

March 29, 2006

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 10, 2006.

### **Reason for Challenge**

The journey levels of most DOL functions are currently excluded from the 2005 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 2005 Fair Act Inventory are primarily support positions. We challenge the inclusion of these functions in the 2005 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 2005 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-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, there is no part of the new Circular contradicts this principle.

ESA	CA	SAN FRANCISCO	US	4	B700	C	B
ESA	GA	ATLANTA	US	4	B700	C	B
ESA	IL	CHICAGO	US	6	B700	C	B
ESA	TX	DALLAS	US	4	B700	C	B
ESA	WA	SEATTLE	US	1	B700	C	B
DM/OASAM	CA	SAN FRANCISCO	US	9	B720	C	B
DM/OASAM	GA	ATLANTA	US	12	B720	C	B
DM/OASAM	IL	CHICAGO	US	19	B720	C	B
DM/OASAM	MA	BOSTON	US	6	B720	C	B
DM/OASAM	MO	KANSAS CITY	US	1	B720	C	B
DM/OASAM	NY	NEW YORK	US	2	B720	C	B
DM/OASAM	PA	PHILADELPHIA	US	11	B720	C	B
DM/OASAM	TX	DALLAS	US	15.5	B720	C	B

## **C-Finance and Accounting**

**C000-Finance and Accounting-Administrative Support- 5 FTE**

**C307-Finance and Accounting-General Accounting- 4 FTE**

**C400-Finance and Accounting-Budget Support- 12 FTE**

**C700-Finance and Accounting-Finance/Accounting Services-29 FTE**

### **Recommendation:**

DOL should uphold this challenge and exclude Finance and Accounting, function codes C000, C307, C400, 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: 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.

ESA	CA	SAN FRANCISCO	US	2	C000	C	B
ESA	MA	BOSTON	US	1	C000	C	B
ESA	PA	PHILADELPHIA	US	2	C000	C	B
OSHA	IL	AURORA	US	1	C307	C	B
OSHA	MO	KANSAS CITY	US	1	C307	C	B
OSHA	NY	MANHATTAN	US	1	C307	C	B
OSHA	WA	SEATTLE	US	1	C307	C	B
OSHA	CA	SAN FRANCISCO	US	1	C400	C	B
BLS	CA	SAN FRANCISCO	US	1	C400	C	B
OSHA	CO	DENVER	US	1	C400	C	B
OSHA	GA	ATLANTA	US	1	C400	C	B
OSHA	GA	ATLANTA	US	1	C400	C	B
OSHA	MO	KANSAS CITY	US	1	C400	C	B
OSHA	MT	BILLINGS	US	1	C400	C	B
OSHA	PA	PHILADELPHIA	US	1	C400	C	B
MSHA	PA	JOHNSTOWN	US	1	C400	C	B
OSHA	TX	DALLAS	US	1	C400	C	B
OSHA	TX	DALLAS	US	1	C400	C	B
OSHA	WA	SEATTLE	US	1	C400	C	B
DM/OASAM	CA	SAN FRANCISCO	US	5	C700	C	B
DM/OASAM	GA	ATLANTA	US	6	C700	C	B
DM/OASAM	IL	CHICAGO	US	8	C700	C	B
DM/OASAM	MA	BOSTON	US	1	C700	C	B
DM/OASAM	MO	KANSAS CITY	US	2	C700	C	B
DM/OASAM	NY	NEW YORK	US	2	C700	C	B
DM/OASAM	TX	DALLAS	US	5	C700	C	B

## **D-Regulatory and Program Management Support Services**

### **D000-Administrative Support-153 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	CA	LONG BEACH	US	4	D000	C	B
ESA	CA	OAKLAND	US	2	D000	C	B
ESA	CA	ORANGE	US	1	D000	C	B
ESA	CA	SAN FRANCISCO	US	1	D000	C	B
OSHA	CA	SAN FRANCISCO	US	1	D000	C	B
BLS	CA	SAN FRANCISCO	US	4	D000	C	B
DM/WB	CA	SAN FRANCISCO	US	1	D000	C	B
OSHA	CO	DENVER	US	1	D000	C	B
DM/WB	CO	DENVER	US	1	D000	C	B
ESA	CT	HARTFORD	US	1	D000	C	B
OSHA	CT	BRIDGEWATER	US	1	D000	C	B
OSHA	CT	BRIDGEWATER	US	1	D000	C	B
OSHA	CT	HARTFORD	US	1	D000	C	B
OSHA	DE	WILMINGTON	US	1	D000	C	B

ESA	FL	JACKSONVILLE	US	1	D000	C	B
ESA	FL	MIAMI	US	1	D000	C	B
ESA	FL	ORLANDO	US	1	D000	C	B
ESA	GA	ATLANTA	US	1	D000	C	B
OSHA	GA	ATLANTA	US	1	D000	C	B
OSHA	GA	ATLANTA	US	1	D000	C	B
OSHA	GA	SAVANNAH	US	1	D000	C	B
OSHA	GA	SMYRNA	US	1	D000	C	B
OSHA	GA	SMYRNA	US	1	D000	C	B
BLS	GA	ATLANTA	US	7	D000	C	B
DM/WB	GA	ATLANTA	US	1	D000	C	B
ESA	HI	HONOLULU	US	1	D000	C	B
ETA	IL	CHICAGO	US	1	D000	C	B
ESA	IL	CHICAGO	US	6	D000	C	B
OSHA	IL	ARLINGTON HEIGHTS	US	1	D000	C	B
OSHA	IL	AURORA	US	1	D000	C	B
OSHA	IL	DES PLAINES	US	1	D000	C	B
OSHA	IL	FAIRVIEW HEIGHTS	US	1	D000	C	B
OSHA	IL	PEORIA	US	1	D000	C	B
OSHA	IL	CHICAGO	US	1	D000	C	B
OSHA	IL	CHICAGO	US	1	D000	C	B
BLS	IL	CHICAGO	US	6	D000	C	B
DM/WB	IL	CHICAGO	US	1	D000	C	B
ESA	IN	INDIANAPOLIS	US	1	D000	C	B
OSHA	IN	INDIANAPOLIS	US	1	D000	C	B
OSHA	KS	WICHITA	US	1	D000	C	B
ESA	KY	PIKEVILLE	US	2	D000	C	B
OSHA	KY	FRANKFORT	US	1	D000	C	B
OSHA	LA	BATON ROUGE	US	1	D000	C	B
ESA	MA	BOSTON	US	3	D000	C	B
OSHA	MA	BOSTON	US	1	D000	C	B
OSHA	MA	BRAINTREE	US	1	D000	C	B
OSHA	MA	METHUEN	US	1	D000	C	B
OSHA	MA	METHUEN	US	1	D000	C	B
OSHA	MA	SPRINGFIELD	US	1	D000	C	B
OSHA	MA	SPRINGFIELD	US	1	D000	C	B
BLS	MA	BOSTON	US	2	D000	C	B
DM/WB	MA	BOSTON	US	1	D000	C	B
OSHA	ME	AUGUSTA	US	1	D000	C	B
ESA	MI	DETROIT	US	1	D000	C	B
ESA	MO	KANSAS CITY	US	1	D000	C	B
OSHA	MO	KANSAS CITY	US	1	D000	C	B
OSHA	MO	ST LOUIS	US	1	D000	C	B
BLS	MO	KANSAS CITY	US	2.8	D000	C	B
DM/WB	MO	KANSAS CITY	US	1	D000	C	B
ESA	MS	JACKSON	US	1	D000	C	B
OSHA	MS	JACKSON	US	1	D000	C	B
ESA	NC	CHARLOTTE	US	1	D000	C	B
OSHA	NC	RALEIGH	US	1	D000	C	B
ESA	NE	OMAHA	US	1	D000	C	B
ESA	NE	ST LOUIS	US	1	D000	C	B
OSHA	NE	OMAHA	US	1	D000	C	B
ESA	NM	ALBUQUERQUE	US	1	D000	C	B
ESA	NY	BUFFALO	US	1	D000	C	B

ESA	NY	MANHATTAN	US	1	D000	C	B
ESA	NY	NEW YORK	US	4	D000	C	B
OSHA	NY	BAYSIDE	US	1	D000	C	B
		NEW YORK-					
BLS	NY	MANHATTAN	US	4	D000	C	B
ESA	OH	CLEVELAND	US	1	D000	C	B
OSHA	OH	CLEVELAND	US	1	D000	C	B
OSHA	OH	COLUMBUS	US	1	D000	C	B
OSHA	OH	SHARONVILLE	US	1	D000	C	B
OSHA	OH	TOLEDO	US	1	D000	C	B
ESA	OK	TULSA	US	1	D000	C	B
OSHA	OR	PORTLAND	US	1	D000	C	B
ESA	PA	JOHNSTOWN	US	2	D000	C	B
ESA	PA	PHILADELPHIA	US	3	D000	C	B
OSHA	PA	PHILADELPHIA	US	1	D000	C	B
BLS	PA	PHILADELPHIA	US	4	D000	C	B
ESA	PR	SAN JUAN	US	1	D000	C	B
OSHA	RI	PROVIDENCE	US	1	D000	C	B
ESA	TX	DALLAS	US	1	D000	C	B
ESA	TX	HOUSTON	US	2	D000	C	B
OSHA	TX	AUSTIN	US	1	D000	C	B
OSHA	TX	DALLAS	US	1	D000	C	B
OSHA	TX	DALLAS	US	1	D000	C	B
OSHA	TX	DALLAS	US	1	D000	C	B
OSHA	TX	DALLAS	US	1	D000	C	B
OSHA	TX	LUBBOCK	US	1	D000	C	B
BLS	TX	DALLAS	US	5	D000	C	B
DM/WB	TX	DALLAS	US	1	D000	C	B
ESA	UT	SALT LAKE CITY	US	1	D000	C	B
OSHA	UT	SANDY	US	1	D000	C	B
ESA	VA	RICHMOND	US	1	D000	C	B
OSHA	VA	NORFOLK	US	1	D000	C	B
ESA	WA	SEATTLE	US	1	D000	C	B
OSHA	WA	SEATTLE	US	1	D000	C	B
OSHA	WA	SEATTLE	US	1	D000	C	B
DM/WB	WA	SEATTLE	US	1	D000	C	B
ESA	WI	MILWAUKEE	US	2	D000	C	B
OSHA	WI	EAU CLAIRE	US	1	D000	C	B
OSHA	WI	MADISON	US	1	D000	C	B
OSHA	WI	MILWAUKEE	US	1	D000	C	B

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

**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-10 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		IL	CHICAGO	US		5	D103	C	B	
ESA		PA	PHILADELPHIA	US		5	D103	C	B	

**D200-Data Collection and Analysis-12 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.

MSHA	CO	LAKWOOD	US	1	D200	C	B
MSHA	CO	LAKWOOD	US	7	D200	C	B
MSHA	CO	LAKWOOD	US	1	D200	C	B
MSHA	CO	LAKWOOD	US	1	D200	C	B
BLS	IL	CHICAGO	US	2	D200	C	B

**D300-Statistical Analysis-4 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	CA	SAN FRANCISCO	US	1	D300	C	B
ESA	GA	ATLANTA	US	1	D300	C	B
ESA	NY	NEW YORK	US	1	D300	C	B
ESA	TX	DALLAS	US	1	D300	C	B

**D500-Benefits and Entitlements Services-132 FTE**

Recommendation:

DOL should uphold this challenge and exclude Benefits Reviews and Analysis, function code D500, from its list of commercial activities.

Basis of Challenge:

Benefits and Entitlements Services 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	CA	LONG BEACH	US	1	D500	C	B
ESA	CA	SAN FRANCISCO	US	1	D500	C	B
ESA	CO	DENVER	US	6	D500	C	B
ESA	FL	JACKSONVILLE	US	1	D500	C	B
ESA	KY	MOUNT STERLING	US	14	D500	C	B

ESA	KY	PIKEVILLE	US	29	D500	C	B
ESA	LA	NEW ORLEANS	US	1	D500	C	B
ESA	MA	BOSTON	US	1	D500	C	B
ESA	MD	BALTIMORE	US	1	D500	C	B
ESA	MD	LANHAM	US	1	D500	C	B
ESA	NY	MANHATTAN	US	1	D500	C	B
ESA	OH	COLUMBUS	US	17	D500	C	B
ESA	PA	GREENSBURG	US	9	D500	C	B
ESA	PA	JOHNSTOWN	US	24	D500	C	B
ESA	PA	WILKES BARRE	US	5	D500	C	B
ESA	TX	HOUSTON	US	1	D500	C	B
ESA	VA	NORFOLK	US	1	D500	C	B
ESA	WA	SEATTLE	US	1	D500	C	B
ESA	WV	CHARLESTON	US	14	D500	C	B
ESA	WV	PARKERSBURG	US	3	D500	C	B

**D604-Customer Service Contacts-8 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	FL	JACKSONVILLE	US	3	D604	C	B
ESA	LA	NEW ORLEANS	US	1	D604	C	B
ESA	VA	NORFOLK	US	3	D604	C	B
ESA	WV	LOGAN	US	1	D604	C	B

**D701-D703 Marketing and Outreach-33 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.

MSHA	CO	LAKEWOOD	US	1	D702	C	B
ESA	CO	DENVER	US	1	D703	C	B
ESA	HI	HONOLULU	US	1	D703	C	B
ESA	KY	MOUNT STERLING	US	2	D703	C	B
ESA	KY	PIKEVILLE	US	4	D703	C	B
ESA	LA	NEW ORLEANS	US	2	D703	C	B
ESA	MA	BOSTON	US	2	D703	C	B
ESA	NY	MANHATTAN	US	2	D703	C	B
ESA	OH	COLUMBUS	US	2	D703	C	B
ESA	PA	JOHNSTOWN	US	6	D703	C	B
ESA	PA	PHILADELPHIA	US	1	D703	C	B
ESA	TX	HOUSTON	US	3	D703	C	B
ESA	VA	NORFOLK	US	1	D703	C	B
ESA	WA	SEATTLE	US	2	D703	C	B
ESA	WV	CHARLESTON	US	1	D703	C	B
ESA	WV	PARKERSBURG	US	2	D703	C	B

**D704-Program Monitoring and Evaluation- 82 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	AK	ANCHORAGE	US	1	D704	C	B
MSHA	AL	HOMEWOOD	US	1	D704	C	B
ESA	CA	SAN FRANCISCO	US	3	D704	C	B
OSHA	CA	SAN FRANCISCO	US	1	D704	C	B
OSHA	CA	SAN FRANCISCO	US	1	D704	C	B
OSHA	CA	SAN FRANCISCO	US	1	D704	C	B
OSHA	CA	SAN FRANCISCO	US	1	D704	C	B
DM/OASAM	CA	SAN FRANCISCO	US	1	D704	C	B
ESA	GA	ATLANTA	US	3	D704	C	B
OSHA	GA	ATLANTA	US	1	D704	C	B
OSHA	GA	ATLANTA	US	1	D704	C	B

OSHA	GA	ATLANTA	US	1	D704	C	B
ESA	IL	CHICAGO	US	3	D704	C	B
OSHA	IL	ARLINGTON HEIGHTS	US	1	D704	C	B
OSHA	IL	ARLINGTON HEIGHTS	US	1	D704	C	B
OSHA	IL	ARLINGTON HEIGHTS	US	1	D704	C	B
OSHA	IL	ARLINGTON HEIGHTS	US	1	D704	C	B
OSHA	IL	ARLINGTON HEIGHTS	US	1	D704	C	B
OSHA	IL	ARLINGTON HEIGHTS	US	1	D704	C	B
OSHA	IL	ARLINGTON HEIGHTS	US	1	D704	C	B
OSHA	IL	ARLINGTON HEIGHTS	US	1	D704	C	B
OSHA	IL	ARLINGTON HEIGHTS	US	1	D704	C	B
OSHA	IL	CHICAGO	US	1	D704	C	B
OSHA	IL	CHICAGO	US	1	D704	C	B
OSHA	IL	CHICAGO	US	1	D704	C	B
OSHA	IL	CHICAGO	US	1	D704	C	B
OSHA	IL	CHICAGO	US	1	D704	C	B
MSHA	IN	VINCENNES	US	1	D704	C	B
MSHA	KY	BARBOURVILLE	US	1	D704	C	B
MSHA	KY	PIKEVILLE	US	1	D704	C	B
ESA	MA	BOSTON	US	1	D704	C	B
OSHA	MA	BOSTON	US	1	D704	C	B
OSHA	MA	BOSTON	US	1	D704	C	B
OSHA	MA	SPRINGFIELD	US	1	D704	C	B
OSHA	MA	SPRINGFIELD	US	1	D704	C	B
OSHA	MO	KANSAS CITY	US	1	D704	C	B
OSHA	MO	KANSAS CITY	US	1	D704	C	B
OSHA	MO	KANSAS CITY	US	1	D704	C	B
OSHA	MO	KANSAS CITY	US	1	D704	C	B
OSHA	MO	KANSAS CITY	US	1	D704	C	B
OSHA	NE	OMAHA	US	1	D704	C	B
OSHA	NJ	AVENEL	US	1	D704	C	B
ESA	NY	NEW YORK	US	2	D704	C	B
OSHA	NY	BOWMANVILLE	US	1	D704	C	B
OSHA	NY	TARRYTOWN	US	1	D704	C	B
OSHA	NY	WESTBURY	US	1	D704	C	B
OSHA	NY	MANHATTAN	US	1	D704	C	B
OSHA	NY	MANHATTAN	US	1	D704	C	B
OSHA	NY	MANHATTAN	US	1	D704	C	B
OSHA	NY	MANHATTAN	US	1	D704	C	B
OSHA	NY	MANHATTAN	US	1	D704	C	B
OSHA	OH	CINCINNATI	US	1	D704	C	B
OSHA	OH	TOLEDO	US	1	D704	C	B
ESA	PA	JOHNSTOWN	US	2	D704	C	B
ESA	PA	PHILADELPHIA	US	1	D704	C	B
OSHA	PA	PHILADELPHIA	US	1	D704	C	B
OSHA	PA	PHILADELPHIA	US	1	D704	C	B
MSHA	PA	NEW STANTON	US	1	D704	C	B
DM/VETS	PA	PHILADELPHIA	US	1	D704	C	B
ESA	TX	DALLAS	US	3	D704	C	B
OSHA	TX	DALLAS	US	1	D704	C	B
OSHA	TX	DALLAS	US	1	D704	C	B
OSHA	TX	DALLAS	US	1	D704	C	B
DM/OASAM	TX	DALLAS	US	1	D704	C	B
DM/VETS	TX	DALLAS	US	1	D704	C	B

MSHA	VA	ARLINGTON	US	5	D704	C	B
OSHA	WA	SEATTLE	US	1	D704	C	B
OSHA	WA	SEATTLE	US	1	D704	C	B
MSHA	WV	MT. HOPE	US	1	D704	C	B

**D711-External Equal Employment Opportunity Reviews- 391 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	AL	ANCHORAGE	US	1	D711	C	B
ESA	AL	BIRMINGHAM	US	5	D711	C	B
ESA	AZ	PHOENIX	US	3	D711	C	B
ESA	CA	LOS ANGELES	US	9	D711	C	B
ESA	CA	OAKLAND	US	11	D711	C	B
ESA	CA	ORANGE	US	5	D711	C	B
ESA	CA	SAN DIEGO	US	5	D711	C	B
ESA	CA	SAN FRANCISCO	US	4	D711	C	B
ESA	CA	SAN JOSE	US	4	D711	C	B
DM/WB	CA	SAN DIEGO	US	1	D711	C	B
ESA	CO	DENVER	US	9	D711	C	B
DM/WB	CO	DENVER	US	1	D711	C	B
ESA	CT	HARTFORD	US	5	D711	C	B
ESA	FL	JACKSONVILLE	US	3	D711	C	B
ESA	FL	MIAMI	US	4	D711	C	B
ESA	FL	ORLANDO	US	10	D711	C	B
ESA	GA	ATLANTA	US	17	D711	C	B
DM/WB	GA	ATLANTA	US	1	D711	C	B
ESA	HI	HONOLULU	US	5	D711	C	B
ESA	IL	CHICAGO	US	28	D711	C	B
DM/WB	IL	CHICAGO	US	1	D711	C	B
ESA	IN	INDIANAPOLIS	US	9	D711	C	B
ESA	KY	LOUISVILLE	US	5	D711	C	B
ESA	LA	NEW ORLEANS	US	4	D711	C	B
ESA	MA	BOSTON	US	9	D711	C	B
DM/WB	MA	BOSTON	US	1	D711	C	B
ESA	MD	BALTIMORE	US	5	D711	C	B
ESA	MD	LANDOVER	US	10	D711	C	B
ESA	MI	DETROIT	US	9	D711	C	B
ESA	MI	GRAND RAPIDS	US	2	D711	C	B
ESA	MN	MINNEAPOLIS	US	7	D711	C	B

ESA	MO	KANSAS CITY	US	7	D711	C	B
ESA	MO	ST LOUIS	US	5	D711	C	B
DM/WB	MO	KANSAS CITY	US	1	D711	C	B
ESA	MS	JACKSON	US	6	D711	C	B
ESA	NC	CHARLOTTE	US	5	D711	C	B
ESA	NC	RALEIGH	US	7	D711	C	B
ESA	NE	OMAHA	US	3	D711	C	B
ESA	NJ	MOUNTAINSIDE	US	12	D711	C	B
ESA	NM	ALBUQUERQUE	US	2	D711	C	B
ESA	NY	BUFFALO	US	5	D711	C	B
ESA	NY	NEW YORK	US	20	D711	C	B
DM/WB	NY	NEW YORK	US	1	D711	C	B
ESA	OH	CLEVELAND	US	7	D711	C	B
ESA	OH	COLUMBUS	US	9	D711	C	B
ESA	OK	TULSA	US	3	D711	C	B
ESA	OR	PORTLAND	US	5	D711	C	B
ESA	PA	PHILADELPHIA	US	12	D711	C	B
ESA	PA	PITTSBURGH	US	11	D711	C	B
DM/WB	PA	PHILADELPHIA	US	1	D711	C	B
ESA	PR	SAN JUAN	US	2	D711	C	B
ESA	SC	COLUMBIA	US	4	D711	C	B
ESA	TN	MEMPHIS	US	3	D711	C	B
ESA	TN	NASHVILLE	US	7	D711	C	B
ESA	TX	DALLAS	US	14	D711	C	B
ESA	TX	HOUSTON	US	8	D711	C	B
ESA	TX	SAN ANTONIO	US	7	D711	C	B
DM/WB	TX	DALLAS	US	1	D711	C	B
ESA	UT	SALT LAKE CITY	US	5	D711	C	B
ESA	VA	RICHMOND	US	7	D711	C	B
ESA	WA	SEATTLE	US	8	D711	C	B
DM/WB	WA	SEATTLE	US	1	D711	C	B
ESA	WI	MILWAUKEE	US	9	D711	C	B

**D712-Safety and Occupational Health Management- 91 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	CA	SAN FRANCISCO	US	1	D712	C	B
OSHA	CA	SAN FRANCISCO	US	1	D712	C	B
OSHA	CA	SAN FRANCISCO	US	1	D712	C	B
OSHA	CA	SAN FRANCISCO	US	1	D712	C	B
OSHA	CA	SAN FRANCISCO	US	1	D712	C	B
OSHA	CA	SAN FRANCISCO	US	1	D712	C	B
OSHA	CA	SAN FRANCISCO	US	1	D712	C	B
OSHA	CA	SAN FRANCISCO	US	1	D712	C	B
OSHA	CA	SAN FRANCISCO	US	1	D712	C	B
OSHA	CO	DENVER	US	1	D712	C	B
OSHA	CO	DENVER	US	1	D712	C	B
OSHA	CO	DENVER	US	1	D712	C	B
OSHA	CO	DENVER	US	1	D712	C	B
OSHA	GA	ATLANTA	US	1	D712	C	B
OSHA	GA	ATLANTA	US	1	D712	C	B
OSHA	GA	ATLANTA	US	1	D712	C	B
OSHA	GA	ATLANTA	US	1	D712	C	B
OSHA	GA	ATLANTA	US	1	D712	C	B
OSHA	GA	ATLANTA	US	1	D712	C	B
OSHA	GA	ATLANTA	US	1	D712	C	B
OSHA	GA	ATLANTA	US	1	D712	C	B
OSHA	GA	ATLANTA	US	1	D712	C	B
OSHA	GA	ATLANTA	US	1	D712	C	B
OSHA	IL	ARLINGTON HEIGHTS	US	1	D712	C	B
OSHA	IL	ARLINGTON HEIGHTS	US	1	D712	C	B
OSHA	IL	ARLINGTON HEIGHTS	US	1	D712	C	B
OSHA	IL	ARLINGTON HEIGHTS	US	1	D712	C	B
OSHA	IL	ARLINGTON HEIGHTS	US	1	D712	C	B
OSHA	IL	ARLINGTON HEIGHTS	US	1	D712	C	B
OSHA	IL	ARLINGTON HEIGHTS	US	1	D712	C	B



OSHA	WA	SEATTLE	US	1	D712	C	B
OSHA	WA	SEATTLE	US	1	D712	C	B
OSHA	WA	SEATTLE	US	1	D712	C	B
OSHA	WA	SEATTLE	US	1	D712	C	B
OSHA	WA	SEATTLE	US	1	D712	C	B
OSHA	WA	SEATTLE	US	1	D712	C	B

**D713-Safety and Occupational Health Inspections- 2 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.

OSHA	IL	DES PLAINES	US	1	D713	C	B
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**D999-2 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  
OSHA| IL CALUMET CITY  
PA PHILADELPHIAUS  
US| 1  
1D999  
D999C  
CB  
B**F-Procurement****F399-F400-Procurement and Contracting Activities-22 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.

DM/OASAM	CA	SAN FRANCISCO	US	1	F399	C	B
DM/OASAM	GA	ATLANTA	US	2	F399	C	B
OSHA	IL	ARLINGTON HEIGHTS	US	1	F399	C	B
DM/OASAM	MA	BOSTON	US	1	F399	C	B
DM/OASAM	NY	NEW YORK	US	1	F399	C	B
DM/OASAM	PA	PHILADELPHIA	US	1	F399	C	B
OSHA	UT	SANDY	US	1	F399	C	B
DM/OASAM	WA	SEATTLE	US	1	F399	C	B
MSHA	AL	HOMEWOOD	US	1	F400	C	B
MSHA	CO	LAKWOOD	US	1	F400	C	B
MSHA	IN	VINCENNES	US	1	F400	C	B
MSHA	KY	BARBOURVILLE	US	2	F400	C	B
MSHA	KY	MADISONVILLE	US	1	F400	C	B
MSHA	KY	PIKEVILLE	US	1	F400	C	B
OSHA	OH	CINCINNATI	US	1	F400	C	B

MSHA	PA	NEW STANTON	US	1	F400	C	B
MSHA	PA	WILKES-BARRE	US	1	F400	C	B
MSHA	VA	NORTON	US	1	F400	C	B
MSHA	WV	MORGANTOWN	US	1	F400	C	B
MSHA	WV	MOUNT HOPE	US	1	F400	C	B

## 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	CO	DENVER	US	1	G102	C	B
OSHA	IL	ARLINGTON HEIGHTS	US	1	G102	C	B
OSHA	IL	CHICAGO	US	1	G104	C	B
OSHA	PA	PHILADELPHIA	US	1	G104	C	B
OSHA	WA	SEATTLE	US	1	G104	C	B

## H-Health Services

### H402-Industrial Hygiene Reviews/Analysis-4 FTE

#### Recommendation:

DOL should uphold this challenge and exclude Industrial Hygiene Reviews/Analysis, function code, H402, 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 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.

OSHA	IL	ARLINGTON HEIGHTS	US	1	H402	C	B
OSHA	IL	ARLINGTON HEIGHTS	US	1	H402	C	B
OSHA	IL	ARLINGTON HEIGHTS	US	1	H402	C	B
OSHA	OH	CINCINNATI	US	1	H402	C	B

## I-Investigations

### I440-Management Evaluations/Audits-363 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	AL	BIRMINGHAM	US	2	1440	C	B
ESA	AL	MONTGOMERY	US	1	1440	C	B
OSHA	AL	MOBILE	US	1	1440	C	B
MSHA	AL	BESSEMER	US	1	1440	C	B
MSHA	AL	HOMEWOOD	US	1	1440	C	B
MSHA	AL	BIRMINGHAM	US	3	1440	C	B
MSHA	AL	BESSEMER	US	1	1440	C	B
ESA	AR	LITTLE ROCK	US	2	1440	C	B
OSHA	AR	LITTLEROCK	US	1	1440	C	B
OSHA	AR	LITTLEROCK	US	1	1440	C	B
ESA	AZ	PHOENIX	US	3	1440	C	B
ESA	CA	GLENDALE	US	2	1440	C	B
ESA	CA	ORANGE	US	2	1440	C	B
ESA	CA	SACRAMENTO	US	2	1440	C	B
ESA	CA	SAN DIEGO	US	3	1440	C	B
ESA	CA	SAN FRANCISCO	US	6	1440	C	B
ESA	CA	SAN JOSE	US	1	1440	C	B
ESA	CA	WEST COVINA	US	3	1440	C	B
OSHA	CA	SAN FRANCISCO	US	1	1440	C	B
OSHA	CA	SAN FRANCISCO	US	1	1440	C	B
OSHA	CA	SAN FRANCISCO	US	1	1440	C	B
MSHA	CA	REDLANDS	US	1	1440	C	B
MSHA	CA	VACAVILLE	US	1	1440	C	B

MSHA	CA	VACAVILLE	US	3	1440	C	B
ESA	CO	DENVER	US	3	1440	C	B
OSHA	CO	DENVER	US	1	1440	C	B
OSHA	CO	DENVER	US	1	1440	C	B
OSHA	CO	ENGLEWOOD	US	1	1440	C	B
OSHA	CO	ENGLEWOOD	US	1	1440	C	B
MSHA	CO	CRAIG	US	1	1440	C	B
MSHA	CO	DELTA	US	1	1440	C	B
MSHA	CO	LAKWOOD	US	3	1440	C	B
MSHA	CO	DENVER	US	2	1440	C	B
MSHA	CO	LAKWOOD	US	1	1440	C	B
ESA	CT	HARTFORD	US	2	1440	C	B
OSHA	CT	HARTFORD	US	1	1440	C	B
ESA	FL	FT LAUDERDALE	US	3	1440	C	B
ESA	FL	JACKSONVILLE	US	4	1440	C	B
ESA	FL	MIAMI	US	2	1440	C	B
ESA	FL	ORLANDO	US	2	1440	C	B
ESA	FL	TAMPA	US	2	1440	C	B
OSHA	FL	FT LAUDERDALE	US	1	1440	C	B
OSHA	FL	JACKSONVILLE	US	1	1440	C	B
OSHA	FL	TAMPA	US	1	1440	C	B
OSHA	FL	TAMPA	US	1	1440	C	B
ESA	GA	ATLANTA	US	4	1440	C	B
ESA	GA	SAVANNAH	US	1	1440	C	B
OSHA	GA	SAVANNAH	US	1	1440	C	B
OSHA	GA	SMYRNA	US	1	1440	C	B
ESA	HI	HONOLULU	US	1	1440	C	B
ESA	IA	DES MOINES	US	1	1440	C	B
OSHA	ID	BOISE	US	1	1440	C	B
ESA	IL	CHICAGO	US	3	1440	C	B
ESA	IL	SPRINGFIELD	US	1	1440	C	B
OSHA	IL	AURORA	US	1	1440	C	B
OSHA	IL	CALUMET CITY	US	1	1440	C	B
OSHA	IL	CALUMET CITY	US	1	1440	C	B
OSHA	IL	DES PLAINES	US	1	1440	C	B
OSHA	IL	PEORIA	US	1	1440	C	B
OSHA	IL	AURORA	US	1	1440	C	B
OSHA	IL	CHICAGO	US	1	1440	C	B
MSHA	IL	BENTON	US	1	1440	C	B
MSHA	IL	HILLSBORO	US	1	1440	C	B
MSHA	IL	PERU	US	1	1440	C	B
ESA	IN	INDIANAPOLIS	US	2	1440	C	B
ESA	IN	SOUTH BEND	US	1	1440	C	B
MSHA	IN	VINCENNES	US	4	1440	C	B
ESA	KS	KANSAS CITY	US	3	1440	C	B
OSHA	KS	WICHITA	US	1	1440	C	B
OSHA	KS	WICHITA	US	1	1440	C	B
MSHA	KY	BARBOURVILLE	US	7	1440	C	B
MSHA	KY	BEAVER DAM	US	1	1440	C	B
MSHA	KY	ELKHORN CITY	US	1	1440	C	B
MSHA	KY	HARLAN	US	1	1440	C	B
MSHA	KY	HAZARD	US	2	1440	C	B
MSHA	KY	HINDMAN	US	1	1440	C	B
MSHA	KY	MADISONVILLE	US	1	1440	C	B

MSHA	KY	MARTIN	US	2	1440	C	B
MSHA	KY	MORGANFIELD	US	1	1440	C	B
MSHA	KY	HELPS	US	1	1440	C	B
MSHA	KY	PIKEVILLE	US	3	1440	C	B
MSHA	KY	WHITESBURG	US	1	1440	C	B
MSHA	KY	PIKEVILLE	US	2	1440	C	B
ESA	LA	BATON ROUGE	US	1	1440	C	B
ESA	LA	NEW ORLEANS	US	2	1440	C	B
OSHA	LA	BATON ROUGE	US	1	1440	C	B
OSHA	LA	BATON ROUGE	US	1	1440	C	B
ESA	MA	BOSTON	US	2	1440	C	B
OSHA	MA	BRAINTREE	US	1	1440	C	B
ESA	MD	BALTIMORE	US	3	1440	C	B
MSHA	MD	OAKLAND	US	1	1440	C	B
OSHA	ME	AUGUSTA	US	1	1440	C	B
OSHA	ME	BANGOR	US	1	1440	C	B
ESA	MI	DETROIT	US	2	1440	C	B
ESA	MI	GRAND RAPIDS	US	1	1440	C	B
ESA	MN	MINNEAPOLIS	US	1	1440	C	B
MSHA	MN	DULUTH	US	2	1440	C	B
ESA	MO	ST LOUIS	US	1	1440	C	B
OSHA	MO	KANSAS CITY	US	1	1440	C	B
OSHA	MO	KANSAS CITY	US	1	1440	C	B
OSHA	MO	ST LOUIS	US	1	1440	C	B
OSHA	MO	ST LOUIS	US	1	1440	C	B
ESA	MS	JACKSON	US	2	1440	C	B
OSHA	MT	BILLINGS	US	1	1440	C	B
ESA	NC	RALEIGH	US	1	1440	C	B
OSHA	ND	BISMARCK	US	1	1440	C	B
ESA	NE	OMAHA	US	1	1440	C	B
OSHA	NE	OMAHA	US	1	1440	C	B
ESA	NH	MANCHESTER	US	2	1440	C	B
ESA	NJ	LAWRENCEVILLE	US	2	1440	C	B
ESA	NJ	MOUNTAINSIDE	US	2	1440	C	B
OSHA	NJ	MARLTON	US	1	1440	C	B
OSHA	NJ	PARSIPPANY	US	1	1440	C	B
OSHA	NJ	HASBROUCK HEIGHTS	US	1	1440	C	B
OSHA	NJ	HASBROUCK HEIGHTS	US	1	1440	C	B
ESA	NM	ALBUQUERQUE	US	2	1440	C	B
MSHA	NM	AZTEC	US	1	1440	C	B
ESA	NV	LAS VEGAS	US	1	1440	C	B
ESA	NY	ALBANY	US	2	1440	C	B
ESA	NY	BROOKLYN	US	1	1440	C	B
ESA	NY	BUFFALO	US	2	1440	C	B
ESA	NY	NEW YORK- MANHATTAN	US	3	1440	C	B
ESA	NY	SYRACUSE	US	1	1440	C	B
ESA	NY	WESTBURY	US	1	1440	C	B
ESA	NY	WHITE PLAINS	US	2	1440	C	B
OSHA	NY	BOWMANVILLE	US	1	1440	C	B
OSHA	NY	MANHATTAN	US	1	1440	C	B
OSHA	NY	BAYSIDE	US	1	1440	C	B
OSHA	NY	BAYSIDE	US	1	1440	C	B
OSHA	NY	SYRACUSE	US	1	1440	C	B

OSHA	NY	SYRACUSE	US	1	1440	C	B
OSHA	NY	WESTBURY	US	1	1440	C	B
OSHA	NY	TARRYTOWN	US	1	1440	C	B
ESA	OH	CINCINNATI	US	1	1440	C	B
ESA	OH	CLEVELAND	US	2	1440	C	B
ESA	OH	COLUMBUS	US	2	1440	C	B
OSHA	OH	CLEVELAND	US	1	1440	C	B
OSHA	OH	CLEVELAND	US	1	1440	C	B
OSHA	OH	COLUMBUS	US	1	1440	C	B
OSHA	OH	SHARONVILLE	US	1	1440	C	B
OSHA	OH	SHARONVILLE	US	1	1440	C	B
OSHA	OH	SHARONVILLE	US	1	1440	C	B
OSHA	OH	TOLEDO	US	1	1440	C	B
MSHA	OH	NEWARK	US	1	1440	C	B
MSHA	OH	ST CLAIRSVILLE	US	3	1440	C	B
OSHA	OK	OKLAHOMA CITY	US	1	1440	C	B
OSHA	OK	OKLAHOMA CITY	US	1	1440	C	B
MSHA	OK	MCALESTER	US	2	1440	C	B
ESA	OR	PORTLAND	US	2	1440	C	B
ESA	PA	PHILADELPHIA	US	2	1440	C	B
ESA	PA	PITTSBURGH	US	2	1440	C	B
ESA	PA	WILKES-BARRE	US	3	1440	C	B
OSHA	PA	ERIE	US	1	1440	C	B
OSHA	PA	ERIE	US	1	1440	C	B
OSHA	PA	PHILADELPHIA	US	1	1440	C	B
OSHA	PA	PHILADELPHIA	US	1	1440	C	B
OSHA	PA	PITTSBURGH	US	1	1440	C	B
OSHA	PA	WILKES BARRE	US	1	1440	C	B
OSHA	PA	ALLENTOWN	US	1	1440	C	B
OSHA	PA	HARRISBURG	US	1	1440	C	B
OSHA	PA	PHILADELPHIA	US	1	1440	C	B
OSHA	PA	PITTSBURGH	US	1	1440	C	B
MSHA	PA	CLEARFIELD	US	1	1440	C	B
MSHA	PA	INDIANA	US	1	1440	C	B
MSHA	PA	JOHNSTOWN	US	2	1440	C	B
MSHA	PA	KITTANNING	US	1	1440	C	B
MSHA	PA	NEW STANTON	US	5	1440	C	B
MSHA	PA	POTTSVILLE	US	1	1440	C	B
MSHA	PA	SHAMOKIN	US	1	1440	C	B
MSHA	PA	WILKES-BARRE	US	1	1440	C	B
MSHA	PA	WYOMISSING	US	1	1440	C	B
MSHA	PA	WARRANDALE	US	4	1440	C	B
MSHA	PA	WAYNESBURG	US	2	1440	C	B
ESA	PR	GUAYNABO, SAN JUAN	US	2	1440	C	B
OSHA	PR	SAN JUAN	US	1	1440	C	B
MSHA	PR	SAN JUAN	US	1	1440	C	B
OSHA	RI	PROVIDENCE	US	1	1440	C	B
OSHA	RI	PROVIDENCE	US	1	1440	C	B
ESA	SC	COLUMBIA	US	1	1440	C	B
MSHA	SD	RAPID CITY	US	1	1440	C	B
ESA	TN	KNOXVILLE	US	1	1440	C	B
ESA	TN	NASHVILLE	US	2	1440	C	B
MSHA	TN	JACKSBORO	US	1	1440	C	B

ESA	TX	ARLINGTON	US	2	1440	C	B
ESA	TX	CORPUS CHRISTI	US	1	1440	C	B
ESA	TX	DALLAS	US	3	1440	C	B
ESA	TX	EL PASO	US	1	1440	C	B
ESA	TX	HOUSTON	US	3	1440	C	B
ESA	TX	SAN ANTONIO	US	3	1440	C	B
OSHA	TX	CORPUS CHRISTI	US	1	1440	C	B
OSHA	TX	DALLAS	US	1	1440	C	B
OSHA	TX	FORT WORTH	US	1	1440	C	B
OSHA	TX	LUBBOCK	US	1	1440	C	B
OSHA	TX	DALLAS	US	1	1440	C	B
OSHA	TX	DALLAS	US	1	1440	C	B
OSHA	TX	HOUSTON	US	1	1440	C	B
OSHA	TX	HOUSTON	US	1	1440	C	B
OSHA	TX	HOUSTON	US	1	1440	C	B
OSHA	TX	AUSTIN	US	1	1440	C	B
OSHA	TX	HOUSTON	US	1	1440	C	B
MSHA	TX	SAN ANTONIO	US	1	1440	C	B
MSHA	TX	DALLAS	US	5	1440	C	B
ESA	UT	SALT LAKE CITY	US	2	1440	C	B
MSHA	UT	PRICE	US	2	1440	C	B
MSHA	UT	SALT LAKE CITY	US	1	1440	C	B
MSHA	UT	SALT LAKE CITY	US	1	1440	C	B
ESA	VA	RICHMOND	US	2	1440	C	B
MSHA	VA	NORTON	US	7	1440	C	B
MSHA	VA	VANSANT	US	4	1440	C	B
MSHA	VA	ARLINGTON	US	1	1440	C	B
ESA	WA	SEATTLE	US	2	1440	C	B
MSHA	WA	BELLEVUE	US	1	1440	C	B
ESA	WI	MADISON	US	1	1440	C	B
ESA	WI	MILWAUKEE	US	1	1440	C	B
OSHA	WI	APPLETON	US	1	1440	C	B
OSHA	WI	APPLETON	US	1	1440	C	B
OSHA	WI	MADISON	US	1	1440	C	B
OSHA	WI	MILWAUKEE	US	1	1440	C	B
OSHA	WI	MILWAUKEE	US	1	1440	C	B
ESA	WV	CHARLESTON	US	1	1440	C	B
OSHA	WV	CHARLESTON	US	1	1440	C	B
OSHA	WV	CHARLESTON	US	1	1440	C	B
MSHA	WV	LOGAN	US	2	1440	C	B
MSHA	WV	MADISON	US	2	1440	C	B
MSHA	WV	MORGANTOWN	US	5	1440	C	B
MSHA	WV	MOUNT CARBON	US	1	1440	C	B
MSHA	WV	MOUNT HOPE	US	9	1440	C	B
MSHA	WV	PINEVILLE	US	1	1440	C	B
MSHA	WV	PRINCETON	US	1	1440	C	B
MSHA	WV	SUMMERSVILLE	US	1	1440	C	B
MSHA	WV	BRIDGEPORT	US	1	1440	C	B
MSHA	WY	GILLETTE	US	1	1440	C	B

**1999-Other Audit and Investigative Activities- 65 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. These activities include investigation, reinvestigations and include activities involving special investigations that must be conducted by government employees. The investigations and inspections commit the government to specific actions.

Basis of challenge:

These investigative functions 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. 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 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 officials 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 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.

OSHA	AL	MOBILE	US	1	1999	C	B
OSHA	AZ	PHOENIX	US	1	1999	C	B
OSHA	CA	SAN FRANCISCO	US	1	1999	C	B
OSHA	CA	SAN FRANCISCO	US	1	1999	C	B
OSHA	CA	SAN FRANCISCO	US	1	1999	C	B
OSHA	CO	DENVER	US	1	1999	C	B
OSHA	CO	DENVER	US	1	1999	C	B
OSHA	CO	DENVER	US	1	1999	C	B
OSHA	CT	BRIDGEWATER	US	1	1999	C	B
OSHA	CT	HARTFORD	US	1	1999	C	B
OSHA	FL	FT LAUDERDALE	US	1	1999	C	B
OSHA	FL	JACKSONVILLE	US	1	1999	C	B
OSHA	FL	TAMPA	US	1	1999	C	B
OSHA	FL	TAMPA	US	1	1999	C	B

OSHA	FL	TAMPA	US	1	1999	C	B
OSHA	GA	TUCKER	US	1	1999	C	B
OSHA	GA	SMYRNA	US	1	1999	C	B
OSHA	IL	CALUMET CITY	US	1	1999	C	B
OSHA	IL	DES PLAINES	US	1	1999	C	B
OSHA	IL	AURORA	US	1	1999	C	B
OSHA	MA	BRAINTREE	US	1	1999	C	B
OSHA	MA	METHUEN	US	1	1999	C	B
OSHA	MA	SPRINGFIELD	US	1	1999	C	B
OSHA	ME	AUGUSTA	US	1	1999	C	B
OSHA	MO	KANSAS CITY	US	1	1999	C	B
OSHA	MO	KANSAS CITY	US	1	1999	C	B
OSHA	MO	ST LOUIS	US	1	1999	C	B
OSHA	MS	JACKSON	US	1	1999	C	B
OSHA	NE	OMAHA	US	1	1999	C	B
OSHA	NH	CONCORD	US	1	1999	C	B
OSHA	NJ	HASBROUCK HEIGHTS	US	1	1999	C	B
OSHA	NY	MANHATTAN	US	1	1999	C	B
OSHA	NY	MANHATTAN	US	1	1999	C	B
OSHA	NY	SYRACUSE	US	1	1999	C	B
OSHA	NY	MANHATTAN	US	1	1999	C	B
OSHA	OH	CLEVELAND	US	1	1999	C	B
OSHA	OH	CLEVELAND	US	1	1999	C	B
OSHA	OH	COLUMBUS	US	1	1999	C	B
OSHA	OH	SHARONVILLE	US	1	1999	C	B
OSHA	OH	SHARONVILLE	US	1	1999	C	B
OSHA	OH	TOLEDO	US	1	1999	C	B
OSHA	PA	PHILADELPHIA	US	1	1999	C	B
OSHA	PA	PHILADELPHIA	US	1	1999	C	B
OSHA	PA	PITTSBURGH	US	1	1999	C	B
OSHA	PA	PITTSBURGH	US	1	1999	C	B
OSHA	PA	PITTSBURGH	US	1	1999	C	B
OSHA	PA	PITTSBURGH	US	1	1999	C	B
OSHA	PA	PITTSBURGH	US	1	1999	C	B
OSHA	PA	ALLENTOWN	US	1	1999	C	B
OSHA	RI	PROVIDENCE	US	1	1999	C	B
OSHA	SC	COLUMBIA	US	1	1999	C	B
OSHA	TN	KNOXVILLE	US	1	1999	C	B
OSHA	TN	NASHVILLE	US	1	1999	C	B
OSHA	TX	AUSTIN	US	1	1999	C	B
OSHA	TX	AUSTIN	US	1	1999	C	B
OSHA	TX	DALLAS	US	1	1999	C	B
OSHA	TX	DALLAS	US	1	1999	C	B
OSHA	TX	DALLAS	US	1	1999	C	B
OSHA	TX	HOUSTON	US	1	1999	C	B
OSHA	VA	NORFOLK	US	1	1999	C	B
OSHA	WA	SEATTLE	US	1	1999	C	B
OSHA	WA	SEATTLE	US	1	1999	C	B
OSHA	WA	SEATTLE	US	1	1999	C	B
OSHA	WI	APPLETON	US	1	1999	C	B
OSHA	WI	EAU CLAIRE	US	1	1999	C	B
OSHA	WI	MILWAUKEE	US	1	1999	C	B

## L-Grants Monitoring and Evaluation

### L200-Grants Monitoring and Evaluation-16 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.

DM/VETS	CA	REDLANDS	US	1	L200	C	B
DM/VETS	CA	SAN FRANCISCO	US	1	L200	C	B
DM/VETS	CA	SAN FRANCISCO	US	1	L200	C	B
DM/VETS	GA	ATLANTA	US	1	L200	C	B
DM/VETS	GA	ATLANTA	US	1	L200	C	B
DM/VETS	IL	CHICAGO	US	1	L200	C	B

DM/VETS	IL	CHICAGO	US	1	L200	C	B
DM/VETS	IL	CHICAGO	US	1	L200	C	B
DM/VETS	MA	BOSTON	US	1	L200	C	B
DM/VETS	MA	BOSTON	US	1	L200	C	B
DM/VETS	MA	BOSTON	US	1	L200	C	B
DM/VETS	NY	NEW YORK- MANHATTAN	US	1	L200	C	B
DM/VETS	PA	PHILADELPHIA	US	1	L200	C	B
DM/VETS	PA	PHILADELPHIA	US	1	L200	C	B
DM/VETS	TX	DALLAS	US	1	L200	C	B
DM/VETS	TX	DALLAS	US	1	L200	C	B

## **S-Supply Operations**

### **S731-Supply Operations-2 FTE**

### **S735-Engineering Services-1 FTE**

### **S742-Inventory Analysis and Management-4 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 S731, S741 and S742 in MSHA and 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.

MSHA	CO	LAKWOOD	US	1	S731	C	B
OSHA	IL	ARLINGTON HEIGHTS	US	1	S731	C	B
OSHA	UT	SANDY	US	1	S735	C	B
MSHA	CO	LAKWOOD	US	1	S742	C	B
MSHA	CO	LAKWOOD	US	1	S742	C	B
OSHA	OH	CINCINNATI	US	1	S742	C	B
MSHA	WV	BECKLEY	US	1	S742	C	B

**T-Other Non-Manufacturing Operations**

**T000-Administrative Support-4 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.

DM/OASAM	IL	CHICAGO	US	1	T000	C	B
DM/OASAM	NY	NEW YORK	US	1	T000	C	B
DM/OASAM	PA	PHILADELPHIA	US	1	T000	C	B
MSHA	WV	MOUNT HOPE	US	1	T000	C	B

**T700-Miscellaneous Program Management-24 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	CA	SACRAMENTO	US	1	T700	C	B
ESA	CA	SAN FRANCISCO	US	5	T700	C	B
DM/OASAM	CA	OAKLAND	US	1	T700	C	B
MSHA	CO	LAKEWOOD	US	1	T700	C	B
ESA	GA	ATLANTA	US	2	T700	C	B
DM/VETS	GA	ATLANTA	US	1	T700	C	B
ESA	IL	CHICAGO	US	3	T700	C	B
OSHA	IL	CHICAGO	US	1	T700	C	B
DM/VETS	IL	CHICAGO	US	1	T700	C	B
ESA	NJ	PLEASANTVILLE	US	1	T700	C	B
ESA	NJ	SOMERS POINT	US	1	T700	C	B
DM/OASAM	NY	NEW YORK	US	2	T700	C	B
ESA	PA	PITTSBURGH	US	1	T700	C	B
ESA	TX	DALLAS	US	3	T700	C	B

### **T807-Visual Information-8 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	1	T807	C	B
MSHA	WV	BECKLEY	US	7	T807	C	B

### **T813-Engineering and Technical Services- 3 FTE**

#### Recommendation:

DOL should uphold this challenge and exclude Engineering and Technical Services, Function code T813, from its list of commercial activities.

Reason for Challenge:

Engineering and Technical Services (GS-0802 and GS-0856) 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.

MSHA	KY	BARBOURVILLE	US	1	T813	C	B
MSHA	OH	ST CLAIRSVILLE	US	1	T813	C	B
MSHA	WV	MORGANTOWN	US	1	T813	C	B

**T820-Administrative Support Services-231 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.

ESA	AL	BIRMINGHAM	US	2	T820	C	B
ESA	AL	MONTGOMERY	US	1	T820	C	B
OSHA	AL	MOBILE	US	1	T820	C	B
OSHA	AL	VESTAVIA HILLS	US	1	T820	C	B
OSHA	AL	VESTAVIA HILLS	US	1	T820	C	B
MSHA	AL	HOMWOOD	US	1	T820	C	B
MSHA	AL	HOMWOOD	US	1	T820	C	B
MSHA	AL	BIRMINGHAM	US	1	T820	C	B
OSHA	AR	LITTLEROCK	US	1	T820	C	B
ESA	AZ	PHOENIX	US	1	T820	C	B
EBSA	CA	LOS ANGELES	US	1	T820	C	B
ESA	CA	LOS ANGELES	US	2	T820	C	B
ESA	CA	SAN DIEGO	US	1	T820	C	B
ESA	CA	SAN FRANCISCO	US	3	T820	C	B
ESA	CA	SAN JOSE	US	1	T820	C	B
OSHA	CA	SAN FRANCISCO	US	1	T820	C	B
OSHA	CA	SAN FRANCISCO	US	1	T820	C	B
MSHA	CA	VACAVILLE	US	1	T820	C	B
DM/OASAM	CA	OAKLAND	US	1	T820	C	B
DM/VETS	CA	SAN FRANCISCO	US	1	T820	C	B
ESA	CO	DENVER	US	1	T820	C	B

OSHA	CO	DENVER	US	1	T820	C	B
OSHA	CO	ENGLEWOOD	US	1	T820	C	B
MSHA	CO	DENVER	US	1	T820	C	B
MSHA	CO	LAKWOOD	US	3	T820	C	B
MSHA	CO	LAKWOOD	US	1	T820	C	B
MSHA	CO	LAKWOOD	US	1	T820	C	B
ESA	FL	FT LAUDERDALE	US	1	T820	C	B
ESA	FL	JACKSONVILLE	US	1	T820	C	B
ESA	FL	ORLANDO	US	2	T820	C	B
ESA	FL	TAMPA	US	2	T820	C	B
OSHA	FL	FT LAUDERDALE	US	1	T820	C	B
OSHA	FL	TAMPA	US	1	T820	C	B
OSHA	FL	TAMPA	US	1	T820	C	B
EBSA	GA	ATLANTA	US	5	T820	C	B
ESA	GA	ATLANTA	US	7	T820	C	B
ESA	GA	SAVANNAH	US	1	T820	C	B
OSHA	GA	ATLANTA	US	1	T820	C	B
OSHA	GA	ATLANTA	US	1	T820	C	B
OSHA	GA	ATLANTA	US	1	T820	C	B
OSHA	GA	TUCKER	US	1	T820	C	B
OSHA	GA	TUCKER	US	1	T820	C	B
DM/OASAM	GA	ATLANTA	US	1	T820	C	B
OSHA	HI	HONOLULU	US	1	T820	C	B
OSHA	IA	DES MOINES	US	1	T820	C	B
EBSA	IL	CHICAGO	US	3	T820	C	B
ESA	IL	CHICAGO	US	5	T820	C	B
OSHA	IL	ARLINGTON HEIGHTS	US	1	T820	C	B
OSHA	IL	ARLINGTON HEIGHTS	US	1	T820	C	B
OSHA	IL	ARLINGTON HEIGHTS	US	1	T820	C	B
OSHA	IL	ARLINGTON HEIGHTS	US	1	T820	C	B
OSHA	IL	ARLINGTON HEIGHTS	US	1	T820	C	B
OSHA	IL	ARLINGTON HEIGHTS	US	1	T820	C	B
OSHA	IL	CHICAGO	US	1	T820	C	B
OSHA	IL	ARLINGTON HEIGHTS	US	1	T820	C	B
OSHA	IL	CHICAGO	US	1	T820	C	B
OSHA	IL	CHICAGO	US	1	T820	C	B
OSHA	IL	CHICAGO	US	1	T820	C	B
DM/VETS	IL	CHICAGO	US	1	T820	C	B
ESA	IN	INDIANAPOLIS	US	1	T820	C	B
MSHA	IN	VINCENNES	US	2	T820	C	B
MSHA	IN	VINCENNES	US	1	T820	C	B
ESA	KY	LOUISVILLE	US	2	T820	C	B
MSHA	KY	BARBOURVILLE	US	4	T820	C	B
MSHA	KY	MADISONVILLE	US	2	T820	C	B
MSHA	KY	PIKEVILLE	US	4	T820	C	B
MSHA	KY	PIKEVILLE	US	1	T820	C	B
ESA	LA	NEW ORLEANS	US	1	T820	C	B
EBSA	MA	BOSTON	US	1	T820	C	B
OSHA	MA	BOSTON	US	1	T820	C	B
OSHA	MA	SPRINGFIELD	US	1	T820	C	B
DM/VETS	MA	BOSTON	US	1	T820	C	B
ESA	MD	LANDOVER	US	1	T820	C	B
OSHA	MD	LINTHICUM	US	1	T820	C	B
OSHA	MD	LINTHICUM	US	1	T820	C	B

ESA	MI	DETROIT	US	1	T820	C	B
ESA	MN	MINNEAPOLIS	US	1	T820	C	B
MSHA	MN	DULUTH	US	1	T820	C	B
ESA	MO	KANSAS CITY	US	1	T820	C	B
OSHA	MO	KANSAS CITY	US	1	T820	C	B
OSHA	MO	KANSAS CITY	US	1	T820	C	B
ESA	MS	JACKSON	US	1	T820	C	B
OSHA	MS	JACKSON	US	1	T820	C	B
OSHA	MT	BILLINGS	US	1	T820	C	B
ESA	NC	CHARLOTTE	US	4	T820	C	B
ESA	NC	RALEIGH	US	3	T820	C	B
OSHA	NC	RALEIGH	US	1	T820	C	B
OSHA	ND	BISMARCK	US	1	T820	C	B
OSHA	NJ	HASBROUCK HEIGHTS	US	1	T820	C	B
OSHA	NJ	MARLTON	US	1	T820	C	B
OSHA	NJ	PARSIPPANY	US	1	T820	C	B
OSHA	NJ	AVENEL	US	1	T820	C	B
EBSA	NY	NEW YORK	US	3	T820	C	B
ESA	NY	NEW YORK	US	1	T820	C	B
OSHA	NY	BOWMANSVILLE	US	1	T820	C	B
OSHA	NY	MANHATTAN	US	1	T820	C	B
OSHA	NY	MANHATTAN	US	1	T820	C	B
OSHA	NY	SYRACUSE	US	1	T820	C	B
OSHA	NY	TARRYTOWN	US	1	T820	C	B
OSHA	NY	WESTBURY	US	1	T820	C	B
OSHA	NY	ALBANY	US	1	T820	C	B
DM/OASAM	NY	NEW YORK	US	1	T820	C	B
DM/WB	NY	NEW YORK	US	1	T820	C	B
EBSA	OH	CINCINATI	US	1	T820	C	B
ESA	OH	CLEVELAND	US	1	T820	C	B
ESA	OH	COLUMBUS	US	1	T820	C	B
OSHA	OK	OKLAHOMA CITY	US	1	T820	C	B
OSHA	OK	OKLAHOMA CITY	US	1	T820	C	B
ESA	OR	PORTLAND	US	1	T820	C	B
EBSA	PA	PHILADELPHIA	US	5	T820	C	B
ESA	PA	PHILADELPHIA	US	7	T820	C	B
ESA	PA	PITTSBURGH	US	1	T820	C	B
OSHA	PA	HARRISBURG	US	1	T820	C	B
OSHA	PA	PHILADELPHIA	US	1	T820	C	B
OSHA	PA	PHILADELPHIA	US	1	T820	C	B
OSHA	PA	PHILADELPHIA	US	1	T820	C	B
OSHA	PA	PHILADELPHIA	US	1	T820	C	B
OSHA	PA	PHILADELPHIA	US	1	T820	C	B
OSHA	PA	PITTSBURGH	US	1	T820	C	B
OSHA	PA	PITTSBURGH	US	1	T820	C	B
OSHA	PA	WILKES BARRE	US	1	T820	C	B
OSHA	PA	ALLENTOWN	US	1	T820	C	B
MSHA	PA	NEW STANTON	US	3	T820	C	B
MSHA	PA	WARRANDALE	US	1	T820	C	B
MSHA	PA	WILKES-BARRE	US	2	T820	C	B
MSHA	PA	BRUCETON	US	7	T820	C	B
DM/OASAM	PA	PHILADELPHIA	US	2	T820	C	B
DM/VETS	PA	PHILADELPHIA	US	1	T820	C	B
ESA	SC	COLUMBIA	US	2	T820	C	B

OSHA	SC	COLUMBIA	US	1	T820	C	B
ESA	TN	MEMPHIS	US	1	T820	C	B
ESA	TN	NASHVILLE	US	3	T820	C	B
OSHA	TN	NASHVILLE	US	1	T820	C	B
EBSA	TX	DALLAS	US	3	T820	C	B
ESA	TX	DALLAS	US	2	T820	C	B
OSHA	TX	DALLAS	US	1	T820	C	B
OSHA	TX	FORT WORTH	US	1	T820	C	B
OSHA	TX	HOUSTON	US	1	T820	C	B
MSHA	TX	DALLAS	US	1	T820	C	B
DM/OASAM	TX	DALLAS	US	2	T820	C	B
DM/VETS	TX	DALLAS	US	1	T820	C	B
MSHA	VA	NORTON	US	3	T820	C	B
ESA	WA	SEATTLE	US	1	T820	C	B
OSHA	WA	SEATTLE	US	1	T820	C	B
ESA	WI	MILWAUKEE	US	1	T820	C	B
OSHA	WI	APPLETON	US	1	T820	C	B
OSHA	WV	CHARLESTON	US	1	T820	C	B
MSHA	WV	BECKLEY	US	1	T820	C	B
MSHA	WV	MORGANTOWN	US	2	T820	C	B
MSHA	WV	MOUNT HOPE	US	4	T820	C	B
MSHA	WV	TRIADELPHIA	US	5	T820	C	B
MSHA	WV	MORGANTOWN	US	2	T820	C	B

**T821-Special Studies and Analysis-29 FTE**

**T834-General Engineering and Analysis Services- 8 FTE**

**T835-Chemical Engineering and Analysis Services- 39 FTE**

**T999-Other non-manufacturing operations- 1 FTE**

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

**Reason for Challenge:**

These functions, T821-Special Studies and Analysis, T834-General Engineering and Analysis Services, T835-Chemical Engineering and Analysis Services 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 T999 Other Non-manufacturing Operation, position located in MSHA,Beckley, WV, is currently the subject of an A76 study and should not be included.**

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.

MSHA	IL	BENTON	US	1	T821	C	B
MSHA	IN	VINCENNES	US	1	T821	C	B
MSHA	KY	HAZARD	US	1	T821	C	B
MSHA	KY	ELKHORN CITY	US	1	T821	C	B
MSHA	KY	MADISONVILLE	US	1	T821	C	B
MSHA	KY	MARTIN	US	1	T821	C	B
MSHA	KY	HELPS	US	1	T821	C	B
MSHA	KY	PIKEVILLE	US	1	T821	C	B
MSHA	PA	WILKES-BARRE	US	1	T821	C	B
MSHA	PA	NEW STANTON	US	1	T821	C	B
MSHA	PA	WAYNESBURG	US	1	T821	C	B
OSHA	UT	SANDY	US	1	T821	C	B
OSHA	UT	SANDY	US	1	T821	C	B
OSHA	UT	SANDY	US	1	T821	C	B
OSHA	UT	SANDY	US	1	T821	C	B
OSHA	UT	SANDY	US	1	T821	C	B
MSHA	UT	PRICE	US	1	T821	C	B
MSHA	VA	NORTON	US	1	T821	C	B
MSHA	VA	NORTON	US	1	T821	C	B
MSHA	WV	MOUNT HOPE	US	1	T821	C	B
MSHA	WV	BRIDGEPORT	US	1	T821	C	B
MSHA	WV	MOUNT HOPE	US	3	T821	C	B
MSHA	WV	PINEVILLE	US	1	T821	C	B
MSHA	WV	PRINCETON	US	1	T821	C	B
MSHA	WV	LOGAN	US	1	T821	C	B
MSHA	WV	MADISON	US	1	T821	C	B
MSHA	WV	SUMMERSVILLE	US	1	T821	C	B
OSHA	OH	CINCINNATI	US	1	T834	C	B
OSHA	OH	CINCINNATI	US	1	T834	C	B
OSHA	OH	CINCINNATI	US	1	T834	C	B
OSHA	OH	CINCINNATI	US	1	T834	C	B
OSHA	OH	CINCINNATI	US	1	T834	C	B
OSHA	OH	CINCINNATI	US	1	T834	C	B
OSHA	OH	CINCINNATI	US	1	T834	C	B
OSHA	OH	CINCINNATI	US	1	T834	C	B
OSHA	UT	SANDY	US	1	T835	C	B
OSHA	UT	SANDY	US	1	T835	C	B



Challenge:

Reason for Challenge:

These education and training 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 greater 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.

**W000-Administrative Support-6 FTE**

**W100-Management Headquarters-Communications, Computing and Information- 1 FTE**

**W299-Other Communications Systems – 6 FTE**

**W310-Computer Services and Database Management- 54 FTE**

**W410-Information Operations and Information Assurance/Security -4 FTE**

**W601-Information Technology Management-3 FTE**

**W824-Data Processing Services-1 FTE**

**W826-Systems Design Development and Programming Services- 26 FTE**

**W999-Other ADP Functions-1 FTE**

Recommendation:

DOL should uphold this challenge and exclude functions W000, W100, W299, W310, W410, W601, W824, W826, W999 from its list of commercial activities.

Reason for Challenge:

These IT 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	CO	LAKWOOD	US	1	W000	C	B
MSHA	IL	BENTON	US	1	W000	C	B
OSHA	UT	SANDY	US	1	W000	C	B
OSHA	UT	SANDY	US	1	W000	C	B
MSHA	WV	TRIADELPHIA	US	2	W000	C	B
ESA	MD	LANHAM	US	1	W100	C	B
MSHA	CO	LAKWOOD	US	1	W299	C	B
MSHA	CO	LAKWOOD	US	3	W299	C	B
MSHA	WV	BECKLEY	US	1	W299	C	B
MSHA	WV	BECKLEY	US	1	W299	C	B
MSHA	AL	BIRMINGHAM	US	1	W310	C	B
EBSA	CA	LOS ANGELES	US	1	W310	C	B
EBSA	CA	SAN FRANCISCO	US	1	W310	C	B
ESA	CA	SACRAMENTO	US	1	W310	C	B
ESA	CA	SAN FRANCISCO	US	1	W310	C	B
ESA	CA	WEST COVINA	US	1	W310	C	B
OSHA	CA	SAN FRANCISCO	US	1	W310	C	B
MSHA	CA	VACAVILLE	US	1	W310	C	B
BLS	CA	SAN FRANCISCO	US	1	W310	C	B
ESA	CO	DENVER	US	1	W310	C	B
OSHA	CO	DENVER	US	1	W310	C	B
MSHA	CO	DENVER	US	1	W310	C	B
MSHA	CO	LAKWOOD	US	1	W310	C	B
MSHA	CO	LAKWOOD	US	1	W310	C	B
MSHA	CO	LAKWOOD	US	1	W310	C	B
ESA	FL	JACKSONVILLE	US	1	W310	C	B
OSHA	FL	FT LAUDERDALE	US	1	W310	C	B
EBSA	GA	ATLANTA	US	1	W310	C	B
ESA	GA	ATLANTA	US	1	W310	C	B
OSHA	GA	ATLANTA	US	1	W310	C	B
ESA	IA	DES MOINES	US	1	W310	C	B
ESA	IL	CHICAGO	US	1	W310	C	B
DM/OASAM	IL	CHICAGO	US	0.6	W310	C	B
ESA	IN	INDIANAPOLIS	US	1	W310	C	B
MSHA	IN	VINCENNES	US	1	W310	C	B
MSHA	KY	BARBOURVILLE	US	2	W310	C	B
MSHA	KY	MADISONVILLE	US	1	W310	C	B
MSHA	KY	PIKEVILLE	US	1	W310	C	B
OSHA	MA	BOSTON	US	1	W310	C	B
ESA	MD	BALTIMORE	US	1	W310	C	B
MSHA	MN	DULUTH	US	1	W310	C	B
ESA	MO	KANSAS CITY	US	1	W310	C	B
OSHA	MO	KANSAS CITY	US	1	W310	C	B

OSHA	NC	RALEIGH	US	1	W310	C	B
ESA	OH	CLEVELAND	US	1	W310	C	B
MSHA	PA	NEW STANTON	US	1	W310	C	B
MSHA	PA	WARRANDALE	US	1	W310	C	B
MSHA	TX	DALLAS	US	1	W310	C	B
OSHA	UT	SALT LAKE CITY	US	1	W310	C	B
OSHA	UT	SALT LAKE CITY	US	1	W310	C	B
OSHA	UT	SANDY	US	1	W310	C	B
MSHA	VA	NORTON	US	2	W310	C	B
ESA	WA	SEATTLE	US	1	W310	C	B
OSHA	WA	SEATTLE	US	1	W310	C	B
MSHA	WV	MORGANTOWN	US	1	W310	C	B
MSHA	WV	MOUNT HOPE	US	1	W310	C	B
MSHA	WV	TRIADELPHIA	US	5	W310	C	B
MSHA	WV	MORGANTOWN	US	1	W310	C	B
MSHA	WV	MOUNT HOPE	US	1	W310	C	B
MSHA	CO	LAKWOOD	US	2	W410	C	B
MSHA	CO	LAKWOOD	US	1	W410	C	B
MSHA	CO	LAKWOOD	US	1	W410	C	B
DM/VETS	CA	SAN FRANCISCO	US	1	W601	C	B
MSHA	CO	LAKWOOD	US	1	W601	C	B
DM/VETS	GA	ATLANTA	US	1	W601	C	B
		NEW YORK-					
BLS	NY	MANHATTAN	US	1	W824	C	B
MSHA	CO	LAKWOOD	US	4	W826	C	B
MSHA	CO	LAKWOOD	US	6	W826	C	B
MSHA	CO	LAKWOOD	US	3	W826	C	B
MSHA	WV	BECKLEY	US	1	W826	C	B
OSHA	GA	TUCKER	US	1	W999	C	B

**Y-Management and General Support**

**Y403-Paralegal-21 FTE**

**Y415-Legal Services and Support-67 FTE**

**Y815-Administrative Support Program Management-2 FTE**

Recommendation:

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

Reason for Challenge:

These legal and support functions should be classified as inherently governmental as defined under revised OMB Circular A-76 because these activities 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.

DM/SOL	CA	LOS ANGELES	US	1	Y403	C	B
DM/SOL	CO	DENVER	US	2	Y403	C	B
DM/SOL	GA	ATLANTA	US	2	Y403	C	B
DM/SOL	IL	CHICAGO	US	2	Y403	C	B
DM/SOL	MA	BOSTON	US	2	Y403	C	B
DM/SOL	MO	KANSAS CITY	US	2	Y403	C	B
DM/SOL	NY	NEW YORK	US	3	Y403	C	B
DM/SOL	PA	PHILADELPHIA	US	3	Y403	C	B
DM/SOL	TN	NASHVILLE	US	2	Y403	C	B
DM/SOL	TX	DALLAS	US	2	Y403	C	B
DM/ADJ	CA	SAN FRANCISCO	US	5	Y415	C	B

DM/SOL	CA	LOS ANGELES	US	2	Y415	C	B
DM/SOL	CA	SAN FRANCISCO	US	4	Y415	C	B
DM/SOL	CO	DENVER	US	1	Y415	C	B
DM/SOL	GA	ATLANTA	US	6	Y415	C	B
DM/SOL	IL	CHICAGO	US	2	Y415	C	B
DM/ADJ	LA	METAIRIE	US	5	Y415	C	B
DM/ADJ	MA	BOSTON	US	3	Y415	C	B
DM/SOL	MA	BOSTON	US	2	Y415	C	B
DM/SOL	MO	KANSAS CITY	US	3	Y415	C	B
DM/ADJ	NJ	CHERRY HILL	US	4	Y415	C	B
DM/SOL	NY	NEW YORK	US	3	Y415	C	B
DM/ADJ	OH	CINCINNATI	US	6	Y415	C	B
DM/SOL	OH	CLEVELAND	US	3	Y415	C	B
DM/ADJ	PA	PITTSBURGH	US	4	Y415	C	B
DM/SOL	PA	PHILADELPHIA	US	4	Y415	C	B
DM/SOL	TN	NASHVILLE	US	4	Y415	C	B
DM/SOL	TX	DALLAS	US	1	Y415	C	B
DM/ADJ	VA	NEWPORT NEWS	US	4	Y415	C	B
DM/SOL	WA	SEATTLE	US	1	Y415	C	B
OSHA	IL	ARLINGTON HEIGHTS	US	1	Y815	C	B

Respectfully Submitted for  
Ron Yarman, President  
National Council of Field Labor Locals (NCFL)  
AFGE, AFL-CIO,

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Bill Henson, NVP, NCFL

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Barbara Brandt, NVP, NCFL