imposes new responsibilities on agencies to review and control paperwork burdens. For example, requires agencies to establish a 60-day public notice and comment period for each proposed collection of information.

DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES APPROPRIATIONS ACT, 1996—PUBLIC LAW 104-50 (ENACTED NOVEMBER 15, 1995)

Sections 347 of the Act establishes a more flexible personnel management system for the Federal Aviation Administration (FAA). It frees FAA from many current statutory personnel that have limited the ability of FAA to meet the unique demands of its work force.

Section 348 of the Act establishes a similar, more flexible acquisition system for FAA, freeing the agency from many current procurement law restrictions.

LEGISLATIVE BRANCH APPROPRIATIONS ACT, 1996—PUBLIC LAW 104-53
(ENACTED NOVEMBER 19, 1995)

Cuts the congressional budget by 10 percent in fiscal year 1996, saving taxpayers \$207 million.

Cuts the House of Representatives administrative staff by 34 percent in fiscal year 1996, reducing the number of employees from 1,063 to 600 and saving taxpayers \$7 million a year.

LOBBYING DISCLOSURE ACT OF 1995—PUBLIC LAW 104-65 (ENACTED
DECEMBER 19, 1995)

Enacts the most sweeping lobbying disclosure reforms in half a century. Requires registration with the Secretary of the Senate and the Clerk of the House of Representatives by any individual lobbyist within 45 days after the individual first makes, or is employed or retained to make, a lobbying contact with either the President, the Vice President, a Member of Congress, or any other specified Federal officer or employee, including certain high-ranking members of the uniformed services.

Requires registrants to file semiannual lobbying activity reports with the appropriate congressional officials and making copies of them available to the public.

Sets forth special rules for the identification of foreign and other clients on whose behalf lobbying contacts are made with a covered legislative or executive branch official.

FEDERAL REPORTS ELIMINATION AND SUNSET ACT OF 1995—PUBLIC
LAW 104-66 (ENACTED DECEMBER 21, 1995)

Reduces costs and paperwork requirements on the executive branch by eliminating or modifying nearly 200 outdated and unnecessary statutory reporting requirements imposed on Federal agencies. Establishes a “sunset” date for other reporting requirements.

PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995—PUBLIC LAW
104-67 (ENACTED DECEMBER 22, 1995)

Enacts (by overriding President Clinton’s veto) a major reform of securities litigation law to curb abusive lawsuits by unscrupulous trial lawyers. Prohibits secret settlements of class action lawsuits, and requires that the terms of settlements be disclosed to all class members. Requires judges to screen attorneys for conflicts of interest. Discourages coercive settlements.

Directs the Securities and Exchange Commission to recommend to Congress increased protections from securities fraud and abusive or unnecessary securities fraud litigation for senior citizens and qualified retirement plans if the Commission finds that they have a need for such increased protections.

FEDERAL ACQUISITION REFORM ACT OF 1996—PUBLIC LAW 104-106,
DIVISION D (ENACTED FEBRUARY 10, 1996)

Reduces unnecessary costs, regulation, and bureaucracy in government procurement through the following reforms:

Commercial Acquisition System: Eliminates extra regulations and simplifies the contracting process for commercially available

items. By shopping smart in the way that private businesses do, the government can get better products faster and cheaper.

Reduction in Certifications: Eliminates unnecessary and costly formal written certifications by contractors that they will comply with certain prohibitions, while keeping the important prohibitions intact.

International Competitiveness: Permits the President to waive the export fee from contractors who exported products developed under government contracts, when appropriate. This fee hindered U.S. companies from selling products overseas and made them less competitive.

Competition: While permitting all interested companies an opportunity to participate in a competition for government business, provides more efficiency in the manner of obtaining competition. It permits government buyers to down-select from many bidders to the greatest number of bidders constituting an efficient competition.

INFORMATION TECHNOLOGY MANAGEMENT REFORM ACT OF 1996—
PUBLIC LAW 104–106, DIVISION E (ENACTED FEBRUARY 10, 1996)

Reduces unnecessary costs in government information technology procurement by decentralizing procurement of information technology and simplifying information technology efforts. This will help the government procure new information technology products to keep pace with the information revolution.

Requires agencies to give greater attention to information technology management. For example, it establishes Chief Information Officers as members of executive management teams and provides for the use of performance measures to ensure accountability for information technology spending results.

ICC TERMINATION ACT OF 1995—PUBLIC LAW 104–88 (ENACTED
DECEMBER 29, 1995)

Abolishes the Interstate Commerce Commission, an obsolete regulatory agency.

SMALL BUSINESS REGULATORY ENFORCEMENT FAIRNESS ACT OF
1996—PUBLIC LAW, 104–121, TITLE II (ENACTED MARCH 29, 1996)

Eases small business compliance burdens by permitting judicial review of the agency regulatory impact analyses required under the 1980 Regulatory Flexibility Act.

Requires Federal agencies to publish plain English guides to help small businesses comply with regulations.

Requires the Small Business Administration to designate a Small Business and Agriculture Regulatory Enforcement Ombudsman to: (1) ensure that small businesses that receive an audit, inspection, or other enforcement action are given a confidential means to comment on such enforcement activity; (2) establish means to receive comments from small businesses regarding enforcement actions; (3) report annually to the Congress on such comments; and (4) provide the affected agency with an opportunity to comment.

Provides for congressional review and potential disapproval of regulations issued by executive branch agencies.

FEDERAL AGRICULTURAL IMPROVEMENT AND REFORM ACT OF 1996—
PUBLIC LAW 104–127 (ENACTED APRIL 4, 1996)

Enacts the most environmentally friendly agricultural soil and water conservation provisions in 60 years, as part of the landmark Agricultural Market Transition Act, promoting crop rotation and wetlands preservation.

Reforms Federal farm programs to allow farmers to reduce pesticide and fertilizer use.

Enacts the first-ever reduction in peanut price supports.

Enacts major reforms in Federal dairy price supports and market orders.

LINE ITEM VETO ACT—PUBLIC LAW 104–130 (ENACTED APRIL 9, 1996)

Amends the Congressional Budget and Impoundment Control Act of 1974 to enact the “line item veto,” enabling the President to eliminate individual items from massive appropriations bills. This authority can be used to cut out wasteful and parochial spending projects, special interest tax breaks, and entitlement provisions. Under this authority, the President can cancel in whole any dollar amount of discretionary budget authority, any item of new direct spending, or any limited tax benefit signed into law, if the President: (1) determines that such cancellation will reduce the Federal budget deficit and will not impair essential Government functions or harm the national interest; and (2) notifies the Congress of any such cancellation.

OMNIBUS CONSOLIDATED RESCISSIONS AND APPROPRIATIONS ACT OF
1996—PUBLIC LAW 104–134 (ENACTED APRIL 26, 1996)

Reduces the number of Federal employees at 29 of the 39 major agencies.

Saves taxpayers \$23 billion in fiscal year 1996 through reductions in spending.

DEBT COLLECTION IMPROVEMENT ACT OF 1996—PUBLIC LAW, 104–134,
§ 31001 (ENACTED APRIL 26, 1996)

Enhances interagency cooperation in collecting Federal debts by providing centralized administration offset and cross-servicing authority. The Department of the Treasury will act as the coordinator of governmentwide debt collection activities, providing a mechanism for effective administrative offset and acting as a clearinghouse to assure that Federal debts are collected in a timely and efficient manner.

Creates new offset authorities to allow the Federal Government to deduct Federal debts owed by debtors from amounts the government owes them.

Gives the Attorney General permanent authority to contract with private counsel to collect delinquent non-tax civil debts.

TAXPAYER BILL OF RIGHTS 2—PUBLIC LAW 104–168 (ENACTED JULY 30,
1996)

Contains a host of provisions to afford taxpayers greater rights and protections in dealing with the Internal Revenue Service (IRS), including the following:

Establishes an Office of Taxpayer Advocate within the IRS to: (1) assist taxpayers in resolving problems with the IRS; (2) identify areas in which taxpayers have problems in dealings with the IRS; and (3) propose administrative and identify legislative changes to mitigate the problems.

Requires prior notification to taxpayers under an installment agreement to pay tax liability before altering, modifying, or terminating such an agreement, and provides for administrative review of installment agreement terminations.

Authorizes the abatement of interest in the case of an assessment due to an unreasonable error or delay on the part of IRS. Allows abatement of the penalty: (1) on a person's inadvertent failure to deposit any employment tax in certain circumstances; and (2) the first time a deposit is required if the deposit is inadvertently sent to the Secretary instead of to the appropriate depository.

Makes a number of reforms in IRS tax collection practices and activities.

Liberalizes the rules for awarding litigation costs and fees to individuals who prevail in lawsuits against the IRS.

Directs the Secretary of the Treasury to disclose certain information where more than one person is liable for a penalty. Allows each person who paid the penalty to recover proportionately from other liable persons. Prohibits imposing a penalty (for a failure to collect and pay over a tax) on unpaid, volunteer, honorary board members of tax-exempt organizations who do not participate in day-to-day financial operations or have actual knowledge of the failure.

Generally prohibits retroactive tax regulations.

HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT—PUBLIC LAW 104–191, TITLE V (ENACTED AUGUST 21, 1996)

Amends Title XI of the Social Security Act to direct the Secretary of Health and Human Services, acting through the HHS Office of Inspector General and the Attorney General, to establish a program to: (1) coordinate Federal, State, and local law enforcement programs to control health care fraud and abuse; (2) conduct investigations, audits, and inspections relating to the delivery of and payment for health care; (3) facilitate enforcement of certain provisions of that title and other acts applicable to health care fraud and abuse; (4) provide for the modification and establishment of safe harbors and to issue interpretative rulings and special fraud alerts; and (5) provide for the reporting and disclosure of certain final adverse actions against health care providers, suppliers, or practitioners pursuant to the data collection system established by this title.

HOUSE RESOLUTION 6 (ADOPTED JANUARY 5, 1995)

Requires a three-fifths super-majority vote in the House to raise income tax rates and prohibited retroactive income tax increases.

Abolishes commemorative bills—a form of legislation that constituted half of all the bills passed by some previous Congresses.

Cuts House committee staff by one third, saving taxpayers \$45 million a year.

Bans “proxy voting” at congressional committees by absent Members.

Guarantees media access to all public meetings and hearings in the House.

Imposes a 6-year term limit on all House committee and subcommittee chairmen.

Imposes an 8-year term limit on the Speaker of the House.

Provides for an independent accounting firm to perform the first-ever comprehensive audit of House financial records.

Abolishes the Office of House Doorkeeper.

Requires the Clerk of the House to submit semiannual reports on the financial and operational status of functions under the Clerk’s jurisdiction.

Imposes a similar reporting requirement on the Sergeant-at-Arms

Creates a Chief Administrative Officer of the House to have operational and financial responsibility for functions as assigned by the Speaker and the Committee on House Oversight.

HOUSE RESOLUTION 107 (ADOPTED MARCH 15, 1995)

Cuts House committee funding by 30 percent compared with the preceding Congress, saving taxpayers \$67 million over 2 years.

HOUSE RESOLUTION 250 (ADOPTED NOVEMBER 16, 1995)

Imposes the strictest congressional gift ban in history, prohibiting House Members and staff from accepting work-related gifts, meals, or trips (except for bona fide work-related fact finding trips requiring substantial participation by the Member or staffer).

CLARIFYING COMMENTS BY HON. WILLIAM F. CLINGER, JR.,
CHAIRMAN

The first sentence of the section in this document regarding durable medical equipment should read, "The durable medical equipment industry (Suppliers of prosthetic devices, wheelchairs, orthotics, etc.) has consistently suffered from waves of fraudulent schemes in which Medicare or Medicaid has been billed for equipment never delivered, higher-cost equipment than that actually delivered, unnecessary equipment or supplies or equipment delivered in a different State from that billed, in order to obtain higher reimbursement."

HON. WILLIAM F. CLINGER, JR.

MINORITY VIEWS OF HON. CARDISS COLLINS

This report was drafted by the majority in absolute secrecy from the minority and was not provided to the members until the last minute. I doubt that any of the committee members have had an opportunity to review it. Because the report is not based on any particular hearings and the minority was not included in its preparation, there is no way to know if its findings are accurate.

The majority report appears to be an effort to discredit the administration's claims of success in its National Performance Review. While the minority would have no objection to an objective examination of the administration's management efforts, the committee made no effort to do so, and there has been no opportunity at hearings to judge the veracity of the administration's claims.

A better approach might have been to request a non-partisan organization such as the General Accounting Office to review both the majority's report and the administration's efforts to determine the success of the National Performance Review. That would be the responsible way to conduct important oversight.

Lacking such an objective approach, the only fair way to proceed is to place the administration's claims side-by-side with the majority's criticisms, and to let the public decide for themselves the success of the administration's efforts. Therefore, we refer readers to the recent report by the Vice President of the National Performance Review entitled, "The Best Kept Secrets In Government," which claims significant progress in many areas and savings to the taxpayers of \$118 billion.

HON. CARDISS COLLINS.

