REPORT TO THE CONGRESS

How To Improve Administration Of The Federal Employees' Compensation Benefits Program

Department of Labor

BY THE COMPTROLLER GENERAL OF THE UNITED STATES

MWD-75-23

MARCH 13, 1975

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-157593

To the President of the Senate and the
Speaker of the House of Representatives

This is our report on how to improve administration of the Federal Employees' Compensation Act benefits program. This program is administered by the Department of Labor.

We made our review pursuant to the Budget and Accounting Act, 1921 (31 U.S.C. 53), and the Accounting and Auditing Act of 1950 (31 U.S.C. 67).

We are sending copies of this report to the Director, Office of Management and Budget; the Secretary of Labor; and the Secretary of the Treasury.

Comptroller General
of the United States

Contents

		Page
DIGEST		
CHAPTER		
1	INTRODUCTION	1
	Fund activities	2
2	IMPROVED COLLECTION PROCEDURES FOR OBTAINING REIMBURSEMENTS FROM CERTAIN AGENCIES	4
	Conclusions	7
	Agency actions and comments	7
3	NEED FOR IMPROVED PRACTICES TO INCREASE EQUITY IN BILLING AGENCIES FOR ADMINISTRATIVE COSTS	9
	Conclusions	10
	Recommendations to the Secretary of Labor	10
	Agency actions and comments	10
4	LABOR UNABLE TO OBTAIN FAIR SHARE OF COMPENSATION FUND ADMINISTRATIVE COSTS FROM CERTAIN AGENCIES	11
	Additional charges if all 14 agencies were billed for administrative costs	13
	Conclusions	14
	Recent legislation	14
	Recommendations to the Secretary of Labor	15
	Agency comments	15
	Matter for consideration by the Congress	16
5	REDUCING ADMINISTRATIVE COSTS BY ELIMINATING CHARGEBACK PROVISION FOR AGENCIES DEPENDENT ON ANNUAL APPROPRIATIONS	17
	Legislative proposal to repeal charge-back provision	19
	Federal safety programs emphasized under Occupational Safety and Health Act	20
	Conclusions	21
	Agency comments and our evaluation	22
	Matter for consideration by the Congress	24
6	SCOPE OF REVIEW	25

APPENDIX		Page
I	Government agencies, instrumentalities, and other organizations referred to as agencies in report	27
II	Principal officials of the Department of Labor responsible for administering activities discussed in this report	29
III	Letter dated September 26, 1974, from the Fiscal Assistant Secretary, Department of the Treasury, to GAO	30
IV	Letter dated October 30, 1974, from the Assistant Secretary for Administration and Management, Department of Labor, to GAO	31

ABBREVIATIONS

ESA	Employment Standards Administration
GAO	General Accounting Office
OSHA	Occupational Safety and Health Administration

COMPTROLLER GENERAL'S
REPORT TO THE CONGRESS

HOW TO IMPROVE ADMINISTRATION OF THE FEDERAL EMPLOYEES' COMPENSATION BENEFITS PROGRAM
Department of Labor

D I G E S T

WHY THE REVIEW WAS MADE

Under the Federal Employees' Compensation Act, as amended (5 U.S.C. 8101), the Department of Labor maintains an Employees' Compensation Fund which the Congress established to provide compensation benefits to Federal employees for disability due to injury or disease sustained in performing their duties. The act also provides for payments of benefits to dependents if an injury or disease causes an employee's death.

Labor through its Employment Standards Administration (ESA) uses the Fund to pay benefits due under the act on behalf of Federal employees of various Government agencies, instrumentalities, and other organizations (hereinafter referred to as agencies).

Each agency, however, must reimburse the Fund through Labor for costs incurred due to injuries or deaths of its employees after December 1, 1960. These reimbursements are called "chargeback payments." (See p. 1.)

GAO examined Labor's procedures and practices for obtaining reimbursements because the manner of reimbursement by some agencies might cause increased costs to the Government.

FINDINGS AND CONCLUSIONS

Before August 15 of each year, Labor must provide each agency a statement of payments made from the Fund on behalf of its employees during the prior fiscal year.

Each agency dependent on appropriated funds is required to include in its annual budget a request for an appropriation equal to the costs of compensation benefit payments made in the previous fiscal year.

Within 30 days after the appropriation becomes available, the agency must pay these chargeback payments to Labor for deposit to the Fund.

An agency which makes payments from funds not dependent on an annual congressional appropriation must make the reimbursement from funds under its control. No required payment period or date is set forth in the law for these agencies. (See p. 1.)

The act also provides that mixed-ownership Government corporations, as defined by 31 U.S.C. 856, or any other corporation, agency, or instrumentality (or

MWD-75-23

activity thereof) which is required by statute to submit an annual budget in accordance with sections 841-869 of title 31 shall pay an additional amount as established by the Secretary of Labor for their fair share of the cost of administration.

Improved collection procedures

Labor did not distinguish, for billing purposes, between agencies which financed their chargeback payments from annual appropriations and those which did not.

Reimbursements were obtained from all agencies with a 1-year timelag automatically built into the collection process.

As a result, at least $8 million which could have been paid into the Fund in fiscal year 1973 was not made available to the Fund until fiscal year 1974.

This represents chargeback liabilities for fiscal year 1972 from five agencies having authority to invest excess funds and not wholly dependent on annual appropriations.

The availability of such funds to these agencies for more than a year after the billing date enabled them to earn interest on funds which would not have been available if the Fund had been reimbursed more promptly. In GAO's view, interest earnings on amounts due the Fund distort the income of these agencies. (See p. 4.)

Labor adopted the GAO proposal to place agencies--not wholly dependent on appropriations and with investment authority--on a current-billing basis for compensation benefits paid on behalf of their employees by establishing procedures requiring payment within 30 days after the billing date for such agencies.

Obtaining fair share of Compensation Fund administrative costs from certain agencies

Labor overcharged seven agencies for their fair share of the Fund's administrative costs by $86,000 for fiscal year 1971 and by $103,000 for fiscal year 1972. The fair-share surcharge rate was established at 6 percent of the amount charged back and was not periodically reviewed for appropriate adjustments as Labor procedures required. (See p. 9.)

In addition, because they are not specifically enumerated in the law, certain agencies not wholly dependent upon annual appropriations from the Congress that had Compensation Fund payments made for their employees in fiscal year 1972 were not billed their fair share of the Fund's administrative costs.

GAO identified 14 agencies not wholly dependent on annual appropriations that had claims payments made on their behalf from the Fund during fiscal year 1972.

(See app. I.) Labor billed seven of these agencies their fair share of the administrative costs for 1972. An eighth agency, although enumerated in the law, was not billed because of an error. Labor believed it could not bill the remaining six because they were not specifically enumerated in the law.

Two of the six agencies, however, are required, in whole or in part, to submit an annual budget pursuant to sections 841-869 and should have been billed by Labor.

Also, since the four remaining agencies identified by GAO had payments made from the Fund for their employees during fiscal year 1972 and were not wholly dependent upon appropriations, GAO believes they should be required by law to pay their fair share of the cost of administration of the Fund. This is based on the rationale that such agencies were established to be self-sustaining and not dependent upon general tax revenues.

The Congress must determine whether one of the four agencies--the Department of Health, Education, and Welfare's Federal Old-Age and Survivors Insurance Trust Fund activities--which is financed essentially by special payroll tax revenues, should be charged for a fair share of administrative costs.

Labor billed 7 of the 14 agencies their fair share of administrative costs for fiscal year 1972 at a 6-percent rate of their amounts charged back, or a total of about $386,400. Had Labor possessed legal authority to assess the 14 agencies their fair share of administrative costs at the GAO-computed rate of 4.4 percent of the amount charged back, the Treasury would have received about $653,300, or about $266,900 more than the $386,400. (See p. 13.)

The 14 agencies identified were only those that had payments made from the Compensation Fund on their behalf during fiscal year 1972.

Reducing administrative costs by eliminating chargeback provision for certain agencies

Administrative costs could be reduced if agencies and organizations receiving appropriated funds were not required by the act to make chargeback payments to the Fund for costs incurred due to employee claims.

This legislative requirement is based on the premise that such a practice would emphasize safety by requiring each agency to justify the cost of compensation benefits to the Office of Management and Budget and the Congress during the appropriation process. (See p. 17.)

With the enactment of the Occupational Safety and Health Act of 1970 and issuance of Executive orders, Federal agencies were to establish and maintain adequate safety and health programs to protect their workers.

With implementation of such programs which emphasize safety, it appears that the basis for the chargeback system with respect to agencies dependent on appropriated funds has lessened in importance. (See p. 21.)

Agencies operating from funds not wholly appropriated by the Congress should continue to be charged for compensation benefits paid on behalf of their employees and for their fair share of the Fund's administrative costs.

RECOMMENDATIONS

The Secretary of Labor should direct the Employment Standards Administration to:

--Review the fair-share surcharge rate for administrative costs to determine its validity and make any appropriate adjustments. (See p. 10.)

--Insure that Labor procedures requiring the periodic review of the fair-share surcharge rate are followed, thereby insuring that the rate is equitable with respect to all the agencies billed administrative costs. (See p. 10.)

--Insure that all agencies that can be legally billed under the act are billed their fair share of the Fund's administrative costs. (See p. 15.)

--Identify all agencies which make payments from revolving or other funds not wholly dependent on annual appropriations in order to identify those agencies which also should be required by law to pay their fair share of administrative costs when compensation benefit payments are made from the Fund on their behalf. (See p. 15.)

--Propose legislation to the Congress to have those identified agencies which should be required by law to pay but which cannot now be legally billed for their fair share of administrative costs be specifically enumerated in the act. (See p. 15.)

AGENCY ACTIONS AND UNRESOLVED ISSUES

Labor said that, in general, action was being taken or was planned to implement GAO's recommendations, and the Treasury concurred in some of the actions planned by Labor.

Labor said any action on proposed elimination of the chargeback provision should await results of its study to examine and evaluate the effectiveness of the provisions and programs under the Federal Employees' Compensation Act.

The 1974 amendments to the act authorized Labor's study and required the Secretary of Labor to report to the Congress on the results and his recommendations no later than September 7, 1975. (See apps. III and IV.)

MATTERS FOR CONSIDERATION BY THE CONGRESS

The Congress may wish to consider amending the Federal Employees' Compensation Act to:

--Make the fair-share surcharge for administrative costs, relative to Employees' Compensation Fund payments, applicable to agencies, identified by Labor, which make payments from revolving or other funds not wholly dependent on annual appropriations even though they are not enumerated in the act as mixed-ownership Government corporations as defined by 31 U.S.C. 856 or not required to submit budgets pursuant to 31 U.S.C. 841-869.

In considering this amendment, the Congress should determine whether it would be appropriate to bill a fair-share surcharge of the Compensation Fund's administrative costs to those agencies financed from special tax revenues, such as the Federal Old-Age and Survivors Insurance Trust Fund activities in the Department of Health, Education, and Welfare. (See p. 16.)

--Strengthen or eliminate the chargeback process on the basis of the findings discussed in this report together with the results of Labor's study under the 1974 amendments to the act. (See p. 24.)

CHAPTER 1

INTRODUCTION

The Federal Employees' Compensation Act, as amended (5 U.S.C. 8101), provides for compensation benefits for the disability or death of the thousands of Federal employees injured or killed each year while performing their duties. These benefits include compensation for loss of wages, dollar awards for bodily impairment or disfigurement, medical care for an injury or disease, rehabilitation services, and compensation for survivors.

To provide compensation and other benefits and expenses authorized by the act, the Congress established the Employees' Compensation Fund. The Fund, which consists of money that the Congress has appropriated for or has transferred to it, is available without time limit.

Under the act, the Department of Labor is responsible for maintaining the Fund. Labor, through its Division of Federal Employees' Compensation, 1/ Office of Workers' Compensation Programs, in the Employment Standards Administration (ESA), pays benefits due under the act on behalf of Federal employees of the various Government agencies, instrumentalities, and other organizations (hereinafter referred to as agencies). Each agency, however, must reimburse the Fund through Labor for costs incurred due to injuries or deaths of its employees.

Before August 15 of each year, Labor, under the act (section 8147(b) of title 5), must provide to each agency a statement showing the total cost of compensation benefit payments made from the Fund on behalf of its employees during the preceding fiscal year.

Each agency is required to include in its annual budget a request for an appropriation in an amount equal to the costs of compensation benefit payments shown on the Labor statement. Thus, an agency dependent on appropriated funds which received the August 15, 1974, statement would include in its appropriation request an amount to cover these costs in its budget for fiscal year 1976. Within 30 days after the appropriation becomes available, the agency must pay these sums to Labor for deposit in the Fund. Labor and the agencies normally refer to such payments as chargebacks.

An agency not dependent on an annual appropriation from the Congress (e.g., the Postal Service) must make the reimbursement from funds under its control. No required

---

1/The former Office of Federal Employees' Compensation.

payment period or date is set forth in the law for these agencies.

In addition the act authorizes Labor to request annual appropriations from the Congress to cover the cost of administering the Federal Employees' Compensation program. The appropriations are to finance all of the program's administrative costs, including those related to payments of benefits for employees of agencies dependent upon appropriations and for employees of agencies not dependent upon appropriations.

The act (section 8147(c) of title 5) also provides that mixed-ownership (e.g., Federal Home Loan Banks and Federal Deposit Insurance Corporation) Government corporations, as defined by 31 U.S.C. 856, or any other corporation, agency, or instrumentality (or activity thereof) which is required by statute to submit an annual budget pursuant to or as provided by sections 841-869 of title 31 of the United States Code pay an additional amount for their fair share of the cost of administration of the Federal Employees' Compensation program. The act states that Labor bill these agencies for their fair share of the cost of administration of the program as determined by the Secretary of Labor and that the administrative costs paid by these agencies shall be deposited as miscellaneous receipts in the U.S. Treasury.

FUND ACTIVITIES

In fiscal year 1973, the Division processed 27,900 new injury claims and 331 new fatality claims. Total compensation benefit payments made in fiscal year 1973 amounted to $217.8 million, of which $168.4 million was charged back to the agencies. The $49.4 million difference was due mainly to continuing payments that began before the initiation of the chargeback system in 1961 and to certain amounts that were not subject to chargebacks (e.g., $7 million paid to Armed Forces reservists).

In the past several years, the number of claims, the amount of compensation benefits paid, and program administrative costs have increased. According to Labor officials, the compensation benefit payments have increased due to the higher salary levels which form the basis for compensation, cost-of-living increases, and the increased cost for medical care. The increase in the number of claims filed is due to (1) more employees electing to claim compensation in place of using sick leave because of the higher benefit levels in effect since the 1966 amendments to the Federal Employees' Compensation Act and (2) the 1969 legislative changes which

permit employees to receive certain credits for unused sick leave at the time of their retirement. 1/

The following schedule illustrates how the costs have increased.

Fiscal year	Benefits paid (millions)	Amounts charged back (000 omitted)	Administrative costs	New claims processed	Total Federal Government employees (note a) (000 omitted)
1961	$ 62.2	$ b/2,929	$ 2,238	13,452	2,279
1962	64.0	13,162	2,611	13,571	2,340
1963	68.1	20,850	2,729	13,109	2,358
1964	72.0	26,670	2,900	13,379	2,348
1965	73.5	32,625	2,988	13,399	2,378
1966	75.2	36,460	3,129	13,570	2,564
1967	89.1	43,928	3,321	15,314	2,719
1968	98.3	50,057	3,727	17,102	2,737
1969	111.2	67,920	4,037	17,885	2,758
1970	131.5	86,620	4,186	17,795	2,705
1971	163.2	119,105	5,280	20,987	2,664
1972	190.0	145,856	6,412	26,774	2,650
1973	217.8	168,409	7,106	28,231	2,627

a/Calendar years.

b/Chargeback system began December 1, 1960.

Annually, Labor submits to the Congress estimates on appropriations necessary for maintaining the Compensation Fund. These estimates, for the most part, cover the annual expenses for administering the Federal Employees' Compensation program, compensation benefit payments not subject to the chargeback system, and the difference between expected compensation benefit payments for the forthcoming year and planned reimbursements from agencies whose employees had previously received compensation benefit payments but will not reimburse the Fund until the following fiscal year because of the 1-year lag.

1/An employee may elect to go on annual or sick leave in lieu of claiming compensation. He may later claim and receive compensation for the period during which he used leave, but he must refund any amount he received over and above the compensation that he would have been paid. He then is credited with any leave he took.

CHAPTER 2

IMPROVED COLLECTION PROCEDURES FOR OBTAINING REIMBURSEMENTS FROM CERTAIN AGENCIES

Labor did not distinguish, for billing purposes, between those agencies which financed their chargeback payments from annual appropriations and those which did not. Reimbursements were obtained from all agencies with a 1-year timelag automatically built into the collection process.

Consequently, at least $8 million, representing chargeback liabilities for fiscal year 1972 from five agencies, was not made available to the Fund until fiscal year 1974. The five agencies (1) are not wholly dependent on annual appropriations and (2) have authority to invest excess funds. The availability of such funds to these agencies for more than a year after the billing date enabled them to earn interest on funds which would not have been available if the Fund had been reimbursed more promptly. In our view, interest earnings on amounts due the Fund distort the income of these agencies.

We suggested that the Division place agencies not wholly dependent on appropriations and with investment authority on a current-billing basis for compensation benefits paid on behalf of their employees, by establishing procedures requiring payment within 30 days after the August 15 billing date. Our proposal was adopted.

The requirements on billing procedures for the Fund are contained in 5 U.S.C. 8147(b) which states:

> "Before August 15 of each year, the Secretary [of Labor] shall furnish to each agency and instrumentality * * * a statement showing the total cost of benefits and other payments made from the Employees' Compensation Fund during the preceding fiscal year * * *. Each agency and instrumentality shall include in its annual budget estimates for the next fiscal year a request for an appropriation in an amount equal to the costs. Sums appropriated pursuant to the request shall be deposited in the Treasury to the credit of the Fund within 30 days after they are available. An agency or instrumentality not

dependent on an annual appropriation shall make the * * * [reimbursement] from funds under its control." (Underscoring supplied.)

As the act states, each agency dependent on appropriated funds must include in its annual budget request an amount equal to the costs Labor bills it. As the result of the Government's budget process, a billing for Labor's compensation benefit payments in the fiscal year ended June 30, 1972, would not be paid until after receipt of the fiscal year 1974 appropriation. This results in about a 1-year lag. An agency not wholly dependent on annual appropriations and with investment authority, however, could make, within a reasonable time after Labor's billing, the required reimbursement from funds under its control.

The following illustrates the effects of Labor's procedures for agencies authorized to invest excess funds and not wholly dependent on annual appropriations.

On July 1, 1971, the effective date of the Postal Reorganization Act (39 U.S.C. 101), the former Post Office Department became the Postal Service--an agency that intended to become self-sustaining. Compensation benefits paid by Labor on behalf of postal employees for injuries sustained on or after July 1, 1971, are reimbursable from the Postal Service Fund. Compensation benefits paid on behalf of employees of the former Post Office Department for injuries sustained before that date are liabilities of the Government and are funded through the appropriation process.

Following the close of fiscal year 1972, Labor issued to the Postal Service a statement of the compensation benefits paid on behalf of postal employees during that year. The statement showed that about $30 million had been paid on behalf of employees of the former Post Office Department for injuries sustained before July 1, 1971, and about $7.8 million had been paid for employees of the Postal Service for injuries sustained on or after that date.

The Postal Service included the $30 million in an appropriation request for fiscal year 1974. The $7.8 million was not included in the appropriation request, because it was to be paid from the Postal Service Fund. A representative of the Postal Service's Office of the Controller said the Postal Service planned to remit the total amount of $38 million to Labor after receipt of the fiscal year 1974 appropriation.

The Assistant Postmaster General, Finance Department, said the $7.8 million could have been paid at the time of billing in August 1972. However, he said that Labor would not accept the payment for the Postal Service's fiscal year 1972 employee

compensation liability at that time. In determining its appropriation needs for fiscal year 1973, Labor had already considered all the fiscal year 1971 reimbursements due in 1973. Labor believed that to accept the unplanned reimbursement would place it in a surplus position and require deposit of these excess funds to the Treasury.

In addition to the Postal Service, we identified four other agencies not wholly dependent on appropriations and having investment authority to which chargebacks had been made. The fiscal year 1972 chargeback liability for the five agencies amounts to over $8 million, as shown below.

Agency	Fiscal year 1972 chargeback amount
Postal Service	$7,855,012
Federal Housing Administration, Department of Housing and Urban Development	247,698
Small Business Administration	88,198
Office of the Comptroller of the Currency, Department of the Treasury	49,444
Federal Home Loan Bank Board	34,369
Total	$8,274,721

Similar lags may have existed since the program began in fiscal year 1961, but we did not determine the amounts which could have been paid earlier by agencies such as the above.

These five agencies were notified in August 1972 of the compensation benefits paid by Labor during fiscal year 1972. Labor was reimbursed by

--the Postal Service in August 1973 (12 months later),

--the Comptroller of the Currency in September 1973 (13 months later),

--the Federal Home Loan Bank Board in November 1973 (15 months later),

--the Federal Housing Administration in December 1973 (16 months later), and

--the Small Business Administration in January 1974 (17 months later).

In September 1972 the Acting Director of the Division wrote to us regarding the Division's proposal to repeal the chargeback provision and provided us with a statement and backup material

which indicated that the present chargeback arrangement was causing a problem in financing the Compensation Fund's operations. The Division's material indicated that it had been necessary to obtain voluntary payments from agencies in advance of their appropriations to cover a potential deficit in the Fund. A Division official also stated that in some years it was necessary to obtain supplemental appropriations or to transfer funds from other programs to finance the Fund's operations.

CONCLUSIONS

A 1-year lag may be appropriate with respect to the reimbursement for benefits paid for employees of agencies, such as the Department of Commerce, dependent on annual appropriations. However, such a lag is unnecessary with respect to the reimbursement for compensation benefits for employees of agencies not wholly dependent on appropriations and with investment authority. Funds should be available from such agencies at the time of Labor's determination of the amount to be billed.

Since the law requires that agencies dependent on appropriations make their reimbursements within 30 days after the funds are available, a bill issued after the close of the fiscal year for payment within 30 days seems reasonable for other agencies with funds already available.

AGENCY ACTIONS AND COMMENTS

We suggested that, to place agencies not wholly dependent on appropriations and with investment authority on a current-billing basis for compensation benefits paid on behalf of their employees, the Division establish procedures requiring payment within 30 days after the August 15 billing date for such agencies.

The Division adopted our proposal. The budget justification for the Compensation Fund for fiscal year 1975, presented to the Subcommittee on Departments of Labor and Health, Education, and Welfare, House Committee on Appropriations, in March 1974, stated:

> "As a result of an FY-1974 General Accounting Office recommendation, agencies not dependent upon an annual appropriation (the largest of which is the U.S. Postal Service), are now required to make payment within thirty days of the billing date. These sums are then deposited to the credit of the Compensation Fund."

Labor also agreed with our assessment and has taken action to bill on the appropriate cycle. Labor said that since the report was submitted, agencies have received a chargeback for fiscal year 1974 and 14 agencies were notified August 14, 1974, that repayment of the fiscal year 1974 costs was expected within 30 days.

Labor has asked its Solicitor to clarify which agencies should properly be billed for accelerated repayment. If necessary Labor will seek an amendment to section 8147(b) of the act to enumerate specifically the agencies or entities which may appropriately be billed for accelerated repayment. The Office of Management and Budget and GAO will be formally requested to participate in this process.

The Treasury concurred with our view that an agency should not earn interest through the investment of money that is due another agency for a service previously performed and that such interest earnings distort the income of the agency owing the money. The Treasury also agreed with the action taken by Labor to place an agency with investment authority on a current-billing basis for compensation benefits paid for its employees.

CHAPTER 3

NEED FOR IMPROVED PRACTICES TO INCREASE EQUITY IN BILLING AGENCIES FOR ADMINISTRATIVE COSTS

Labor overcharged seven agencies which were billed for their fair share of the compensation program's administrative costs because the fair-share surcharge rate was not periodically reviewed by ESA and appropriately adjusted as required by Labor procedures. On the basis of Labor's procedures, we calculated that collectively these agencies overpaid about $86,000 for fiscal year 1971 and were overcharged about $103,000 for fiscal year 1972.

Under the Federal Employees' Compensation Act (section 8147(c) of title 5) Labor must bill mixed-ownership Government corporations, as defined by 31 U.S.C. 856, or any other agency, corporation, or instrumentality (or activity thereof) which is required by statute to submit an annual budget pursuant to sections 841-869 of title 31 for their fair-share cost of administering the compensation program.

The funds collected from these agencies are deposited as miscellaneous receipts in the Treasury. The fair share is determined on the basis of a surcharge rate computed by ESA. The current charge established by ESA is 6 percent of the amount charged back to the agencies.

Labor procedures require that ESA periodically, and no less than biannually, review this rate to determine its validity. This review consists of determining the percentage relationship of benefit and claim payments incurred for agencies covered by section 8147(c) of the act compared to total benefit and claim payments from the Fund. The computed percentage is then applied to the Fund's total administrative costs to determine that portion of administrative costs applicable to these agencies. Dividing this figure by the amount of benefit and claim payments incurred for these agencies results in the surcharge rate.

Labor billed each agency for administrative costs at the 6-percent surcharge rate. However, our computation of the fair-share surcharge rate, using Labor's prescribed procedures, showed that the surcharge rate for fiscal years 1971 and 1972 should have been about 4.4 percent.

The seven agencies were overcharged for fiscal years 1971 and 1972. These seven agencies are the Federal Crop Insurance Corporation; the Federal Home Loan Bank Board; the Federal Housing Administration; Federal Prisons Industries, Inc.; the Saint Lawrence Seaway Development Corporation; the Small Business Administration; and the Tennessee Valley Authority.

On the basis of Labor's procedures, we calculated, as shown in the following table, that collectively these agencies overpaid about $86,000 for fiscal year 1971 and were overcharged about $103,000 for fiscal year 1972.

Fiscal year	Chargeback amount for seven cited agencies	Fair share billed at 6 percent	Fair share computed at 4.4 percent	Amount overpaid or overcharged
1971	$5,366,738	$322,003	$236,136	$ 85,867
1972	6,439,989	386,400	283,360	103,040

Division officials informed us that the current rate of 6 percent of the amount charged back has been in effect since the establishment of the fair-share charge in 1960. The officials also said the rate had never been reviewed to determine its validity though required by Labor procedures.

CONCLUSIONS

We believe that the surcharge rate should have been reviewed and computed in accordance with Labor's procedures so that the seven agencies mentioned above would have been billed only their fair share of the administrative costs. Compliance with these procedures will insure that each agency will be charged correctly.

RECOMMENDATIONS TO THE SECRETARY OF LABOR

We recommend that the Secretary require ESA to (1) review the fair-share surcharge rate to determine its validity and make any appropriate adjustments and (2) insure compliance with Labor procedures requiring the periodic review of the fair-share surcharge rate, thereby insuring that the rate is equitable with respect to all the agencies billed administrative costs.

AGENCY ACTIONS AND COMMENTS

Labor said that ESA would review the computation of the fair-share costs of administration and, if necessary, recompute them. Appropriate action has been taken to insure that no less than a biennial review of the computation will be made in accordance with the formula in the accounting procedures. Labor said that revised fiscal year 1974 billings were prepared for the agencies covered by section 8147(c) of the act.

CHAPTER 4

LABOR UNABLE TO OBTAIN FAIR SHARE OF COMPENSATION FUND ADMINISTRATIVE COSTS FROM CERTAIN AGENCIES

Because they are not specifically enumerated in the law, certain agencies that had Compensation Fund payments made for their employees in fiscal year 1972 and that were not wholly dependent upon annual appropriations from the Congress were not billed their fair share of the Fund's administrative costs. Since agencies not wholly dependent upon appropriations are generally established to be self-sustaining, they should be required by law to pay their fair share of the cost of administering the program if they had payments made on their behalf from the Fund.

The Federal Employees' Compensation Act provides that (1) mixed-ownership Government corporations, as defined by 31 U.S.C. 856, or (2) any other agency, corporation, or instrumentality which is required by statute to submit an annual budget pursuant to sections 841-869 of title 31 shall pay an additional amount for their fair share of the Fund's administrative costs. Labor's position, based on a 1970 determination by its Office of the Solicitor, is that fair share portions of administrative costs are chargeable only to those Government agencies specified in the law. This determination stated that specific enumeration was essential and that inference or implication would not suffice.

We identified 14 agencies not wholly dependent upon annual appropriations from the Congress that had claims payments made for their employees from the Compensation Fund during fiscal year 1972. (See app. I.) Labor billed seven of these agencies their fair share of administrative costs for fiscal year 1972. An eighth agency, although enumerated in the law, was not billed because of an error. 1/ Labor believed it could not bill the remaining six agencies because they were not specifically enumerated in the law.

1/ The Department of Agriculture's Commodity Credit Corporation--the eighth agency Labor determined it could bill--is required by law to pay its fair share of administrative costs, but due to an error by Labor it was not billed for fiscal years 1970-72.

Two of the six agencies, however, are required, in whole or in part, to submit an annual budget pursuant to sections 841-869 and should have been billed by Labor. These agencies were the Veterans Canteen Service and the National Credit Union Administration. The Veterans Canteen Service is required to prepare and submit a budget program as provided for wholly-owned Government corporations by 31 U.S.C. 841-869. The National Credit Union Administration is required by section 209(b)(1) of the Federal Credit Union Act (12 U.S.C. 1790 (b)(1)) to prepare and submit a budget as provided for wholly-owned corporations by the Government Corporation Control Act (31 U.S.C. 841-869) but only with respect to the financial operations arising by reason of title II of the Federal Credit Union Act. Title II of the act provides, among other things, for the insuring of Federal credit unions. Accordingly, the National Credit Union Administration should be billed its fair share of the Fund's administrative costs, but only for compensation claims for activities carried on under title II of the Federal Credit Union Act.

Labor's Office of the Solicitor informally advised us in 1974 that, if the statute creating an activity required the agency to submit an annual budget pursuant to sections 841-869 of title 31, it could be reasonably construed as being chargeable for its fair share of administrative costs even though not specifically enumerated in the law. Our Office of General Counsel concurs in this opinion.

Also, since the four remaining agencies identified by us had payments made for their employees from the Fund during fiscal year 1972 and are not wholly dependent upon appropriations, they should be required by law to pay their fair share of the cost of administering the program. This is based on the rationale that such agencies generally were established to be self-sustaining and not dependent upon general tax revenue. Thus, such agencies, if they have payments made from the Fund on their behalf should pay their fair share of the administrative costs rather than having such costs be borne by appropriations from general tax revenues.

One of the four agencies that has not been charged a fair share of the Compensation Fund's administrative costs presented an unusual situation. Activities of the Social Security Administration related to the Federal Old-Age and Survivors Insurance Trust Fund are essentially financed from special payroll tax revenues. 1/ Thus, the Compensation Fund's administrative

---

1/ The other three agencies are the Postal Service; the Board of Governors, Federal Reserve System; and the Office of the Comptroller of the Currency, Department of the Treasury.

costs would ultimately be paid by tax revenues whether the agency was surcharged or the Fund absorbed the cost and Labor included this cost in its annual appropriation request for Fund maintenance. It must be determined, therefore, whether it would be appropriate to charge this agency and any others like it a fair share of the Fund's administrative costs.

ADDITIONAL CHARGES IF ALL 14 AGENCIES WERE BILLED FOR ADMINISTRATIVE COSTS

Chargebacks to the 14 agencies identified by us amounted to $14.8 million for fiscal year 1972. Labor billed seven of these agencies their fair share of administrative costs at a 6-percent rate, or a total of $386,400. Had Labor possessed legal authority to assess all 14 agencies their fair share of administrative costs at our computed rate of 4.4 percent (see p. 9), the Treasury would have received about $653,284, or $266,884 more than the $386,400. These differences are illustrated in the following table which shows the computed and billed fair shares for the 14 agencies.

	Charge-back amount	GAO-computed fair share at 4.4%	Fair share billed at 6%	Differences
For seven agencies billed fair share in fiscal year 1972	$ 6,439,989	$283,360	$386,400	-$103,040
For seven agencies not billed fair share in fiscal year 1972	8,407,369	369,924	-	369,924
Total	$14,847,358	$653,284	$386,400	$266,884

The 14 agencies were only those that had compensation benefit payments made from the Compensation Fund on their behalf in fiscal year 1972. Information on additional agencies not wholly dependent on appropriations, which have not as yet had compensation benefit payments made from the Fund on their behalf but may have in the future was not available or could not be readily identified by Labor or the Treasury.

CONCLUSIONS

The Veterans Canteen Service, the National Credit Union Administration, and any other such agency which under the act can be billed by Labor for its fair share of administrative costs should be billed.

Agencies which are neither enumerated in the law as mixed-ownership Government corporations as defined by 31 U.S.C. 856 nor required to submit budgets pursuant to 31 U.S.C. 841-869 but which are not wholly dependent on annual appropriations and were established to be self-sustaining should also be required by law to pay their fair share of the Compensation Fund's administrative costs when benefit payments are made on their behalf.

However, one such agency was a trust fund activity which was financed essentially from special payroll tax revenues. It must be determined whether an agency of this type should be billed its fair share of the Compensation Fund's administrative costs.

RECENT LEGISLATION

After we discussed our findings with the Division, we noted that Labor submitted a legislative proposal covering the payment of Compensation Fund administrative costs by the Postal Service in Labor's budget justification for fiscal year 1975. The proposal was to amend Labor's appropriation act for fiscal year 1975 to provide for the billing and payment of the Fund's administrative costs incurred in paying benefits for Postal Service employees through June 30, 1975.

In justifying the changes the Director of the Office of Workers' Compensation Programs indicated that the Postal Service is not a mixed-ownership Government corporation as defined by 31 U.S.C. 856 nor is it covered by sections 841-869 of title 31. Thus, special language is needed to charge the Postal Service its fair share of administrative costs.

On June 27, 1974, the House of Representatives passed Labor's appropriation act for fiscal year 1975 which included the special language. The act was passed by the Senate on September 18, 1974. It was signed by the President on December 7, 1974, as Public Law 93-517.

RECOMMENDATIONS TO THE SECRETARY OF LABOR

We recommend that the Secretary have ESA:

--Insure that all agencies which can be legally billed under the Federal Employees' Compensation Act are billed their fair share of the Compensation Fund's administrative costs.

--Identify all agencies which will make payments from revolving or other funds not wholly dependent on annual appropriations in order to identify those agencies which also should be required by law to pay their fair share of administrative costs when compensation benefit payments are made from the Fund on their behalf.

--Propose legislation to the Congress to have those identified agencies which should be required by law to pay but which cannot now be legally billed for their fair share of administrative costs be specifically enumerated in the act.

AGENCY COMMENTS

The Treasury concurred with our opinion that administrative costs should be collected from those agencies that meet required legal billing criteria. However, according to the Treasury, there are special provisions governing reimbursements out of the Federal Old-Age and Survivors Insurance Trust Fund--42 U.S.C. 401(g)(1)(A) and 42 U.S.C. 401(g)(1)(B)--which may make it inappropriate to charge administrative costs of the compensation program.

As a matter of principle, Labor also supports the assessing of administrative costs. Labor said, however, that ESA has experienced difficulty in determining which organizations should be subject to the "user charge" for administrative costs. It took special legislative action to clarify the status of the Postal Service.

Labor said that there have also been problems in assessing the two agencies mentioned in our report. Labor in light of our conclusions has formally requested its Solicitor to reexamine the option regarding the need for enumeration. Labor said it will be guided by the Solicitor's response.

Labor also said there were a number of gray areas, which means that proposals for administrative and legislative action will have to be carefully studied. Both the Office of Management and Budget and GAO will be consulted in this process.

MATTER FOR CONSIDERATION BY THE CONGRESS

The Congress may wish to consider amending the Federal Employees' Compensation Act to make the fair-share surcharge for administrative costs, relative to Employees' Compensation Fund payments, applicable to agencies, identified by Labor, which make payments from revolving or other funds not wholly dependent on annual appropriations even though they are not enumerated in the law as mixed-ownership Government corporations as defined by 31 U.S.C. 856 or are not required to submit budgets pursuant to 31 U.S.C. 841-869. In considering the amendment, the Congress should determine whether it would be appropriate to bill a fair-share surcharge of the Compensation Fund's administrative costs to those agencies, such as the Federal Old-Age and Survivors Insurance Trust Fund activities, Department of Health, Education, and Welfare, financed from special tax revenues.

CHAPTER 5

REDUCING ADMINISTRATIVE COSTS BY ELIMINATING CHARGEBACK PROVISION FOR AGENCIES DEPENDENT ON ANNUAL APPROPRIATIONS

The requirement in the Federal Employees' Compensation Act for Labor to charge back compensation benefit payments to agencies dependent on annual appropriations has created additional administrative tasks and costs for both Labor and the Federal agencies. We believe that Labor's and the agencies' administrative costs may outweigh the benefits intended to be derived from the chargeback process. Further, there is little evidence that the legislative purpose of the chargeback provision is being served.

The chargeback provision was enacted in 1960 as part of the 1960 amendments to the act. The legislative purpose of the provision was to encourage safety and careful scrutiny of claims by charging agencies for the cost of injuries. This intent is described in both the Senate and House Legislative Committee reports on the 1960 amendments as follows:

> "* * * to further the promotion of safety in the various Federal agencies and establishments * * *. This provision would bring to the attention of the heads of each agency the cost of compensation for injuries to employees under his jurisdiction and require him to justify such expenditures to the Bureau of the Budget [Office of Management and Budget] and to Congress."

The chargeback requirement creates a need by the Division for special accounting to accumulate the payments for these dependent agencies and to bill the agencies and by the dependent agencies to budget for and obtain necessary appropriations to reimburse Labor.

As part of our review and approval of Labor's Employees' Compensation Ancillary Accounting System, we informed the Secretary of Labor, by letter dated August 25, 1970, that it appeared that Labor's and the dependent agencies' administrative costs may outweigh the benefits derived from the chargeback process. We stated that, in the interest of accounting simplification, we would support legislation Labor might seek to eliminate the chargeback requirements.

In his October 1970 reply to our letter, the Assistant Secretary

--agreed man-hour savings could be achieved by eliminating the chargeback requirements,

--stated there was no evidence that the legislative purpose of the chargeback provision was being served,

--stated that congressional appropriation committees have traditionally treated the Fund's contributions as mandatory items and agency justifications have not been requested, and

--stated Labor was developing a legislative recommendation for the repeal of the chargeback provision.

In a statement submitted to the Office of Management and Budget in connection with the fiscal year 1970 budget hearings, the Division indicated that accounting for the chargeback program was very costly both in terms of dollars and in terms of interference with its management information systems. The statement said that (1) when the program began it was relatively small ($3 million in billings) and about 10 new positions were authorized to handle the workload but (2) the program had grown immensely to an estimated $44 million in 1970 with little increase in authorized staff. (The program actually increased to $86 million in 1970 and to $168 million by 1973.) Thus, persons working on other functions had to assist in handling the chargeback billings.

In September 1972 the Acting Director of the Division wrote to us regarding the Division's proposal that legislation be enacted to repeal the chargeback provision and provided us with a statement and backup material which indicated that the present chargeback arrangements were not only costly but because of delays in agency appropriations the solvency of the Fund has been seriously jeopardized. In its material the Division concluded that it has been necessary to obtain voluntary payments from a number of agencies in advance of their appropriations to cover a potential deficit in the Fund. The Division said that an annual necessity of obtaining an advance ("drawdown") is another facet of the presently inadequate arrangements. Division officials have been in favor of eliminating the chargeback system for several years and have proposed such a recommendation.

A study made by the Assistant Secretary for Administration at the request of Labor's Under Secretary was completed in late 1972. The study team, composed of staff from various groups within Labor, reviewed 10 studies previously made of the Fund's activities and made their own analyses. The study concluded

that the chargeback provision has not realized its original intent and repealing the provision would save the administrative cost required to maintain the system (computing and preparing the charges). The study added that this would not only be a saving to Labor but also to the client agencies (processing the charges into their budgets and reimbursing the Fund).

As part of the study, Labor secured the views of officials from the Departments of the Treasury, Defense, Army, Navy, and Air Force. All the agencies contacted were in favor of eliminating the chargeback. The report to the Under Secretary on the results of the study recommended that proposed legislation eliminating the chargeback system for agencies paying from appropriated funds be prepared.

Labor, however, did not submit the legislation proposed by the study team. In fact, when such proposed legislation was introduced, Labor--as discussed below--opposed it.

LEGISLATIVE PROPOSAL TO REPEAL CHARGEBACK PROVISION

In June 1973 the Chairman of the Select Subcommittee on Labor, House Committee on Education and Labor, introduced House bill 9118 in the 93d Congress to amend various sections of the Federal Employees' Compensation Act. Section 16 of House bill 9118 would repeal the chargeback provision and require Labor to submit annually estimates of appropriations necessary to maintain the Compensation Fund. The section would also have limited administrative expenses for the Fund to an amount not to exceed 6 percent of the annual compensation and other benefits paid under the act.

Hearings were held on the bill by the House Select Subcommittee in September 1973. In testimony on September 12, 1973, the Assistant Secretary of Labor for ESA opposed repeal of the chargeback provision. He said:

> "The chargeback procedure was enacted in 1960 to encourage safety by charging agencies for cost of injuries. We believe that the concept of chargeback is sound in principle and has tended to contribute to the Federal employee safety effort. We therefore suggest that it be retained."

The Assistant Secretary also opposed the 6-percent limit for salaries and expenses on the basis of amounts of compensation paid. He said this would impose an unrealistic limit and there was no connection between the amount of compensation paid and the Division's salaries and expenses.

During the testimony, the Assistant Secretary was asked by the Chairman of the Select Subcommittee whether he believed that the chargeback provision had actually resulted in better safety conditions on the job. The Chairman cited an example of a Federal agency, the Postal Service, which was affected by the chargeback but still had high accident rates.

In response the Director of the Office of Workers' Compensation Programs said that it was important to focus on injuries so that managers of Federal agencies were aware of these situations and that without the chargeback the overall Government frequency rate may have been higher. He said, however, Labor's position that the chargeback process contributed to agency safety was one in theory as opposed to practice and that in reality neither Labor nor anybody else truly knew how the chargeback process affected safety.

After completing its hearings, the Select Subcommittee on Labor, on March 14, 1974, reported unanimously on House bill 9118 with amendments to the House Committee on Education and Labor. Subsequently, the Committee accepted House bill 13871, which was introduced by the Select Subcommittee Chairman and cosponsored by 22 members of the Committee, as a substitute for House bill 9118. House bill 13871 contained further amendments to the act, however, it did not contain the amendment to repeal the chargeback provision. On April 3, 1974, the Committee reported favorably on House bill 13871, and it was passed by the House on May 7, 1974.

In reviewing the legislative history of the two bills, we could not determine the reason for deletion of the amendment to repeal the chargeback provision. The Counsel of the House Select Subcommittee advised us that the deletion was based on Labor's testimony at the hearings and further discussions with Labor officials. The Director of the Office of Workers' Compensation Programs said Labor opposed repeal of the chargeback because, even if it couldn't be proved, the chargeback process served as a valid safety conscious feature to the Federal agencies and has affected the accident picture.

On August 12, 1974, the Senate passed House bill 13871. It was signed by the President on September 7, 1974, as Public Law 93-416.

FEDERAL SAFETY PROGRAMS EMPHASIZED UNDER OCCUPATIONAL SAFETY AND HEALTH ACT

Although safety programs are not new in the Federal Government, their status was elevated by the passage of the Occupational Safety and Health Act of 1970 (84 Stat. 1590)

and Executive Order No. 11612, dated July 26, 1971, (revised by Executive Order No. 11807, dated September 18, 1974). The act, passed in December 1970 and effective in April 1971, was to insure, to the extent possible, that every individual be provided with safe and healthful working conditions.

The Secretary of Labor was given responsibility for administering the act. The Secretary delegated this responsibility to the Assistant Secretary for Occupational Safety and Health by creating the Occupational Safety and Health Administration (OSHA) on April 28, 1971.

Section 19 of the act provides that the head of each Federal agency be responsible for establishing and maintaining an effective and comprehensive occupational safety and health program consistent with the safety and health standards promulgated under the act. To implement section 19, the Executive orders set forth the criteria to be used by Federal agencies in establishing the required occupational safety and health program for Federal employees.

The orders also require OSHA to issue regulations to provide guidance to Federal agencies in fulfilling their responsibilities under the act. OSHA also is to evaluate each agency's program and make specific recommendations for improving safety programs tnroughout Federal agencies. Since the act was passed OSHA has issued the required regulations for Federal agencies. Also by the end of September 1974, OSHA said it had made evaluations at 88 Federal agencies.

Under the act, Federal agencies are to record all work-related deaths, injuries, and illnesses, other than those requiring first aid, and report these statistics to OSHA periodically. OSHA annually reports to the Federal agencies detailed data on these statistics for use in their occupational safety and health programs.

CONCLUSIONS

Since concern for the health and safety of Federal employees has been elevated under the 1970 act and Executive orders and is receiving increased emphasis under the OSHA requirements, we believe that the need for the chargeback procedure for this purpose, with respect to agencies dependent on appropriated funds, has lessened in importance. Also, apparently no one is certain how effective the chargeback procedure is in meeting its original legislative purpose. In addition, the chargeback requirement has created additional administration tasks and costs.

Agencies operating from funds not wholly appropriated by the Congress should continue to be charged for the compensation

benefits paid on behalf of their employees and for their fair share of the Compensation Fund's administrative costs.

AGENCY COMMENTS AND OUR EVALUATION

In its comments Labor agrees with our conclusion that the mechanics of the chargeback billing are cumbersome and that the differing time frames for receipt of payment between appropriated and nonappropriated fund agencies create problems in accounting and problems of equity. It also states that the lag between the actual incurrence of the cost and the time of payment weakens the impact of the cost on agency operations and negates its impact as a safety incentive.

Labor states, however, that the section of our report on the chargeback system needs very careful review because of inconsistencies in logic and because there are major errors of fact in the analysis. It states, for example, that our assertion that the timelag between billing and payment has made it necessary to request voluntary payments from agencies on numerous occasions and creates a cash flow problem is factually incorrect. It said that there was substantial misunderstanding on several points of this issue.

Labor asserts that any problems in having available funds for a given fiscal year result from errors in estimating the level of direct appropriation needed to cover incremental costs; the fact that these estimates are developed 18 months or more in advance; and the fact that any slight error, such as 1 or 2 percent in aggregate estimates, would result in some slippage. According to Labor, there has been only one instance--in fiscal year 1971--when it has been necessary to obtain voluntary payments from agencies in advance of their appropriations to cover a potential deficit in the Fund. Labor said, in point of fact, the Labor and Department of Health, Education, and Welfare appropriations act has been one of the last approved over the last 5 fiscal years. Therefore, it has been the reimbursement from other agencies which has met cash flow demands in the early parts of these fiscal years.

We recognize that problems such as the need to make early estimates for appropriation requests and receiving appropriations late in the fiscal year may contribute to the cash flow problems of the Fund. However, we disagree with Labor's assertions that there are major errors of fact or inconsistencies in logic in our presentation.

It should be noted that our findings and conclusions concerning the problems in the chargeback billing system, the effect of these problems on the solvency of the Fund, and the questionableness of the system as an incentive to improve

agencies' safety performance are based on Labor's studies, statements, and reports on the chargeback system. Moreover, as indicated on pages 18 through 19, a number of studies in these areas have been made by the Assistant Secretary for Administration and by others within Labor over a 10-year period.

Labor said that two points need to be made about a safety incentive. First, there is a strong desire to develop consistent national policies on all workers' compensation programs, including the Federal program. This includes insuring that the costs of compensation are borne by the employer. Secondly, the number of inquiries, requests for further details, and initiatives in developing tracking systems by and from agencies subject to the chargeback indicates a very real concern with compensation costs.

Labor concludes that, until the study authorized by the 1974 amendments to the Federal Employees' Compensation Act has been completed, it would be unfair to assert that the chargeback system has not had the intended impact. The 1974 amendments require the Secretary of Labor to study the effectiveness of the provisions and programs under the act and to submit a report on his findings and recommendations to the Congress not later than September 7, 1975.

Labor said that, obviously, one of the items which will be included in the study will be a test of the chargeback's impact on agency consciousness of the cost of workers' compensation. The study will investigate why the system is or is not meeting legislative intent. It is Labor's educated guess that barriers to effectiveness are mechanical and that the chargeback system can and should be strengthened.

Labor also said that to eliminate the chargeback without considering the positive safety incentive might be premature. It said that most of the adverse conditions generated by the chargeback provisions appear to be mechanical if the workers' compensation principle underlying the legislative intent proves to be valid. There are a number of options which, according to Labor, can be undertaken to strengthen the chargeback system and which will be evaluated as part of the study. One option, requiring legislation, would be to bill all agencies regardless of source of funding at the beginning of the fiscal year for the cost estimated to be incurred. This could be done on an actuarial basis and adjustments could be made at the end of each fiscal year.

Labor stressed that one other consideration must be kept in mind. The 1974 amendments to the act materially modified the way in which the act is to be administered. The major change is a provision which permits agencies to continue employees

in salary status in cases of noncontroverted traumatic injuries of less than 45 days. This provision will have some impact on the direct costs incurred by the Compensation Fund although the order of magnitude is still being determined.

We recognize that it may be premature to revise the chargeback system, pending completion of the study authorized by the 1974 amendments to the act. We believe, however, that the findings and issues raised in our report on the effectiveness and efficiency of the chargeback system are still generally valid. We also believe that they should be considered, along with Labor's findings and recommendations, in developing changes to improve the Federal Employees' Compensation program, including the chargeback system.

MATTER FOR CONSIDERATION BY THE CONGRESS

The Congress may wish to consider amending the Federal Employees' Compensation Act, on the basis of the findings discussed in this report along with the results of Labor's study, to strengthen or eliminate the chargeback process.

CHAPTER 6

SCOPE OF REVIEW

Our review was directed primarily toward examining the Division's administration of the Employees' Compensation Fund under the Federal Employees' Compensation Act. We reviewed the legislative history of the act and the Division's policies, procedures, and practices used to administer the Fund.

We examined the source and availability of Federal funds used to reimburse the Compensation Fund for (1) costs incurred in payments due to injuries or deaths of Federal employees and (2) the fair share of the Fund's administrative expenses. We also reviewed the manner of reimbursement by some Government agencies. We did not make a general review of the Division's overall administration of death or disability claims for Federal employees.

Our review was performed primarily at the Division's headquarters in Washington, D.C., where we examined documents, reports, and records. We also held discussions with officials of Labor and representatives of other Federal agencies.

GOVERNMENT AGENCIES, INSTRUMENTALITIES, AND OTHER ORGANIZATIONS REFERRED TO AS AGENCIES IN REPORT (note a)

Agencies billed administrative costs for fiscal years 1971-72 as required by the act:

- Federal Crop Insurance Corporation, Department of Agriculture
- Federal Home Loan Bank Board (note b)
- Federal Housing Administration (notes b and c), Department of Housing and Urban Development
- Federal Prisons Industries, Inc., Department of Justice
- Saint Lawrence Seaway Development Corporation, Department of Transportation
- Small Business Administration (note b)
- Tennessee Valley Authority

Agencies which were not billed administrative costs for fiscal years 1971-72:

- U.S. Postal Service (note b) (Paid from appropriated funds before fiscal year 1972)
- National Credit Union Administration (note d)
- Federal Old-Age and Survivors Insurance Trust Fund Activities, Department of Health, Education, and Welfare
- Veterans Canteen Service (note d)
- Office of the Comptroller of the Currency, Department of Treasury (note b)
- Board of Governors, Federal Reserve System

Agency not billed administrative costs for fiscal years 1971-72 because of an error by Labor:

- Commodity Credit Corporation, Department of Agriculture (note e)

a/ Identified as having compensation benefit payments made from the Compensation Fund on their behalf during fiscal year 1972.

b/ These five agencies are authorized to invest excess funds.

c/ The Division was notified at the end of fiscal year 1972 that the Department of Housing and Urban Development's budget was no longer broken down by organization level and as such 31 U.S.C. 852 applies and no fair share is to be charged the Federal Housing Administration. The Division billed the Department no fair share of administrative costs for fiscal year 1973.

d/ These two agencies are required to submit, in whole or in part, annual budgets in accordance with 31 U.S.C. 841-869 and should be chargeable for their fair share of administrative costs.

e/ The Corporation is required by law to pay its fair share of administrative costs but due to error was not billed for such for fiscal years 1970-72.

PRINCIPAL OFFICIALS OF

THE DEPARTMENT OF LABOR

RESPONSIBLE FOR ADMINISTERING

ACTIVITIES DISCUSSED IN THIS REPORT

	Tenure of office	
	From	To
SECRETARY OF LABOR:		
Peter J. Brennan	Feb. 1973	Present
James D. Hodgson	July 1970	Feb. 1973
ASSISTANT SECRETARY FOR EMPLOYMENT STANDARDS:		
Bernard E. DeLury	May 1973	Present
Vacant	Jan. 1973	May 1973
Richard J. Gruenwald	Jan. 1972	Jan. 1973
Horace E. Menasco (acting)	Oct. 1971	Jan. 1972
Arthur A. Fletcher	May 1969	Oct. 1971
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS:		
Herbert A. Doyle, Jr.	Feb. 1974	Present
Herbert A. Doyle, Jr. (acting)	Sept. 1971	Feb. 1974

APPENDIX III

THE DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

FISCAL ASSISTANT SECRETARY

SEP 26 1974

Dear Mr. Lowe:

Reference is made to your letter of August 26, 1974, addressed to the Secretary of the Treasury requesting comments on your draft report "Opportunities to Improve Administration of the Federal Employees' Compensation Benefits Program," Department of Labor.

We have reviewed the draft report, especially the matters that you indicate related to the Department of the Treasury on pages 2, 3, 4, 14, 15, 17, 18, 23, 24, 26, and 27. In general, the data on these pages relates to self-sustaining agencies, their authority to invest excess funds, the timing of payments to Department of Labor for costs of compensation payments, and the failure of Department of Labor to bill certain self-sustaining agencies because of their interpretation of the law.

We concur with the view that a self-sustaining agency should not earn interest through the investment of money that is due another agency for a service previously performed. Such interest earnings distort the income of the self-sustaining agency. We agree with the action taken to place a self-sustaining agency with investment authority on a current billing basis for compensation benefits paid to its respective employees.

We also concur with the opinion that administrative costs should be collected from those self-sustaining agencies that meet required legal billing criteria. However, there are special provisions governing reimbursements out of the Federal Old-Age and Survivors Insurance Trust Fund--42 USC 401 (g)(1)(A) and 42 USC 401 (g)(1)(B)--which may make it inappropriate to charge administrative costs of the Compensation program.

Thank you for the opportunity to review and comment on the report.

Sincerely yours,

John K. Carlock

Mr. Victor L. Lowe, Director
General Government Division
U.S. General Accounting Office
Washington, D. C. 20548

GAO note: Page numbers refer to pages of our draft report.

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

OCT 30 1974

Mr. Gregory J. Ahart
Director
Manpower and Welfare Division
U. S. General Accounting Office
Washington, D. C. 20548

Dear Mr. Ahart:

This is in response to the GAO draft report "Opportunities to Improve Administration of the Federal Employees' Compensation Benefits Program." The response is to the major recommendations of the draft report and is organized as follows:

- General Comments
- Improved Collection Procedures for Obtaining Reimbursements from Self-Sustaining Agencies
- Improved Practices to Increase Equity in Billing Agencies for Administrative Costs
- Ability of the Department to Obtain Administrative Costs from Certain Self-Sustaining Agencies
- Problems with the Chargeback Provisions and Related Matters of Administrative Costs

1. General

A number of observations and recommendations made in the draft have helped clarify what has historically been a clouded situation with regard to managing the "chargeback" provisions of the Federal Employees' Compensation Act. Based on the draft report, ESA has initiated action to implement several recommendations. The specifics are discussed under the appropriate sections of our comments.

2. Improved Collection Procedures for Obtaining Reimbursements from Self-Sustaining Agencies

GAO's recommended procedures for improving the collection of reimbursements from self-sustaining agencies is to require repayment for compensation benefits paid to employees of those agencies in the previous fiscal year within 30 days after the August 15th billing date. The Department agreed with GAO's assessment and has taken corrective action to bill on the appropriate cycle. However, in attempting to implement collection procedures, a number of complications have arisen which should be noted in the report.

In FY 1973, twelve agencies received letters requesting payment of compensation costs within 30 days. Eight of these were identified by ESA from 31 USC 846 and 856 as being wholly-owned and mixed-ownership corporations.

Of the twelve agencies that were sent accelerated bills in November 1973, seven complied and made payment. At that time, the enabling legislation of the eighth agency, the Federal Deposit Insurance Corporation, prohibited making payment for employee compensation expenses. That legislation has since been changed, and FDIC has agreed to payment of retroactive bills, now being reconstructed to cover the period of time when their legislation prohibited payment.

Four agencies did not make payment. Two Departments--Interior (Bonneville, Southeast, and Southwest Power Administrations) and Agriculture (Commodity Credit and Federal Crop Insurance Corporations)--indicated that they were dependent on an annual appropriation. The Federal Home Loan Bank Board stated that while not dependent on an annual appropriation, Congress does set a limit on the expenses they may incur in any given year, therefore, they could not absorb the additional charge. The remaining agency, the Tennessee Valley Authority, indicated that it is partially dependent on an annual appropriation and had referred the matter to its General Counsel for a determination.

Since the draft report was completed, agencies have received a chargeback for FY 1974. Fourteen agencies were notified August 14, 1974, that accelerated repayment of the FY 1974 costs was expected within 30 days.

RECIPIENTS OF AUGUST 14, 1974 LETTER REQUESTING ACCELERATED REPAYMENT

ACCELERATED REPAYMENT MADE:

Saint Lawrence Seaway Development Corporation
Comptroller of the Currency
Federal Deposit Insurance Corporation
Veterans Administration Canteen Service
United States Postal Service, (for employee injuries incurred after 7/1/71)

ACCELERATED REPAYMENT CHALLENGED:

Federal Home Loan Bank Board (See Attachment A)
National Credit Union Administration (See Attachment B)
Small Business Administration (See Attachment C)

INTENTION TO PAY OR TO CHALLENGE ACCELERATED REPAYMENT BILL PRESENTLY UNKNOWN

Social Security Administration
Federal Prison Industries*
Export-Import Bank of the United States*
Federal Reserve System, Board of Governors*
Tennessee Valley Authority
Government Printing Office*

* Indicates accelerated repayment made for FY 1973.

The Solicitor of Labor was asked on September 19, 1974, to clarify which agencies, government corporations and instrumentalities ESA should properly bill for accelerated repayment. ESA may have to canvass agencies to determine the type of funding used for the payment of Employees' Compensation benefits to determine the appropriate billing cycle for each agency. If necessary, ESA will seek an amendment to Section 8147(b) of the FECA, to enumerate specifically the agencies or entities which may appropriately be billed for accelerated repayment. OMB and GAO will also be formally requested to participate in this process.

3. Improved Practices to Increase Equity in Billing Agencies for Administrative Costs

ESA agrees that the computation of the fair share costs of administration would be reviewed and, if necessary, recomputed. Appropriate action has been taken to insure that no less than biennially a review of the computation will be made in accordance with the formula in the accounting procedures. (See Attachment D.)

Revised FY 1974 billings were prepared for the agencies determined to be subject to the fair share costs of administration of 5 USC 8147(c).

4. Ability of the Department to Obtain Administrative Costs from Certain Self-Sustaining Agencies

The draft report concludes that there are a number of self-sustaining agencies, though not enumerated in law as mixed-ownership government corporations and not dependent on annual appropriations, which should be required to pay their fair-share of the costs of administration of the compensation fund. ESA has charged fair share cost of administration against only those agencies enumerated in 31 USC 841-169 as wholly-owned or mixed-ownership corporations. The basis for this policy is an opinion provided by the Office of the Solicitor at the request of the former Bureau of Employees' Compensation. (See Attachment E.)

The opinion essentially was that administrative costs are chargeable only to those government corporations specifically listed by law. The opinion continues that such specific enumeration was essential and that inference or implication would not suffice.

The draft report indicates there is a consensus between the GAO General Counsel and the SOL that under certain conditions there are self-sustaining agencies which can be charged even though they are not specifically enumerated in the law. Two examples were cited: ESA has experienced difficulty in determining which organizations should be subject to the "user charge" for administrative costs. It took special legislative action to clarify the status of the Postal Service.

There have also been problems in assessing the two agencies mentioned by GAO and it is clear that there are some legal barriers which are not mentioned in the report. We

have formally requested that the Solicitor of Labor re-examine the option regarding the need for enumeration in light of GAO's conclusions. We will be guided by the SOL's response.

As a matter of principle, ESA supports the principle of assessing administrative costs. There are, however, a number of gray areas, which means that proposals for administrative and for legislative action will have to be carefully studied. Both OMB and GAO will be consulted in this process.

5. Problems with the Chargeback Provisions and Related Matters of Administrative Costs

In a number of instances, the draft report is directly or indirectly critical of the chargeback mechanism for two reasons: (1) The impact of the chargeback procedures on the financing of the compensation fund and (2) The need to incur administrative costs in managing the chargeback system. The report ultimately recommends elimination of the chargeback system. We believe that these sections of the draft need very careful review because of the inconsistencies in logic and because there are major errors of fact in the analysis.

A determination of the impact of the chargeback on the compensation fund proceeds from two different levels of abstraction. The first is the programmatic use of the chargeback provisions to achieve the generic goals of a workers' compensation program; the second is the mechanics of the chargeback system. There are overlapping considerations in that the administration of the system does affect its programmatic effectiveness.

The draft report concludes that programmatically the chargeback system has not been effective, or at least the impact cannot be proved. The report also cites the existence of OSHA as negating the need for a safety incentive resulting from the existence of a Federal workers' compensation program. There appears to be no disagreement that at least the theory underlying the "chargeback" is a valid one. GAO's sole concern seems to be that evidence of effectiveness is hard to come by.

With regard to safety incentive, two points need to be made. First, there is a strong desire within the Administration to develop consistent national policies with regard

to all workers' compensation programs including the Federal program. This includes insuring that the costs of compensation are borne by the employer. Secondly, the number of inquiries, requests for further detail, and initiatives in developing tracking systems by and from agencies subject to the chargeback indicates a very real concern with compensation costs. It must be concluded that it would be an unfair assessment to assert that the chargeback system has not had the intended impact until the study has been completed.

The 1974 amendments to the Federal Employees' Compensation Act mandate a section by section research project on the effectiveness of the Act. The report is to be completed by next year. Obviously, one of the items which will be included in the study would be to test the impact of the chargeback on agency consciousness of the cost of workers' compensation. The question would be addressed not only to the degree to which the system is meeting legislative intent but why or why not. It is our educated guess that barriers to effectiveness are mechanical and that the chargeback system can and should be strengthened.

The draft report concludes that the mechanics of the chargeback billing are cumbersome, a point with which ESA agrees. The draft also asserts that the time-lag between billing and payment creates a cash flow problem, which is factually incorrect. The differing time frames for receipt of payment between appropriated and nonappropriated fund agencies creates problems in accounting and problems of equity. The lag between the actual incurrence of the cost and the period for payment does weaken the impact of that cost on agency operations which negates its impact as a safety incentive.

It would appear that there was substantial misunderstanding on several points of this issue. The assertion is made that the one to two-year lag in receipts creates problems in financing operations of the fund and that it has been necessary to request voluntary payments from the agencies on numerous occasions. Any problems in having available appropriate dollar levels for a given fiscal year result from errors in estimating the level of direct appropriation needed to cover incremental costs. Since budget estimates are developed 18 months or more in advance of the end of a given fiscal year, the controlling factor is the ability to predict the variables which affect cost--i.e. Consumer Price Index adjustments, pay raises, increases in medical costs, numbers of new claims, etc. Since an error of only one or two percent in aggregate estimates amounts to $5 to

$10 million, there will always be some degree of slippage. This problem, of course, would not be eliminated by going to total direct appropriations. It is for this reason that the FECA contains provisions for use of "draw-down" authority. Should the estimating error be sufficiently large, ESA has in the past sought and obtained supplemental appropriations.

There has been only one instance where it has been necessary to obtain voluntary payments from agencies in advance of their appropriations to cover a potential deficit in the fund. That occurred in FY 1971 when a large number of agencies as well as the Department were operating under continuing resolutions. Under continuing resolution, the agencies are not required to reimburse the fund even though some funds for compensation are included in their operating amounts. Prudent management of the fund dictated that agencies be requested to make such payments as they already had funds authorized to them. In point of fact, the Labor-HEW Appropriations Act has been one of the last approved over the last five fiscal years. Therefore, it has been the reimbursements from other agencies which have met cash flow demands in the early parts of these fiscal years.

To eliminate the chargeback without a consideration of the positive safety incentive it might be, would be premature. Most of the adverse conditions generated by the chargeback provisions appear to be mechanical if the workers' compensation principle underlying the legislative intent proves to be valid. There are a number of options which can be undertaken to strengthen the chargeback system and which will be evaluated as a part of the research study noted earlier. One option, requiring legislation, would be to bill all agencies regardless of source of funding at the beginning of the fiscal year for the estimated cost anticipated to be incurred. This could be done on an actuarial basis with adjustments made at the end of each fiscal year in the next fiscal year's billing. This would unify billing cycles, eliminate the need for the major part of the direct appropriation requirement, and place the actual costs of compensation where incurred.

The final conclusion of the draft report relative to administrative costs savings should be considered only with the following facts noted. The cost of administration of the chargeback system is minimal, less than $100,000 annually to ESA, and less than $500,000 government-wide. Further, if the system were maintained for self-sustaining agencies, the cost reductions to ESA would be minimal

because of marginal cost considerations in maintaining a partial system. For the most part, agency personnel involved with the chargeback have other duties and the so-called saving to them is negligible.

As a matter of record, two points should be mentioned concerning GAO's figures. Page 12 of the draft report cites figures for "Benefits Paid" from 1969-73. These figures were taken from a statistical table and do not represent actual amounts, which are available in ESA's budget office. Also, under "Activity Under the Fund," on page 10 of the draft report, reference is made to the number of claims processed. It should be noted that this figure, 28,231, refers only to new claims and does not take into consideration the activity spent on the large number of claims currently on the periodic rolls.

Summary

The issues raised by GAO are for the most part well taken with the exception of the question of the elimination of the chargeback provisions. Any action on the chargeback should be in conjunction with the results of the research on the effectiveness of the FECA. One other consideration must be kept in mind at this juncture. The 1974 amendments to the FECA materially modified the way in which the Act is to be administered. The major change is a provision which permits agencies to continue employees in salary status in cases of noncontroverted traumatic injuries of less than forty-five days. This provision will have an impact on the direct costs incurred by the compensation fund although the order of magnitude is still being determined. There may be, as a result, spin-off effects on the chargeback system which GAO may wish to consider before preparing the final report.

Sincerely,

Fred G. Clark

FRED G. CLARK
Assistant Secretary for
Administration and Management

Enclosures

GAO note: Page numbers refer to pages of our draft report.

FEDERAL HOME LOAN BANK BOARD

WASHINGTON, D. C. 20552

101 INDIANA AVENUE, N. W.

FEDERAL HOME LOAN BANK SYSTEM
FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION
FEDERAL SAVINGS AND LOAN SYSTEM

EXECUTIVE ASSISTANT
TO THE CHAIRMAN

September 10, 1974

Mr. Herbert A. Doyle, Jr., Director
Office of Workers' Compensation Programs
Employment Standards Administration
U.S. Department of Labor
Washington, D. C. 20211

Dear Mr. Doyle:

Reference is made to your letter dated August 15, 1974, to Chairman Bomar and to the SF 1080 enclosed with that letter which states the amount due the Department of Labor for payments made in F/Y 1974 to or for the benefit of employees under the Board's jurisdiction.

In your letter you state that:

> "***It has been determined that the intent of 5 USC 8147(b) requires agencies, that are not totally dependent on an annual appropriation, to reimburse the Employees' Compensation Fund within 30 days after notification of prior year costs. As your agency is affected by this determination, the enclosure reflects the reimbursement due."

We do not know who made this determination nor do we know why it was applied to this agency. The Federal Home Loan Bank Board is totally dependent upon an annual appropriation limitation imposed by the Congress. This agency is subject to the same budgetary process as other agencies except for the fact that the Congress imposes an annual limitation on the administrative expenses which we may incur and pay from funds received directly or indirectly from the savings and loan industry. The fact that we do not operate with funds appropriated from the Treasury has no bearing on this matter whatsoever.

amount shown on the SF 1080 attached to your letter will be included in our F/Y 1976 budget estimates and placed in line for payment at the appropriate time. We shall be pleased to discuss this matter with you in more detail if you desire.

Sincerely,

Joseph W. Gillespie, Deputy Director
Office of Management Systems and
Administration

JWG/tnd

Attachment B

NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

Office of the Administrator

OA/HA:ywb
August 29, 1974

Mr. Herbert A. Doyle, Jr.
Director
Office of Workers' Compensation Programs
Employment Standards Administration
U.S. Department of Labor
Washington, D.C. 20211

Dear Mr. Doyle:

I am writing to express my dissatisfaction with the revised method of billing the National Credit Union Administration for reimbursement for benefits and other payments made from employees Compensation Fund during Fiscal Year 1974. Your letter of August 15, 1974, indicated that agencies, not totally dependent on an annual appropriation, must reimburse Employees' Compensation Fund within 30 days after notification of prior year's cost.

I must protest the method of billing since only on August 12, 1974, three days before your new bill, NCUA paid a bill of $23,765.00 for Fiscal Year 1973. If the current bill is paid on your new timetable, we will have paid $51,326 in a little over a month. The fact that NCUA does not receive annual appropriations, does not place it in a more favorable financial position than appropriated agencies. We have a serious cash flow situation since our income is derived chiefly from examination fees from Federal credit unions. These examinations are performed on a staggered basis throughout the year and a great burden is placed on the agency to maintain the delicate balance between this income and the required expenses.

Our financial management program has been geared to the old system of including the prior fiscal year's bill in the upcoming budget cycle. We

should not have difficulty in changing this pattern, but only after a reasonable period has elapsed to enable us to replenish our cash supply.

I would appreciate your consideration of a request to delay the billing for a few months.

Sincerely,

HERMAN NICKERSON, JR.
Administrator

Attachment C.

U.S. GOVERNMENT
SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

OFFICE OF THE ADMINISTRATOR

SEP 16 1974

Mr. Herbert A. Doyle, Jr.
Director, Office of Workers'
Compensation Programs
Employment Standards Administration
U. S. Department of Labor
Washington, D. C. 20211

Dear Mr. Doyle:

This is in response to your letter of August 15, 1974, requesting reimbursement from the Small Business Administration to the Employees' Compensation Fund for costs in compensation and medical benefits for Fiscal Year 1974.

Despite your determination to the contrary, this Agency is dependent on an annual appropriation for salaries and expenses, therefore, there are no funds to pay the requested amount this year. We will include the amount requested in our annual budget estimates for FY 1976, as has been established procedures in the past. Accordingly, payment will be made when the FY 1976 appropriation becomes available.

An amount of $174,914 for FY 1973 was included in and will be paid out of our 1975 funds. Due to budgetary restraints, there will be no additional funds available for these purposes.

Sincerely,

Ronald G. Coleman
Assistant Administrator
for Administration

RECALCULATION BY STEPS OF THE FY 1974 FAIR SHARE COSTS OF ADMINISTRATION FOR CHARGEBACK PROGRAM

(Step 1) $\frac{\text{FY 1974 Total Benefits of Non-Appropriated Agencies}}{\text{FY 1974 Total Benefits of Compensation Fund}} = \frac{46,591,589}{270,613,113*} = .1722\%$

(Step 2) FY 1974 Compensation Fund Administrative Costs = $9,069 655 X .1722% = 1,561,794

(Step 3) $\frac{\text{FY 1974 Applicable Administrative Charge}}{\text{FY 1974 Total Benefits of Non-Appropriated Agencies}} = \frac{1,561,794}{46,591,589} = 3.35\%$ ROUNDED 3.4%

* Includes Emergency Relief Acts, Job Corps, Peace Corps, Vesta, Neighborhood Youth Corps programs, and other fringe acts.

OFFICE OF THE SOLICITOR

WASHINGTON, D.C. 20210

DEC 10 1970

CG

Chargeback of Compensation and Administration Cost to the Newly Organized U. S. Postal Service

John M. Ekeberg, Director
Bureau of Employees' Compensation

This is in reply to your memorandum of October 23, 1970.

(1) You ask whether 5 U.S.C. 8147(b) applies to the U. S. Postal Service as reorganized by P.L. 91-375, the Postal Reorganization Act (84 Stat. 719)?

We answer in the affirmative.

There are two statutory criteria for applicability of section 8147(b): (a) that the employer be an agency or instrumentality of the United States; and (b) that the agency or instrumentality have an employee who is or may be covered by the F.E.C.A.

The Postal Service meets both criteria.

The addition of section 1005(c) to Title 39, U. S. Code, provided for by section 2 of the Postal Reorganization Act (84 Stat. 732), makes all officers and employees subject to the F.E.C.A.

It is also clear that the Postal Service is an agency or instrumentality of the United States, although its precise description is somewhat ambiguous.

Among the amendments to Title 39 provided for by section 2 of P.L. 91-375, are these:

> § 201. United States Postal Service
>
> There is established, as an independent establishment of the executive branch of the Government of the United States, the United States Postal Service. (84 Stat. 720; emphasis added)
>
> § 401. General Powers of the Postal Service
>
> (9) to exercise, in the name of the United States, the right of eminent domain for the furtherance of its official purposes; and to have

> the priority of the United States with respect to the payment of debts out of bankrupt, insolvent, and decedent's estates. (84 Stat. 723; emphasis added)
>
> § 409. Suits by and against the Postal Service
>
> (c) The provisions of chapter 171 and all other provisions of Title 28 relating to tort claims shall apply to tort claims arising out of activities of the Postal Service. (84 Stat. 725).
>
> § 2002. Capital of the Postal Service
>
> (d) After the commencement of operations of the Postal Service, the President is authorized to transfer to the Postal Service, and the Postal Service is authorized to transfer to other departments, agencies, or independent establishments of the Government of the United States, with or without reimbursement, any property of that department, agency, or independent establishment and the Postal Service, respectively, when the public interest would be served by such transfer. (84 Stat. 739; emphasis added).

We believe these provisions adequately demonstrate a Congressional intent that the Postal Service be a governmental agency or instrumentality for the purpose of applying 5 U.S.C. 8147(b).

The ambiguity earlier referred to arises from the fact that the executive branch, of which the Postal Service is to be a part, is organized as follows: executive departments (5 U.S.C. 101), military departments (5 U.S.C. 102), government corporations (5 U.S.C. 103), and independent establishments (5 U.S.C. 104). Notwithstanding its description as an independent establishment (39 U.S.C. 201, 84 Stat. 720), section 6(c)(2) of the Postal Reorganization Act negates placement of the Postal Service among independent establishments in 5 U.S.C. 104. The Post Office General Counsel's Office states that they consider themselves as becoming an independent establishment, only more so than any other within the purview of 5 U.S.C. 104. The language in 39 U.S.C. 2002, cited above, bears this out. Note that that refers to departments, agencies, or independent establishments and the Postal Service.

(2) You also ask whether 5 U.S.C. 8147(c) applies to the U. S. Postal Service?

We answer in the negative.

Fair share portions of administrative costs are chargeable only to those government corporations specifically listed in 39 U.S.C. 846 (wholly owned government corporations) or in 39 U.S.C. 856 (mixed-ownership government corporations). The Postal Service is not so listed, nor was it added by P.L. 91-375. Such specific enumeration is essential; inference or implication will not suffice. Pearl v. United States, 230 F.2d 243 (C.A. 10, 1956).

Harold C. Nystrom
Associate Solicitor for General Legal Services

AN EQUAL OPPORTUNITY EMPLOYER

UNITED STATES
GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE,$300

POSTAGE AND FEES PAID
U. S. GENERAL ACCOUNTING OFFICE

THIRD CLASS