

April 20, 2005

Mr. Al Stewart, Procurement Executive
U.S. Department of Labor Room S-1524
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Dear Mr. Stewart:

This challenge signals the intent of the National Council of Field Labor Locals (NCFLL) to fight every attempt to transfer Department of Labor (DOL) functions to "for-profit" contractors with unknown or questionable records. It is, and has always been in the best interest of the American worker to be served by the dedicated, well trained, highly skilled and professional federal employees of the Labor Department.

The protection of American worker's pensions, wages, and job safety & health provided by DOL career professionals is simply too valuable a service to the American public and our economy to turn over to private contractors. Studies prove that contractors often provide low wages, little job security, and poor benefits. Contract employees often lack long term experience, academic preparation, and professional training. If DOL replaces committed public employees with private contractors the American worker can expect high turnover rates and deterioration of the quality of work performed by this agency.

Essential positions must be preserved in the interest of the American worker. They include Mine Safety and Health Inspectors, Occupational Safety and Health Compliance Officers, Wage and Hour Investigators, Federal Workers Compensation Claims Examiners, Office of Federal Contract Compliance Officers, Pension and Welfare Benefits Administrators, Bureau of Labor Management Standards employees and the indispensable and experienced support staffs on whom they rely and interact with daily.

After continuing reviews of the ongoing investigations relating to government contractors, we still maintain that an informed electorate and Congress will resist the replacement of federal employees with contractors. It is our intention to ensure that such action will receive the highest level of public and private exposure that our resources can provide. We will work hand in hand with the American Federation of Government Employees (AFGE) and the American Federation of Labor and Congress of International Organizations (AFL-CIO) to alert the public and Congress to the danger of placing the vital missions of the Department of Labor in the hands of minimum wage employees who work for bottom-line oriented contractors.

Interested Party

I serve as President of the National Council of Field Labor Locals (NCFLL) AFGE, AFL-CIO, which represents 7,000 employees working in DOL. In this capacity, I am an "interested party" as established under the provisions of section 3(b) of the Federal Activities and Inventory Reform Act (FAIR Act) of 1998, Public Law 105-270. As the head of a labor organization as described in section 7103(a)(4) of title 5, United States Code, I submit the following challenge to select items contained in DOL'S Commercial Activities Inventory of March 16, 2005.

Reason for Challenge

The journey levels of most DOL functions are currently excluded from the 2004 Fair Act Inventory (Commercial Listing). This indicates these positions are, at least for now, recognized as core or inherently governmental.

The majority of functions listed on the 2004 Fair Act Inventory are primarily support positions. We challenge the inclusion of these functions in the 2004 Fair Act Inventory for the following reasons:

- The functions closely support and are intimately related to the Core Mission of DOL, including those Inherently Governmental Functions, as to mandate performance by Government employees.
- The functions significantly affect the life and property of private persons.
- Primarily females and minorities perform many functions that are included in the 2004 inventory. Therefore, their inclusion is essentially discriminatory.
- The performance of the functions by government employees ensures that the interests and concerns of the public and the agency regarding the safeguarding of classified information are appropriately addressed.
- Contractors may have interests that are not in concert with the public interest and may be beyond the reach of management controls otherwise applicable to public employees.
- The functions performed by these employees entail access to confidential, privacy act sensitive information.
- The functions determine what supplies or services are to be approved and acquired by the government.
- The functions collect fines, penalties, costs, or other charges from public and private entities.
- The performance of these functions by government employees ensures that any final agency action complies with the laws, executive orders, and regulations and policies of the United States.
- The performance of these functions by government employees protects the interests and concerns of the public and the agency regarding the safeguarding of classified information and statistical data.
- The performance of these functions by government employees ensures that the Government uses informed, independent opinions when it utilizes service contracts. It provides for greater scrutiny and an appropriate enhanced degree of management oversight when contracting for functions that are not inherently governmental but closely support the performance of inherently governmental functions.

Functions Under Challenge:

We challenge the following functions.

B-Personnel Management

B000-Personnel Administrative Support-21 FTE

Recommendation:

DOL should uphold this challenge and exclude Personnel Administrative Support, function code B000, from its list of commercial activities.

Reason for Challenge:

Personnel Clerical/Assistance (GS-0203) functions should be classified as inherently governmental as defined under revised OMB Circular A-76 because this activity requires substantial discretion in applying governmental authority and protects economic and privacy interests.

Basis of Challenge:

Personnel Administrative Support on behalf of DOL entails access to privacy, personnel sensitive or confidential information. The protection of this information falls within the government's authority to protect the interests of its citizens in so far as it significantly affects the life, liberty, or property of private persons, and therefore must remain inherently governmental. Maintaining this function as inherently governmental ensures that any final agency action complies with the laws and policies of the United States. Maintaining this function as inherently governmental ensures that decisions reflect the independent conclusions of agency official and not those of contractors who may have interests that are not in concert with the public interest, and any be beyond the reach of management controls otherwise applicable to public employees.

Agency and contractor management will discover that it will be difficult for managers to carry out the core and inherently governmental functions of DOL with contract employees. The first concern of government contractors is not the performance of DOL work it is the creation of profit. Job duties or functions not specifically named by contract will not be performed. To get contractor employees to perform work outside the scope of the contract will require agency managers to renegotiate the terms of specific contracts.

OASAM	GA	ATLANTA	US	3B000	C	B	2003
OASAM	MA	BOSTON	US	3B000	C	B	2003
OASAM	IL	CHICAGO	US	3B000	C	B	1999
OASAM	TX	DALLAS	US	7B000	C	B	2002
OASAM	NY	NEW YORK	US	1B000	C	B	2003
OASAM	PA	PHILADELPHIA	US	2B000	C	B	2003
OASAM	PA	PHILADELPHIA	US	2B000	C	B	2004

B-100 Classification- 1-FTE

Recommendation:

DOL should uphold this challenge and exclude Classification, function code B100, from its list of commercial activities.

Reason for Challenge:

Position Classification (GS-0221) functions should be classified as inherently governmental as defined under revised OMB Circular A-76 because this activity requires substantial discretion in applying governmental authority and protects economic and privacy interests.

Basis of Challenge:

Classification involves access to privacy, personnel sensitive or confidential information. The protection of this information falls within the government's authority to protect the interests of its citizens in so far as it significantly affects the life, liberty, or property of private persons, and therefore must remain inherently governmental. Maintaining this function as inherently governmental ensures that any final agency action complies with the laws and policies of the United States. Maintaining this function as inherently governmental ensures that decisions reflect the independent conclusions of agency official and not those of contractors who may have interests that are not in concert with the public interest, and any be beyond the reach of management controls otherwise applicable to public employees.

In addition, the DOL FAIR Act Inventory submission violates both the established precedent rule and the principle of consistency within function codes by classifying the incumbents in Function Code B100 as both commercial and inherently governmental. All FTEs associated with a function should be classified as either inherently governmental or commercial in compliance with OMB guidance. Circular A-76 clearly states that "agencies shall identify all activities performed by government personnel as either commercially or inherently governmental". (Pg. 4(a)). It does not allow activities to be identified as both. Agencies are required to use the function codes provided by OMB, not create sub-function codes by dividing the functions between commercial and inherently governmental. In fact, OMB has provided previous guidance indicating that functions should be classified in a uniform manner. The Revised Supplemental Handbook for Circular A-76, located on the OMB web site, indicates that precedent, such as other agencies' conflicting classification of a function as inherently governmental, is a valid reason to challenge the designation of a function on the FAIR Act Inventory (Appendix 2, paragraph (G)(3)). This guidance indicates that classification of a function should be consistent between agencies, so classification of a function should most certainly be consistent within an agency. While the Revised Supplemental Handbook has been replaced by the revised Circular, no part of the new Circular contradicts this principle.

B200-Employee Development-1 FTE

Recommendation:

DOL should uphold this challenge and exclude Employee Development, function code B200, from its list of commercial activities.

Reason for Challenge:

Employee Development (GS-0235) functions should be classified as inherently governmental as defined under revised OMB Circular A-76 because this activity requires substantial discretion in applying governmental authority and protects economic and privacy interests.

Basis of Challenge:

Employee Development entails access to privacy, personnel sensitive or confidential information. The protection of this information falls within the government's authority to protect the interests of its citizens in so far as it significantly affects the life, liberty, or property of private persons, and therefore must remain inherently governmental. Maintaining this function as inherently governmental ensures that any final agency action complies with the laws and policies of the United States. Maintaining this function as inherently governmental ensures that decisions reflect the independent conclusions of agency official and not those of contractors who may have interests that are not in concert with the public interest, and any beyond the reach of management controls otherwise applicable to public employees.

In addition, the DOL FAIR Act Inventory submission violates both the established precedent rule and the principle of consistency within function codes by classifying the incumbents in Function Code B200 as both commercial and inherently governmental. All FTEs associated with a function should be classified as either inherently governmental or commercial in compliance with OMB guidance. Circular A-76 clearly states that "agencies shall identify all activities performed by government personnel as either commercially or inherently governmental". (Pg. 4(a)). It does not allow activities to be identified as both. Agencies are required to use the function codes provided by OMB, not create sub-function codes by dividing the functions between commercial and inherently governmental. In fact, OMB has provided previous guidance indicating that functions should be classified in a uniform manner. The Revised Supplemental Handbook for Circular A-76, located on the OMB web site, indicates that precedent, such as other agencies' conflicting classification of a function as inherently governmental, is a valid reason to challenge the designation of a function on the FAIR Act Inventory (Appendix 2, paragraph (G)(3)). This guidance indicates that classification of a function should be consistent between agencies, so classification of a function should most certainly be consistent within an agency. While the Revised Supplemental Handbook has been replaced by the revised Circular, no part of the new Circular contradicts this principle.

B300-Staffing Reviews-3 FTE

Recommendation:

DOL should uphold this challenge and exclude Staffing Reviews, function code B300, from its list of commercial activities.

Reason for Challenge:

Personnel Staffing (GS-0212) functions should be classified as inherently governmental as defined under revised OMB Circular A-76 because this activity requires substantial discretion in applying governmental authority and protects economic and privacy interests.

Basis of Challenge:

Staffing Reviews involves access to privacy, personnel sensitive or confidential information. The protection of this information falls within the government's authority to protect the interests of its citizens in so far as it significantly affects the life, liberty, or property of private persons, and therefore must remain inherently governmental. Maintaining this function as inherently governmental ensures that any final agency action complies with the laws and policies of the United States. Maintaining this function as inherently governmental ensures that decisions reflect the independent conclusions of agency official and not those of contractors who may have interests that are not in concert with the public interest, and any be beyond the reach of management controls otherwise applicable to public employees.

In addition, the DOL FAIR Act Inventory submission violates both the established precedent rule and the principle of consistency within function codes by classifying the incumbents in Function Code B300 as both commercial and inherently governmental. All FTEs associated with a function should be classified as either inherently governmental or commercial in compliance with OMB guidance. Circular A-76 clearly states that "agencies shall identify all activities performed by government personnel as either commercially or inherently governmental". (Pg. 4(a)). It does not allow activities to be identified as both. Agencies are required to use the function codes provided by OMB, not create sub-function codes by dividing the functions between commercial and inherently governmental. In fact, OMB has provided previous guidance indicating that functions should be classified in a uniform manner. The Revised Supplemental Handbook for Circular A-76, located on the OMB web site, indicates that precedent, such as other agencies' conflicting classification of a function as inherently governmental, is a valid reason to challenge the designation of a function on the FAIR Act Inventory (Appendix 2, paragraph (G)(3)). This guidance indicates that classification of a function should be consistent between agencies, so classification of a function should most certainly be consistent within an agency. While the Revised Supplemental Handbook has been replaced by the revised Circular, no part of the new Circular contradicts this principle.

OASAM	CA	SAN FRANCISCO	US	2B300	C	B		2001
OASAM	CA	SAN FRANCISCO	US	1B300	C	B		2002

B301-Personnel Processing-7 FTE

Recommendation:

DOL should uphold this challenge and exclude Personnel Processing, function code B301, from its list of commercial activities.

Reason for Challenge:

Personnel Processing functions should be classified as inherently governmental as defined under revised OMB Circular A-76 because this activity requires substantial discretion in applying governmental authority and protects economic and privacy interests.

Basis of Challenge:

The Personnel Processing of employees involves access to privacy, personnel sensitive or confidential information, including Social Security numbers, personnel files, disciplinary actions, addresses, and other personal information. The protection of this information falls within the government's authority to protect the interests of its citizens in so far as it significantly affects the life, liberty, or property of private persons. Categorizing this function as inherently governmental will preserve the privacy of federal workers and ensure that employee morale is not undermined by private contractor abuse of sensitive information.

OASAM IL	CHICAGO	US	2B301	C	B		2002
OASAM MO	KANSAS CITY	US	1B301	C	B		2002
OASAM CA	SAN FRANCISCO	US	4B301	C	B		2002

B400-Employee Relations-2 FTE

Recommendation:

DOL should uphold this challenge and exclude Employee Relations, function code B400, from its list of commercial activities.

Reason for Challenge:

Employee Relations (GS-0230) functions should be classified as inherently governmental as defined under revised OMB Circular A-76 because this activity requires substantial discretion in applying governmental authority and protects economic and privacy interests.

Basis of Challenge:

Employee Relations entails access to privacy, personnel sensitive or confidential information, including Social Security numbers, personnel files, disciplinary actions, addresses, and other personal information. The protection of this information falls within the government's authority to protect the interests of its citizens in so far as it significantly affects the life, liberty, or property of private persons. Categorizing this function as inherently governmental will preserve the privacy of federal workers and ensure that employee morale is not undermined by private contractor abuse of sensitive information.

OASAM IL CHICAGO 2 B400 C B 2001

B401-Benefits Reviews and Analysis-1 FTE

Recommendation:

DOL should uphold this challenge and exclude Benefits Reviews and Analysis, function code B401, from its list of commercial activities.

Reason for Challenge:

Benefit Review functions should be classified as inherently governmental as defined under revised OMB Circular A-76 because this activity requires substantial discretion in applying governmental authority and protects economic and privacy interests.

Basis of Challenge:

Benefits Reviews and Analysis entails access to privacy, personnel sensitive or confidential information, including Social Security numbers, personnel files, disciplinary actions, addresses, and other personal information. The protection of this information falls within the government's authority to protect the interests of its citizens in so far as it significantly affects the life, liberty, or property of private persons. Categorizing this function as inherently governmental will preserve the privacy of federal workers and ensure that employee morale is not undermined by private contractor abuse of sensitive information.

OASAM | IL CHICAGO 1 B401 C B | 2002

501- Agency Equal Employment Opportunity Reviews- 1 FTE

Recommendation:

DOL should uphold this challenge and exclude Agency Equal Employment Opportunity Reviews, function code B501, from its list of commercial activities.

Reason for Challenge:

Equal Employment Opportunity functions (GS-0260) should be classified as inherently governmental as defined under revised OMB Circular A-76 because this activity requires substantial discretion in applying governmental authority and protects economic and privacy interests.

Basis of Challenge:

The performance of the function by government employees ensures that the interests and concerns of the public and the Department of Labor regarding the protection of minorities and women's rights are appropriately addressed and protected. This may not necessarily be in the interest of contractors, which may have concerns that are not in concert with public interest.

In addition, the DOL FAIR Act Inventory submission violates both the established precedent rule and the principle of consistency within function codes by classifying the incumbents in Function Code B501 as both commercial and inherently governmental. All FTEs associated with a function should be classified as either inherently governmental or commercial in compliance with OMB guidance. Circular A-76 clearly states that "agencies shall identify all activities performed by government personnel as either commercially or inherently governmental". (Pg. 4(a)). It does not allow activities to be identified as both. Agencies are required to use the function codes provided by OMB, not create sub-function codes by dividing the functions between commercial and inherently governmental. In fact, OMB has provided previous guidance indicating that functions should be classified in a uniform manner. The Revised Supplemental Handbook for Circular A-76, located on the OMB web site, indicates that precedent, such as other agencies' conflicting classification of a function as inherently governmental, is a valid reason to challenge the designation of a function on the FAIR Act Inventory (Appendix 2, paragraph (G)(3)). This guidance indicates that classification of a function should be consistent between agencies, so classification of a function should most certainly be consistent within an agency. While the Revised Supplemental Handbook has been replaced by the revised Circular, no part of the new Circular contradicts this principle.

OSHA I IL ARLINGTON HEIGHTS 1 B501 C B I 2003

B-700- B720 -Personnel Management Specialist-48 FTE

Recommendation:

DOL should uphold this challenge and exclude Personnel Management Specialist, function code B700, and B720 from its list of commercial activities.

Reason for Challenge:

Personnel Management functions (GS-0201) should be classified as inherently governmental as defined under revised OMB Circular A-76 because this activity requires substantial discretion in applying governmental authority and protects economic and privacy interests.

Basis of Challenge:

Personnel Management Support and Civilian Personnel Operations entails access to private, personnel sensitive or confidential information, including Social Security numbers, personnel files, addresses, Privacy Act material, health and insurance information, and other personal data. The protection of this information falls within the government's authority to protect the interests of its citizens in so far as it significantly affects the life, liberty, or property of private persons. Categorizing this function as inherently governmental will preserve the privacy of federal workers and ensure that employee morale is not undermined by private contractor abuse of sensitive information.

In addition, the DOL FAIR Act Inventory submission violates both the established precedent rule and the principle of consistency within function codes by classifying the incumbents in Function Code B700 and B720 as both commercial and inherently governmental. All FTEs associated with a function should be classified as either inherently governmental or commercial in compliance with OMB guidance. Circular A-76 clearly states that “agencies shall identify all activities performed by government personnel as either commercially or inherently governmental”. (Pg. 4(a)). It does not allow activities to be identified as both. Agencies are required to use the function codes provided by OMB, not create sub-function codes by dividing the functions between commercial and inherently governmental. In fact, OMB has provided previous guidance indicating that functions should be classified in a uniform manner. The Revised Supplemental Handbook for Circular A-76, located on the OMB web site, indicates that precedent, such as other agencies’ conflicting classification of a function as inherently governmental, is a valid reason to challenge the designation of a function on the FAIR Act Inventory (Appendix 2, paragraph (G)(3)). This guidance indicates that classification of a function should be consistent between agencies, so classification of a function should most certainly be consistent within an agency. While the Revised Supplemental Handbook has been replaced by the revised Circular, no part of the new Circular contradicts this principle

ESA	GA	ATLANTA	US	3B700	C	B	2002
OASAM	GA	ATLANTA	US	6B700	C	B	2003
OASAM	MA	BOSTON	US	2B700	C	B	2003
ESA	IL	CHICAGO	US	4B700	C	B	2002
OASAM	IL	CHICAGO	US	5B700	C	B	1999
ESA	TX	DALLAS	US	4B700	C	B	2002
OASAM	TX	DALLAS	US	7B700	C	B	2002
OASAM	CO	DENVER	US	1B700	C	B	2004
OASAM	NY	NEW YORK	US	4B700	C	B	2003
ESA	PA	PHILADELPHIA	US	1B700	C	B	2002
ESA	CA	SAN FRANCISCO	US	3B700	C	B	2002
OASAM	CA	SAN FRANCISCO	US	2B700	C	B	2002
ESA	WA	SEATTLE	US	1B700	C	B	2002
OASAM	PA	PHILADELPHIA	US	5B720	C	B	2004

C-Finance and Accounting

C000-Finance and Accounting-Administrative Support-16.1 FTE

C100-Finance and Accounting-Voucher Examining-1 FTE

C300-Finance and Accounting-Accounting Technicians-7.5 FTE

C302-Travel Processing -3.75 FTE

C307-Finance and Accounting-General Accounting-12.25 FTE

C310-Finance and Accounting-Payroll Processing-1 FTE

C312-Payments Issuance Support/Processing-1 FTE

C313-Finance and Accounting-Financial Systems Support-1 FTE

C314-Finance and Accounting-Financial Management and Program Planning-1 FTE

C315-Finance and Accounting-Financial Management Operations-1 FTE

C400-Finance and Accounting-Budget Support-8.25 FTE

C403-Financial Program Management-1 FTE

C700-Finance and Accounting-Finance/Accounting Services-2.5 FTE

Recommendation:

DOL should uphold this challenge and exclude Finance and Accounting, function codes C000, C100, C300, C302, C307, C310, C312, C313, C314, C315, C400, C403, C700 from its list of commercial activities.

Reason for Challenge:

Finance and Accounting functions should be classified as inherently governmental as defined under revised OMB Circular A-76 because this activity requires substantial discretion in applying governmental authority and protects economic and privacy interests.

Function Code: C000

Basis of Challenge:

The duties of the incumbent in this position support the financial responsibilities of the Agency through, among other functions, the review of budgetary formats; ensuring the accuracy of funding requests, schedules and justifications; preparing budget status reports on Agency accounts; and, conducting research to obtain factual information and/or interpretation. The incumbent uses initiative and judgment, i.e. substantial discretion in interpreting and applying guidelines and principles. These duties are part of the chain that ultimately bind the U.S. government; determine, protect and advance U.S. interests and affect the life, liberty and property of private persons. Financial Budget Assistants have access to and maintain highly confidential information. This protects the Government.

The incumbent in this position gathers and disseminates information and data to assure that Agency resources and assets such as Agency property are properly maintained; assembles, reviews and verifies financial documentation on purchase orders, contracts and other obligating documents; researches information in the financial management system and monitors contractor performance and deliveries; reviews contract expenditures; and, determines whether proposed costs are reasonable and should be paid. The Financial Technician independently processes the most difficult procedural and technical tasks or actions and handles problems. Thus, the incumbent exercises independence utilizes substantial discretion in the exercise of duties; and binds the U.S. Government to action. This, in turn, determines, protects and advances U.S. interests and affects the life, liberty and property of private persons. The Financial Technician has access to and maintains highly confidential information.

Finance and Accounting functions entail access to privacy, personnel sensitive, or confidential information. The protection of this information falls within the government's authority to protect the interests of its citizens in so far as it significantly affects the life, liberty, or property of private persons, and therefore must remain inherently governmental. Maintaining these functions as inherently governmental ensures that any final agency action complies with the laws and policies of the United States. Maintaining this function as inherently governmental ensures that decisions reflect the independent conclusions of agency official and not those of contractors who may have interests that are not in concert with the public interest, and any beyond the reach of management controls otherwise applicable to public employees.

Agency and contractor management will discover that it will be difficult for managers to carry out core and inherently governmental functions of DOL with contract employees. The first concern of government contractors is not the performance of government work it is the creation of profit. Functions not specifically named in a contract will not be performed. To get contractor employees to perform work outside the scope of the contract will force managers to renegotiate the agreement.

In addition, the DOL FAIR Act Inventory submission violates both the established precedent rule and the principle of consistency within function codes by classifying the incumbents in Function Code C000 as both commercial and inherently governmental. All FTEs associated with a function should be classified as either inherently governmental or commercial in compliance with OMB guidance. Circular A-76 clearly states that "agencies shall identify all activities performed by government personnel as either commercially or inherently governmental". (Pg. 4(a)). It does not allow activities to be identified as both. Agencies are required to use the function codes provided by OMB, not create sub-function codes by dividing the functions between commercial and inherently governmental. In fact, OMB has provided previous guidance indicating that functions should be classified in a uniform manner. The Revised Supplemental Handbook for Circular A-76, located on the OMB web site, indicates that precedent, such as other agencies' conflicting classification of a function as inherently governmental, is a valid reason to challenge the designation of a function on the FAIR Act

Inventory (Appendix 2, paragraph (G)(3). This guidance indicates that classification of a function should be consistent between agencies, so classification of a function should most certainly be consistent within an agency. While the Revised Supplemental Handbook has been replaced by the revised Circular, no part of the new Circular contradicts this principle.

Function Code: C300

Basis of Challenge:

The incumbent in this position regularly and routinely processes complex transactions including payment actions; audits of payment actions; reconciles data documents with financial databases; monitors payments; reviews Certificates of Deposit, Canceled Payment Schedules and Debit Vouchers; and, provides technical guidance and assistance among other duties. Substantial discretion is utilized in selecting and applying guides, procedures and techniques and in deviating from established procedural instructions, when necessary. The work of the Financial Accounting Technician contributes to actions that binds the U.S. Government; determines, protects and advances interests of the U.S.; and, affects life, liberty and property of private persons. Information that the incumbent has access to is highly confidential.

Function Code: C307

Basis of Challenge:

The incumbent in this position processes accounts receivable verifying the accuracy and completeness of data. Duties associated with this position also include maintaining overall control over expenditure accounting; reviewing and analyzing reports; preparing reports and determining the sources of processing deficiencies. Accounting Technicians also create accounts receivable and generate billing. Accounting Technicians use accounting manuals, agency regulations, directives and must apply a good understanding of accounting procedures, techniques and the appropriate guidelines in given situations. The work is performed independently. The Accounting Technician has access to highly confidential information. The incumbent utilizes substantial discretion in performing the job. In executing the duties of this position, the Accounting Technician binds the U.S. Government; determines, protects and advances interests of the U.S., and affects life, liberty and property of private persons.

In addition, the DOL FAIR Act Inventory submission violates both the established precedent rule and the principle of consistency within function codes by classifying the incumbents in Function Code C307 as both commercial and inherently governmental. All FTEs associated with a function should be classified as either inherently governmental or commercial in compliance with OMB guidance. Circular A-76 clearly states that “agencies shall identify all activities performed by government personnel as either commercially or inherently governmental”. (Pg. 4(a)). It does not allow activities to be identified as both. Agencies are required to use the function codes provided by OMB, not create sub-function codes by dividing the functions between commercial and inherently governmental. In fact, OMB has provided previous guidance indicating that functions should be classified in a uniform manner. The Revised Supplemental Handbook for Circular A-76, located on the OMB web site, indicates that precedent, such as other agencies’ conflicting classification of a function as inherently governmental, is a valid reason to challenge the designation of a function on the FAIR Act Inventory (Appendix 2, paragraph (G)(3). This guidance indicates that classification of a function should be consistent between agencies, so classification of a function should most certainly be consistent within an agency. While the Revised Supplemental Handbook has been replaced by the revised Circular, no part of the new Circular contradicts this principle.

Function Code: C313

Basis of Challenge:

The incumbent in this position ensures that Agency systems provide financial data that is reliable, accurate, timely, and complies with internal directives and external regulations. The Systems Accountant serves as the Agency's system manager, which includes providing expert advice, guidance and direction relative to DOL's accounting system; it develops financial policies and programs and continually reviews, analyzes and evaluates accounting methods and procedures. The Systems Accountant reviews the work of others to ascertain policy compliance and effective use of resources. Projects are performed independently and the incumbent is charged with resolving conflicts within the system. This requires resourcefulness and inventiveness. The Systems Accountant has access to highly confidential information. In performing these duties, the Systems Accountant utilizes substantial discretion and makes decisions that bind the U.S. Government. Such discretion also determines, protects and advances U.S. interests; and, affects the life, liberty and property of private persons.

Finance and Accounting functions entail access to privacy, personnel sensitive, or confidential information. The protection of this information falls within the government's authority to protect the interests of its citizens in so far as it significantly affects the life, liberty, or property of private person, and therefore must remain inherently governmental. Maintaining this function as inherently governmental ensures that decisions reflect the independent conclusions of agency officials and not those of contractors who may have interests that are not in concert with the public interest, and beyond the reach of management controls otherwise applicable to public employees.

Agency and contractor management will discover that it will be difficult for managers to carry out core and inherently governmental functions of DOL with contract employees. The first concern of government contractors is not the performance of government work, it is the creation of profit. Functions not specifically named in a contract will not be performed. To get contractor employees to perform work outside the scope of the contract will force managers to renegotiate the agreement.

In addition, the DOL FAIR Act Inventory submission violates both the established precedent rule and the principle of consistency within function codes by classifying the incumbents in Function Code C313 as both commercial and inherently governmental. All FTEs associated with a function should be classified as either inherently governmental or commercial in compliance with OMB guidance. Circular A-76 clearly states that "agencies shall identify all activities performed by government personnel as either commercially or inherently governmental". (Pg. 4(a)). It does not allow activities to be identified as both. Agencies are required to use the function codes provided by OMB, not create sub-function codes by dividing the functions between commercial and inherently governmental. In fact, OMB has provided previous guidance indicating that functions should be classified in a uniform manner. The Revised Supplemental Handbook for Circular A-76, located on the OMB web site, indicates that precedent, such as other agencies' conflicting classification of a function as inherently governmental, is a valid reason to challenge the designation of a function on the FAIR Act Inventory (Appendix 2, paragraph (G)(3)). This guidance indicates that classification of a function should be consistent between agencies, so classification of a function should most certainly be consistent within an agency. While the Revised Supplemental Handbook has been replaced by the revised Circular, no part of the new Circular contradicts this principle.

OSHA	MT	BILLINGS	US	1C000	C	B	2003
ESA	MA	BOSTON	US	1C000	C	B	2002
OASAM	MA	BOSTON	US	1C000	C	B	2003
ESA	IL	CHICAGO	US	2C000	C	B	2002
OASAM	IL	CHICAGO	US	2C000	C	B	1999
ESA	MO	KANSAS CITY	US	1C000	C	B	2002
ESA	PA	PHILADELPHIA	US	2C000	C	B	2002
OASAM	PA	PHILADELPHIA	US	2C000	C	B	2004
OASAM	CA	SAN FRANCISCO	US	1C000	C	B	1999
OASAM	IL	CHICAGO	US	1C100	C	B	1999
OASAM	TX	DALLAS	US	1C300	C	B	2003
OASAM	MO	KANSAS CITY	US	1C300	C	B	1999
OASAM	NY	NEW YORK	US	3C300	C	B	2003
OASAM	PA	PHILADELPHIA	US	1C300	C	B	2003
OASAM	CA	SAN FRANCISCO	US	2C300	C	B	1999
OASAM	TX	DALLAS	US	2C302	C	B	2004
OASAM	CA	SAN FRANCISCO	US	2C302	C	B	1999
OASAM	GA	ATLANTA	US	2C307	C	B	1999
OSHA	MA	BOSTON	US	1C307	C	B	2003
OASAM	IL	CHICAGO	US	1C307	C	B	1999
OASAM	TX	DALLAS	US	1C307	C	B	1999
OASAM	TX	DALLAS	US	2C307	C	B	2002
OSHA	CO	DENVER	US	1C307	C	B	2003
OSHA	MO	KANSAS CITY	US	1C307	C	B	2003
OSHA	NJ	PARSIPPANY	US	1C307	C	B	2003
OASAM	PA	PHILADELPHIA	US	1C307	C	B	1999
OASAM	WA	SEATTLE	US	1C307	C	B	1999
OASAM	IL	CHICAGO	US	1C310	C	B	1999
OASAM	IL	CHICAGO	US	1C312	C	B	2002
OASAM	IL	CHICAGO	US	1C313	C	B	2002
OASAM	IL	CHICAGO	US	1C314	C	B	2001
OASAM	CA	SAN FRANCISCO	US	1C315	C	B	2002
OSHA	AK	ANCHORAGE	US	1C400	C	B	2003
OSHA	TX	AUSTIN	US	1C400	C	B	2003
OSHA	WV	CHARLESTON	US	1C400	C	B	2003
BLS	TX	DALLAS	US	1C400	C	B	2003
OASAM	TX	DALLAS	US	0C400	C	B	2004
OSHA	MO	KANSAS CITY	US	1C400	C	B	2003
BLS	CA	SAN FRANCISCO	US	1C400	C	B	2003
OSHA	CA	SAN FRANCISCO	US	1C400	C	B	2003
OSHA	PA	WILKES BARRE	US	1C400	C	B	2003
OASAM	PA	PHILADELPHIA	US	1C403	C	B	2004
OASAM	IL	CHICAGO	US	2C700	C	B	2002
OASAM	TX	DALLAS	US	1C700	C	B	2003

D-Regulatory and Program Management Support Services

D000-Administrative Support-176 FTE

Recommendation:

DOL should uphold this challenge and exclude Regulatory and Program Management

Administrative Support, function code D000, from its list of commercial activities.

Reason for Challenge:

Management and Program Clerical/Assistance (GS-0344) and Equal Opportunity Assistance (GS-0361) functions should be classified as inherently governmental as defined under revised OMB Circular A-76 because this activity requires substantial discretion in applying governmental authority and protects economic and privacy interests.

Basis of Challenge:

Administrative Support on behalf of DOL entails access to privacy, personnel sensitive or confidential information. The protection of this information falls within the government's authority to protect the interests of its citizens in so far as it significantly affects the life, liberty, or property of private persons, and therefore must remain inherently governmental. Maintaining this function as inherently governmental ensures that any final agency action complies with the laws and policies of the United States. Maintaining this function as inherently governmental ensures that decisions reflect the independent conclusions of agency official and not those of contractors who may have interests that are not in concert with the public interest, and any be beyond the reach of management controls otherwise applicable to public employees.

Agency and contractor management will discover that it will be difficult for managers to carry out the core and inherently governmental functions of DOL with contract employees. The first concern of government contractors is not the performance of work it is the creation of profit. Government contractors will not perform functions that are not specifically addressed by contract. To get contractor employees to perform work outside the scope of the contract will force managers to renegotiate the contract.

Primarily females and minorities perform these functions. It is therefore sadly ironic that the commercial classification of this function targets female and minority employees who work for agencies designed to protect equal treatment. Contracting out this function will harm the very people who these agencies are created to protect.

In addition, the DOL FAIR Act Inventory submission violates both the established precedent rule and the principle of consistency within function codes by classifying the incumbents in Function Code D000 as both commercial and inherently governmental. All FTEs associated with a function should be classified as either inherently governmental or commercial in compliance with OMB guidance. Circular A-76 clearly states that "agencies shall identify all activities performed by government personnel as either commercially or inherently governmental". (Pg. 4(a)). It does not allow activities to be identified as both. Agencies are required to use the function codes provided by OMB, not create sub-function codes by dividing the functions between commercial and inherently governmental. In fact, OMB has provided previous guidance indicating that functions should be classified in a uniform manner. The Revised Supplemental Handbook for Circular A-76, located on the OMBG web site, indicates that precedent, such as other agencies' conflicting classification of a function as inherently governmental, is a valid reason to challenge the designation of a function on the FAIR Act Inventory (Appendix 2, paragraph (G)(3)). This guidance indicates that classification of a function should be consistent between agencies, so classification of a function should most certainly be consistent within an agency.

ESA	NM	ALBUQUERQUE	US	1D000	C	B	2002
OSHA	WI	APPLETON	US	1D000	C	B	2003
OSHA	IL	ARLINGTON HEIGHTS	US	5D000	C	B	2003
BLS	GA	ATLANTA	US	6D000	C	B	2003
ESA	GA	ATLANTA	US	1D000	C	B	2002

OSHA	GA	ATLANTA	US	5D000	C	B	2003
WB	GA	ATLANTA	US	1D000	C	B	2000
OSHA	IL	AURORA	US	1D000	C	B	2003
OSHA	LA	BATON ROUGE	US	2D000	C	B	2003
ESA	AL	BIRMINGHAM	US	1D000	C	B	2002
OSHA	AL	BIRMINGHAM	US	1D000	C	B	2003
BLS	MA	BOSTON	US	3D000	C	B	2003
ESA	MA	BOSTON	US	2D000	C	B	2002
OSHA	MA	BOSTON	US	6D000	C	B	2003
WB	MA	BOSTON	US	1D000	C	B	2000
OSHA	NY	BOWMANSVILLE	US	1D000	C	B	2003
OSHA	MA	BRAINTREE	US	1D000	C	B	2003
OSHA	CT	BRIDGEWATER	US	2D000	C	B	2003
ESA	NY	BUFFALO	US	1D000	C	B	2002
OSHA	IL	CALUMET CITY	US	3D000	C	B	2003
OSHA	WV	CHARLESTON	US	3D000	C	B	2003
ESA	NC	CHARLOTTE	US	1D000	C	B	2002
BLS	IL	CHICAGO	US	6D000	C	B	2003
ESA	IL	CHICAGO	US	5D000	C	B	2002
OSHA	IL	CHICAGO	US	2D000	C	B	2003
WB	IL	CHICAGO	US	1D000	C	B	2000
ESA	OH	CLEVELAND	US	1D000	C	B	2002
OSHA	OH	CLEVELAND	US	1D000	C	B	2003
OSHA	OH	CLEVELAND	US	2D000	C	B	2003
OSHA	OH	COLUMBUS	US	3D000	C	B	2003
OSHA	NH	CONCORD	US	1D000	C	B	2003
BLS	TX	DALLAS	US	4D000	C	B	2003
ESA	TX	DALLAS	US	1D000	C	B	2002
OSHA	TX	DALLAS	US	3D000	C	B	2003
WB	TX	DALLAS	US	1D000	C	B	2000
WB	CO	DENVER	US	1D000	C	B	2000
OSHA	IA	DES MOINES	US	1D000	C	B	2003
ESA	MI	DETROIT	US	1D000	C	B	2002
OSHA	WI	EAU CLAIRE	US	1D000	C	B	2003
OSHA	PA	ERIE	US	1D000	C	B	2003
OSHA	TX	FORT WORTH	US	1D000	C	B	2003
OSHA	FL	FT LAUDERDALE	US	2D000	C	B	2003
ESA	CT	HARFORD	US	1D000	C	B	2002
ESA	HI	HONOLULU	US	1D000	C	B	2002
ESA	TX	HOUSTON	US	2D000	C	B	2002
OSHA	TX	HOUSTON	US	3D000	C	B	2003
OSHA	TX	HOUSTON	US	1D000	C	B	2003
ESA	IN	INDIANAPOLIS	US	1D000	C	B	2002
ESA	MS	JACKSON	US	1D000	C	B	2002
OSHA	MS	JACKSON	US	1D000	C	B	2003
ESA	FL	JACKSONVILLE	US	1D000	C	B	2002
OSHA	FL	JACKSONVILLE	US	1D000	C	B	2003
BLS	MO	KANSAS CITY	US	2D000	C	B	2003
ESA	MO	KANSAS CITY	US	1D000	C	B	2002
OSHA	MO	KANSAS CITY	US	3D000	C	B	2003
WB	MO	KANSAS CITY	US	1D000	C	B	2000
OSHA	AR	LITTLE ROCK	US	1D000	C	B	2003
OSHA	TX	LUBBOCK	US	1D000	C	B	2003
OSHA	WI	MADISON	US	1D000	C	B	2003
OSHA	MA	METHUEN	US	1D000	C	B	2003
ESA	FL	MIAMI	US	1D000	C	B	2002

ESA	WI	MILWAUKEE	US	2D000	C	B	2002
OSHA	AL	MOBILE	US	2D000	C	B	2003
ESA	TN	NASHVILLE	US	1D000	C	B	2002
OSHA	TN	NASHVILLE	US	1D000	C	B	2003
ESA	NY	NEW YORK	US	4D000	C	B	2002
BLS	NY	NEW YORK-MANHATTAN	US	4D000	C	B	2003
OSHA	NY	NEW YORK-MANHATTAN	US	2D000	C	B	2003
ESA	CA	OAKLAND	US	2D000	C	B	2002
ESA	NE	OMAHA	US	1D000	C	B	2002
ESA	CA	ORANGE	US	1D000	C	B	2002
ESA	FL	ORLANDO	US	1D000	C	B	2002
OSHA	IL	PEORIA	US	1D000	C	B	2003
BLS	PA	PHILADELPHIA	US	5D000	C	B	2003
ESA	PA	PHILADELPHIA	US	3D000	C	B	2002
OSHA	PA	PHILADELPHIA	US	4D000	C	B	2003
OSHA	PA	PITTSBURGH	US	2D000	C	B	2003
ESA	VA	RICHMOND	US	1D000	C	B	2002
ESA	UT	SALT LAKE CITY	US	1D000	C	B	2002
BLS	CA	SAN FRANCISCO	US	3D000	C	B	2003
OSHA	CA	SAN FRANCISCO	US	1D000	C	B	2003
WB	CA	SAN FRANCISCO	US	1D000	C	B	2000
ESA	PR	SAN JUAN	US	1D000	C	B	2002
OSHA	UT	SANDY	US	8D000	C	B	2003
OSHA	WA	SEATTLE	US	1D000	C	B	2003
WB	WA	SEATTLE	US	1D000	C	B	2000
OSHA	GA	SMYRNA	US	1D000	C	B	2003
ESA	MO	ST LOUIS	US	1D000	C	B	2002
OSHA	FL	TAMPA	US	1D000	C	B	2003
OSHA	OH	TOLEDO	US	1D000	C	B	2003
OSHA	GA	TUCKER	US	1D000	C	B	2003
ESA	OK	TULSA	US	1D000	C	B	2002
OSHA	KS	WICHITA	US	1D000	C	B	2003
OSHA	PA	WILKES BARRE	US	1D000	C	B	2003
OSHA	DE	WILMINGTON	US	1D000	C	B	2003

D100-Regulatory Activities Support-21 FTE

Recommendation:

DOL should uphold this challenge and exclude Regulatory Activities Support, function code D100, from its list of commercial activities.

Reason for Challenge:

Regulatory Activities Support functions should be classified as inherently governmental as defined under revised OMB Circular A-76 because this activity requires substantial discretion in applying governmental authority and protects economic and privacy interests.

Basis of Challenge:

Regulatory Activities Support on behalf of DOL entails access to privacy, personnel sensitive or confidential information. The protection of this information falls within the government's authority to protect the interests of its citizens in so far as it significantly affects the life, liberty, or property of

private persons, and therefore must remain inherently governmental. Maintaining this function as inherently governmental ensures that any final agency action complies with the laws and policies of the United States. Maintaining this function as inherently governmental ensures that decisions reflect the independent conclusions of agency official and not those of contractors who may have interests that are not in concert with the public interest, and any be beyond the reach of management controls otherwise applicable to public employees. Agency and contractor management will discover that it will be difficult for managers to carry out the core and inherently governmental functions of DOL with contract employees. The first concern of government contractors is not the performance of work it is the creation of profit. Government contractors will not perform functions that are not specifically addressed by contract. To get contractor employees to perform work outside the scope of the contract will force managers to renegotiate the contract.

Primarily females and minorities perform these functions. It is therefore sadly ironic that the commercial classification of this function targets female and minority employees who work for agencies designed to protect equal treatment. Contracting out this function will harm the very people who these agencies are created to protect.

EBSA	GA	ATLANTA	US	4D100	C	B	2003
EBSA	MA	BOSTON	US	2D100	C	B	2003
EBSA	IL	CHICAGO	US	1D100	C	B	2003
EBSA	OH	CINCINATI	US	3D100	C	B	2003
EBSA	MO	KANSAS CITY	US	5D100	C	B	2003
EBSA	CA	LOS ANGELES	US	1D100	C	B	2003
EBSA	CA	SAN FRANCISCO	US	5D100	C	B	2003

D101- Regulatory Economist/Statisticians-1 FTE

Recommendation:

DOL should uphold this challenge and exclude Regulatory Economist/Statisticians, function code D101, from its list of commercial activities.

Reason for Challenge:

Employee Relations GS-0230 functions should be classified as inherently governmental as defined under revised OMB Circular A-76 because this activity requires substantial discretion in applying governmental authority and protects economic and privacy interests.

Basis of Challenge:

The performance of these functions by government employees ensures that any final agency action complies with the laws, executive orders, and regulations and policies of the United States. These functions are intertwined with the core functions of DOL. The privatization of these functions would undermine the agency's ability to perform its work.

In addition, the DOL FAIR Act Inventory submission violates both the established precedent rule and the principle of consistency within function codes by classifying the incumbents in Function Code D101 as both commercial and inherently governmental. All FTEs associated with a

function should be classified as either inherently governmental or commercial in compliance with OMB guidance. Circular A-76 clearly states that “agencies shall identify all activities performed by government personnel as either commercially or inherently governmental”. (Pg. 4(a)). It does not allow activities to be identified as both. Agencies are required to use the function codes provided by OMB, not create sub-function codes by dividing the functions between commercial and inherently governmental. In fact, OMB has provided previous guidance indicating that functions should be classified in a uniform manner. The Revised Supplemental Handbook for Circular A-76, located on the OMBG web site, indicates that precedent, such as other agencies’ conflicting classification of a function as inherently governmental, is a valid reason to challenge the designation of a function on the FAIR Act Inventory (Appendix 2, paragraph (G)(3)). This guidance indicates that classification of a function should be consistent between agencies, so classification of a function should most certainly be consistent within an agency.

MSHA | CO LAKEWOOD US | 1D101 C B | 1999

D103-Salary/Wages Reviews-13 FTE

Recommendation:

DOL should uphold this challenge and exclude Salary/Wages Review, function code D103, from its list of commercial activities.

Reason for Challenge:

Salary and Wage Administration (GS-0223) functions should be classified as inherently governmental as defined under revised OMB Circular A-76 because this activity requires substantial discretion in applying governmental authority and protects economic and privacy interests.

Basis of Challenge:

The performance of these functions by government employees ensures that any final agency action complies with the laws, executive orders, and regulations and policies of the United States. These functions are intertwined with the core functions of DOL. The privatization of these functions would undermine the agency’s ability to perform its work.

ESA	GA	ATLANTA	US	1D103	C	B		2002
ESA	IL	CHICAGO	US	7D103	C	B		2002
ESA	PA	PHILADELPHIA	US	5D103	C	B		2002

D200-Data Collection and Analysis-3 FTE

Recommendation:

DOL should uphold this challenge and exclude Data Collection and Analysis, function code D200, from its list of commercial activities.

Reason for Challenge:

Data Collection and Analysis functions should be classified as inherently governmental as defined under revised OMB Circular A-76 because this activity requires substantial discretion in applying governmental authority and protects economic and privacy interests.

Basis of Challenge:

The performance of these functions by government employees ensures that any final agency action complies with the laws, executive orders, and regulations and policies of the United States. These functions are intertwined with the core functions of DOL. The privatization of these functions would undermine the agency's ability to perform its work. The incumbent in this position monitors and evaluates the data collection and processing activities of information reporting systems; participates in DOL's enforcement of Commission regulations regarding confidentiality; and, serves as Liaison for resolving survey problems and provides technical assistance. The Employment Data Technician utilizes specialized knowledge of office automation hardware and software. The work of this position is carried out independently. The information that the Employment Data Technician has access to is highly confidential. The Employment Data Technician position uses substantial discretion and binds the US Government; determines, protects and advances interests of the U.S.; and, affects life, liberty and property of private persons.

In addition, the DOL FAIR Act Inventory submission violates both the established precedent rule and the principle of consistency within function codes by classifying the incumbents in Function Code D200 as both commercial and inherently governmental. All FTEs associated with a function should be classified as either inherently governmental or commercial in compliance with OMB guidance. Circular A-76 clearly states that "agencies shall identify all activities performed by government personnel as either commercially or inherently governmental". (Pg. 4(a)). It does not allow activities to be identified as both. Agencies are required to use the function codes provided by OMB, not create sub-function codes by dividing the functions between commercial and inherently governmental. In fact, OMB has provided previous guidance indicating that functions should be classified in a uniform manner. The Revised Supplemental Handbook for Circular A-76, located on the OMBG web site, indicates that precedent, such as other agencies' conflicting classification of a function as inherently governmental, is a valid reason to challenge the designation of a function on the FAIR Act Inventory (Appendix 2, paragraph (G)(3)). This guidance indicates that classification of a function should be consistent between agencies, so classification of a function should most certainly be consistent within an agency.

BLS	IL	CHICAGO	US	2D200	C	B		2003
BLS	PA	PHILADELPHIA	US	1D200	C	B		2003

D300-Statistical Analysis-2 FTE

Recommendation:

DOL should uphold this challenge and exclude Statistical Analysis, function code D300, from its list of commercial activities.

Reason for Challenge:

Statistical Analysis functions should be classified as inherently governmental as defined under revised OMB Circular A-76 because this activity requires substantial discretion in applying governmental authority and protects economic and privacy interests.

Basis of Challenge:

The performance of these functions by government employees ensures that any final agency action complies with the laws, executive orders, and regulations and policies of the United States. These functions are intertwined with the core functions of DOL. The privatization of these functions would undermine the agency's ability to perform its work.

ESA	TX	DALLAS	US	1D300	C	B		2002
ESA	CA	SAN FRANCISCO	US	1D300	C	B		2002

D-410-Compliance Operations- FTE

Recommendation:

DOL should uphold this challenge and exclude Compliance Operations, function code D410, from its list of commercial activities.

Reason for Challenge:

General Inspection, Investigation, and Compliance (GS-1801) functions should be classified as inherently governmental as defined under revised OMB Circular A-76 because this activity requires substantial discretion in applying governmental authority and protects economic and privacy interests.

Basis of Challenge:

In addition, the DOL FAIR Act Inventory submission violates both the established precedent rule and the principle of consistency within function codes by classifying the incumbents in Function Code D410 as both commercial and inherently governmental. All FTEs associated with a function should be classified as either inherently governmental or commercial in compliance with OMB guidance. Circular A-76 clearly states that “agencies shall identify all activities performed by government personnel as either commercially or inherently governmental”. (Pg. 4(a)). It does not allow activities to be identified as both. Agencies are

required to use the function codes provided by OMB, not create sub-function codes by dividing the functions between commercial and inherently governmental. In fact, OMB has provided previous guidance indicating that functions should be classified in a uniform manner. The Revised Supplemental Handbook for Circular A-76, located on the OMBG web site, indicates that precedent, such as other agencies' conflicting classification of a function as inherently governmental, is a valid reason to challenge the designation of a function on the FAIR Act Inventory (Appendix 2, paragraph (G)(3)). This guidance indicates that classification of a function should be consistent between agencies, so classification of a function should most certainly be consistent within an agency.

OSHA	NY	ALBANY	US	4D410	C	B	2003
OSHA	PA	ALLENTOWN	US	1D410	C	B	2003
OSHA	WI	APPLETON	US	3D410	C	B	2003
OSHA	GA	ATLANTA	US	7D410	C	B	2003
OSHA	IL	AURORA	US	3D410	C	B	2003
OSHA	TX	AUSTIN	US	2D410	C	B	2003
OSHA	ME	BANGOR	US	3D410	C	B	2003
OSHA	LA	BATON ROUGE	US	3D410	C	B	2003
OSHA	MA	BOSTON	US	1D410	C	B	2003
OSHA	MA	BOSTON	US	1D410	C	B	2003
OSHA	NY	BOWMANSVILLE	US	5D410	C	B	2003
OSHA	MA	BRAINTREE	US	1D410	C	B	2003
OSHA	MA	BRAINTREE	US	3D410	C	B	2003
OSHA	CT	BRIDGEWATER	US	2D410	C	B	2003
OSHA	IL	CALUMET CITY	US	2D410	C	B	2003
OSHA	IL	CHICAGO	US	8D410	C	B	2003
OSHA	OH	CLEVELAND	US	5D410	C	B	2003
OSHA	SC	COLUMBIA	US	1D410	C	B	2003
OSHA	OH	COLUMBUS	US	3D410	C	B	2003
OSHA	NH	CONCORD	US	2D410	C	B	2003
OSHA	TX	CORPUS CHRISTI	US	3D410	C	B	2003
OSHA	TX	DALLAS	US	7D410	C	B	2003
OSHA	CO	DENVER	US	8D410	C	B	2003
OSHA	IA	DES MOINES	US	1D410	C	B	2003
OSHA	WI	EAU CLAIRE	US	1D410	C	B	2003
OSHA	TX	EL PASO	US	2D410	C	B	2003
OSHA	TX	FORT WORTH	US	2D410	C	B	2003
OSHA	KY	FRANKFORT	US	2D410	C	B	2003
OSHA	NJ	HASBROUCK HTS	US	4D410	C	B	2003
OSHA	TX	HOUSTON	US	7D410	C	B	2003
OSHA	MS	JACKSON	US	3D410	C	B	2003
OSHA	FL	JACKSONVILLE	US	1D410	C	B	2003
OSHA	MO	KANSAS CITY	US	# D410	C	B	2003
OSHA	TN	KNOXVILLE	US	1D410	C	B	2003
OSHA	MD	LINTHICUM	US	1D410	C	B	2003
OSHA	AR	LITTLE ROCK	US	1D410	C	B	2003
OSHA	TX	LUBBOCK	US	1D410	C	B	2003
OSHA	WI	MADISON	US	1D410	C	B	2003
OSHA	NJ	MARLTON	US	5D410	C	B	2003
OSHA	MA	METHUEN	US	2D410	C	B	2003
OSHA	WI	MILWAUKEE	US	3D410	C	B	2003
OSHA	AL	MOBILE	US	4D410	C	B	2003
OSHA	NY	NEW YORK-MANHATTAN	US	9D410	C	B	2003
OSHA	VA	NORFOLK	US	1D410	C	B	2003
OSHA	NJ	PARSIPPANY	US	3D410	C	B	2003

OSHA	IL	PEORIA	US	2D410	C	B	2003
OSHA	PA	PHILADELPHIA	US	6D410	C	B	2003
OSHA	AZ	PHOENIX	US	1D410	C	B	2003
OSHA	PA	PITTSBURGH	US	5D410	C	B	2003
OSHA	CA	SAN DIEGO	US	1D410	C	B	2003
OSHA	WA	SEATTLE	US	4D410	C	B	2003
OSHA	OH	SHARONVILLE	US	5D410	C	B	2003
OSHA	GA	SMYRNA	US	1D410	C	B	2003
OSHA	MO	ST LOUIS	US	4D410	C	B	2003
OSHA	NY	SYRACUSE	US	2D410	C	B	2003
OSHA	GA	TUCKER	US	2D410	C	B	2003
OSHA	AL	VESTAVIA HILLS	US	2D410	C	B	2003
OSHA	NY	WESTBURY	US	1D410	C	B	2003
OSHA	KS	WICHITA	US	6D410	C	B	2003
OSHA	PA	WILKES BARRE	US	2D410	C	B	2003
OSHA	DE	WILMINGTON	US	1D410	C	B	2003

D604-Customer Service Contacts-6 FTE

Recommendation:

DOL should uphold this challenge and exclude Customer Service Contacts, function code D604, from its list of commercial activities.

Reason for Challenge:

The functions of Customer Service Contacts should be classified as inherently governmental as defined under revised OMB Circular A-76 because this activity requires substantial discretion in applying governmental authority and protects economic and privacy interests.

Basis of Challenge:

Customer Service Contacts involve access to privacy, personnel sensitive or confidential information, including Social Security numbers, addresses, and other personal information. The protection of this information falls within the government's authority to protect the interests of its citizens in so far as it significantly affects the life, liberty, or property of private persons. Categorizing this function as inherently governmental will preserve the privacy of citizens and ensure that employee morale is not undermined by private contractor abuse of sensitive information.

ESA	OH	CLEVELAND	US	3D604	C	B	2002
ESA	OH	CLEVELAND	US	1D604	C	B	2002
ESA	CO	DENVER	US	1D604	C	B	2002
ESA	WV	LOGAN	US	1D604	C	B	2002

D701-D703 Marketing and Outreach-15 FTE

Recommendation:

DOL should uphold this challenge and exclude Marketing and Outreach, function code D701, D703, from its list of commercial activities.

Reason for Challenge:

Marketing and Outreach functions should be classified as inherently governmental as defined under revised OMB Circular A-76 because this activity requires substantial discretion in applying governmental authority and protects economic and privacy interests.

Basis of Challenge:

The incumbent who perform this function have access to private, personnel sensitive and confidential information. Preserving the sanctity of this data demands the discretionary exercise of Government authority and therefore involves the act of governing. These activities require the use of Government authority to protect the interests of its citizens as this data significantly affects the life, liberty, or property of private persons. Maintaining this function as inherently governmental guarantees any final agency action complies with the laws and policies of the United States. It ensures that decisions reflect the independent conclusions of agency officials and not those of contractors and private companies that may profit from the misuse of this personal information.

EBSA	GA	ATLANTA	US	1D701	C	B	2003
EBSA	MA	BOSTON	US	1D701	C	B	2003
EBSA	IL	CHICAGO	US	1D701	C	B	2003
EBSA	OH	CINCINATI	US	1D701	C	B	2003
EBSA	TX	DALLAS	US	1D701	C	B	2003
EBSA	MO	KANSAS CITY	US	1D701	C	B	2003
EBSA	CA	LOS ANGELES	US	1D701	C	B	2003
EBSA	NY	NEW YORK	US	1D701	C	B	2003
EBSA	PA	PHILADELPHIA	US	1D701	C	B	2003
EBSA	CA	SAN FRANCISCO	US	1D701	C	B	2003
ESA	CO	DENVER	US	2D703	C	B	2002
ESA	FL	JACKSONVILLE	US	3D703	C	B	2002

D704-Program Monitoring and Evaluation-76.75 FTE

Recommendation:

DOL should uphold this challenge and exclude Program Monitoring and Evaluation, function code D704, from its list of commercial activities.

Reason for Challenge:

Management and Program Analysis (GS-0343) functions should be classified as inherently governmental as defined under revised OMB Circular A-76 because this activity requires substantial discretion in applying governmental authority and protects economic and privacy interests.

Basis of Challenge:

The function is so intimately related to the core mission and inherently governmental functions of DOL so as to mandate performance by government employees. These duties include analysis of DOL management and programs, access to and knowledge of strategies used by the agency's lawyers in court, and access to Privacy Act data.

The performance of the function by government employees ensures that the interests and concerns of the public and the agency regarding the safeguarding of classified information is appropriately addressed and protected. This may not necessarily be in the interest of contractors, which may have concerns that are not in concert with the public interest.

In addition, the DOL FAIR Act Inventory submission violates both the established precedent rule and the principle of consistency within function codes by classifying the incumbents in Function Code D704 as both commercial and inherently governmental. All FTEs associated with a function should be classified as either inherently governmental or commercial in compliance with OMB guidance. Circular A-76 clearly states that "agencies shall identify all activities performed by government personnel as either commercially or inherently governmental". (Pg. 4(a)). It does not allow activities to be identified as both. Agencies are required to use the function codes provided by OMB, not create sub-function codes by dividing the functions between commercial and inherently governmental. In fact, OMB has provided previous guidance indicating that functions should be classified in a uniform manner. The Revised Supplemental Handbook for Circular A-76, located on the OMBG web site, indicates that precedent, such as other agencies' conflicting classification of a function as inherently governmental, is a valid reason to challenge the designation of a function on the FAIR Act Inventory (Appendix 2, paragraph (G)(3)). This guidance indicates that classification of a function should be consistent between agencies, so classification of a function should most certainly be consistent within an agency.

OSHA	PA	ALLENTOWN	US	1D704	C	B	2003
OSHA	IL	ARLINGTON HEIGHTS	US	7D704	C	B	2003
ESA	GA	ATLANTA	US	3D704	C	B	2002
OASAM	GA	ATLANTA	US	1D704	C	B	2003
OSHA	GA	ATLANTA	US	2D704	C	B	2003
SOL	GA	ATLANTA	US	1D704	C	B	2002
MSHA	KY	BARBOURVILLE	US	1D704	C	B	2000
MSHA	WV	BECKLEY	US	2D704	C	B	2000
ESA	MA	BOSTON	US	1D704	C	B	2002
OSHA	MA	BOSTON	US	2D704	C	B	2003
OSHA	MA	BOSTON	US	1D704	C	B	2003
OSHA	WV	CHARLESTON	US	2D704	C	B	2003
ESA	IL	Chicago	US	2D704	C	B	2002

OASAM	IL	CHICAGO	US	2D704	C	B	2000
OSHA	OH	CINCINNATI	US	1D704	C	B	2003
OSHA	NH	CONCORD	US	1D704	C	B	2003
ESA	TX	DALLAS	US	3D704	C	B	2002
OASAM	TX	DALLAS	US	1D704	C	B	2002
OSHA	TX	DALLAS	US	4D704	C	B	2003
VETS	TX	DALLAS	US	1D704	C	B	2002
OASAM	CO	DENVER	US	1D704	C	B	2002
OSHA	CO	DENVER	US	2D704	C	B	2003
OSHA	FL	FT LAUDERDALE	US	1D704	C	B	2003
OSHA	NJ	HASBROUCK HTS	US	1D704	C	B	2003
OSHA	PR	HATO REY	US	1D704	C	B	2003
MSHA	AL	HOMEWOOD	US	1D704	C	B	2000
OSHA	MO	KANSAS CITY	US	1D704	C	B	2003
MSHA	CO	LAKEWOOD	US	1D704	C	B	1999
MSHA	PA	NEW STANTON	US	1D704	C	B	2000
ESA	NY	NEW YORK-MANHATTAN	US	1D704	C	B	2002
OSHA	NY	NEW YORK-MANHATTAN	US	1D704	C	B	2003
MSHA	VA	NORTON	US	1D704	C	B	2000
OSHA	OK	OKLAHOMA CITY	US	1D704	C	B	2003
OSHA	OK	OKLAHOMA CITY	US	1D704	C	B	2003
OSHA	NE	OMAHA	US	1D704	C	B	2003
OSHA	NJ	PARSIPPANY	US	1D704	C	B	2003
ESA	PA	PHILADELPHIA	US	2D704	C	B	2002
MSHA	KY	PIKEVILLE	US	1D704	C	B	2000
OSHA	RI	PROVIDENCE	US	1D704	C	B	2003
ESA	CA	SAN FRANCISCO	US	3D704	C	B	2002
OASAM	CA	SAN FRANCISCO	US	1D704	C	B	2000
OSHA	CA	SAN FRANCISCO	US	1D704	C	B	2003
OSHA	UT	SANDY	US	3D704	C	B	2003
OSHA	WA	SEATTLE	US	1D704	C	B	2003
OSHA	OH	SHARONVILLE	US	1D704	C	B	2003
OSHA	GA	SMYRNA	US	1D704	C	B	2003
OSHA	FL	TAMPA	US	1D704	C	B	2003
OSHA	NY	TARRYTOWN	US	1D704	C	B	2003
OSHA	AL	VESTAVIA HILLS	US	2D704	C	B	2003
MSHA	IN	VINCENNES	US	1D704	C	B	2000
OSHA	PA	WILKES BARRE	US	1D704	C	B	2003

D711-External Equal Employment Opportunity Reviews-385 FTE

Recommendation:

DOL should uphold this challenge and exclude External Equal Employment Opportunity Review Staff, function code D711, from its list of commercial activities.

Reason for Challenge:

Equal Opportunity Compliance (GS-0360) functions should be classified as inherently governmental as defined under revised OMB Circular A-76 because this activity requires substantial discretion in applying governmental authority and protects economic and privacy interests.

Basis of Challenge:

The EOS position requires the unique skill of being able to quickly organize voluminous amounts of seemingly incomprehensible pieces of information into quantifiable data that allows for meaningful auditing, analysis and report writing. The unique knowledge and ability required to perform this task can only be procured through many years of exposure to different contractors and knowledge of these contractor's employment and operational practices. The fact that a private contractor's employees would not possess this critical knowledge would undoubtedly cause a severe decline in the quality of review and compliant investigations, and ultimately compromise the expectation of protection of the public's interests.

The EOS must also be well versed in all pertinent government regulations, guidelines, procedures and principles due to the fact that he or she is regularly depended upon by the public to provide accurate and timely technical assistance on an array of employment related questions. The EOS must possess knowledge of what every DOL agency, as well as other federal, state and local fair employment practices agencies do in order to competently service public requests for assistance with their employment related questions and issues. These questions are usually vastly different one from another, and therefore would be unable to be answered by a pre-written script, which is what a private contractor would most likely have to do because none of the contractor employees would possess, or even be inclined to procure, this critical knowledge.

Knowledge of principles of evidence gathering, interviewing, and skill in utilizing mathematical and statistical applications to determine probability ratios to be used in the judging of equal employment opportunity compliance and non-compliance is also an essential function inherent in the EOS position. Despite whatever other outside experience and education a contractor employee may possess, the skill required to successfully perform these functions as they specifically relate to OFCCP compliance evaluations and complaint investigations can only be acquired through years of experience as an EOS. Knowledge of many different components that make up an employer's overall employment practice is also essential to the successful performance of the EOS position. This knowledge includes recruitment and selection trends, current labor relations issues and the overall job market climate, availability within the job market for hundreds of various jobs, local unemployment numbers, knowledge of the significance of U.S. Census statistics to an employer's affirmative action program, and knowledge of community organizations that could help a contractor with their good faith efforts are all topics that the EOS must be adept and knowledgeable in, in order to successfully perform the overall duties of the position.

First of all, EOS positions deal with highly sensitive and confidential company materials and information that fall under FOIA guidelines. Since the position deals daily with information which cannot be shared with the general public without prior legal, legislative and administrative approval, most non-governmental employees could not be utilized in this position.

Each EOS employee must be able to conduct a complete and independent investigation. This necessitates each EOS being able to analyze sensitive and classified data, and discuss that data and other confidential information with company representatives that cannot be released to members of the public under FOIA. Therefore, employees of private contractors would be unable to perform these tasks and be in compliance with FOIA and privacy act regulations as currently written. Specifically, the EOS position has access to anywhere from 200 to 15,000 personnel files of hundreds of companies. The data contained in these files includes information such as Social Security numbers, compensation information, home addresses and telephone numbers, and many other types of sensitive personal data. The ability of OFCCP to execute its mission would be severely compromised if the position was contracted out and the public became aware that non-governmental employees had access to their vital and personal information.

Each EOS position must be able to not only handle extremely difficult and complicated cases from the initial stage, they must also be able to rescue voluminous and complex cases that have

been worked on for many months by the regional office and are nearly at the point of collapse. Each EOS must be able to investigate and present recommendations for corrective actions for contractors on cases that typically contain 5000 to 25000 pieces of paper within 3 to 7 days. The EOS, either singularly or in teams, must then utilize his or her unique knowledge, skills, and abilities and engage in considerable effort to sort, organize, cross-examine, evaluate, and resolve every problem with each case. These cases each require a several levels of analysis of all of the alleged discrimination information, frequent re-investigations & follow-up interviews, and several rounds of negotiations with company representatives before a case can be successfully resolved. The skill sets necessary to complete these myriad tasks are only obtainable through years of experience specific to the mission of OFCCP, and cannot be obtained through any other means than having actually worked for the OFCCP. Similar educational or work experiences in related fields do not exist, which would render an outside contractor substantially unqualified to perform OFCCP tasks.

EOS positions also demand that each investigator possess a considerable detailed knowledge of the applicable regulations and laws, current and past agency procedures, regional office directives and current legislative and judicial interpretations. This type of knowledge lends itself only to that federal employee who has had extensive knowledge and experience within the OFCCP and other federal labor organizations.

This unique knowledge and expertise allows EOS employees to be able to respond to daily or weekly changes in procedures, interpretations, and orders that directly impact on the quality and quantity of production essential to the core capability of the agency mission. This is not a qualification that will any longer be present for public benefit should outside contractors be allowed to service OFCCP's mission, and because of this fact, the efficiency and protections inherently found in this work will be seriously compromised.

The performance of the function by government employees ensures that the interests and concerns of the public and the Department of Labor regarding the protection of minorities and women's rights are appropriately addressed and protected. This may not necessarily be in the interest of contractors, which may have concerns that are not in concert with public interest. The Office of Federal Contract Compliance Programs enforces laws that protect equal opportunity and affirmative action. Sadly, it has not protected those rights in its own inventory and among its own employees.

In addition, the DOL FAIR Act Inventory submission violates both the established precedent rule and the principle of consistency within function codes by classifying the incumbents in Function Code D711, Womens Bureau as both commercial and inherently governmental. All FTEs associated with a function should be classified as either inherently governmental or commercial in compliance with OMB guidance. Circular A-76 clearly states that "agencies shall identify all activities performed by government personnel as either commercially or inherently governmental". (Pg. 4(a)). It does not allow activities to be identified as both. Agencies are required to use the function codes provided by OMB, not create sub-function codes by dividing the functions between commercial and inherently governmental. In fact, OMB has provided previous guidance indicating that functions should be classified in a uniform manner. The Revised Supplemental Handbook for Circular A-76, located on the OMBG web site, indicates that precedent, such as other agencies' conflicting classification of a function as inherently governmental, is a valid reason to challenge the designation of a function on the FAIR Act Inventory (Appendix 2, paragraph (G)(3)). This guidance indicates that classification of a function should be consistent between agencies, so classification of a function should most certainly be consistent within an agency.

ESA	NM	ALBUQUERQUE	US	4D711	C	B	2002
ESA	AL	ANCHORAGE	US	1D711	C	B	2002
ESA	GA	ATLANTA	US	# D711	C	B	2002
WB	GA	ATLANTA	US	1D711	C	B	2003

ESA	MD	BALTIMORE	US	6D711	C	B	2002
ESA	AL	BIRMINGHAM	US	6D711	C	B	2002
ESA	MA	BOSTON	US	8D711	C	B	2002
WB	MA	BOSTON	US	1D711	C	B	2003
ESA	NY	BUFFALO	US	4D711	C	B	2002
ESA	NC	CHARLOTTE	US	5D711	C	B	2002
ESA	IL	CHICAGO	US	# D711	C	B	2002
WB	IL	CHICAGO	US	1D711	C	B	2003
ESA	OH	CLEVELAND	US	6D711	C	B	2002
ESA	SC	COLUMBIA	US	5D711	C	B	2002
ESA	OH	COLUMBUS	US	# D711	C	B	2002
ESA	TX	DALLAS	US	# D711	C	B	2002
WB	TX	DALLAS	US	1D711	C	B	2003
ESA	CO	DENVER	US	7D711	C	B	2002
WB	CO	DENVER	US	1D711	C	B	2003
ESA	MI	DETROIT	US	9D711	C	B	2002
ESA	MI	GRAND RAPIDS	US	2D711	C	B	2002
ESA	CT	HARFORD	US	4D711	C	B	2002
ESA	HI	HONOLULU	US	5D711	C	B	2002
ESA	TX	HOUSTON	US	7D711	C	B	2002
ESA	IN	INDIANAPOLIS	US	9D711	C	B	2002
ESA	MS	JACKSON	US	5D711	C	B	2002
ESA	FL	JACKSONVILLE	US	3D711	C	B	2002
ESA	MO	KANSAS CITY	US	8D711	C	B	2002
WB	MO	KANSAS CITY	US	1D711	C	B	2003
ESA	MD	LANDOVER	US	# D711	C	B	2002
ESA	AR	LITTLE ROCK	US	2D711	C	B	2002
ESA	CA	LOS ANGELES	US	9D711	C	B	2002
ESA	KY	LOUISVILLE	US	5D711	C	B	2002
ESA	TN	MEMPHIS	US	4D711	C	B	2002
ESA	FL	MIAMI	US	4D711	C	B	2002
ESA	WI	MILWAUKEE	US	8D711	C	B	2002
ESA	MN	MINNEAPOLIS	US	4D711	C	B	2002
ESA	NJ	MOUNTAINSIDE	US	# D711	C	B	2002
ESA	TN	NASHVILLE	US	7D711	C	B	2002
ESA	LA	NEW ORLEANS	US	4D711	C	B	2002
ESA	NY	NEW YORK	US	# D711	C	B	2002
WB	NY	NEW YORK	US	1D711	C	B	2003
ESA	CA	OAKLAND	US	# D711	C	B	2002
ESA	NE	OMAHA	US	3D711	C	B	2002
ESA	CA	ORANGE	US	5D711	C	B	2002
ESA	FL	ORLANDO	US	# D711	C	B	2002
ESA	PA	PHILADELPHIA	US	# D711	C	B	2002
WB	PA	PHILADELPHIA	US	1D711	C	B	2003
ESA	AZ	PHOENIX	US	4D711	C	B	2002
ESA	PA	PITTSBURGH	US	# D711	C	B	2002
ESA	OR	PORTLAND	US	4D711	C	B	2002
ESA	NC	RALEIGH	US	7D711	C	B	2002
ESA	VA	RICHMOND	US	7D711	C	B	2002
ESA	UT	SALT LAKE CITY	US	5D711	C	B	2002
ESA	TX	SAN ANTONIO	US	7D711	C	B	2002
ESA	CA	SAN DIEGO	US	4D711	C	B	2002
WB	CA	SAN DIEGO	US	1D711	C	B	2003
ESA	CA	SAN FRANCISCO	US	4D711	C	B	2002
ESA	CA	SAN JOSE	US	4D711	C	B	2002
ESA	PR	SAN JUAN	US	2D711	C	B	2002
ESA	WA	SEATTLE	US	7D711	C	B	2002

WB	WA	SEATTLE	US	1D711	C	B	2003
ESA	MO	ST LOUIS	US	4D711	C	B	2002
ESA	OK	TULSA	US	3D711	C	B	2002

D712-Safety and Occupational Health Management-19 FTE

Recommendation:

DOL should uphold this challenge and exclude Safety and Occupational Health Management Staff, function code D712, from its list of commercial activities.

Reason for Challenge:

Safety and Occupational Health Management (GS-0018) functions should be classified as inherently governmental as defined under revised OMB Circular A-76 because this activity requires substantial discretion in applying governmental authority and protects economic and privacy interests.

Basis of Challenge:

The function is so intimately related to the core mission and inherently governmental functions of DOL so as to mandate performance by government employees. These duties include access to and knowledge of strategies used by the agency and access to Privacy Act Data.

The performance of the function by government employees ensures that the interests and concerns of the public and the agency regarding the safeguarding of classified information is appropriately addressed and protected. This may not necessarily be in the interest of contractors which may have concerns that are not in concert with the public interest.

In addition, the DOL FAIR Act Inventory submission violates both the established precedent rule and the principle of consistency within function codes by classifying the incumbents in Function Code D712, as both commercial and inherently governmental. All FTEs associated with a function should be classified as either inherently governmental or commercial in compliance with OMB guidance. Circular A-76 clearly states that “agencies shall identify all activities performed by government personnel as either commercially or inherently governmental”. (Pg. 4(a)). It does not allow activities to be identified as both. Agencies are required to use the function codes provided by OMB, not create sub-function codes by dividing the functions between commercial and inherently governmental. In fact, OMB has provided previous guidance indicating that functions should be classified in a uniform manner. The Revised Supplemental Handbook for Circular A-76, located on the OMBG web site, indicates that precedent, such as other agencies’ conflicting classification of a function as inherently governmental, is a valid reason to challenge the designation of a function on the FAIR Act Inventory (Appendix 2, paragraph (G)(3)). This guidance indicates that classification of a function should be consistent between agencies, so classification of a function should most certainly be consistent within an agency.

OSHA	IL	ARLINGTON HEIGHTS	US	1D712	C	B	2003
OSHA	IL	ARLINGTON HEIGHTS	US	3D712	C	B	2003
OSHA	ID	BOISE	US	1D712	C	B	2003
OSHA	MA	BOSTON	US	1D712	C	B	2003
OSHA	CT	HARTFORD	US	3D712	C	B	2003
OSHA	MO	KANSAS CITY	US	1D712	C	B	2003

OSHA	NE	OMAHA	US	2D712	C	B	2003
OSHA	NE	OMAHA	US	1D712	C	B	2003
OSHA	ME	PORTLAND	US	1D712	C	B	2003
OSHA	WA	SEATTLE	US	2D712	C	B	2003
OSHA	MA	SPRINGFIELD	US	2D712	C	B	2003
OSHA	NY	SYRACUSE	US	1D712	C	B	2003

D713-Safety and Occupational Health Inspections-4 FTE

Recommendation:

DOL should uphold this challenge and exclude Safety and Occupational Health Management Staff, function code D713, from its list of commercial activities.

Reason for Challenge:

Safety and Occupational Health Management (GS-0018) functions should be classified as inherently governmental as defined under revised OMB Circular A-76 because this activity requires substantial discretion in applying governmental authority and protects economic and privacy interests.

Basis of Challenge:

OSHA Managers enforcing specific health and safety laws commit the government to a course of action as well as significantly affect the property of private citizens. For example, inspectors can propose and levy fines for those operations not in compliance with federal laws. Inspectors have access to privacy, personnel sensitive or confidential information, including Social Security numbers, addresses, and other personal information.

The protection of this information falls within the government's authority to preserve the interests of its citizens in so far as it significantly affects the life, liberty, or property of private persons. Categorizing this function as inherently governmental will preserve the privacy of citizens and ensure that employee morale is not undermined by private contractor abuse of sensitive information.

In addition, the DOL FAIR Act Inventory submission violates both the established precedent rule and the principle of consistency within function codes by classifying the incumbents in Function Code D713, as both commercial and inherently governmental. All FTEs associated with a function should be classified as either inherently governmental or commercial in compliance with OMB guidance. Circular A-76 clearly states that "agencies shall identify all activities performed by government personnel as either commercially or inherently governmental". (Pg. 4(a)). It does not allow activities to be identified as both. Agencies are required to use the function codes provided by OMB, not create sub-function codes by dividing the functions between commercial and inherently governmental. In fact, OMB has provided previous guidance indicating that functions should be classified in a uniform manner. The Revised Supplemental Handbook for Circular A-76, located on the OMBG web site, indicates that precedent, such as other agencies' conflicting classification of a function as inherently governmental, is a valid reason to challenge the designation of a function on the FAIR Act Inventory (Appendix 2, paragraph (G)(3)). This guidance indicates that classification of a function should be consistent between agencies, so classification of a function should most certainly be consistent within an agency.

OASAM	IL	CHICAGO	US	1D713	C	B	2002
OASAM	TX	DALLAS	US	1D713	C	B	2002
OASAM	MO	KANSAS CITY	US	1D713	C	B	2002
OSHA	NY	NEW YORK-MANHATTAN	US	1D713	C	B	2003

D999-1 FTE

Recommendation:

DOL should uphold this challenge and exclude function code D999 from its list of commercial activities.

Reason for Challenge

The function designation D999 is not listed in the DOL 2004 FAIR Act Functional Codes. Therefore, D999 is an erroneous designation, and should not be included in the Commercial FAIR Act Inventory.

Basis of Challenge:

Circular A-76 clearly states that “agencies shall identify all activities performed by government personnel as either commercially or inherently governmental”. Agencies are required to use the function codes provided by OMB, not create sub-function codes. In fact, OMB has provided previous guidance indicating that functions should be classified in a uniform manner. The Revised Supplemental Handbook for Circular A-76, located on the OMBG web site, indicates that precedent. This guidance indicates that classification of a function should be consistent between agencies, so classification of a function should most certainly be consistent within an agency.

OSHA	IL	AURORA	US	1D999	C	B	2003
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F-Procurement

F399-F400-Procurement and Contracting Activities-10 FTE

Recommendation:

DOL should uphold this challenge and exclude Procurement and Contracting Activities Staff, function codes F399 and F400 from its list of commercial activities.

Reason for Challenge:

Procurement Clerical and Technician (GS-1106) and Purchasing (GS-1105) functions should be classified as inherently governmental as defined under revised OMB Circular A-76 because this activity requires substantial discretion in applying governmental authority and protects economic and privacy interests.

Basis of Challenge:

The incumbents who perform this function bind the United States to take actions by contract, policy regulation, authorization, and/or order. These activities require the exercise of discretion involving monetary transactions and entitlements. Therefore, they are inherently governmental. By defining this function as inherently governmental, the agency will guarantee that any final agency action complies with the laws and policies of the United States. Additionally, this will ensure that the decisions performed by these employees reflect the independent conclusions of agency officials.

The incumbents who perform this function have access to competition and procurement sensitive information. These activities necessitate the use of discretion with regard to monetary transactions and entitlements. Access by a non-federal employee would compromise the integrity of future competitions, contracts, and procurement actions. It would impede governmental authority and disrupt the procurement process.

The incumbents who perform this function have access to private, personnel sensitive and confidential information. Preserving the sanctity of this data demands the discretionary exercise of Government authority and therefore involves the act of governing. These activities require the use of Government authority to protect the interests of its citizens as this data significantly affects the life, liberty, or property of private persons. Maintaining this function as inherently governmental guarantees any final agency action complies with the laws and policies of the United States. It ensures that decisions reflect the independent conclusions of agency officials and not those of contractors and private companies that may profit from the misuse of this personal information.

In addition, the DOL FAIR Act Inventory submission violates both the established precedent rule and the principle of consistency within function codes by classifying the incumbents in Function Code F399 in OASAM as both commercial and inherently governmental. All FTEs associated with a function should be classified as either inherently governmental or commercial in compliance with OMB guidance. Circular A-76 clearly states that “agencies shall identify all activities performed by government personnel as either commercially or inherently governmental”. (Pg. 4(a)). It does not allow activities to be identified as both. Agencies are required to use the function codes provided by OMB, not create sub-function codes by dividing the functions between commercial and inherently governmental. In fact, OMB has provided previous guidance indicating that functions should be classified in a uniform manner. The Revised Supplemental Handbook for Circular A-76, located on the OMBG web site, indicates that precedent, such as other agencies’ conflicting classification of a function as inherently governmental, is a valid reason to challenge the designation of a function on the FAIR Act Inventory (Appendix 2, paragraph (G)(3)). This guidance indicates that classification of a function should be consistent between agencies, so classification of a function should most certainly be consistent within an agency.

OSHA	IL	ARLINGTON HEIGHTS	US	1F399	C	B	2003
OASAM	GA	ATLANTA	US	1F399	C	B	2003
OASAM	MA	BOSTON	US	1F399	C	B	2003
OASAM	NY	NEW YORK	US	1F399	C	B	2003
OASAM	PA	PHILADELPHIA	US	1F399	C	B	2004
OASAM	CA	SAN FRANCISCO	US	1F399	C	B	2002
OASAM	CA	SAN FRANCISCO	US	1F399	C	B	1999
OSHA	UT	SANDY	US	1F399	C	B	2003
OASAM	WA	SEATTLE	US	1F399	C	B	1999
OASAM	TX	DALLAS	US	1F400	C	B	2002

G-Social Services

G102-Library Services, G104-Technical/Professional/Legal Library Information Services

Recommendation:

DOL should uphold this challenge and exclude Industrial Hygiene Reviews/Analysis, function code, H402, Medical Services, function code, H201, Medical Officers, function code, H401 and Other Health Services, function code, H999 from its list of commercial activities.

Reason for Challenge:

Librarian (GS-1410), and Technical Informaiton Services (GS-1412) functions should be classified as inherently governmental as defined under revised OMB Circular A-76 because this activity requires substantial discretion in applying governmental authority and protects economic and privacy interests.

Basis of Challenge:

In addition, the DOL FAIR Act Inventory submission violates both the established precedent rule and the principle of consistency within function codes by classifying the incumbents in Function Code G104 as both commercial and inherently governmental. All FTEs associated with a function should be classified as either inherently governmental or commercial in compliance with OMB guidance. Circular A-76 clearly states that “agencies shall identify all activities performed by government personnel as either commercially or inherently governmental”. (Pg. 4(a)). It does not allow activities to be identified as both. Agencies are required to use the function codes provided by OMB, not create sub-function codes by dividing the functions between commercial and inherently governmental. In fact, OMB has provided previous guidance indicating that functions should be classified in a uniform manner. The Revised Supplemental Handbook for Circular A-76, located on the OMBG web site, indicates that precedent, such as other agencies’ conflicting classification of a function as inherently governmental, is a valid reason to challenge the designation of a function on the FAIR Act Inventory (Appendix 2, paragraph (G)(3)). This guidance indicates that classification of a function should be consistent between agencies, so classification of a function should most certainly be consistent within an agency.

OSHA	IL	ARLINGTON HEIGHTS	US	1G102	C	B	2003
MSHA	WV	BECKLEY	US	1G102	C	B	2000
OSHA	CO	DENVER	US	1G102	C	B	2003
OSHA	MO	KANSAS CITY	US	1G102	C	B	2003
MSHA	WV	BECKLEY	US	5G104	C	B	2000
OSHA	ID	BOISE	US	1G104	C	B	2003
OSHA	OH	CLEVELAND	US	1G104	C	B	2003
OSHA	NY	NEW YORK-MANHATTAN	US	1G104	C	B	2003
OSHA	VA	NORFOLK	US	1G104	C	B	2003
OSHA	UT	SANDY	US	6G104	C	B	2003

H-Health Services

H402-Industrial Hygiene Reviews/Analysis-7 FTE , H201-Medical Services-2 FTE

H401-Medical Officers-1 FTE, H999-Other Health Services-1 FTE

Recommendation:

DOL should uphold this challenge and exclude Industrial Hygiene Reviews/Analysis, function code, H402, Medical Services, function code, H201, Medical Officers, function code, H401 and Other Health Services, function code, H999 from its list of commercial activities.

Reason for Challenge:

General Health Science (GS-0601), Medical Officers (GS-0602), Industrial Hygiene (GS-0690) and Toxicology (GS-0415) functions should be classified as inherently governmental as defined under revised OMB Circular A-76 because this activity requires substantial discretion in applying governmental authority and protects economic and privacy interests.

Basis of Challenge:

In addition, the DOL FAIR Act Inventory submission violates both the established precedent rule and the principle of consistency within function codes by classifying the incumbents in Function Code H401 in OSHA as both commercial and inherently governmental. All FTEs associated with a function should be classified as either inherently governmental or commercial in compliance with OMB guidance. Circular A-76 clearly states that “agencies shall identify all activities performed by government personnel as either commercially or inherently governmental”. (Pg. 4(a)). It does not allow activities to be identified as both. Agencies are required to use the function codes provided by OMB, not create sub-function codes by dividing the functions between commercial and inherently governmental. In fact, OMB has provided previous guidance indicating that functions should be classified in a uniform manner. The Revised Supplemental Handbook for Circular A-76, located on the OMBG web site, indicates that precedent, such as other agencies’ conflicting classification of a function as inherently governmental, is a valid reason to challenge the designation of a function on the FAIR Act Inventory (Appendix 2, paragraph (G)(3)). This guidance indicates that classification of a function should be consistent between agencies, so classification of a function should most certainly be consistent within an agency.

OSHA	CA	SAN FRANCISCO	US	1H201	C	B	2003
OSHA	UT	SANDY	US	1H201	C	B	2003
OSHA	CA	SAN FRANCISCO	US	1H401	C	B	2003
OSHA	IL	ARLINGTON HEIGHTS	US	4H402	C	B	2003
MSHA	WV	BECKLEY	US	1H402	C	B	2000
OSHA	UT	SANDY	US	2H402	C	B	2003
MSHA	WV	BECKLEY	US	1H999	C	B	1999

I-Investigatio

1440-Management Evaluations/Audits-371 FTE

Recommendation:

DOL should uphold this challenge and exclude Management Evaluations/Audits, function code 1440 from its list of commercial activities.

Reason for Challenge:

Incumbents in Compliance Inspection and Support (GS-1802) functions should be classified as inherently governmental as defined under revised OMB Circular A-76 because this activity requires substantial discretion in applying governmental authority and protects economic and privacy interests.

Basis of Challenge:

This function entails access to the public's confidential information, including Social Security numbers, addresses, wages, immigration status, case files, compliance or non-compliance with federal law, and other private data. They transcribe confidential documents. They are intimately involved with the process of assessing fines to the public. The protection of this information falls within the government's authority to protect the interests of its citizens in so far as it significantly affects the life, liberty, or property of private persons, and therefore must remain inherently governmental. Maintaining this function as inherently governmental ensures that any final agency action complies with the laws and policies of the United States. Maintaining this function as inherently governmental ensures that decisions reflect the independent conclusions of agency official and not those of contractors who may have interests that are not in concert with the public interest, and any be beyond the reach of management controls otherwise applicable to public employees.

Agency and contractor management will discover that it will be difficult for managers to carry out the core and inherently governmental functions of DOL with contract employees. The first concern of government contractors is not the performance of DOL mission work it is the creation of profit. Contractors will not perform functions not specifically addressed in a contract. To get contractor employees to perform work outside the scope of a contract will force managers to renegotiate the specific contract language.

ESA	NY	ALBANY	US	21440	C	B	2002
ESA	NM	ALBUQUERQUE	US	21440	C	B	2002
OSHA	PA	ALLENTOWN	US	31440	C	B	2003
OSHA	WI	APPLETON	US	21440	C	B	2003
ESA	GA	ATLANTA	US	31440	C	B	2002
OSHA	IL	AURORA	US	11440	C	B	2003
OSHA	TX	AUSTIN	US	11440	C	B	2003
OSHA	NJ	AVENEL	US	31440	C	B	2003
MSHA	NM	AZTEC	US	11440	C	B	1999
ESA	MD	BALTIMORE	US	31440	C	B	2002
MSHA	KY	BARBOURVILLE	US	71440	C	B	1999

ESA	LA	BATON ROUGE	US	11440	C	B	2002
OSHA	LA	BATON ROUGE	US	31440	C	B	2003
MSHA	KY	BEAVER DAM	US	11440	C	B	1999
MSHA	WA	BELLEVUE	US	11440	C	B	1999
MSHA	IL	BENTON	US	31440	C	B	1999
ESA	AL	BIRMINGHAM	US	21440	C	B	2002
MSHA	AL	BIRMINGHAM	US	41440	C	B	2002
ESA	MA	BOSTON	US	21440	C	B	2002
OSHA	MA	BOSTON	US	11440	C	B	2003
OSHA	MA	BRAINTREE	US	11440	C	B	2003
ESA	NY	BROOKLYN	US	11440	C	B	2002
ESA	NY	BUFFALO	US	21440	C	B	2002
ESA	NY	BUFFALO	US	11440	C	B	2002
OSHA	IL	CALUMET CITY	US	21440	C	B	2003
MSHA	UT	CASTLE DALE	US	11440	C	B	1999
ESA	WV	CHARLESTON	US	11440	C	B	2002
ESA	IL	CHICAGO	US	31440	C	B	2002
OSHA	IL	CHICAGO	US	41440	C	B	2003
ESA	OH	CINCINNATI	US	11440	C	B	2002
MSHA	WV	CLARKSBURG	US	11440	C	B	2004
MSHA	PA	CLEARFIELD	US	11440	C	B	1999
ESA	OH	CLEVELAND	US	21440	C	B	2002
OSHA	OH	CLEVELAND	US	11440	C	B	2003
ESA	SC	COLUMBIA	US	11440	C	B	2002
OSHA	SC	COLUMBIA	US	21440	C	B	2003
ESA	OH	COLUMBUS	US	21440	C	B	2002
ESA	TX	CORPUS CHRISTI	US	11440	C	B	2002
OSHA	TX	CORPUS CHRISTI	US	21440	C	B	2003
MSHA	CO	CRAIG	US	11440	C	B	1999
ESA	TX	DALLAS	US	41440	C	B	2002
MSHA	TX	DALLAS	US	51440	C	B	2002
OSHA	TX	DALLAS	US	21440	C	B	2003
MSHA	CO	DELTA	US	11440	C	B	1999
ESA	CO	DENVER	US	31440	C	B	2002
MSHA	CO	DENVER	US	21440	C	B	2002
ESA	IA	DES MOINES	US	11440	C	B	2002
OSHA	IL	DES PLAINES	US	21440	C	B	2003
ESA	MI	DETROIT	US	21440	C	B	2002
MSHA	MN	DULUTH	US	31440	C	B	2002
OSHA	WI	EAU CLAIRE	US	11440	C	B	2003
ESA	TX	EL PASO	US	91440	C	B	2002
MSHA	KY	ELKHORN CITY	US	11440	C	B	1999
OSHA	CO	ENGLEWOOD	US	21440	C	B	2003
OSHA	TX	FORT WORTH	US	21440	C	B	2003
ESA	FL	FT LAUDERDALE	US	31440	C	B	2002
OSHA	FL	FT LAUDERDALE	US	11440	C	B	2003
ESA	NY	GARDEN CITY	US	11440	C	B	2002
MSHA	WY	GILLETTE	US	11440	C	B	1999
ESA	CA	GLENDALE	US	21440	C	B	2002
ESA	MI	GRAND RAPIDS	US	11440	C	B	2002
MSHA	VA	GRUNDY	US	21440	C	B	1999
ESA	PR	GUAYNABO, SAN JUAN	US	11440	C	B	2002
MSHA	KY	HARLAN	US	11440	C	B	1999
ESA	CT	HARTFORD	US	21440	C	B	2002
OSHA	NJ	HASBROUCK HTS	US	11440	C	B	2003
ESA	PR	HATO REY, SAN JUAN	US	11440	C	B	2002

MSHA	KY	HAZARD	US	21440	C	B	1999
MSHA	IL	HILLSBORO	US	11440	C	B	1999
MSHA	KY	HINDMAN	US	11440	C	B	1999
MSHA	AL	HOMEWOOD	US	11440	C	B	1999
ESA	HI	HONOLULU	US	11440	C	B	2002
ESA	TX	HOUSTON	US	31440	C	B	2002
OSHA	TX	HOUSTON	US	21440	C	B	2003
OSHA	TX	HOUSTON	US	21440	C	B	2003
MSHA	AL	HUEYTOWN	US	11440	C	B	2004
MSHA	AL	HUEYTOWN	US	11440	C	B	1999
MSHA	PA	INDIANA	US	11440	C	B	1999
ESA	IN	INDIANAPOLIS	US	21440	C	B	2002
OSHA	IN	INDIANAPOLIS	US	11440	C	B	2003
MSHA	TN	JACKSBORO	US	11440	C	B	1999
ESA	MS	JACKSON	US	21440	C	B	2002
ESA	FL	JACKSONVILLE	US	41440	C	B	2002
OSHA	FL	JACKSONVILLE	US	21440	C	B	2003
MSHA	PA	JOHNSTOWN	US	21440	C	B	1999
ESA	KS	KANSAS CITY	US	31440	C	B	2002
OSHA	MO	KANSAS CITY	US	51440	C	B	2003
MSHA	PA	KITTANNING	US	11440	C	B	1999
ESA	TN	KNOXVILLE	US	11440	C	B	2002
MSHA	CO	LAKWOOD	US	21440	C	B	1999
MSHA	CO	LAKWOOD	US	11440	C	B	2004
OSHA	MI	LANSING	US	11440	C	B	2003
ESA	NV	LAS VEGAS	US	11440	C	B	2002
ESA	NJ	LAWRENCEVILLE	US	21440	C	B	2002
ESA	AR	LITTLE ROCK	US	21440	C	B	2002
MSHA	WV	LOGAN	US	21440	C	B	1999
OSHA	TX	LUBBOCK	US	21440	C	B	2003
ESA	WI	MADISON	US	11440	C	B	2002
MSHA	WV	MADISON	US	31440	C	B	1999
OSHA	WI	MADISON	US	11440	C	B	2003
MSHA	KY	MADISONVILLE	US	11440	C	B	1999
ESA	NH	MANCHESTER	US	21440	C	B	2002
OSHA	NJ	MARLTON	US	21440	C	B	2003
MSHA	KY	MARTIN	US	21440	C	B	1999
MSHA	OK	MCALESTER	US	11440	C	B	1999
ESA	FL	MIAMI	US	11440	C	B	2002
ESA	WI	MILWAUKEE	US	11440	C	B	2002
ESA	MN	MINNEAPOLIS	US	11440	C	B	2002
OSHA	MN	MINNEAPOLIS	US	11440	C	B	2003
ESA	AL	MONTGOMERY	US	11440	C	B	2002
MSHA	KY	MORGANFIELD	US	61440	C	B	1999
MSHA	WV	MOUNT CARBON	US	11440	C	B	1999
MSHA	WV	MOUNT HOPE	US	91440	C	B	1999
ESA	NJ	MOUNTAINSIDE	US	21440	C	B	2002
ESA	TN	NASHVILLE	US	21440	C	B	2002
OSHA	TN	NASHVILLE	US	11440	C	B	2003
ESA	LA	NEW ORLEANS	US	21440	C	B	2002
MSHA	PA	NEW STANTON	US	51440	C	B	1999
ESA	NY	NEW YORK-MANHATTAN	US	31440	C	B	2002
OSHA	NY	NEW YORK-MANHATTAN	US	71440	C	B	2003
OSHA	NY	NEW YORK-QUEENS	US	31440	C	B	2003
MSHA	OH	NEWARK	US	11440	C	B	1999
MSHA	VA	NORTON	US	11440	C	B	2004

MSHA	VA	NORTON	US	71440	C	B	1999
MSHA	MD	OAKLAND	US	11440	C	B	1999
ESA	NE	OMAHA	US	11440	C	B	2002
ESA	CA	ORANGE	US	21440	C	B	2002
ESA	FL	ORLANDO	US	21440	C	B	2002
OSHA	IL	PEORIA	US	21440	C	B	2003
MSHA	IL	PERU	US	11440	C	B	1999
MSHA	KY	PHELPS	US	11440	C	B	1999
ESA	PA	PHILADELPHIA	US	11440	C	B	2002
OSHA	PA	PHILADELPHIA	US	31440	C	B	2003
ESA	AZ	PHOENIX	US	31440	C	B	2002
MSHA	KY	PIKEVILLE	US	31440	C	B	1999
MSHA	KY	PIKEVILLE	US	11440	C	B	2004
MSHA	WV	PINEVILLE	US	11440	C	B	1999
ESA	PA	PITTSBURGH	US	21440	C	B	2002
OSHA	PA	PITTSBURGH	US	21440	C	B	2003
ESA	OR	PORTLAND	US	11440	C	B	2002
ESA	OR	PORTLAND	US	11440	C	B	2002
OSHA	OR	PORTLAND	US	11440	C	B	2003
MSHA	PA	POTTSVILLE	US	11440	C	B	1999
MSHA	UT	PRICE	US	21440	C	B	1999
MSHA	WV	PRINCETON	US	11440	C	B	1999
ESA	NC	RALEIGH	US	11440	C	B	2002
MSHA	SD	RAPID CITY	US	11440	C	B	1999
MSHA	CA	REDLANDS	US	11440	C	B	1999
MSHA	VA	RICHLANDS	US	21440	C	B	1999
ESA	VA	RICHMOND	US	11440	C	B	2002
ESA	VA	RICHMOND	US	11440	C	B	2002
ESA	CA	SACRAMENTO	US	21440	C	B	2002
ESA	UT	SALT LAKE CITY	US	21440	C	B	2002
MSHA	UT	SALT LAKE CITY	US	11440	C	B	1999
MSHA	UT	SALT LAKE CITY	US	11440	C	B	2002
OSHA	UT	SALT LAKE CITY	US	11440	C	B	2003
ESA	TX	SAN ANTONIO	US	31440	C	B	2002
MSHA	TX	SAN ANTONIO	US	11440	C	B	1999
ESA	CA	SAN DIEGO	US	31440	C	B	2002
ESA	CA	SAN FRANCISCO	US	61440	C	B	2002
OSHA	CA	SAN FRANCISCO	US	21440	C	B	2003
ESA	CA	SAN JOSE	US	11440	C	B	2002
MSHA	PR	SAN JUAN	US	11440	C	B	1999
ESA	GA	SAVANNAH	US	11440	C	B	2002
ESA	WA	SEATTLE	US	21440	C	B	2002
OSHA	WA	SEATTLE	US	31440	C	B	2003
MSHA	PA	SHAMOKIN	US	21440	C	B	1999
OSHA	OH	SHARONVILLE	US	11440	C	B	2003
ESA	IN	SOUTH BEND	US	11440	C	B	2002
ESA	IL	SPRINGFIELD	US	11440	C	B	2002
MSHA	OH	ST CLAIRSVILLE	US	31440	C	B	1999
ESA	MO	ST LOUIS	US	21440	C	B	2002
OSHA	MO	ST LOUIS	US	21440	C	B	2003
MSHA	WV	SUMMERSVILLE	US	11440	C	B	1999
ESA	NY	SYRACUSE	US	11440	C	B	2002
ESA	FL	TAMPA	US	21440	C	B	2002
OSHA	FL	TAMPA	US	11440	C	B	2003
OSHA	NY	TARRYTOWN	US	11440	C	B	2003
OSHA	GA	TUCKER	US	21440	C	B	2003

MSHA	CA	VACAVILLE	US	31440	C	B	2002
MSHA	IN	VINCENNES	US	41440	C	B	1999
MSHA	PA	WARRANDALE	US	41440	C	B	2002
MSHA	PA	WAYNESBURG	US	21440	C	B	2004
ESA	CA	WEST COVINA	US	31440	C	B	2002
ESA	NY	WESTBURY	US	11440	C	B	2002
ESA	NY	WHITE PLAINS	US	21440	C	B	2002
MSHA	KY	WHITESBURG	US	21440	C	B	1999
ESA	PA	WILKES BARRE	US	31440	C	B	2002
OSHA	PA	WILKES BARRE	US	11440	C	B	2003
MSHA	PA	WILKES-BARRE	US	11440	C	B	1999
MSHA	PA	WYOMISSING	US	11440	C	B	1999

1999-Other Audit and Investigative Activities-60 FTE

Recommendation:

The agency should uphold this challenge and exclude Other Audit and Investigative Activities, Function code 1999, from its list of commercial activities.

Reason for Challenge:

General Inspection, Investigation and Compliance (GS-1801) functions should be classified as inherently governmental as defined under revised OMB Circular A-76 because this activity requires substantial discretion in applying governmental authority and protects economic and privacy interests.

Basis of challenge:

OSHA	GA	ATLANTA	US	11999	C	B	2003
OSHA	ME	BANGOR	US	11999	C	B	2003
OSHA	MA	BOSTON	US	11999	C	B	2003
OSHA	MA	BRAINTREE	US	11999	C	B	2003
OSHA	CT	BRIDGEWATER	US	11999	C	B	2003
OSHA	IL	CALUMET CITY	US	21999	C	B	2003
OSHA	IL	CHICAGO	US	11999	C	B	2003
OSHA	OH	COLUMBUS	US	11999	C	B	2003
OSHA	NH	CONCORD	US	11999	C	B	2003
OSHA	CO	DENVER	US	11999	C	B	2003

OSHA	IL	DES PLAINES	US	11999	C	B	2003
OSHA	CO	ENGLEWOOD	US	21999	C	B	2003
OSHA	PA	ERIE	US	11999	C	B	2003
OSHA	IL	FAIRVIEW HEIGHTS	US	11999	C	B	2003
OSHA	PA	HARRISBURG	US	31999	C	B	2003
OSHA	CT	HARTFORD	US	11999	C	B	2003
OSHA	NJ	HASBROUCK HTS	US	21999	C	B	2003
OSHA	IN	INDIANAPOLIS	US	11999	C	B	2003
OSHA	MI	LANSING	US	11999	C	B	2003
OSHA	AR	LITTLE ROCK	US	31999	C	B	2003
OSHA	WI	MADISON	US	31999	C	B	2003
OSHA	MA	METHUEN	US	11999	C	B	2003
OSHA	TN	NASHVILLE	US	11999	C	B	2003
OSHA	NY	NEW YORK-MANHATTANUS	US	51999	C	B	2003
OSHA	PA	PHILADELPHIA	US	31999	C	B	2003
OSHA	NC	RALEIGH	US	21999	C	B	2003
OSHA	CA	SAN DIEGO	US	21999	C	B	2003
OSHA	CA	SAN FRANCISCO	US	11999	C	B	2003
OSHA	GA	SAVANNAH	US	31999	C	B	2003
OSHA	OH	SHARONVILLE	US	11999	C	B	2003
OSHA	GA	SMYRNA	US	11999	C	B	2003
OSHA	MA	SPRINGFIELD	US	11999	C	B	2003
OSHA	FL	TAMPA	US	71999	C	B	2003
OSHA	NY	TARRYTOWN	US	11999	C	B	2003
OSHA	NY	WESTBURY	US	11999	C	B	2003

L-Grants Monitoring and Evaluation

L200-Grants Monitoring and Evaluation-12 FTE

Recommendation:

DOL should uphold this challenge and exclude Grant Monitoring and Evaluation staff, function code L200, from its list of commercial activities.

Reason for Challenge:

General Business and Industry Grants (GS-1101) functions should be classified as inherently governmental as defined under revised OMB Circular A-76 because this activity requires substantial discretion in applying governmental authority and protects economic and privacy interests.

Basis of Challenge:

These positions are inherently government because the incumbents perform federal grant management and evaluation with respect to activities relating to awarding federal grants, administering federal grants, and terminating federal grants. These incumbents perform activities that require the exercise of discretion in applying government authority and making value judgments in making decisions for the government. Incumbents establish procedures and policies related to the oversight of monetary entitlements. The incumbents in these positions have a wide range of discretionary decision authority.

The monitoring and evaluation of grant monies is core to the mission of the agency, and therefore performance of commercial activity by government personnel is required due to a statutory prohibition against private sector performance.

In addition, the DOL FAIR Act Inventory submission violates both the established precedent rule and the principle of consistency within function codes by classifying the incumbents in Function Code L200 in Vets as both commercial and inherently governmental. All FTEs associated with a function should be classified as either inherently governmental or commercial in compliance with OMB guidance. Circular A-76 clearly states that “agencies shall identify all activities performed by government personnel as either commercially or inherently governmental”. (Pg. 4(a)). It does not allow activities to be identified as both. Agencies are required to use the function codes provided by OMB, not create sub-function codes by dividing the functions between commercial and inherently governmental. In fact, OMB has provided previous guidance indicating that functions should be classified in a uniform manner. The Revised Supplemental Handbook for Circular A-76, located on the OMBG web site, indicates that precedent, such as other agencies’ conflicting classification of a function as inherently governmental, is a valid reason to challenge the designation of a function on the FAIR Act Inventory (Appendix 2, paragraph (G)(3)). This guidance indicates that classification of a function should be consistent between agencies, so classification of a function should most certainly be consistent within an agency.

VETS	GA	ATLANTA	US	1L200	C	B	1999
VETS	MA	BOSTON	US	2L200	C	B	1999
VETS	IL	CHICAGO	US	3L200	C	B	1999
VETS	TX	DALLAS	US	2L200	C	B	1999
VETS	NY	NEW YORK-MANHATTAN	US	1L200	C	B	1999

VETS	PA	PHILADELPHIA	US	1L200	C	B	1999
VETS	CA	REDLANDS	US	1L200	C	B	1999
VETS	CA	SAN FRANCISCO	US	1L200	C	B	1999

S-Supply Operations

S731-Supply Operations-8 FTE, S741-Supply, Warehousing and Distribution Services Management-1 FTE, S742-Inventory Analysis and Management-2 FTE

Recommendation:

DOL should uphold this challenge and exclude Supply Operations staff, function code S731, S741, and S742 from its list of commercial activities.

Reason for Challenge:

Supply Program Management (GS-2003), Supply Clerical and Technician (GS-2005), Distribution Facilities and Storage Management (GS-2030), and Inventory Management (GS-2010) functions should be classified as inherently governmental as defined under revised OMB Circular A-76 because this activity requires substantial discretion in applying governmental authority and protects economic and privacy interests.

Basis of Challenge:

Agency and contractor management will discover that it will be difficult for managers to carry out the core and inherently governmental functions of DOL with contract employees. The first concern of government contractors is not the performance of DOL work it is the creation of profit. Contractors will not perform any function not specifically named in a contract. To get contract employees to perform work outside the scope of the contract will force managers to renegotiate specific contracts.

In addition, the DOL FAIR Act Inventory submission violates both the established precedent rule and the principle of consistency within function codes by classifying the incumbents in Function Code L200 in Vets as both commercial and inherently governmental. All FTEs associated with a function should be classified as either inherently governmental or commercial in compliance with OMB guidance. Circular A-76 clearly states that “agencies shall identify all activities performed by government personnel as either commercially or inherently governmental”. (Pg. 4(a)). It does not allow activities to be identified as both. Agencies are required to use the function codes provided by OMB, not create sub-function codes by dividing the functions between commercial and inherently governmental. In fact, OMB has provided previous guidance indicating that functions should be classified in a uniform manner. The Revised Supplemental Handbook for Circular A-76, located on the OMBG web site, indicates that precedent, such as other agencies’ conflicting classification of a function as inherently governmental, is a valid reason to challenge the designation of a function on the FAIR Act Inventory (Appendix 2, paragraph (G)(3)). This guidance indicates that classification of a function should be consistent between agencies, so classification of a function should most certainly be consistent within an agency.

OASAM	GA	ATLANTA	US	2S731	C	B	2003
MSHA	WV	BECKLEY	US	1S731	C	B	2001
OASAM	TX	DALLAS	US	1S731	C	B	2002
MSHA	CO	LAKEWOOD	US	1S731	C	B	2004
MSHA	CO	LAKEWOOD	US	1S731	C	B	2001
MSHA	WV	MOUNT HOPE	US	1S731	C	B	2001
MSHA	WV	BECKLEY	US	1S741	C	B	2003
MSHA	WV	BECKLEY	US	1S742	C	B	2003
MSHA	CO	LAKEWOOD	US	1S742	C	B	2003

T-Other Non-Manufacturing Operations

T000-Administrative Support-21 FTE

Recommendation:

DOL should uphold this challenge and exclude Administrative Support, function code T000, from its list of commercial activities.

Reason for Challenge:

Information Receptionist (GS-0304), Mail and File Clerk (GS-0305), and Coding Clerk (GS-0357) functions should be classified as inherently governmental as defined under revised OMB Circular A-76 because this activity requires substantial discretion in applying governmental authority and protects economic and privacy interests.

Basis of Challenge:

Administrative Support on behalf of DOL entails access to privacy, personnel sensitive or confidential information. The protection of this information falls within the government's authority to protect the interests of its citizens in so far as it significantly affects the life, liberty, or property of private persons, and therefore must remain inherently governmental. Maintaining this function as inherently governmental ensures that any final agency action complies with the laws and policies of the United States. Maintaining this function as inherently governmental ensures that decisions reflect the independent conclusions of agency official and not those of contractors who may have interests that are not in concert with the public interest, and any be beyond the reach of management controls otherwise applicable to public employees.

Agency and contractor management will discover that it will be difficult for managers to carry out the core and inherently governmental functions of DOL with contract employees. The first concern of government contractors is not the performance of DOL work it is the creation of profit. Contractors will not perform any function not specifically named in a contract. To get contract employees to perform work outside the scope of the contract will force managers to renegotiate specific contracts.

OASAM	GA	ATLANTA	US	1T000	C	B	2003
OASAM	MA	BOSTON	US	1T000	C	B	2003
OASAM	IL	CHICAGO	US	4T000	C	B	1999
OASAM	MO	KANSAS CITY	US	2T000	C	B	1999
MSHA	CO	LAKEWOOD	US	6T000	C	B	2002

MSHA	CO	LAKWOOD	US	1T000	C	B	2004
MSHA	CO	LAKWOOD	US	1T000	C	B	1999
OASAM	NY	NEW YORK	US	3T000	C	B	2003
OASAM	CA	SAN FRANCISCO	US	1T000	C	B	1999
OASAM	WA	SEATTLE	US	1T000	C	B	1999

T700-Miscellaneous Program Management-22 FTE

Recommendation:

DOL should uphold this challenge and exclude Miscellaneous Program Management, function code T700 from its list of commercial activities.

Reason for Challenge:

Program Management (GS-0340), Administrative Officer (GS-0341), and Miscellaneous Administration and Program (GS-0301) functions should be classified as inherently governmental as defined under revised OMB Circular A-76 because this activity requires substantial discretion in applying governmental authority and protects economic and privacy interests.

Basis of Challenge:

Incumbents in these positions should be classified as inherently governmental because of their supervisory duties and managerial authority to conduct program reviews, agency accountability reviews, and conduct yearly performance appraisals. The incumbent in these positions handle politically sensitive and confidential information. The work performed by the incumbents is core to the mission of the agency, and therefore performance of commercial activity by government personnel is required due to a statutory prohibition against private sector performance.

In addition, the DOL FAIR Act Inventory submission violates both the established precedent rule and the principle of consistency within function codes by classifying the incumbents in Function Code L200 in Vets as both commercial and inherently governmental. All FTEs associated with a function should be classified as either inherently governmental or commercial in compliance with OMB guidance. Circular A-76 clearly states that “agencies shall identify all activities performed by government personnel as either commercially or inherently governmental”. (Pg. 4(a)). It does not allow activities to be identified as both. Agencies are required to use the function codes provided by OMB, not create sub-function codes by dividing the functions between commercial and inherently governmental. In fact, OMB has provided previous guidance indicating that functions should be classified in a uniform manner. The Revised Supplemental Handbook for Circular A-76, located on the OMBG web site, indicates that precedent, such as other agencies’ conflicting classification of a function as inherently governmental, is a valid reason to challenge the designation of a function on the FAIR Act Inventory (Appendix 2, paragraph (G)(3)). This guidance indicates that classification of a function should be consistent between agencies, so classification of a function should most certainly be consistent within an agency.

ESA	GA	ATLANTA	US	2T700	C	B	2002
MSHA	WV	BECKLEY	US	1T700	C	B	2000
SOL	MA	BOSTON	US	1T700	C	B	2002
ESA	IL	CHICAGO	US	2T700	C	B	2002
SOL	IL	CHICAGO	US	1T700	C	B	2002
VETS	IL	CHICAGO	US	1T700	C	B	1999
ESA	TX	DALLAS	US	2T700	C	B	2002
SOL	TX	DALLAS	US	1T700	C	B	2002
SOL	MO	KANSAS CITY	US	1T700	C	B	2002
SOL	NY	NEW YORK	US	1T700	C	B	2002
OASAM	NY	NEW YORK	US	1T700	C	B	2003
OASAM	CA	OAKLAND	US	1T700	C	B	1999
SOL	PA	PHILADELPHIA	US	1T700	C	B	2002
ESA	PA	PITTSBURGH	US	1T700	C	B	2002
ESA	NJ	PLEASANTVILLE	US	1T700	C	B	2002
ESA	CA	SACRAMENTO	US	1T700	C	B	2002
ESA	CA	SAN FRANCISCO	US	3T700	C	B	2002

T807-Visual Information-9 FTE

Recommendation:

DOL should uphold this challenge and exclude Visual Information, function code T807 from its list of commercial activities.

Reason for Challenge:

General Arts and Information (GS-1001), Audiovisual Production (GS-1071) and Visual Information (GS-1084), functions should be classified as inherently governmental as defined under revised OMB Circular A-76 because this activity requires substantial discretion in applying governmental authority and protects economic and privacy interests.

Basis of Challenge:

The duties of this function include all the various aspects of producing and disseminating information in various audio/visual formats aimed at audiences both internal and external to the Agency. The incumbents are responsible for independently planning, designing and carrying out assignments with minimum review. The incumbents have access to highly confidential information. The incumbents apply laws, regulations, directives and procedures in achieving results. As a result, the incumbents use substantial discretion that binds the US Government; determines, protects and advances interests of the U.S.; and, affects life, liberty and property of private persons.

OSHA	IL	ARLINGTON HEIGHTS	US	1T807	C	B	2003
MSHA	WV	BECKLEY	US	8T807	C	B	1999
OSHA	UT	SALT LAKE CITY	US	1T807	C	B	2003

T820-Administrative Support Services-221 FTE

Recommendation:

DOL should uphold this challenge and exclude these Administrative Support Services, function code T820, from its list of commercial activities.

Reason for Challenge:

Miscellaneous Clerk and Assistant (GS-0303), Secretary (GS-0318), Clerk-Typist (GS-0322) and Office Automation Clerical and Assistance (GS-0326) functions should be classified as inherently governmental as defined under revised OMB Circular A-76 because this activity requires substantial discretion in applying governmental authority and protects economic and privacy interests.

Basis of Challenge:

The incumbent in this position provides internal and external customer service through the independent preparation of a myriad of documents relating to the mission and function of the Agency, through employee information and through frequent public contact. Much of the material handled by the incumbent is private and confidential. Substantial discretion is applied by the incumbent in preparing documents, verifying information and in providing the public with information regarding their rights. The incumbents' work affects office functioning which ultimately has an effect on the Agency's ability to achieve its mission and on private individuals who have sought redress through the Agency. The decisions made by the incumbent, whether by work processed, information imparted to private persons or in other ways, binds the government. The incumbent may also make changes to documents which may or may not be reviewed which is another application of discretion and binds the government to an action. The exercise of the duties above requires the use of discretion and binds the U.S. Government; determines, protects and advances interests of the U.S.; and, affects life, liberty and property of private persons.

Primarily females and minorities perform these functions. It is therefore sadly ironic that the commercial classification of this function targets female and minority employees who work for agencies designed to protect equal treatment. Contracting out this function will harm the very people who these agencies are created to protect.

Administrative Support on behalf of DOL entails access to privacy, personnel sensitive or confidential information. The protection of this information falls within the government's authority to protect the interests of its citizens in so far as it significantly affects the life, liberty, or property of private persons, and therefore must remain inherently governmental. Maintaining this function as inherently governmental ensures that any final agency action complies with the laws and policies of the United States. Maintaining this function as inherently governmental ensures that decisions reflect the independent conclusions of agency official and not those of contractors who may have interests that are not in concert with the public interest, and any be beyond the reach of management controls otherwise applicable to public employees.

Agency and contractor management will discover that it will be difficult for managers to carry out the core and inherently governmental functions of DOL with contract employees. The first concern of government contractors is not the performance of DOL work it is the creation of profit. Contractors will not perform any functions not specifically named in a contract. To get contract employees to perform work outside the scope of the contract will force agency managers to renegotiate specific contracts.

OSHA	PA	ALLENTOWN	US	1T820	C	B	2003
OSHA	IL	ARLINGTON HEIGHTS	US	1T820	C	B	2003
EBSA	GA	ATLANTA	US	1T820	C	B	2003

ESA	GA	ATLANTA	US	8T820	C	B	2002
OASAM	GA	ATLANTA	US	4T820	C	B	2003
OSHA	GA	ATLANTA	US	2T820	C	B	2003
OSHA	IL	AURORA	US	1T820	C	B	2003
MSHA	KY	BARBOURVILLE	US	5T820	C	B	1999
MSHA	WV	BECKLEY	US	5T820	C	B	1999
ESA	AL	BIRMINGHAM	US	2T820	C	B	2002
MSHA	AL	BIRMINGHAM	US	1T820	C	B	2002
VETS	MA	BOSTON	US	1T820	C	B	2003
OSHA	NY	BOWMANSVILLE	US	1T820	C	B	2003
MSHA	PA	BRUCETON	US	7T820	C	B	2002
ESA	NC	CHARLOTTE	US	2T820	C	B	2002
EBSA	IL	CHICAGO	US	2T820	C	B	2003
ESA	IL	CHICAGO	US	9T820	C	B	2002
OASAM	IL	CHICAGO	US	1T820	C	B	1999
OSHA	IL	CHICAGO	US	1T820	C	B	2003
VETS	IL	CHICAGO	US	1T820	C	B	1999
EBSA	OH	CINCINATI	US	1T820	C	B	2003
ESA	OH	CLEVELAND	US	1T820	C	B	2002
ESA	SC	COLUMBIA	US	2T820	C	B	2002
ESA	OH	COLUMBUS	US	1T820	C	B	2002
OSHA	OH	COLUMBUS	US	1T820	C	B	2003
BLS	TX	DALLAS	US	2T820	C	B	2003
EBSA	TX	DALLAS	US	3T820	C	B	2003
ESA	TX	DALLAS	US	4T820	C	B	2002
MSHA	TX	DALLAS	US	1T820	C	B	1999
OASAM	TX	DALLAS	US	2T820	C	B	2002
VETS	TX	DALLAS	US	1T820	C	B	1999
ESA	CO	DENVER	US	1T820	C	B	2002
MSHA	CO	DENVER	US	2T820	C	B	1999
OASAM	CO	DENVER	US	2T820	C	B	2002
OSHA	CO	DENVER	US	1T820	C	B	2003
MSHA	MN	DULUTH	US	1T820	C	B	1999
OSHA	PA	ERIE	US	1T820	C	B	2003
MSHA	WV	FAIRMONT	US	1T820	C	B	2004
ESA	FL	FT LAUDERDALE	US	1T820	C	B	2002
OSHA	FL	FT LAUDERDALE	US	1T820	C	B	2003
MSHA	AL	HOMEWOOD	US	2T820	C	B	1999
MSHA	AL	HOMEWOOD	US	1T820	C	B	2000
ESA	IN	INDIANAPOLIS	US	1T820	C	B	2002
ESA	MS	JACKSON	US	1T820	C	B	2002
ESA	FL	JACKSONVILLE	US	1T820	C	B	2002
OSHA	FL	JACKSONVILLE	US	1T820	C	B	2003
BLS	MO	KANSAS CITY	US	1T820	C	B	2003
ESA	MO	KANSAS CITY	US	1T820	C	B	2002
MSHA	CO	LAKWOOD	US	4T820	C	B	1999
MSHA	CO	LAKWOOD	US	1T820	C	B	2004
EBSA	CA	LOS ANGELES	US	1T820	C	B	2003
ESA	CA	LOS ANGELES	US	2T820	C	B	2002
ESA	KY	LOUISVILLE	US	2T820	C	B	2002
MSHA	KY	MADISONVILLE	US	4T820	C	B	1999
ESA	TN	MEMPHIS	US	1T820	C	B	2002
ESA	FL	MIAMI	US	1T820	C	B	2002
ESA	WI	MILWAUKEE	US	1T820	C	B	2002
ESA	MN	MINNEAPOLIS	US	1T820	C	B	2002
ESA	AL	MONTGOMERY	US	1T820	C	B	2002
MSHA	WV	MORGANTOWN	US	2T820	C	B	1999

MSHA	WV	MORGANTOWN	US	1T820	C	B	2004
MSHA	WV	MOUNT HOPE	US	5T820	C	B	1999
ESA	TN	NASHVILLE	US	3T820	C	B	2002
ESA	LA	NEW ORLEANS	US	1T820	C	B	2002
MSHA	PA	NEW STANTON	US	3T820	C	B	1999
EBSA	NY	NEW YORK	US	3T820	C	B	2003
ESA	NY	NEW YORK	US	1T820	C	B	2002
WB	NY	NEW YORK	US	1T820	C	B	1999
OASAM	NY	NEW YORK	US	2T820	C	B	2003
OSHA	NY	NEW YORK-MANHATTAN	US	1T820	C	B	2003
OSHA	NY	NEW YORK-MANHATTAN	US	1T820	C	B	2003
OSHA	NY	NEW YORK-QUEENS	US	1T820	C	B	2003
MSHA	VA	NORTON	US	4T820	C	B	1999
OASAM	CA	OAKLAND	US	1T820	C	B	2000
ESA	FL	ORLANDO	US	2T820	C	B	2002
EBSA	PA	PHILADELPHIA	US	4T820	C	B	2003
ESA	PA	PHILADELPHIA	US	7T820	C	B	2002
OASAM	PA	PHILADELPHIA	US	1T820	C	B	2004
OASAM	PA	PHILADELPHIA	US	2T820	C	B	2003
OSHA	PA	PHILADELPHIA	US	1T820	C	B	2003
VETS	PA	PHILADELPHIA	US	1T820	C	B	1999
ESA	AZ	PHOENIX	US	1T820	C	B	2002
MSHA	KY	PIKEVILLE	US	5T820	C	B	1999
MSHA	KY	PIKEVILLE	US	1T820	C	B	2004
OSHA	PA	PITTSBURGH	US	2T820	C	B	2003
ESA	OR	PORTLAND	US	1T820	C	B	2002
OSHA	OR	PORTLAND	US	1T820	C	B	2003
ESA	NC	RALEIGH	US	3T820	C	B	2002
ESA	CA	SAN DIEGO	US	1T820	C	B	2002
OSHA	CA	SAN DIEGO	US	1T820	C	B	2003
ESA	CA	SAN FRANCISCO	US	5T820	C	B	2002
OASAM	CA	SAN FRANCISCO	US	2T820	C	B	2004
OSHA	CA	SAN FRANCISCO	US	4T820	C	B	2003
OSHA	CA	SAN FRANCISCO	US	2T820	C	B	2003
VETS	CA	SAN FRANCISCO	US	1T820	C	B	1999
ESA	CA	SAN JOSE	US	1T820	C	B	2002
OSHA	UT	SANDY	US	2T820	C	B	2003
ESA	GA	SAVANNAH	US	1T820	C	B	2002
ESA	WA	SEATTLE	US	1T820	C	B	2002
OSHA	WA	SEATTLE	US	1T820	C	B	2003
OSHA	OH	SHARONVILLE	US	1T820	C	B	2003
OSHA	GA	SMYRNA	US	2T820	C	B	2003
OSHA	MO	ST LOUIS	US	1T820	C	B	2003
OSHA	NY	SYRACUSE	US	1T820	C	B	2003
ESA	FL	TAMPA	US	2T820	C	B	2002
OSHA	FL	TAMPA	US	1T820	C	B	2003
OSHA	OH	TOLEDO	US	1T820	C	B	2003
MSHA	WV	TRIADELPHIA	US	5T820	C	B	2002
OSHA	GA	TUCKER	US	1T820	C	B	2003
MSHA	CA	VACAVILLE	US	1T820	C	B	1999
MSHA	IN	VINCENNES	US	1T820	C	B	2004
MSHA	IN	VINCENNES	US	2T820	C	B	1999
MSHA	PA	WARRANDALE	US	1T820	C	B	1999
MSHA	PA	WILKES-BARRE	US	3T820	C	B	1999

DOL should uphold this challenge and exclude Special Studies and Analysis, function code T821, T822, T834, T835, T836, T839, T855 and T999 from its list of commercial activities.

Reason for Challenge:

Supply Program Management (GS-2003), Supply Clerical and Technician (GS-2005), Distribution Facilities and Storage Management (GS-2030), and Inventory Management (GS-2010) functions should be classified as inherently governmental as defined under revised OMB Circular A-76 because this activity requires substantial discretion in applying governmental authority and protects economic and privacy interests.

Basis of Challenge:

Engineers, scientists, technicians and specialists perform highly technical and specialized investigations and compliance determinations regarding safety and health issues. They cover many areas that require specialized knowledge in the prevention of accidents hazard awareness, etc. as they pertain to specific industries and the associated environments. These specialists have a right of entry to specific industries to perform complex investigations, the results of which are utilized by Agency enforcement personnel to determine compliance. Industry has come to accept DOL's presence on properties because our inspectors, specialists, and engineers have extensive experience with the hazards associated with operations and, therefore, are not a liability to have on-site. Historically, employers have been reluctant to have individuals without safety backgrounds on-site because of the liability they pose. This fact is borne out by the disproportionately high incidence of injuries and fatalities among contractors visiting or working on properties.

All specialists and technicians must have in-depth knowledge not only of federal law and regulations governing workplace safety, but also extensive knowledge of and experience in areas of expertise. Many of these employees are also involved in the process to approve, certify and perform audits within industry and government. Decisions made can significantly affect the life of private persons. It would be virtually impossible for them to make a decision without in-depth experience.

OASAM	GA	ATLANTA	US	1T821	C	B	2003
SOL	TX	DALLAS	US	1T821	C	B	2002
SOL	CO	DENVER	US	1T821	C	B	2002
SOL	PA	PHILADELPHIA	US	1T821	C	B	2002
SOL	IL	CHICAGO	US	1T822	C	B	2002
SOL	NY	NEW YORK	US	2T822	C	B	2002
MSHA	WV	BECKLEY	US	6T834	C	B	2003
OSHA	OH	CINCINNATI	US	4T835	C	B	2003
OSHA	FL	TAMPA	US	1T835	C	B	2003
OSHA	WV	TRIADELPHIA	US	1T835	C	B	2003
MSHA	WV	BECKLEY	US	1T836	C	B	2000
MSHA	WV	BECKLEY	US	3T839	C	B	2000
OSHA	IL	ARLINGTON HEIGHTS	US	1T855	C	B	2003
MSHA	WV	BECKLEY	US	1T999	C	B	1999

U-Education and Training

Recommendation:

DOL should uphold this challenge and exclude function codes U303, U500, U600, and U699. Basis of

Challenge:

Reason for Challenge:

Supply Program Management (GS-2003), Supply Clerical and Technician (GS-2005), Distribution Facilities and Storage Management (GS-2030), and Inventory Management (GS-2010) functions should be classified as inherently governmental as defined under revised OMB Circular A-76 because this activity requires substantial discretion in applying governmental authority and protects economic and privacy interests.

Basis of Challenge

The performance of these functions by government employees ensures that any final agency action complies with the laws, executive orders, and regulations and policies of the United States. These functions are intertwined with the core functions of DOL. The privatization of these functions would undermine the agency's ability to perform its work.

Contractors may have interests that are not in concert with the public interest and may be beyond the reach of management controls otherwise applicable to public employees. The performance of these functions by federal employees ensures that the government uses informed and independent options. It provides for grater scrutiny and an enhanced degree of management and oversight when contracting for functions that are not inherently governmental but closely support the performances of inherently governmental functions.

OSHA	PA	PHILADELPHIA	US	1U303	C	B	2003
ESA	IL	CHICAGO	US	3U500	C	B	2002
ESA	TX	DALLAS	US	4U500	C	B	2002
ESA	CA	LOS ANGELES	US	2U500	C	B	2002
ESA	FL	MIAMI	US	1U500	C	B	2002
ESA	LA	NEW ORLEANS	US	2U500	C	B	2002
ESA	NE	OMAHA	US	1U500	C	B	2002
ESA	CA	ORANGE	US	1U500	C	B	2002
ESA	AZ	PHOENIX	US	1U500	C	B	2002
ESA	OR	PORTLAND	US	1U500	C	B	2002
ESA	CA	SAN DIEGO	US	1U500	C	B	2002
ESA	CA	SAN FRANCISCO	US	1U500	C	B	2002
ESA	CA	SAN JOSE	US	1U500	C	B	2002
ESA	WA	SEATTLE	US	1U500	C	B	2002
OSHA	IL	ARLINGTON HEIGHTS	US	# U600	C	B	2003
MSHA	KY	BARBOURVILLE	US	1U600	C	B	1999
MSHA	WV	BECKLEY	US	# U600	C	B	1999
OSHA	WA	BELLEVUE	US	1U600	C	B	2003
OSHA	CO	DENVER	US	1U600	C	B	2003
OSHA	NY	NEW YORK-MANHATTAN	US	2U600	C	B	2003
OSHA	NE	OMAHA	US	1U600	C	B	2003
OSHA	PA	PHILADELPHIA	US	1U600	C	B	2003
OSHA	RI	PROVIDENCE	US	1U600	C	B	2003
OSHA	GA	SMYRNA	US	1U600	C	B	2003
OSHA	NY	SYRACUSE	US	1U600	C	B	2003
MSHA	WV	BECKLEY	US	1U699	C	B	2002

W210-Telephone Systems-1 FTE

W310-Computer Services and Database Management-35 FTE

W601-Information Technology Management-2 FTE

W824-Data Processing Services-1 FTE

Recommendation:

DOL should uphold this challenge and W000-Administrative Support-4 FTE exclude these functions from its list of commercial activities.

Reason for Challenge:

Supply Program Management (GS-2003), Supply Clerical and Technician (GS-2005), Distribution Facilities and Storage Management (GS-2030), and Inventory Management (GS-2010) functions should be classified as inherently governmental as defined under revised OMB Circular A-76 because this activity requires substantial discretion in applying governmental authority and protects economic and privacy interests.

Basis of Challenge:

When government employees perform this function the agency is best able to carry out its core mission. It contractor's best interest may not necessarily be the best interest of the agency or the public. Agency and contractor managers will discover that it will be difficult for managers to carry out the core and inherently governmental functions of DOL with contract employees. The first concern of government contractors is not the performance of DOL work it is the creation of profit. Contractors will not perform any functions not specifically named in a contract. To get contractor employees to perform work outside the scope of the contract will force managers to renegotiate specific contracts. Agency managers should remember that contractor problems continue to plague DOL computer systems, including WHIZARD, IPAL and People Power.

The function is so intimately related to the core mission and inherently governmental functions of DOL so as to mandate performance by government employees. These duties include analysis of DOL management programs, analysis of private sector programs, access to and knowledge of strategies used by the agency, and access to Privacy Act data.

MSHA	IL	BENTON	US	1W000	C	B	2004
MSHA	WV	TRIADDELPHIA	US	3W000	C	B	2002
OASAM	PA	PHILADELPHIA	US	1W210	C	B	2003
OSHA	IL	ARLINGTON HEIGHTS	US	1W310	C	B	2003
EBSA	GA	ATLANTA	US	1W310	C	B	2003
ESA	GA	ATLANTA	US	1W310	C	B	2002
ESA	MD	BALTIMORE	US	1W310	C	B	2002
MSHA	KY	BARBOURVILLE	US	2W310	C	B	1999
MSHA	WV	BECKLEY	US	1W310	C	B	2003
MSHA	WV	BECKLEY	US	2W310	C	B	2002
MSHA	AL	BIRMINGHAM	US	1W310	C	B	1999
OSHA	ND	BISMARCK	US	1W310	C	B	2003
OSHA	MA	BOSTON	US	1W310	C	B	2003
ESA	IL	CHICAGO	US	1W310	C	B	2002
OASAM	IL	CHICAGO	US	1W310	C	B	2002
ESA	OH	CLEVELAND	US	1W310	C	B	2002
MSHA	TX	DALLAS	US	1W310	C	B	1999
ESA	CO	DENVER	US	1W310	C	B	2002

MSHA	CO	DENVER	US	1W310	C	B	1999
ESA	IA	DES MOINES	US	1W310	C	B	2002
MSHA	MN	DULUTH	US	1W310	C	B	2002
ESA	IN	INDIANAPOLIS	US	1W310	C	B	2002
ESA	FL	JACKSONVILLE	US	1W310	C	B	2002
ESA	MO	KANSAS CITY	US	1W310	C	B	2002
MSHA	CO	LAKWOOD	US	7W310	C	B	1999
MSHA	CO	LAKWOOD	US	# W310	C	B	2002
MSHA	CO	LAKWOOD	US	1W310	C	B	2003
EBSA	CA	LOS ANGELES	US	1W310	C	B	2003
MSHA	KY	MADISONVILLE	US	1W310	C	B	1999
MSHA	WV	MORGANTOWN	US	1W310	C	B	1999
MSHA	WV	MORGANTOWN	US	1W310	C	B	2004
MSHA	WV	MOUNT HOPE	US	1W310	C	B	1999
MSHA	WV	MOUNT HOPE	US	1W310	C	B	2004
MSHA	PA	NEW STANTON	US	1W310	C	B	1999
MSHA	VA	NORTON	US	2W310	C	B	1999
OSHA	NE	OMAHA	US	1W310	C	B	2003
OSHA	NJ	PARSIPPANY	US	1W310	C	B	2003
OSHA	PA	PHILADELPHIA	US	2W310	C	B	2003
MSHA	KY	PIKEVILLE	US	1W310	C	B	1999
ESA	CA	SACRAMENTO	US	1W310	C	B	2002
EBSA	CA	SAN FRANCISCO	US	1W310	C	B	2003
ESA	CA	SAN FRANCISCO	US	1W310	C	B	2002
OSHA	CA	SAN FRANCISCO	US	1W310	C	B	2003
ESA	WA	SEATTLE	US	2W310	C	B	2002
OSHA	MA	SPRINGFIELD	US	1W310	C	B	2003
MSHA	WV	TRIADELPHIA	US	5W310	C	B	2002
OSHA	GA	TUCKER	US	1W310	C	B	2003
MSHA	CA	VACAVILLE	US	1W310	C	B	1999
MSHA	IN	VINCENNES	US	1W310	C	B	1999
MSHA	PA	WARRANDALE	US	1W310	C	B	1999
ESA	CA	WEST COVINA	US	1W310	C	B	2002
OASAM	GA	ATLANTA	US	1W601	C	B	2003
VETS	GA	ATLANTA	US	1W601	C	B	1999
MSHA	CO	LAKWOOD	US	1W601	C	B	1999
VETS	CA	SAN FRANCISCO	US	1W601	C	B	1999
BLS	NY	NEW YORK-MANHATTAN	US	1W824	C	B	2003

Recommendation:

DOL should uphold this challenge and exclude Systems Design, Development and Programming Services, function code W826, from its list of commercial activities.

Reason for Challenge:

Supply Program Management (GS-2003), Supply Clerical and Technician (GS-2005), Distribution Facilities and Storage Management (GS-2030), and Inventory Management (GS-2010) functions should be classified as inherently governmental as defined under revised OMB Circular A-76 because this activity requires substantial discretion in applying governmental authority and protects economic and privacy interests.

Basis of Challenge:

The function is so intimately related to the core mission and inherently governmental functions of DOL so as to mandate performance by government employees. These duties include analysis of DOL management and programs, analysis of private sector programs, access to and knowledge of strategies used by the agency, and access to Privacy Act data.

The performance of the function by government employees ensures that the interests and concerns of the public and the agency regarding the safeguarding of classified information is appropriately addressed and protected. This may not necessarily be in the interest of contractors, which may have concerns that are not in concert with the public interest.

The performance of these functions by government employees ensures that any final agency action complies with the laws, executive orders, and regulations and policies of the United States. These functions are intertwined with the core functions of DOL. The privatization of these functions would undermine the agency's ability to perform its work.

MSHA | CO LAKEWOOD US | 1W826 C B | 1999

Y-Management and General Support

Y403-Paralegal-21 FTE

Y415-Legal Services and Support-78 FTE

Recommendation:

DOL should uphold this challenge and exclude these legal positions from its list of commercial activities.

Reason for Challenge:

Supply Program Management (GS-2003), Supply Clerical and Technician (GS-2005), Distribution Facilities and Storage Management (GS-2030), and Inventory Management (GS-2010) functions should be classified as inherently governmental as defined under revised OMB Circular A-76 because this activity requires substantial discretion in applying governmental authority and protects economic and privacy interests.

Basis of Challenge:

The performance of these functions entails access to private and confidential information, including the agency's litigation strategies, documents, case files protected by the Privacy Act, trade secret information, and other sensitive information about private sector employers that should not be accessed by competitors. Maintaining this function as inherently governmental ensures that any final agency action complies with the laws and policies of the United States. The inherently governmental designation will ensure that decisions reflect the independent conclusions of agency officials and not contractors who may have interests that are not in concert with the public, and any be beyond the reach of management controls otherwise applicable to public employees.

The Paralegal Specialist function should be classified as inherently governmental, as defined by revised OMB Circular A-76, because it is composed of activities that (1) require substantial discretion in applying governmental authority; (2) bind the United States to take some action; (3) determine and protect economic and property interests; and (4) significantly affect the property

of private persons. In addition, some Paralegal Specialists are classified as inherently governmental; therefore, all Paralegal Specialists should be classified as inherently governmental under precedent requirements.

Paralegal Specialists use substantial discretion in applying governmental authority, which is an inherently governmental activity under revised OMB Circular A-76. They make substantive decisions concerning the acceptability of legal instruments and documents presented to establish vessel entitlements based on the citizenship of vessel owners. Their work involves using a variety of methods to identify relationships and solve complex problems based on the application of various rules or precedents. Paralegal Specialists exercise substantial judgment to evaluate documentation submitted against the provisions set forth in statutes. They determine actions needed to resolve issues and acceptable documentation needed to ensure substantial compliance with the intent of applicable laws and regulations.

In addition, the DOL FAIR Act Inventory submission violates both the established precedent rule and the principle of consistency within function codes by classifying the incumbents in Function Code Y403 and Y415 as both commercial and inherently governmental. All FTEs associated with a function should be classified as either inherently governmental or commercial in compliance with OMB guidance. Circular A-76 clearly states that “agencies shall identify all activities performed by government personnel as either commercially or inherently governmental”. (Pg. 4(a)). It does not allow activities to be identified as both. Agencies are required to use the function codes provided by OMB, not create sub-function codes by dividing the functions between commercial and inherently governmental. In fact, OMB has provided previous guidance indicating that functions should be classified in a uniform manner. The Revised Supplemental Handbook for Circular A-76, located on the OMB web site, indicates that precedent, such as other agencies’ conflicting classification of a function as inherently governmental, is a valid reason to challenge the designation of a function on the FAIR Act Inventory (Appendix 2, paragraph (G)(3)). This guidance indicates that classification of a function should be consistent between agencies, so classification of a function should most certainly be consistent within an agency. While the Revised Supplemental Handbook has been replaced by the revised Circular, no part of the new Circular contradicts this principle.

SOL	GA	ATLANTA	US	3Y403	C	B	2002
SOL	MA	BOSTON	US	2Y403	C	B	2002
SOL	IL	CHICAGO	US	3Y403	C	B	2002
SOL	TX	DALLAS	US	3Y403	C	B	2002
SOL	CO	DENVER	US	2Y403	C	B	2002
SOL	MO	KANSAS CITY	US	2Y403	C	B	2002
SOL	CA	LOS ANGELES	US	1Y403	C	B	2002
SOL	TN	NASHVILLE	US	2Y403	C	B	2002
SOL	NY	NEW YORK	US	3Y403	C	B	2002
SOL	PA	PHILADELPHIA	US	3Y403	C	B	2002
SOL	CA	SAN FRANCISCO	US	2Y403	C	B	2002
SOL	WA	SEATTLE	US	1Y403	C	B	2002
SOL	GA	ATLANTA	US	6Y415	C	B	2002
ALJ	MA	BOSTON	US	3Y415	C	B	2002
SOL	MA	BOSTON	US	3Y415	C	B	2002
ALJ	NJ	CAMDEN	US	4Y415	C	B	2002
SOL	IL	CHICAGO	US	3Y415	C	B	2002
ALJ	OH	CINCINNATI	US	6Y415	C	B	2002
SOL	OH	CLEVELAND	US	3Y415	C	B	2002
SOL	TX	DALLAS	US	2Y415	C	B	2002
SOL	CO	DENVER	US	1Y415	C	B	2002
SOL	MO	KANSAS CITY	US	4Y415	C	B	2002
SOL	CA	LOS ANGELES	US	2Y415	C	B	2002
ALJ	LA	METAIRIE	US	6Y415	C	B	2002

SOL	TN	NASHVILLE	US	4Y415	C	B	2002
SOL	NY	NEW YORK	US	3Y415	C	B	2002
ALJ	VA	NEWPORT NEWS	US	4Y415	C	B	2002
SOL	PA	PHILADELPHIA	US	6Y415	C	B	2002
ALJ	PA	PITTSBURGH	US	4Y415	C	B	2002
ALJ	CA	SAN FRANCISCO	US	6Y415	C	B	2002
SOL	CA	SAN FRANCISCO	US	4Y415	C	B	2002

MSHA	WV	BECKLEY	US	1Y520	C	B	2001
OASAM	PA	PHILADELPHIA	US	1Y520	C	B	2004
OSHA	IL	ARLINGTON HEIGHTS	US	1Y815	C	B	2003
OASAM	GA	ATLANTA	US	1Y815	C	B	2003
MSHA	WV	BECKLEY	US	2Y815	C	B	2002
OASAM	TX	DALLAS	US	4Y815	C	B	2002
OSHA	CA	SAN FRANCISCO	US	1Y815	C	B	2003
OSHA	UT	SANDY	US	4Y815	C	B	2003
ESA	WA	SEATTLE	US	3Y820	C	B	2002
ESA	WA	SEATTLE	US	1Y820	C	B	2002
MSHA	WV	BECKLEY	US	2Y860	C	B	2002
MSHA	WV	BECKLEY	US	1Z991	C	B	2003
MSHA	WV	BECKLEY	US	4Z992	C	B	2002

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