BY THE COMPTROLLER GENERAL

Report To The Congress

OF THE UNITED STATES

Congress Should Scale Down Redwood Employee Program Benefits

The Redwood Employee Protection Program, established as a result of title II of Public Law 95-250, provides benefits to workers laid off because of expansion of the Redwood National Park. However, workers whose layoffs are not related to the park expansion also qualify for benefits because of a provision in the law.

The program's exceptional benefits reduce incentives to work, and the Department of Labor's poor management creates problems in program operations.

GAO recommends that the Congress amend title II of the act to restrict the program to park-related layoffs and that Labor develop criteria and procedures to improve program operations.

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

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

This report points out problems associated with the Redwood Employee Protection Program. The proliferation of special unemployment income assistance programs in recent years and your interest in finding ways to reduce Federal spending make this report particularly germane at this time. The Redwood Employee Protection Program is authorized by the Redwood National Park Expansion Act of 1978 and is administered by the Department of Labor.

Our review was made pursuant to a request from Representative Don H. Clausen to assess the effectiveness of the program.

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

Milton J. Socolar

Acting Comptroller General
of the United States

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COMPTROLLER GENERAL'S
REPORT TO THE CONGRESS

CONGRESS SHOULD SCALE DOWN REDWOOD EMPLOYEE PROGRAM BENEFITS

D I G E S T

The Redwood Employee Protection Program provides generous benefits to laid-off workers. However, employees whose layoffs are not related to the 48,000 acre expansion of the Redwood National Park have qualified for benefits because the law presumes that layoffs within a specified period of time are related to park expansion.

About 88 percent more employees than originally estimated have established program eligibility during the first 18 months of the program, and as of September 1979 $11.4 million in monetary benefits had been paid. (See p. 7.)

RECOMMENDATIONS TO THE CONGRESS

The Congress should amend the act to:

--Delete the conclusive presumption provision in section 203 of the law and require that the Secretary of Labor certify that layoffs are related to a decrease in operations caused by park expansion before program eligibility can be established.

--Require Labor to identify program recipients whose eligibility has been established for reasons other than park expansion and terminate their eligibility for future benefits.

--Eliminate differences in eligibility requirements between union and nonunion employees.

GAO also suggests that the Congress consider legislative action to minimize disincentives

to employment and help eliminate some of the administrative problems associated with the delivery of benefits to affected workers. Some options would be to:

--Require that workers exhaust unemployment benefits before receiving cash payments under the Redwood Employee Protection Program.

--Provide that monetary benefits be continued at an amount not more than available under unemployment insurance, rather than replacing the full amount of workers average weekly net wage. (See pp. 57 and 58.)

PROGRAM ELIGIBILITY NOT WELL TARGETED TO PARK EXPANSION

Program eligibility has been increased because of the law which states that (1) layoffs within a specified period are presumed to be related to park expansion and (2) Labor has not restricted the designation of affected employers to organizational units adversely affected by park expansion. (See p. 7.)

GAO estimated that 30 percent or more of the employees who have established program eligibility did so during temporary curtailments in their employment for maintenance shutdowns, adverse weather conditions, temporary road closures, and a variety of other reasons not related to park expansion. (See p. 10.)

Despite the increase in the number of eligible employees, some employees directly affected by park expansion have been denied program benefits because of legislative restrictions that prevented their employers from being certified as affected. (See p. 18.)

PROBLEMS CAUSED BY PROGRAM BENEFITS

The program's complex legislative requirements have caused administrative problems, and the

generous benefits have reduced the incentive to work and contributed to workers seeking layoffs in preference to staying on the job. Layoffs out of order of seniority prompted an investigation by the Federal Bureau of Investigation because such layoffs may disqualify a person for benefits. (See p. 23.)

Furthermore, some provisions in the Redwood Employee Protection Program legislation have resulted in inconsistent and different treatment of employees in similar situations. (See p. 27.)

For example, the program makes it easier for employees under union agreements to establish program eligibility than it is for others. As a result, employees working many years with an affected nonunion employer could be denied program benefits, while employees working only 1 year for an affected union employer could establish program eligibility. (See pp. 28 and 29.)

MANAGEMENT DEFICIENCIES

The employee eligibility determination and benefit entitlement processes have been hindered by management deficiencies which have caused some employees not to apply for program benefits. Management deficiencies have also resulted in errors in benefit entitlements and have delayed employees from receiving health, welfare and pension coverage and retraining benefits. (See p. 31.)

Labor did not clearly define authority and responsibility for program components among groups involved, and in some instances, proper channels of communication have not been established. Problems in fixing authority and responsibility and the absence of established channels of communication contributed to delays in providing health insurance benefits. (See pp. 31 to 35.)

Labor has not provided timely guidance to the California Employment Development Department, which is responsible for the daily administration of the program, and Labor has been slow in providing information to covered employees on program benefits. (See pp. 35 to 37.)

Labor also has not adequately evaluated California Employment Development Department controls and procedures, nor has it monitored performance as often as it should. (See pp. 37 to 44.)

Labor did not begin providing health insurance benefits for most affected employees until 18 months after the program began and has yet to begin providing pension coverage. (See pp. 45 to 47.)

Furthermore, provisions in the legislation which provide for new jobs and guarantee affected employees preferential hiring treatment have not been effective because (1) few jobs have been created and few affected employees have applied for the jobs that have been created, and (2) Labor has failed to insure that the preferential hiring guarantees are adhered to. (See pp. 53 to 56.)

RECOMMENDATIONS TO THE DEPARTMENT OF LABOR

The Secretary of Labor should:

--Develop criteria to restrict certification of affected employers to operations directly affected by park expansion.

--Clarify the authority and responsibility of the various Labor groups involved with administering the program.

--Provide guidance and direction to the California Employment Development Department on eligibility and benefit determination matters more promptly.

--Evaluate the California Employment Development Department controls and procedures and take necessary action to insure that information supplied by employees and employers is routinely verified and that eligibility and benefit determinations and entitlement calculations are periodically checked.

--Require that the California Employment Development Department adjust eligibility and benefit determinations affected by subsequent procedural changes and insure that benefit overpayments are collected.

--Accelerate the implementation of health, welfare, and pension coverage.

--Define the level of technical and professional training that is reasonable and necessary to enhance an affected employee's prospects for obtaining suitable employment. (See pp. 58 and 59.)

AGENCIES' COMMENTS AND GAO EVALUATION

Labor generally agreed with GAO's recommendations to the Secretary of Labor regarding the administration of the program and said it had already begun implementing most of them. However, Labor does not believe there is any opportunity for developing restrictive criteria to apply to the affected woods employers, nor does Labor believe such an effort would be compatible with the express language of the act. Concerning the need to clarify the authority and responsibility of the various Labor groups involved with administering the program, Labor said it did not concur that any formalized clarification effort was necessary or appropriate.

GAO does not agree with Labor's position. Although Labor cannot be faulted on a legal basis for its approach to certifying affected woods employers, GAO believes the legislation permits a narrower interpretation and that a more restrictive approach would help insure that only persons whose layoff is caused by park expansion receive program benefits. GAO also disagrees with Labor's position that clarification of authority and responsibility is not needed. Although a Secretary's Order formalizing the delegation of authority and assignment of responsibility exists for the major Labor organizational components administering the Redwood Employee Protection Program, GAO's review indicated that implementation of the Program has been hindered by confusion over the roles and functions of Labor staff and that clarification is needed to correct these problems.

The California Employment Development Department characterized the report as thorough and generally agreed with the findings. The Department, however, believed tying program benefits more closely to the regular unemployment insurance program appeared to exceed the need to accomplish constructive reforms and suggested alternative solutions. (See pp. 59 to 61.)

Contents

ABBREVIATIONS

CETA	Comprehensive Employment and Training Act
EDD	Employment Development Department
ETA	Employment and Training Administration
FBI	Federal Bureau of Investigation
GAO	General Accounting Office
LMSA	Labor-Management Services Administration
REPP	Redwood Employee Protection Program

CHAPTER 1

INTRODUCTION

In March 1978 the Congress added 48,000 acres to the Redwood National Park in northern California by passing Public Law 95-250, an amendment to the Redwood National Park Act of 1968 (Public Law 90-545). The Congress recognized that expansion of the park could adversely affect certain workers; accordingly, title II of the legislation established the Redwood Employee Protection Program (REPP), which directed the Secretary of Labor to provide adversely affected workers with various forms of monetary and nonmonetary assistance. Specifically, title II directed that laid-off workers receive benefits they would have received if they had not been laid off and that they be given benefits to assist in retraining and in obtaining employment outside the timber industry and the affected area.

Unlike other unemployment compensation programs that have nationwide application, REPP was intended to assist only a relatively small group of workers in northern California.

PROGRAM BENEFITS AND ELIGIBILITY

REPP is generally patterned after the employee protection provisions of the Regional Rail Reorganization Act of 1973 (Public Law 93-236) and the Trade Act of 1974 (Public Law 93-618). Like the Trade Act, REPP provides monetary payments, training, and job search and relocation allowances to affected employees.

REPP monetary benefits in the form of weekly or lump-sum severance payments are exceptionally generous, and like the Regional Rail Reorganization Act, REPP provides such fringe benefits as health and pension benefit coverage. See appendix I for a brief comparison of these special unemployment compensation programs.

REPP benefits are added to regular State unemployment insurance benefits available to REPP beneficiaries so that the worker obtains the benefit level provided in the REPP act. California weekly unemployment insurance benefits equal 50 percent of the recipient's average weekly gross wage up to a maximum, in January 1980, of $120 per week. California provides 26 weeks of unemployment insurance benefits. An additional 13 weeks of benefits are provided during periods of

high unemployment under the extended benefits program, established by the Federal-State Extended Unemployment Compensation Act of 1970 (Public Law 91-373).

The amount of benefits and the length of the period during which an affected employee may receive benefits depend on an employee's length of employment, job occupation, previous earnings, and age. Briefly, REPP entitlement represents the full amount of a laid-off affected employee's prior gross wages, including overtime, but the entitlement is to be reduced by an estimate of the worker's previous withholdings for Federal and State income taxes as well as the employee's share of social security taxes.

The law establishes the following four categories of employees:

--Regular employees. These are employees with 5 or more years of employment with affected employers.

--Short-service employees. These are employees who will not reach age 60 before October 1, 1984, and who at the time of layoff had less than 5 full years of service credit under a pension plan which is contributed to by an industry employer. 1/

--Seasonal employees. These are employees in an occupation in which the average annual number of weeks during which work was actually performed by all covered employees employed in the occupation during the 5 calendar years preceding the enactment date was 40 weeks or less.

--Retired employees. These are employees between the age of 62 and 65 who retire from an affected employer for reasons other than disability between May 31, 1977, and September 30, 1984, who are receiving pension

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1/Industry employer means a corporation, partnership, joint venture, person, or other form of business entity of which a working portion or division is an affected employer. Not all working portions or divisions of industry employers are designated as affected by park expansion; prior employment with a nonaffected portion or division of an industry employer counts toward creditable service but cannot be used to establish eligibility for benefits.

benefits under a plan financed by an industry employer, and who are ineligible for benefits under title XVIII (Medicare) of the Social Security Act.

Employees are generally considered affected if they are totally or partially laid off by an employer certified by the Secretary of Labor as adversely affected by the park expansion.

In the absence of an extension by the Secretary of Labor, an affected employee must apply for benefits no later than September 30, 1980. The period in which an affected employee may receive benefits, known as the employee protection period, is based on years of creditable service with affected or industry employers.

Most individuals can receive benefits only until September 30, 1984, but employees who reach age 60 by that date may continue to receive benefits until age 65. Acceptance of severance payments terminates most benefits.

PROGRAM OPERATIONS

The Secretary of Labor, the official responsible for administering REPP, has delegated the responsibility for its implementation to the Assistant Secretaries for Labor-Management Services Administration (LMSA) and Employment and Training Administration (ETA). Labor has contracted with the California Employment Development Department (EDD) to process applications for REPP benefits and to make payments and furnish employment services to affected employees.

At the time of our fieldwork, EDD had contracted with the Comprehensive Employment and Training Act (CETA) prime sponsor for Humboldt County to provide training. In response to our draft report, EDD stated that it had since contracted with Humboldt State University and the College of the Redwoods to provide training under the act.

The Secretary has also appointed, in accordance with the law, a liaison to represent him with employees and their unions and advise him on the administration of the act.

Eligibility for REPP assistance is determined in a two-step process. First, the Assistant Secretary for LMSA must determine which employers are affected by the expansion of the Redwood National Park. This determination is critical because only covered employees, laid off from an affected employer, are eligible for benefits.

The legislation classifies employers into categories--woods, mill, and contract--and establishes different eligibility for each. As of September 21, 1979, Labor had certified 42 firms as affected--3 woods employers, 29 mill employers, and 10 contract employers--and determined that 149 firms were not affected.

Secondly, the Assistant Secretary for ETA must determine, with the help of the California EDD if an employee is covered by the act and whether or not he or she was laid off by an affected employer.

Initial interviews with claimants are conducted by EDD personnel to obtain information on the claimants' status and previous employment. This information and other information obtained from the employee's last affected employer is forwarded to EDD's payment unit in Sacramento, California, where determinations of REPP eligibility and entitlements are made.

At the end of fiscal year 1979, Labor reported that 1,735 employees, or 70 percent, of the 2,472 who had applied for REPP benefits had been determined eligible. Over $11.4 million in monetary benefits had been paid since the program began in 1978.

Regular and seasonal employees can choose to receive either weekly payments or lump-sum severance payments. On the other hand, short-service and retired workers are eligible only to receive a lump-sum severance payment that cannot exceed the equivalent of 72 weeks' payments. By the end of fiscal year 1979, the REPP weekly monetary payments were averaging $183.

REPP has no maximum weekly monetary benefit amount, whereas California's regular unemployment insurance program had a maximum weekly monetary benefit payment of $104 at the end of fiscal year 1979. At that time, REPP's payment period averaged about 28 weeks for a total payment of $5,124 per person; many workers are still collecting these payments. Lump-sum severance payments averaged $11,376 and ranged between $1,100 and $65,400. Almost equal dollar amounts had been paid out in weekly benefits and lump-sum benefits with authorized weekly benefit payments totaling about $5.5 million and authorized severance payments totaling about $5.9 million.

REGIONAL CHARACTERISTICS

The Redwood National Park is located about 300 miles north of San Francisco in California's Humboldt and Del Norte Counties. (See map on p. 6.) In 1978, the two counties had an estimated population of about 123,000. The greatest population concentrations were in the cities of Eureka and Crescent City, the county seats of Humboldt and Del Norte Counties, respectively. Timber, an industry employing about 7,000 in the two counties, fisheries, and recreation were the primary industries in the region. As of 1977, there were 323 timber operators in the two counties.

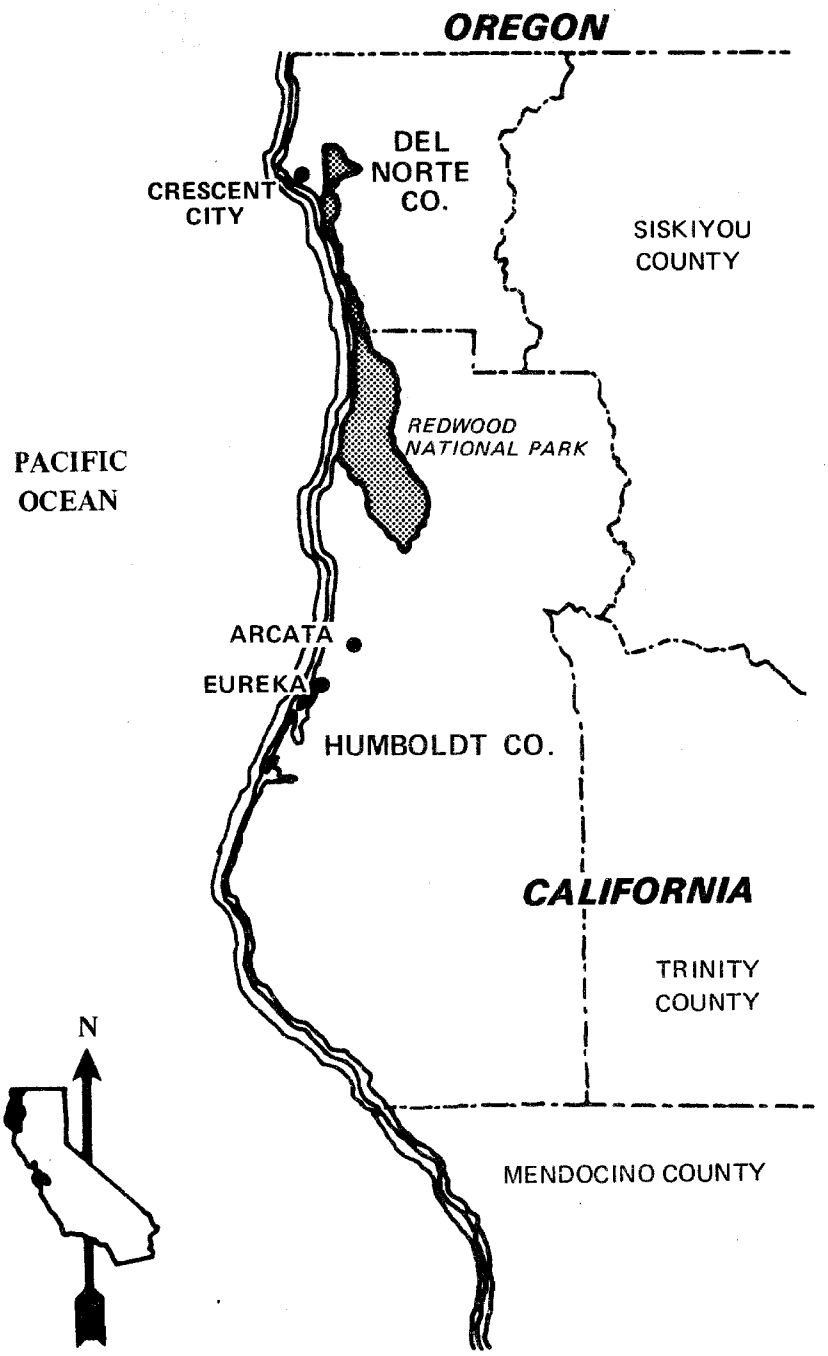
SCOPE OF REVIEW

We made this review to evaluate the effectiveness of REPP to date, with a view to making any mid-course corrections, and also ensuring congressional intent is being carried out. Our evaluation included determining if: (1) the program is reaching all of those workers who are eligible for benefits under the guidelines and (2) the guidelines are realistic and adequate to deal with the situation that exists. We also examined prior GAO reports and laws related to other special employee protection programs.

We interviewed Federal officials in Washington, D.C., and Labor's regional office in San Francisco; Federal, State, and local officials in Humboldt and Del Norte Counties; and affected employers and affected employees during the period April through September 1979. We also talked with the senior Federal Bureau of Investigation (FBI) agent in Eureka, California, about work the FBI was conducting on REPP and reviewed the findings of a special Labor review committee, which was established in March 1979 to examine layoff practices under REPP.

We reviewed laws, legislative history, program guidelines, and data in Labor's files. We also reviewed a random sample of 185 out of a total of 1,965 individual files of persons who had applied for the program as of May 31, 1979. This sample insures, with a confidence level of 95 percent (plus or minus 7 percent), that the data obtained are representative of the program applicants. The types of data we gathered were age of employee, length of time worked within the industry, amount of weekly benefits or severance payments, and subsequent employment information.

AREA AFFECTED BY PARK EXPANSION



CHAPTER 2

PROGRAM ELIGIBILITY IS NOT DEPENDENT ON PARK EXPANSION

A major problem with REPP has been that the number of employees eligible for REPP benefits has greatly exceeded the number of jobs lost because of park expansion. This has happened for two reasons:

--Due to the legislated conclusive presumption clause, layoffs need not be related to park expansion to serve as a basis for eligibility.

--Labor has not restricted the designation of affected employers to organizational units adversely affected by park expansion.

On the other hand, in several instances firms that were adversely affected by park expansion have not been certified for program participation because of legislative requirements, thus some adversely affected individuals have been denied program benefits.

UNEXPECTED PROGRAM GROWTH

Before the passage of the act, several estimates were made of the number of jobs that would be lost as a direct result of park expansion. Estimates of direct job losses through fiscal year 1979 used by the Congressional Budget Office and the National Park Service were 570 and 921, respectively. Although the National Park Service did not determine the economic impact of its estimate of direct job losses, the Congressional Budget Office in an October 14, 1977, cost analysis estimated that monetary benefits for the 570 direct job losses through fiscal year 1979 would amount to $8.2 million.

Actual job losses and monetary benefits have greatly exceeded these original estimates. According to a Labor report, as of the end of fiscal year 1979, 1,735 employees had been determined eligible for REPP benefits, and over $11.4 million in monetary benefits had been paid. Thus, the number of eligible employees had exceeded the Congressional Budget Office estimate by about 204 percent and exceeded the National Park Service estimate by about 88 percent. Also, monetary benefits had exceeded the Congressional Budget Office estimate by about 39 percent.

A factor contributing to the increase in program eligibility and cost is that many employees who have been declared eligible were not adversely affected by the park expansion.

LAYOFFS UNRELATED TO PARK EXPANSION SERVE AS A BASIS FOR BENEFIT ELIGIBILITY

REPP legislation states that employees who meet certain requirements are to be considered covered employees. (See p. 28 for definition of a covered employee.) A covered employee who is laid off and is eligible for California unemployment compensation can qualify for REPP benefits. Because no determination is required that a layoff is related to park expansion, any employee laid off by an affected employer due to such things as routine maintenance shutdowns, equipment repairs, inclement weather, or road closures or for various other reasons can qualify for REPP benefits.

Section 203 of the law states that:

> "The total or partial layoff of a covered employee employed by an affected employer during the period beginning May 31, 1977, and ending September 30, 1980, other than for a cause that would disqualify an employee for unemployment compensation, * * * is conclusively presumed to be attributable to the expansion of the Redwood National Park * * * Any covered employee laid off during that period by an affected employer shall be considered an affected employee at any time said employee is on such layoff within the period ending September 30, 1984, or, if earlier, the end of said employee's period of protection * * *." (Emphasis added.)

The problem with temporary layoffs surfaced initially in connection with a regularly scheduled maintenance shutdown of one of the affected woods employers. For over 25 years this company had shut down its operation for 2 weeks of maintenance during the summer and for another 2 weeks during the Christmas holidays. While some workers are retained to do the maintenance work, others are laid off for the period. Employees who are laid off and who generally meet the basic eligibility requirements for unemployment compensation under

the California Unemployment Insurance Code can thus establish eligibility for REPP benefits under section 205(a) of the act, which states

> "* * * an application for unemployment compensation filed by a covered employee * * * shall be deemed an application for the benefits provided by this Act."

Short-term layoffs are not unique to this woods employer. Other woods and contract employers have shut down their operation to do maintenance work or because of road and railroad line closures or inclement weather or for various other reasons.

In response to our draft report, EDD informed us of additional problems caused by the conclusive presumption clause in the act and by partial layoffs. Under section 201(12) of the act a partial layoff means

> "a calendar week for which all pay received by a covered employee from affected employers is at least 10 per centum less than the layoff or vacation replacement benefit that would have been payable for that week had said covered employee suffered a total layoff."

According to EDD, a fully employed individual who, for example, works 5 instead of 10 hours overtime can collect partial benefits even though that applicant may have no overall reduction in the yearly amount of available overtime. Combining the conclusive presumption and partial layoff definitions has resulted in applicants claiming many retroactive weeks of partial benefits occurring before their layoff. EDD said that more recently applicants have demanded that either EDD or their employer review each week of employment beginning on or after May 31, 1977, to identify a 10-percent reduction in income and establish a qualifying layoff. EDD said this demand is increasing in intensity as September 30, 1980, nears.

Unemployment insurance eligibility has also been established for reasons other than employees being laid off. Employees, for instance, have established REPP eligibility after they voluntarily quit to better themselves, for personal reasons, or as a result of a company lockout over a trade dispute.

EDD also stated that on October 2, 1979, Labor advised it that all terminations not disqualifying under the California

Unemployment Insurance Code, including a voluntary quit, are covered by the conclusive presumption provision. Based upon its Legal Office advice, EDD has implemented procedures which hold that a quit, with or without good cause, does not establish program liability.

We reviewed the legislative history but did not find a reason for the conclusive presumption clause. The special consultant to the Secretary of Labor for REPP told us that, without the conclusive presumption clause, employers would have too much control over the program. He told us, however, that such temporary layoffs as short-term layoffs for maintenance were not anticipated and should not be a reason for REPP eligibility.

One employer told us that the present situation is "ridiculous" and that either employers or Labor should have some input into the process of determining affected employees. In this regard, it should be noted that other employee protection legislation, such as the Trade Act of 1974, requires the Secretary of Labor to determine the eligibility of groups of workers for program benefits.

Effect of temporary layoffs on eligibility

Employees qualifying for REPP for reasons unrelated to the park expansion have been a major factor in the unexpected program growth. A survey of this situation by EDD in June 1979 indicated that the eligibility of 369 (or about 26 percent) of 1,411 eligible persons was based on layoffs for maintenance. The 369 employees claimed benefits for 1,146 weeks. These claims represented $241,072 of about $3.9 million in weekly layoff benefits paid to employees as of June 15, 1979. Our review of a random sample of 185 employee files substantiated EDD findings. We found that for 36 (or about 30 percent) of 122 persons (not including retirees), eligibility was based on normal maintenance shutdowns or such things as adverse weather conditions or temporary road closures.

In March 1979, a special Labor Department committee was established by a special assistant to the Secretary to review REPP layoff practices. In an April 4, 1979, memorandum discussing maintenance and other short-term layoffs, the committee stated:

"This loophole--for so it must be described--makes a sham out of the September 30, 1980 cut-off date for program eligibility. In essence, any person laid off for a short period now establishes eligibility during any subsequent period of unemployment for payments up to September 30, 1984. In neither case need there be a relationship between the real cause of unemployment and the expansion of the Redwood Park.

"Depending upon the number of maintenance shutdowns or other short-term layoffs before September 30, 1980, it is conceivable that every person who was on the payroll of an affected employer as of May 31, 1977, will become eligible for one part or another of the benefit package prior to the end of the window period. Such an eventuality will inflate costs far above the original estimates."

Some employers told us that the attitude of many employees toward work changed once employees established REPP eligibility during temporary layoffs. Employers attribute this change to the fact that, once an employee establishes eligibility, he or she is potentially eligible for benefits even though fully employed. Although REPP benefits are generally geared to an employee's employment status and earnings, he or she could possibly be eligible for weekly payments even while working full time because previous overtime is included in the calculation of an employee's weekly layoff benefit. This is because REPP will pay the difference when an employee's current earnings are 10 percent less than the weekly layoff benefit amount. According to employers, relations are strained between employers and employees because employees are not willing to work overtime when they can receive additional income without working additional hours.

Solicitor's opinion and Labor's action

LMSA officials requested an opinion from Labor's Solicitor's Office regarding the issue of eligibility based on layoffs arising from temporary plant maintenance or similar shutdowns. In a January 9, 1979, memorandum, the Associate Solicitor stated:

"While we sympathize with the position which you have taken in the memorandum that such a plant shutdown is totally outside of the application of the Act, we believe section 203 of the Act is controlling. That section contains a conclusive presumption that a layoff is attributable to the Act and since these employees do not fit into the one exception to the presumption and are receiving unemployment compensation, there is nothing we can find that overrides the clear wording of the statute. We understand that there are practical considerations which will make such an opinion extremely hard to administer but we believe that any other position is legally indefensible."

Although the committee reviewing REPP layoffs realized that the conclusive presumption clause would potentially inflate program coverage and cost, the April 4, 1979, memorandum stated that recommending a legislative change was not a viable option because

"Those responsible for [REPP] may not risk a reopening of the statute when there is a possibility that such a reopening might result in wholesale changes in the Act's current design."

Instead, the committee recommended that Labor

"* * * take administrative action designed to subject the program to more careful and stringent audits and to impress participants and others with the consequences of unlawful activities. To do this, the Department could request the California Employment Development Department (EDD) to implement prevention and detection efforts, including the utilization of field auditors, to verify REPP wage and separation information. The Department could also amend its REPP application forms to state more clearly that it is a Federal offense to give false statements * * *."

We believe that it is not clear how the committee expects to mitigate the effect of the conclusive presumption clause by implementing prevention and detection efforts and amending REPP application forms.

In response to our draft report, EDD stated that, as of January 1980, workers continued to be declared eligible on the basis of temporary layoffs and there were indications that "applicants and/or employers may be conspiring to achieve program eligibility through contrived layoffs." In January 1980, EDD sent letters to all affected employers, appealing for their cooperation in preventing program abuses.

EMPLOYER CERTIFICATION UNRELATED TO PARK EXPANSION

The identification of employers unfavorably affected by park expansion is a major step in assuring that benefits go only to employees laid off because of park expansion. But Labor has not interpreted legislative criteria to insure that only operations unfavorably affected by park expansion were certified as affected.

The act establishes the following criteria for an "affected employer" and for classes of "affected employers":

--"'affected employer' means a corporation, partnership, joint venture, person, or other form of business entity (including a predecessor or a successor by purchase, merger, or other form of acquisition), or a working portion or division thereof, which is engaged in the harvest of timber or in related sawmill, plywood, and other wood processing operations, and which meets the qualifications set forth in the definition of affected woods employer, affected mill employer, or affected contract employer."

--"'affected woods employer' means an affected employer engaged in the harvest of redwood timber who owns at least 3 per centum of the number of acres authorized to be included within the expansion area on January 1, 1977, and on the date of enactment of this section: Provided, that an affected woods employer shall be only that major portion or division of the industry employer directly responsible for such harvesting operations."

--"'affected mill employer' means an affected employer engaged in sawmill, plywood, and other wood processing operations in Humboldt or Del Norte Counties in the State of California who has either (A) obtained 15 per centum or more of its raw wood materials directly from affected woods employers during calendar

year 1977 or (B) is a wholly owned mill of an affected woods employer: Provided, That an affected mill employer shall be only that major portion or division of the industry employer directly responsible for such wood processing operations."

--"'affected contract employer' means an affected employer providing services pursuant to contract with an affected woods employer, if at least 15 per centum of said employer's employee-hours worked during calendar year 1977 were within or directly related to the expansion area pursuant to such contract or contracts."

To determine the status of employers, Labor needed to obtain information on employer operations, such as the percentage of land owned in the park expansion area, the amount of raw wood materials obtained directly from woods employers, or the number of employee hours that an affected employer provided contract services in the expansion area in relation to the firm's total employee hours.

To obtain this information, Labor sent a letter in May 1978, along with a questionnaire requesting data needed in the certification process to 60 potentially affected mill and contract employers in northern California. Labor obtained the names of these companies from the affected woods employers. Another large mailing was made in July 1978. Since that time, most of the letters and accompanying questionnaires that Labor has sent out requesting data for certification have been the result of an EDD request that Labor certify a specific company following an applicant's request for benefits.

To make certifications, Labor depends almost exclusively on information voluntarily supplied by employers in response to these questionnaires. But, Labor had difficulty in obtaining information from some employers.

In reviewing LMSA files, we noted instances where firms had not responded to the questionnaire after several months. In some cases, Labor had not obtained data as late as 1 year after the original questionnaire was sent. Often, Labor made repeated telephone calls requesting that the questionnaire be completed and returned.

In early 1979, Labor sent a followup letter to nonresponsive firms indicating that they were not considered affected because they had not submitted the necessary information

to LMSA. Labor officials told us that these letters had been sent to about 30 to 40 companies. Labor's reason for basing its determinations on nonresponses to questionnaires was that EDD would not process REPP applications for employees who had worked for companies that had not yet been certified. Instead, EDD was holding the applications until LMSA certified the employee's former employer.

LMSA believed that designating these companies as not affected would prompt EDD to process the application and find the employees ineligible for REPP. LMSA reasoned that the employees could then appeal this determination of noneligibility to EDD's administrative law judge. EDD staff were told to advise REPP applicants to appeal the EDD finding that they could not qualify for REPP on the basis that they did not work for an affected employer. In LMSA's opinion, the administrative law judge could then force the company to provide information needed to certify the employer. The administrative law judge could finally determine the applicant's affected status on the basis of the information obtained.

An LMSA official told us, however, that the administrative law judges were not always obtaining the information called for in Labor's questionnaire. Rather, as a basis for their decisions, they were asking employers if they had done business with the woods employers and if the employee was laid off because of a decrease in this business.

Certification of employers is a primary responsibility given to Labor. We believe that it is inappropriate for Labor to depend on the EDD appeals process and the administrative law judges to determine the status of companies that failed to supply data to LMSA. We also believe that it is inappropriate for Labor to designate a company as not affected solely because it did not submit the information requested. The act authorizes the Secretary to subpoena from employers information needed to properly carry out their responsibilities. Yet, as of August 1979, the Secretary had not used this authority to obtain data from employers that failed to voluntarily respond.

The determination of employers as not affected solely because they did not provide data to Labor could cause employers to be erroneously designated as not affected when they actually meet program requirements. In this case, benefits would be denied to employees who otherwise would be entitled, if it were not for the erroneous designation.

In response to our draft report, EDD stated that inadequate investigation by and the reliance by LMSA upon EDD's appeals process to gather affected employer information has resulted in scheduling and hearing of many unnecessary appeals, unnecessarily clogging the appeals calendar, increasing administrative and applicant expense, and creating untold ill feeling by applicants against EDD and Labor. In an attempt to facilitate LMSA decisionmaking, EDD said it was implementing a procedure under which an application for benefits causes a request to be sent immediately to the local LMSA representative for information regarding whether or not the applicant's former employer has been certified as affected.

In its response to our draft report, Labor said it was no longer following the procedure of certifying nonrespondent employers as not affected and then permitting the claimant employee to file an appeal with an administrative law judge. Labor said it has again written each of the three woods employers and has obtained from them the name of each contract employer who worked for them in the park expansion area. A new letter has been sent to these contract employers. If they do not respond in a timely fashion, LMSA intends to subpoena their records.

Problems created by the interpretation and application of criteria

Under the legislation we believe Labor should have certified as an affected employer only those operations directly affected by park expansion. Instead of restricting certification to only affected operations, however, Labor certified entire corporate divisions, of which affected operations were only one portion. We believe this approach to certifying employers is inappropriate because it could result in individuals not affected by park expansion being eligible for recurring program benefits.

The fact that Labor did not restrict the program to operations directly affected by park expansion was reflected in its policy regarding employees of affected contract employers. Labor did not require that employees of contract employers work in operations in the expansion area to become eligible for program benefits.

For example, one contract employer was certified as affected although it was a trucking firm that had several divisions throughout northern California and Oregon and hauled several different kinds of materials, in addition to raw wood

materials. Since Labor did not place restrictions on the types of operations that may be certified as affected, employees engaged in hauling minerals from a mining operation outside of the expansion area were eligible for REPP benefits when they were laid off.

Furthermore, since REPP legislation limits in any week the number of employees of an affected contract employer who can receive benefits, employees hauling minerals outside the park used up program slots that may be needed if employees engaged in timber-harvesting operations in the expansion area are later laid off.

A contributing reason to Labor's identifying improper operations is that the companies reported to Labor data needed in the certification process the way the data were maintained in their accounting systems. Labor did not single out operations that should have been included or asked the employers to provide data only for activities directly related to operations in the park expansion area. We believe the Secretary should have obtained data that would enable him to certify only those operations directly related to park expansion as adversely affected.

We questioned Labor's approach to certifying employers. A more narrow interpretation of the act in which only operations directly affected by park expansion are certified as affected would be consistent with the legislation and would assist in controlling program costs.

EDD also said that Labor's interpretation of the legislation in certifying affected employers has resulted in REPP entitlement to applicants who may never have worked near the park expansion area. EDD pointed out examples of applicants that were employed by a division of an affected contract employer in a county some distance from the park or that were laid off from an Oregon plant of the same employer and applicants employed by a Sonoma County department of an affected woods employer. (Sonoma County is not adjacent to Humboldt or Del Norte Counties.)

After we brought this situation, in which employees of contract employers were eligible for benefits even though they did not work in the park expansion area, to the attention of Labor officials, Labor changed its policy. In commenting on our draft report, Labor stated that, for contract employers, its more narrow interpretation of the act will have the

effect of limiting those eligible for benefits to those contract employees who personally worked in operations related to timber-harvesting operations in the expansion area.

Some employers forced to close or curtail operations were certified as not affected

As a result of legislative restrictions, some adversely affected firms could not be certified. In our review of Labor's files, we found seven companies that were not certified as affected even though it appeared, on the basis of information in the files, that they had been adversely affected by park expansion.

For example, for certification purposes, the act specifies 1977 as the base year for determining purchases by mill employers from woods employers. However, Labor officials told us that woods employers began curtailing some operations in 1977 and reduced shipments to some mills that year. Thus, because some mills were not able to obtain their normal supplies from the affected woods employers in 1977, they did not meet the statutory requirement of obtaining 15 percent of their raw woods materials from one of the affected woods employers in 1977 even though they would have met the 15-percent requirement if 1976 had been used as a basis for certification.

The legislative requirement that woods employers must own 3 percent of the land in the park expansion area also excluded employees of some small loggers who logged on their own land. The following are examples of adversely affected firms that Labor could not certify because of specific criteria established in the act:

--One mill employer could not purchase logs from the affected woods employers in 1977, as the employer had traditionally done in the past, because of reduced supplies caused by park expansion. Later, the firm was designated as not affected because it did not obtain 15 percent of its raw materials from the affected woods employer in 1977. When the firm closed, about 25 laid-off employees were ineligible for REPP benefits.

--Another woods employer harvesting timber on land it owned within the park expansion area was not certified as affected because the firm owned less than the statutorily required 3 percent of the land within the area. Therefore, three laid-off employees were not eligible for REPP benefits.

In addition to specific legislative restrictions, the legislation contains general wording which required Labor's administrative interpretation. In some of the instances where administrative discretion was necessary, Labor's initial interpretation resulted in an adversely affected firm not being certified as affected.

An LMSA official told us that one reason for some of the difficulties in interpreting and applying the act to best fit actual situations was that, when the act became effective, program administrators had a rather sketchy understanding of the timber industry. Consequently, they failed to grasp the complexities involved and did not develop regulations to implement some key provisions.

As program experience has been gained, the need for clarifying criteria in the form of regulations to assist in applying the act to actual situations has become apparent. Yet, Labor has made little progress in developing criteria or regulations to improve program administration. The need to develop criteria for applying the act is illustrated in the following example.

Labor originally interpreted the provision, that a mill employer must obtain 15 percent of its raw wood materials directly from an affected woods employer, to mean that the mill had to purchase the material. Problems arose in a case where the mill directly obtained, but did not purchase, raw material. The mill was not designated as affected because it did not purchase 15 percent of its raw materials from an affected woods employer even though it received more than this amount directly from the affected woods employer. The raw materials had been purchased by a third party and shipped to the mill for manufacturing. The mill made furniture out of the wood and forwarded it to the third-party purchaser. Under Labor's policy, the 80 laid-off employees of the mill were not eligible for REPP even though they were laid off solely because of the inability to get raw materials from the woods employers.

Realizing that such employees should be eligible for REPP benefits, the Chief of LMSA's Division of Employee Protection stated the following in an April 25, 1979, memorandum to Labor's Associate Solicitor:

> "* * * We are finding out that the organization of the industry is such that a mill could 'obtain (raw materials) directly' from the three woods employers without actually ever owning the wood, relying instead on its final customers to supply its raw materials; or, a mill could obtain (raw materials) directly from the three woods employers in the physical sense of obtain (direct shipment) but the mills' purchase invoices would show that the wood had been purchased from an intermediary who relies on volume purchases and resale."

Labor's Associate Solicitor later reversed Labor's position that a mill employer had to purchase raw material from an affected woods employer and said that only direct receipt was required.

As of March 1980, Labor had not published final regulations for the program, and the proposed regulations published in the Federal Register on June 12, 1979, do not clarify or provide adequate criteria for applying the act to specific situations.

CHAPTER 3

REPP BENEFITS SERVE AS A DISINCENTIVE TO WORK

REPP benefits are extremely attractive and have resulted in reducing incentives to work and causing workers to seek layoffs. Furtheremore, because of complex legislative requirements, program benefits are difficult and burdensome to administer, and the benefits provided to some employees differ from those provided to others in similar situations.

IMPACT OF PROGRAM BENEFITS

REPP's generous benefits have caused some senior employees to request that they be laid off when the work force is decreased and have reduced work incentives for others. The FBI is investigating the possibility of fraudulent layoff practices.

Layoffs not consistent with seniority

Most employees who have been determined eligible are either regular or short-service employees. In our sample of 185 REPP applicants, regular employees represented 53 percent of the 133 eligible employees and short-service employees represented 20 percent. Our sample included 82 woods, 28 mill, and 23 contract employees.

More regular employees than short-service employees have been laid off from employers that are still in operation. In our sample of the three woods employers, nearly six times as many regular employees as short-service employees have been laid off. The large number of regular employees being laid off has raised questions about whether employers and employees are adhering to the provisions of seniority protection clauses in union labor agreements. Program officials told us that, instead of using seniority rights to retain their jobs, employees covered by union contracts appear to be using their seniority to be laid off before others to obtain program benefits.

The special Labor committee reviewing layoff practices under REPP also addressed this problem in an April 4, 1979, memorandum. The committee stated

> "There is evidence * * * that senior workers are being laid off first. In fact, the record

suggests that senior workers are actively seeking layoffs in order to gain coverage and access to generous benefits."

The committee's memorandum also stated, however, that "nowhere in the act is seniority spoken of in relation to the order of layoff." Therefore, if no collective bargaining agreements or California unemployment insurance laws are broken, little can be done to prevent out-of-order layoffs.

Program administrators are concerned about out-of-order layoffs because of their impact on program costs. Since senior employees generally have higher earnings than other workers and usually have worked more than 5 years with an employer, their weekly benefit or lump-sum severance pay will be greater, or their weekly benefit will run for a longer period. In addition, since many senior employees will reach the age of 60 by September 30, 1984, a large number of them will be eligible for benefits until they reach the age of 65.

Statistics compiled by both Labor and us show that older employees have been laid off in greater numbers than younger employees. In our sample, 47 employees (or 35 percent of those eligible for program benefits) were 50 years old or older in 1979. Of the 47 individuals, 18 (or 38 percent) will reach the age of 60 to 65 by September 30, 1984.

Breakdown by Employee Classification and Age of Eligible Employees in GAO's Sample in 1979

	20-29	30-39	40-49	50 and over	Total
Regular	9	22	10	29	70
Short-service	13	8	4	2	27
Seasonal	2	8	0	5	15
Retired	0	0	0	11	11
Eligible but not classified	5	4	1	0	10
Total	29	42	15	47	133
Percentage	22	32	11	35	100

FBI probe

The FBI has been looking into the possibility of fraud in regards to layoff practices. The local FBI office in Eureka, California, began its probe into the layoff practices of one woods employer in January 1979 after receiving complaints from individuals claiming older employees were being laid off at their own request, even though their positions were not jeopardized by park expansion. Local newspapers and radio and television stations also reported such incidents were occurring.

The senior agent in the Eureka office told us that, although the legislation is vague and does not specifically address order of layoffs, the law requires that layoffs comply with California unemployment insurance laws. In this regard, section 1256 of the California Unemployment Insurance Code states that

> "An individual is disqualified for unemployment compensation benefits if * * * he left his most recent work voluntarily without good cause or he has been discharged for misconduct connected with his most recent work."

The agent said this section of the code was the basis for his investigation. He said that his report submitted to the U.S. District Attorney's Office in September 1979 provided facts surrounding the layoffs of 35 employees ranging in ages from 54 to 61. The agent noted that, if the U.S. attorney decides to prosecute, he would expand his investigation to other employers. Otherwise, he would not pursue the matter further. As of March 1980, a Federal grand jury was conducting hearings on the matter.

The agent said that the problem of layoffs out-of-order of seniority could be mitigated by improving the forms that are used to obtain employment information. He said that, for example, on the form filled out by the employer, the immediate supervisor of a laid-off employee should be required to state the reason for the layoff and sign the statement certifying that the information supplied is correct. In addition to deterring layoffs out-of-order of seniority, such a requirement would facilitate enforcement of the law.

A spokesman for the company involved in the FBI investigation acknowledged to us that older employees have been laid off, but said this was not unusual. The official stated that,

although senior employees who are affected by a forced reduction have the right under union agreements to bump the employee with least seniority in his or her department or plant, the affected employee must instigate this action. Employees and union representatives indicated that many older laid-off employees did not opt to bump the last positions in the plants because these positions were generally more strenuous and were potentially injurious.

In its April 13, 1979, report to the Secretary of Labor, the Labor committee recommended that the Secretary send a letter to affected employers encouraging them to exercise reasonableness in their layoff practices. In response to this recommendation, the Secretary in June 1979 sent letters to affected employers requesting that they follow traditional layoff practices. Some employers we contacted, however, resented the letter's implication and further indicated that they will not change their layoff practices.

Disincentive to work

Several Labor and EDD officials involved in administering REPP told us they believe that generous program benefits have reduced employee work incentives. These officials argue that, because the program is designed to provide laid-off employees with the same level of income and benefits they would receive if they were still fully employed, the program has reduced the incentive to work. These officials contend that traditional work values and incentives have been unfavorably affected.

We contacted seven affected employers that represent about 90 percent of the eligible employees in our sample. All but one of these employers cited examples of employees requesting to be laid off. One employer said that 46 out of 47 employees who were 55 years old or older had requested to be laid off because, in the employer's opinion, of the generous program benefits. Employers generally agreed that the program's generous benefits have reduced many employees' incentive to work and that employers were viewed as inconsiderate for not laying off workers.

These employers also said that employees are refusing overtime with greater frequency than in the past and attributed this to REPP's monetary benefits. One reason cited is that, once a regular employee establishes program eligibility, he

or she is guaranteed a weekly layoff benefit which may exceed his or her present weekly earnings because previous overtime is included in the calculation.

Many of these employees who work a full week are still entitled to the difference, if any, between their present earnings and their computed weekly layoff benefit. Since REPP pays the difference, these employees have no incentive to work overtime as they did in the past.

Union representatives and employees we contacted recognized that a few employees may be influenced by REPP's monetary benefits, but they generally denied that the benefits had reduced employees' incentive to work. The union representatives and employees also claimed that overtime was strictly voluntary, and they cited operations where refusal of overtime was common.

From our discussions with Federal and State officials, employers, employees, and union representatives, it has become apparent to us that REPP's monetary benefits have affected relations between employees and employers and work incentives.

GAO reports on various other special employee protection programs and, more recently, on the regular Unemployment Insurance Compensation Program, alluded to the same problem. For example, in our report entitled "Worker Adjustment Assistance Under the Trade Act of 1974 to New England Workers Has Been Primarily Income Maintenance," dated October 31, 1978 (HRD-78-153), State employment security officials said they believe that the amount of trade adjustment monetary benefits, which are 70 percent of average weekly wages, reduced, and in some cases eliminated, any incentive to seek employment.

In our report "Unemployment Insurance--Inequities and Work Disincentives in the Current System," dated August 28, 1979 (HRD-79-79), we showed that, in light of social and economic changes since the unemployment insurance program began in 1935, the compensation replaced an average of 64 percent of a recipient's net income before unemployment, thereby possibly reducing the incentive to work for some recipients.

We have taken the position that a uniform approach be used to provide special assistance to groups that the Congress determines are adversely affected by Federal policies. In February 21, 1980, testimony before the Subcommittee on Oversight, House Committee on Ways and Means, we recommended that, before additional benefits are provided, affected

workers should first be required to exhaust regular unemployment insurance benefits. To minimize the possibility that the additional weeks of income protection under this approach would provide a disincentive to employment, we recommended that monetary benefits be continued at an amount not more than available under unemployment insurance rather than the higher amounts now allowed under the various special employee protection programs. Implementation of this approach would help eliminate some of the administrative problems associated with the delivery of benefits to affected workers.

BENEFITS DIFFICULT AND BURDENSOME TO ADMINISTER

REPP's monetary benefits are difficult and burdensome to administer because of complex legislative requirements. Weekly layoff benefits, for example, are computed by taking the average hours for the 3 years most hours were worked during 1973 through 1977 (counting hours paid for at time-and-a-half and double time as 1-1/2 and 2 hours, respectively) times the wage rate applicable to the highest paid job held by the employee during the period January 1, 1977, through March 27, 1978, and dividing this amount by 52.

The act requires that, in computing the weekly layoff benefit, differentials are to be added to the employee's basic wage rate, such as night differentials.

The computed weekly layoff benefit amount establishes the affected employee's basis for payment. The REPP program will make up the difference any time the affected employee makes 10 percent less than the weekly layoff benefit amount. If an affected employee is totally unemployed, the employee receives the total weekly benefit amount. An employee who makes 10 percent less than the computed weekly benefit amount is considered on partial layoff and can get REPP benefits.

To make these calculations, employment information from 1973 forward is necessary. To obtain this information, EDD uses a series of forms to request detailed employment and wage information from employees and employers. Gathering these data is time consuming and costly for the employers.

Most employers we contacted complained about the time and money spent providing information to EDD and to employees applying for REPP benefits. Employers reported hiring additional staff to meet the requests for information. One

employer estimated spending $25,000 researching employment records and filling out REPP forms. Others complained because the information requested did not match their accounting systems and took considerable staff time to compile. One company reported charging employees $35 to provide information on prior year partial layoffs.

Employers also have had a difficult time understanding exactly what information to provide. This difficulty, which is partly due to inadequate forms and instructions provided by Labor and EDD, is discussed in more detail in chapter 4.

In response to our draft report, EDD agreed that providing employment information does indeed place a heavy burden on employers. EDD stated it has attempted to alleviate this burden by having field personnel visit employers when questions arise regarding employee form completion. However, EDD expects demands on employers' time to increase as more employees request employers to review weekly wage records beginning May 31, 1977, in search of a qualifying week. EDD indicated that these requests could continue for an indefinite period, as the law does not place a time limit on when an applicant can file for REPP benefits, even though total or partial layoffs must occur before September 30, 1980, in order for an applicant to be eligible for benefits.

INCONSISTENT PROGRAM BENEFITS

A number of provisions in the REPP legislation cause employees in similar situations to be treated inconsistently and differently. These provisions have precluded some employees from being declared eligible for the program even though they were laid off because of park expansion.

Inconsistencies

A provision of the legislation that results in inconsistent treatment of employees is the one that gives affected employees incentives to seek employment outside the timber industry or to relocate to other areas. The provision does not apply the same geographic restrictions to employees who elect to take severance payments as it does to those who receive weekly layoff benefits.

Regular and seasonal employees who receive weekly layoff benefits have their weekly benefits reduced by 100 percent of their earnings regardless of where they work if they are

employed in timber-harvesting or related wood processing operations. Regular and seasonal employees who elect to take lump-sum severance payments are not required to repay their severance payments when they become employed in timber-harvesting or other wood processing operations outside Humboldt, Del Norte, or adjacent counties. Regular and seasonal employees who resume work in timber-harvesting or related operations within these designated areas before September 30, 1980, must repay their severance payments in weekly installments.

A number of program officials and union representatives told us that they believe this provision of the legislation was intended to encourage affected employees to leave the area. But they point out that only employees electing to take lump-sum severance payments are encouraged to leave the affected area if they want to work in wood-related operations.

Another inconsistency resulting from the provision is that regular, seasonal, and retired employees must agree to repay severance payments if they resume employment in the industry within Humboldt and Del Norte and adjacent counties, while short-service employees who are recalled to work can keep their payments.

Different treatment

The legislation treats and compensates employees differently even though they are in essentially similar situations. Employees under union agreements, for example, have a better chance of being declared eligible than employees not under union agreements. In accordance with section 201(10) of the act, employees are determined to be covered by the act if they either

--had seniority under a collective bargaining agreement with an affected employer as of May 31, 1977, had at least 12 months of creditable service as of March 27, 1978, and had performed work for one or more affected employers on or after January 1, 1977, or

--worked for one or more affected employers for at least 1,000 hours from January 1, 1977, through March 27, 1978, and had a continuing employment relationship with an affected employer as of March 27, 1978, or, if laid off on or after May 31, 1977, had such a relationship as of the date of layoff.

In essence, employees under union agreements have two ways of becoming covered, whereas employees not under union agreements must have worked 1,000 hours from January 1, 1977, through March 27, 1978. Usually, employees would not have much difficulty working 1,000 hours; however, some employees were unable to work a full year in 1977 because their employers closed before the end of the year.

For example, at one nonunion mill some employees were unable to work a full year in 1977 because the mill closed in September 1977. Several of the mill's employees were later denied REPP benefits for failure to meet the 1,000-hour criteria. One of these employees had worked 17 years with the company but was unable to work 1,000 hours in 1977 between January and September because of illness. As a result of our investigation into this case, the employee was eventually declared eligible in accordance with section 201(17) of the act, because the hours the employee would have worked if it were not for the illness should have been included. When these hours were counted, the employee exceeded the 1,000-hour criteria. Had this been a union employer, the employee would not have had to work 1,000 hours in 1977 but instead could have qualified on the basis of seniority under a collective bargaining agreement coupled with some work, not necessarily totaling 1,000 hours, in the January 1, 1977, to March 27, 1978, period.

Employees of affected employers who do not have pension plans are also treated differently under the provisions of the law if they choose to retire early (between the ages of 62 to 65). Employees in this category are not eligible for the lump-sum severance payments, as are those who take early retirement from affected employers with pension plans.

The Secretary's consultant for REPP told us that the justification for the different treatment of the two groups provided for by the legislation is that many of the smaller employers could not afford a pension plan or, in some cases, health and welfare plans. Therefore, employees of these employers who are between the ages of 62 and 65 were not made eligible for lump-sum severance payments, while similar employees of employers with pension plans were made eligible for severance payments.

The legislation also compensates certain categories of workers more than seems warranted by the actual impact the park expansion had on their economic situations. This is especially true of some recipients of severance pay. We were

told by one employer that some employees, for example, had planned to take early retirement before passage of the act. But, with the passage of the act, these employees became eligible for lump-sum payments which were actually unexpected windfall benefits. One salaried salesman making $25,000 a year retired at the age of 62 from an affected woods employer and received a $27,135 lump-sum REPP severance payment. The employee later went to work as a lumber product salesman with another company in the area at a reportedly higher salary.

Other employees have also received windfall benefits. One affected contract employer, for instance, sold several of its trucking divisions after the enactment of the legislation. The employees ceased working for their old employer and began working for the new owner and employer. There was no break in their employment, but technically they were laid off by the former owner and hired by the new owner. Because they were laid off by the former owner, they qualified for REPP and received lump-sum REPP severance payments ranging from $1,900 to $31,400. We do not believe that the legislation intended employees in such instances to receive benefits.

CHAPTER 4

POOR MANAGEMENT HAS HINDERED PROGRAM IMPLEMENTATION

Labor has not closely managed REPP and has not provided effective guidance to EDD. Consequently some employees have not applied for REPP benefits, errors have been made in computing benefit entitlements, and delays have occurred in providing health, welfare, and pension benefits. To improve administration of the program, Labor needs to

--clarify lines of authority,

--provide timely guidance and direction,

--evaluate the adequacy of EDD controls and procedures,

--monitor EDD performance more closely, and

--implement health, welfare, and pension benefit provisions.

LINES OF AUTHORITY NEED CLARIFICATION

Program officials we contacted commented on the need to clarify the authority and responsibility of the various groups administering the program, especially at the local level. This clarification is especially needed because REPP involves many different groups. Labor's failure to clearly fix authority and responsibility for some program tasks at the local level has caused uncertainty among the groups administering the program about what are the proper channels of communication and who is responsible for assuring that various parts of the program are effectively implemented.

Participating groups

A major management problem in the program is that roles of each involved group have not been clearly defined, and authority and responsibility for program components have not been clearly delineated. Individuals are not sure who should make decisions when questions arise or new situations are encountered.

Two organizations within Labor, LMSA and ETA, have been given administrative responsibilities for REPP. In turn, two organizations within ETA, the U.S. Employment Service and the Unemployment Insurance Services, have been delegated various REPP administrative responsibilities because of their experience in administering traditional unemployment insurance programs. This experience includes making entitlement determinations, making monetary payments, and providing employability services.

Simultaneously, the Division of Employee Protections within LMSA's Office of Labor-Management Relations Services has been given overall responsibility for implementing REPP because of its experience with other special worker compensation programs. In addition to its headquarters staff, LMSA has temporarily assigned a field representative to Eureka, California, to facilitate the employer certification process and the implementation of health, welfare, and pension coverage.

ETA's San Francisco regional office is patterned after headquarters divisions and has been delegated local responsibility for working with EDD. ETA regional staff are charged with assisting and monitoring EDD's activities as they pertain to REPP employee determinations, benefit entitlements, and employment services. Questions raised by EDD are generally conveyed to the regional ETA representative by phone. Those that cannot be easily resolved or that have broad implications are forwarded to LMSA's Division of Employee Protections in Washington, D.C.

As specified in the act, a special REPP consultant to the Secretary of Labor has been appointed in Eureka, California. This consultant has no formal line of authority within LMSA, ETA, or EDD.

Labor has contracted with EDD to review and evaluate REPP applications and determine benefit entitlements. EDD has contracted with Humboldt State University and the College of the Redwoods to provide training under the act.

The Departments of the Interior, Agriculture, and Commerce also involved in administering the park expansion program. Interior and Agriculture are involved because the act requires that they give REPP beneficiaries priority in local National Park Service and U.S. Forest Service jobs that become available. Interior also is responsible for preparing an annual report to the Congress on park expansion.

The act directs Commerce, through the Economic Development Administration, to provide economic assistance to the area.

Problems encountered

The Secretary's consultant in Eureka told us that his role and function were not clear in relation to LMSA, ETA, and EDD. His job description calls for him to make recommendations on administering the act and resolving complex legal or interpretative questions. However, most of his time is spent assisting employees who believe that they have been unfairly treated by EDD or Labor. Problems have occurred when the consultant has intervened on an employee's behalf with EDD or when he has misinformed employees because procedural changes were made without his knowledge.

The consultant said that the program has been hampered by the number of people making decisions and that the agencies need to work together more closely. In an April 13, 1979, report by Labor's Redwood Review Committee, it was recommended that:

> "LMSA and ETA should clarify the roles and responsibilities between California EDD and LMSA, and their staff relationships at the local level. The role and responsibilities of the Union Liaison (Secretary's consultant) in Eureka, and his relationship to LMSA, EDD and ETA field staff also need clarification."

A June 1979 memorandum by an Interior Department official reviewing the implementation of the program further noted the need to clarify authority and responsibility in the program. The official stated that he had attempted to set up a meeting among all the parties involved to discuss problems in initiating a retraining program. The idea, however, was vetoed by Labor's regional ETA staff because they felt that too many people would be involved and that the meeting would not be productive. The meeting was not held and, as of September 1979, very little retraining had occurred.

The Interior official found a need for better channels of communication and clearer delineation of authority and responsibility for all the agencies involved. His memorandum stated:

"Although the officials from each agency with whom I spoke showed great enthusiasm for this program to revitalize the economy of Humboldt and Del Norte Counties, the program appears disorganized and lacks direction. There are three aspects to this problem.

"First, there is substantial miscommunication among all government agencies which has hurt the effectiveness of the program * * *.

"Second, there is some confusion about who is responsible for each part of the economic mitigation effort. Virtually every official with whom I spoke complained that there are so many people involved in this program that they don't know who to talk to when they either have a problem or a suggestion. Department of Labor and EDD * * * seem to be particularly affected by this problem.

"Third, the program lacks direction and coordination * * *."

Elsewhere in the memorandum, the official described program problems and pointed out the need for Labor and EDD to establish clear lines of authority and responsibility:

"In another instance, when the various DOL [Department of Labor] officials attempted to explain their reporting responsibilities during that same Monday meeting, the result was nightmarish. The basic conflict centers on the regional ETA officials and [the local LMSA official]. The regional ETA officials believe that they are not being fully involved with the Redwood program and that [the local LMSA official] does not keep them informed; and they don't understand why the program cannot be handled through the regular bureaucratic channels rather than having [the local LMSA official] present in Eureka. On the other hand, [the local LMSA official] who is a representative from the national LMSA office in Eureka is generally viewed as the focus of the DOL program but lacks the authority to direct any aspect of it. As a consequence, each of these officials believe that he or she cannot function fully effectively because of the actions of some other official."

In a June 1979 memorandum for the Chief of the Office of Program Services in Labor's Employment Service, an employment and training specialist pointed out that:

> "* * * there are many different activities assigned to many different departments and components. Part of this is necessary but there is also a strong impression that there are too many cooks stirring the pot and this has resulted in miscommunication, misinterpretation of roles and functions, and misinformation being forwarded or published on various facets of the program. Individuals attempt to answer questions outside of their areas of responsibility and expertise."

We believe that program implementation was hindered by problems in management organization. For example, some of the delay in providing health benefits (discussed on pp. 45 to 47) resulted from LMSA's difficulties in delegating responsibility for part of this program component to ETA. LMSA officials believed ETA should pay health insurance claims because of ETA's experience in managing unemployment insurance payment programs. ETA, however, did not want this responsibility because it believed that managing this type of benefit was vastly different from its traditional role in unemployment insurance programs. Consequently, LMSA and ETA spent several months trying to determine who would pay the health claims. During this period, LMSA also tried to get EDD to handle the health claims, but EDD refused. As of March 1980, ETA has agreed to pay the claims on an interim basis until LMSA can find some other way to provide health benefits.

GUIDANCE AND DIRECTION HAVE NOT BEEN TIMELY

Recognizing the urgent need to provide monetary assistance to workers affected by park expansion, Labor and EDD quickly prepared program guidelines and, in July 1978, began accepting applications for benefits. The first payments were made 2 months later in September 1978 when funds were made available.

Since the initial effort, Labor's guidance and direction, however, have not been timely. For example, even though Public Law 95-250 was passed in March 1978, Labor had not issued final program regulations as of March 1980. Without final regulations, Labor and EDD had to rely on occasional interpretations by Labor's solicitor and the initial REPP handbook, which was subject to change.

According to EDD officials, the delay in issuing regulations hampered negotiations for the training contract with the CETA prime sponsor. Negotiations were also delayed because Federal funds were not available until February 1979. The CETA prime sponsor in Humboldt County was reluctant to sign any agreement to provide training before formal regulations were issued because of possible changes in the program's content.

Labor has also been slow in providing information to covered employees on program benefits. The act requires Labor to provide covered employees with information on REPP benefits and employee rights and obligations in nontechnical terms. It was not until June 1979, 15 months after enactment, that Labor issued an informational brochure to EDD field offices.

The lack of program information, especially early in the program, apparently resulted in some employees not applying for REPP benefits. Based on layoff information provided by a woods employer for May 31, 1977, to April 18, 1978, we found that four of eight employees that should have been in our sample, based on our selection criteria, had not applied for REPP benefits. From the limited information available, it appeared that three of the four that did not apply would have qualified for some REPP benefits. A check of EDD unemployment insurance files on two of these employees indicated that the individuals applied for and had received unemployment insurance compensation funds after their layoffs.

EDD field staff told us that some employees may not have applied for REPP benefits at the beginning because of the lack of program information. The staff said that, during the first few months of the program, there was a lot of confusion over who was eligible and how employees should be made aware of the available benefits. Labor and EDD officials believe they had no obligation to search out qualified applicants.

In addition to being slow in issuing implementing regulations and informational brochures, Labor has not been timely in providing guidance and direction on specific issues.

For example, in February 1979, ETA regional staff and EDD staff visited Labor headquarters to discuss various issues raised by field office and payment unit staff, including the need to

--develop and issue informational brochures,

--document policy decisions,

--determine the effect of military duty and vacation time on a REPP recipient,

--determine what job search and relocation costs are reimbursable,

--determine if REPP applicants must file for unemployment insurance, and

--determine if training stipends to short-service employees are payable only during the period of protection.

We were told by Labor regional staff in August 1979 that, with the exception of the informational brochure, all of the other issues were still outstanding.

In response to our draft report, EDD stated that it had been provided only the legislation, the proposed regulations, and a REPP program handbook as guidance for program administration. EDD added that there are conflicts within the act, between the act and the program guidelines, and between the act, the program guidelines, and proposed regulations.

EDD pointed out that, although numerous issues and conflicts have been presented to Labor, except for written instructions relating to the conclusive presumption and backdating of claims prior to March 27, 1978, to date, most policy guidance has been verbal.

In response to our draft report, Labor concurred that its response time in providing guidance and direction to EDD has not been as timely as would be desired. Labor said it would take at least a month to develop new policy guidance in response to EDD questions.

EDD'S CONTROLS AND PROCEDURES NOT ADEQUATE

Labor has overall responsibility for REPP. Even though EDD is administering the program at the local level, Labor is responsible for insuring that EDD has adequate program controls and procedures.

Our review of EDD's performance showed a lack of controls and procedures needed to assure program integrity and compliance. EDD does not have procedures to

--verify information supplied by employers and employees,

--insure the adequacy of determinations and computations,

--adjust prior eligibility and benefits determinations affected by subsequent procedural changes, and

--track and verify employment information from REPP recipients.

Limited verification of employee and employer information

Employee eligibility and benefit determinations are made on the basis of information provided by the employee and his or her last affected employer. This information is obtained through employee interviews and the use of three forms--an employee Application for Determination of Entitlements, an employee Supplemental Application for Determination of Entitlement, and an employee Request for Wage and Separation Information. EDD rarely confirms information provided on these forms. Although EDD recognizes the need to confirm information provided by employees and employers, it has just recently begun to develop methods to do so.

We noted that the lack of verification has permitted errors to go undetected. For example, one affected mill employer failed to include vacation, sick, and holiday hours when reporting employee hours worked, as required. As a result, REPP recipients who worked for this employer may have received less than their correct entitlements. One employee was denied program eligibility because this information was excluded. Conversely, seasonal employees at all but one affected contract employer were receiving more than their correct entitlements because their vacation hours were included twice in determining their monetary benefit.

It appears that these problems between employers, the EDD payment unit, and the REPP coordinator at EDD resulted from differing understandings of how to determine benefit amounts. EDD officials were unaware of these problems because of the lack of verification.

Our review of files at EDD also disclosed instances where the information supplied by the employees did not agree with the information submitted by the employer. For example, we found cases where layoff dates differed--in one case by as much as 11 months. EDD generally does not contact the employees and employers in these cases, but uses other sources of information, such as EDD's own employment insurance records, to resolve the difference. In one instance EDD used the layoff date on its unemployment records, which was different than the dates shown by the employee or employer.

REPP eligibility determinations and benefit computations are not adequately reviewed

We reviewed a random sample of 185 REPP applicant files from the start of the program through May 1979. Four of these files included incorrect eligibility determinations--three files showed that employees who did not meet all the criteria were determined eligible, and one file showed that an employee who met all the criteria was determined to be ineligible.

From our sample we selected 25 files to evaluate the accuracy of the length of service and monetary benefit calculations. In evaluating these 25 files, we found six errors in calculations that resulted in excessive or insufficient periods of entitlement. There were also two with incorrect monetary benefit determinations in which the employees were entitled to additional benefits. The errors in all these cases appeared to be the result of carelessness, and EDD indicated they would take steps to correct them.

As required by the act, EDD adjusts REPP benefits for other earnings, such as unemployment insurance. The agency also calculates and reduces benefits by the amount of Federal income taxes and social security taxes corresponding to the given income level. REPP entitlements are also supposed to be reduced by an estimate of the worker's previous withholdings for State income taxes. However, in response to our draft report, EDD informed us that this was not being done and that the California legislature had recently rejected taxation of unemployment insurance benefits. EDD stated that Labor had informed it that a change will be made to deduct State taxes. However, as of March 27, 1980, EDD had not received any formal notice of this change. As with the other calculations, EDD supervisory staff do not routinely check to insure their accuracy.

Errors in benefit determinations and computations have resulted in overpayments to some employees. Even though routine checks are not made, as of June 1979, EDD had found 40 recipients who had received a total of $50,782 in overpayments ranging from $15 to $7,865. All but 10 of these overpayments representing $18,552 have been resolved either by reductions in subsequent payments, by being canceled by administrative law judges, or by cash repayments.

EDD officials stated that some of the 10 outstanding overpayments would be collected and that others, especially those where EDD was in error and the amounts are relatively small, may be waived if the final regulations permit it.

As of March 1980, Labor had not decided on whether or not overpayments could be waived when they resulted from administrative errors.

No procedure to adjust prior eligibility and benefit determinations affected by subsequent procedural changes

EDD has not developed procedures to adjust prior eligibility and benefit determinations that might be affected by subsequent procedural changes. As a result, employees may be receiving an amount different than that to which they are entitled.

For example, in June 1979, Labor reversed the designation of one mill employer from not affected to affected. Many of the 85 laid-off employees of this company may have decided not to apply for REPP benefits since their employer had been initially classified as not affected. There may also be other REPP applicants who had worked for this employer and who, under Labor's original ruling, could not use employment history with that employer in establishing length of service. EDD has no system or procedure to identify and notify former employees of procedural changes or of their possible change in benefit eligibility.

Also, as discussed earlier, we found that two employers provided incorrect information on employee hours. EDD has no system or procedure to correct these errors.

EDD officials told us that they were unable to adjust eligibility and benefit determinations because the program's files were not automated and there was insufficient staff to manually research the files every time a change occurred.

EDD and Labor officials told us that they underestimated the volume of applicants and the difficulty of operating the REPP program and, therefore, did not recognize the need to automate program information.

No method to track and verify employment information submitted by REPP recipients

Once individuals become eligible for REPP benefits, EDD needs to obtain current employment information on a continuing basis so proper benefit adjustments can be made. Yet, EDD's procedures for monitoring REPP recipient activities are limited and are not completely reliable.

Individuals who receive lump-sum severance payments, except for short-service employees, must repay them if they return to work in the industry within Humboldt, Del Norte, or adjacent counties. Weekly layoff benefit amounts must also be adjusted for any income earned during the period.

Until June 1979, EDD's only contact with REPP recipients who were receiving weekly layoff benefits was the "Weekly Request for Benefit" form that recipients are required to mail every 2 weeks to the local EDD field office. This form asks recipients to provide current information on their employment and earnings. Since June 1979, local EDD offices have also been scheduling, on a 6-week cycle, office interviews with REPP recipients to review and evaluate their attempts to secure employment. The forms and the interviews reportedly have had some effect on tracking individual employment activities; however, EDD has no assurance that the information provided is complete and correct.

For example, EDD, by chance, identified an individual who understated his earnings information on his Weekly Request for Benefit form for over 3 months. If an EDD official had not known about a June 1979 across-the-board wage increase at the individual's place of employment, this erroneous information may not have been detected.

EDD has since requested that affected employers report changes in earnings of persons covered by REPP. This procedure will help verify employee earnings at affected employers. EDD still has no system of assuring the accuracy of information provided by individuals working for nonaffected employers or working out of State.

Individuals receiving REPP benefits who live out of State submit their Weekly Request for Benefits forms directly to the EDD payment unit in Sacramento, California. But information provided on these forms is neither verified nor analyzed to determine if the individual is still eligible for REPP benefits.

For example, one person in our sample took a job in Louisiana after he was laid off from one of the affected woods employers. The individual's file indicated he quit this job and took and quit three other jobs during the period March to November 1978. At one point, the individual was unemployed for 4 months, but the EDD payment unit received no indication that he was looking for suitable work or that he was registered for employment and training services as required by REPP. The REPP coordinator at EDD said that REPP benefits probably should not have been paid during this period, but EDD had no mechanism to adequately followup or track out-of-State recipients. As of October 4, 1979, EDD had identified about 150 out-of-State REPP recipients.

As mentioned earlier, EDD also needs to track regular, seasonal, and retired persons who have received lump-sum severance payments. These individuals are required to repay the severance payments if they return to work in the timber-harvesting or related sawmill, plywood, and other wood processing operations in Humboldt, Del Norte, or adjacent counties.

EDD officials believe many of the individuals in this category are still living in the affected area, but EDD has no system to detect REPP recipients in the area who return to timber harvesting or related work.

The consequences of the lack of a followup or tracking system on program costs could be substantial since about 230 regular, seasonal, and retired employees have received lump-sum severance payments ranging from $1,100 to $65,400. EDD was not able to provide us with the total severance payment costs for regular, seasonal, and retired employees because EDD cannot separate out the severance payments made to short-service employees who would not be required to repay them.

In response to our draft report, EDD stated that it agrees that supervisory reviews and management evaluations are necessary. EDD said, however, that large amounts of staff time had been devoted to fighting brush fires and

resolving policy issues and conflicts between the act and program guidelines. Despite these problems, EDD stated it has initiated a number of program improvements, including

--sending letters to affected employers to discourage fraudulent activities,

--installing a system to provide the FBI with information about potential fraud,

--establishing an auditor position specifically for verification of REPP claimant and employer wage information,

--completing preliminary planning for an automated management information and fraud detection system,

--planning a system to detect persons who received severance payments and returned to work for affected employers prior to September 30, 1980, and

--installing a program of conducting periodic eligibility reviews for REPP beneficiaries in continued claim status.

EDD'S PERFORMANCE SHOULD BE MORE CLOSELY MONITORED

Labor has been unaware of EDD's management deficiencies because Labor has not adequately monitored EDD activities. Labor's regional office staff made some cursory checks of REPP files, but has not made a comprehensive review of EDD procedures and controls. Labor has been primarily involved with the highly visible problems, such as the temporary and out-of-order layoffs discusssed in chapters 2 and 3.

The responsibility for monitoring EDD performance rests mainly with the ETA regional staff in San Francisco. According to the ETA regional REPP coordinator, she would like to make quarterly visits to assess EDD's performance but has been unable to do so because of other program responsibilities. The REPP coordinator said that she has had frequent discussions by phone with EDD officials and believed the program was running smoothly.

In August 1979, 16 months after the program began, ETA's national and regional staff conducted a routine 2-week program review. This review highlighted problems previously unknown

to the ETA staff. This review, however, did not identify several problems in administering the program. For example, even after the program review, regional staff were still not aware of such problems as the inclusion of vacation hours twice in some seasonal workers computation of benefits, the lack of supervisory reviews, and the lack of an effective tracking system for out-of-State recipients.

In response to our draft report, Labor stated that ETA's 2-week program review was initially scheduled for September 1978 but subsequently rescheduled four times because of such reasons as fears of disrupting the newly established payment operations and because of the FBI and GAO investigations. Labor stated that its regional office staff made reviews and visits to EDD on specific problems and transmitted to Labor the need for specific corrective action.

DELAYS IN PROVIDING FRINGE BENEFITS

Labor failed to provide health and pension benefits in a timely manner. This delay is partly due to management problems and partly to complexities resulting from the broad scope of the benefits. Labor's failure to provide these benefits resulted in some laid-off employees incurring their own medical expenses and losing pension credits even though the legislation intended that the Federal Government take care of these expenses during the employees' protection period.

The act states in section 204(a)(2) that the Secretary of Labor shall provide affected employees with

> " * * * continuing entitlement to health and welfare benefits and accrual of pension rights and credits based upon length of employment and/or amounts of earnings to the same extent as and at no greater cost to said employees than would have been applicable had they been actively employed." 1/ and 2/

1/Exceptions to this are that short-service employees are not entitled to health, welfare, or pension coverage and retired employees are not entitled to pension coverage.

2/Labor officials told us that, in REPP, welfare benefits are part of health benefit coverage.

According to Labor officials, they had never before been faced with the need to provide health, welfare, and pension coverage to employment program recipients. This inexperience, coupled with the complexities involved in setting up such systems, contributed to the delay in providing these benefits in a timely manner.

Health coverage

Labor officials told us that they seriously began thinking about the problem of how to pay health benefit claims in July 1978 after they had established monetary payments procedures. In November 1978, LMSA mailed affected employers a draft of an agreement which Labor proposed to use in the early part of the program to provide a continuation of health coverage for laid-off workers.

Labor wanted to merely take over payment of the employer's contribution to the employee's health insurance premium so that the REPP beneficiary would continue to be covered as if still employed.

A cover letter mailed with the proposed agreement asked the employer to review it and determine whether or not the company would enter into such an agreement. Later, LMSA's official in Eureka sent a followup letter to answer several questions raised by the earlier letter and also to explain that Labor planned to implement health coverage in several steps.

The first step was to pay the employer's contribution to the employee's health insurance premium. Then, as soon as possible, Labor planned to bring all the affected employees under a single plan administered by a health insurance company. But this plan for providing health insurance coverage was never implemented.

Most affected employers had some health plan; however, LMSA officials said that most employers would not agree to continuing health insurance coverage for laid-off employees with Labor merely paying the employer's part of the insurance premiums.

One exception was that one firm continued to make premium payments for laid-off affected employees from its health insurance trust fund. LMSA notified the firm that Labor would reimburse it for making these premium payments for affected employees. However, in November 1979, Labor discontinued

reimbursing the trust fund because per capita payments to the trust fund were much greater than health benefit costs for other REPP beneficiaries. As of July 31, 1979, Labor had reimbursed the trust fund for about $256,000 for premiums since May 1978.

Since most of the other employers with health plans declined to continue health insurance coverage for laid-off employees, LMSA either had to find an insurance company that would agree to provide required health insurance coverage or had to set up an in-house health insurance program.

Because of the varying coverage of the various employer programs, Labor entered into an interim arrangement in July 1979 with an insurance company in which the company would examine health benefit claims in accordance with the health insurance coverage the worker had before he or she was laid off.

A Labor official told us that the insurance company was familiar with most of the health insurance programs held by affected employers because of the company's long association with the lumber industry in northern California. Because of this experience, the company could assure that recipients retained the same health insurance coverage they had while employed. Under the interim arrangement, Labor pays the insurance company $6 per claim for its services. The insurance company examines recipients' claims to determine if the services were covered under the workers' previous health insurance and if the charge is reasonable. The claims are then sent to LMSA for payment.

In June 1979, Labor attempted to obtain competitive bids for a contract to examine health claims on a permanent basis. But, no bids were received and, consequently, Labor decided to continue its arrangement with the existing insurance company. The arrangement does not include provisions for the insurance company to prepare and issue checks.

As of March 1980, Labor had not established a permanent system to prepare and issue checks. In September 1979, ETA headquarters agreed to prepare and issue checks to clear up an accumulated backlog of bills. ETA mailed checks totaling $49,362 to clear up the backlog. Many of these bills were for medical service rendered in 1977 and 1978. No further arrangements had been made to process and pay health claims being forwarded by the health insurance company.

In February 1980, LMSA officials told us that they plan to have ETA continue preparing and issuing checks to beneficiaries to cover health insurance claims. ETA officials said that they consider this arrangement temporary, but do not know when a different procedure will be implemented. We were told that, as of the end of February 1980, 1,175 claims had been approved for payments totaling about $197,000 and, of this amount, about $180,000 had been paid out.

The delay in paying health claims caused problems. One hospital began legal action in August 1979 to sue a REPP beneficiary for not paying a $1,027 hospital bill due since February 1978. The beneficiary later contacted Labor, and as a result, Labor made special arrangements to issue a check in the required amount. The check was mailed to the hospital on August 23, 1979, or about 18 months past the date payment was due. We were told that other beneficiaries had equally long overdue bills but that the local credit bureau in Eureka, California, had agreed to telephone LMSA headquarters staff before more lawsuits for nonpayment were started against REPP beneficiaries.

Pension coverage

Labor had made no pension benefit payments to or on behalf of REPP beneficiaries as of March 1980--2 years after passage of the act. As was the case in providing health insurance benefits, the affected employers would not agree to Labor merely continuing the beneficiaries' previous coverage under the pension program the worker had while employed. Consequently, Labor contracted with the same insurance company it was using in its health programs to review the pension coverage the beneficiary had while employed and inform Labor of the benefit due. Labor officials told us that REPP will purchase an annuity for covered REPP beneficiaries that will make up any loss in future pension benefits caused by the workers' layoff. They said that Labor plans to issue pension checks to currently retired REPP beneficiaries that will compensate the worker for any loss in pension due to his layoff.

Labor contracted with a consulting firm to analyze the provisions of the various employer pension plans. The consultant report, dated June 29, 1979, stated that, of the 26 affected employers that the firm looked at, 8 had laid off or expected to lay off employees with pension plan coverage. The report noted that, as of January 1979, the eight affected employers had laid off 707 employees, and that these companies

estimated an additional 616 employees would be laid off before October 1, 1980, totaling 1,323 affected employees. As of August 7, 1979, Labor had obtained information showing that at least 17 of the 38 employers then certified as affected had some type of pension plan.

A union representative said that some older employees laid off in 1977 are approaching the age when pension benefits can be drawn. Because contributions to pension programs have not been made, the pension benefits of these employees may be reduced if Labor does not make it up.

In response to our draft report, Labor stated it has implemented the health, welfare, and pension coverage systems and indicated that all employees will be made whole, retroactively, for their health and pension entitlements under section 204 of the act.

CHAPTER 5

PROGRAMS TO IMPROVE EMPLOYABILITY HAVE BEEN INEFFECTIVE

In addition to monetary and fringe benefits, the act also provides for (1) retraining benefits, including job search and relocation allowances, (2) job creation, and (3) preferential and full consideration hiring guarantees to assist laid-off employees to find suitable work. These provisions have been ineffective, however, because their implementation was delayed and not well coordinated.

RETRAINING BENEFITS DELAYED

The ability of affected workers to obtain alternative employment opportunities has been weakened because training provisions of the act were not implemented in a timely manner. The act provides in section 210(a) that:

> "An affected employee is eligible to apply for and the Secretary shall authorize training (including training for technical and professional occupations) at Government expense during said employee's period of protection if--
>
> (1) the Secretary determines that there is no suitable employment available for the employee within a reasonable commuting area; and
>
> (2) there is substantial reason to believe that the employee's employment prospects would be enhanced after successful completion of the training for which application has been filed,"

Formal REPP training did not start until June 1979 or 14 months after passage of the act. The primary reason for the delay was Labor's failure to set out procedures for REPP beneficiaries to receive training and to provide funding in a timely manner. Labor did not give training benefits the same priority it gave monetary benefits. When EDD began accepting claims for REPP benefits in July 1978, it had no procedures or available funds for processing requests for retraining benefits. It was not until April 1979, about 9 months after EDD began accepting the first REPP applications, that training guidelines, procedures, and funding were available.

It would have been impossible to start the training program in the absence of procedures or funding unless the State was willing to implement this program on its own. The prime sponsor responsible for providing training services was unwilling to activate the training program until Labor published regulations delineating the type of training and services to be provided. Proposed regulations were published on June 12, 1979, and the CETA prime sponsor for Humboldt County signed a training agreement with EDD on June 22, 1979.

A CETA official told us that, as of September 12, 1979, 40 affected employees had been enrolled in various programs at Humboldt State University and at the College of the Redwoods for the 1979 fall session.

Impact of delays

Although the training program was delayed, we were unable to determine the extent of any adverse impact because of the lack of records and documentation showing the number of employees who wanted training.

According to the consultant to the Secretary of Labor, at the beginning of REPP, affected employees expressed significant interest in training in such areas as maintenance, carpentry, air-conditioning, construction, and mechanics. But interest waned because of the lack of procedures and funding. We talked with several employees who were laid off in 1977. These employees said that they had wanted to be retrained in order to find employment outside of the timber industry but were unable, because of the absence of a training program.

Elapsed period of protection

Some affected employees did not get training benefits because their period of protection either had expired before the start of training or would have expired before the completion of such training. REPP's proposed regulations state that EDD will approve training provided:

> "The affected employee makes application and can complete the training during the employee's period of protection. However, a short-service employee must make application during the period which begins on the date of his/her total layoff and extends for that period of time which is equal to the length of his/her creditable

service. In no instance shall authorized training for any employee extend beyond September 30, 1984."

We noted one case where an applicant established a protection period under REPP that extended from January 29, 1978, to October 18, 1979. In the summer of 1978, the applicant discussed with EDD the possibility of obtaining training benefits. He was told that, although the act provides for such benefits, none were available at the time.

The applicant discussed the matter with EDD on May 21, 1979, and on several subsequent occasions. Even though EDD believed the applicant should receive training to enable him to qualify for a job, he was denied training because by that time it could not be completed before the expiration of his protection period.

The applicant appealed this decision to the California Unemployment Insurance Appeals Board, and the board ruled in favor of the applicant. In its ruling, the board, in effect, said that the applicant should be held harmless because training was unavailable when the applicant became eligible.

During a discussion with a supervisor in EDD's Eureka field office, we were told that the appeals procedure is the only option available to applicants who have been denied retraining benefits under similar circumstances. But the appeals process is time consuming. The supervisor believed that his office should be given administrative authority to resolve these situations.

Some affected employees avoided work while waiting for training

Training program delays have caused some laid-off affected employees to remain idle until the training program was developed and implemented. One affected employee we interviewed stated that he desired training so he could get into building maintenance work. The employee, who was laid off December 31, 1977, did not state when he first applied for training. However, around April 1979, the employee contacted EDD in this regard and was later notified that he could start training in September 1979. This employee said that he did not seek employment because he was aware of the fact that, if he was employed, he would have been ineligible for training if he quit his job.

In response to our draft report, Labor said it has promulgated new policy guidance greatly liberalizing the eligibility requirements for training and permitting all claimants to start a new period of protection for training purposes only beginning with the availability of training in June 1979. As part of the revised policy guidance, Labor said individuals who accepted new employment will not be denied the opportunity to enroll in training because of the subsequent employment.

Questionable program benefits

Several benefits provided under REPP training provisions are more liberal than those provided under other special assistance programs, such as the Trade Act of 1974, which primarily emphasizes on-the-job training. REPP specifies that an affected employee is eligible to receive training for a technical or professional occupation if suitable employment is unavailable and if the employee's employment prospects would be enhanced after successful completion of the training.

The act does not identify the occupations for which technical or professional training will be given or place a limit on the total amount of payments that will be provided for training. Labor has not defined what constitutes enhancement of employment prospects. According to EDD's State Employment Services coordinator, as long as the above two conditions are met, the specific type of training actually provided to affected workers is unlimited.

The following case illustrates how the liberal training benefits can increase overall REPP costs. A regular employee entitled to weekly layoff benefits of $375 per week received approval to obtain 205 weeks of training to complete requirements for an undergraduate degree in accounting and to obtain a masters degree in business administration. The affected employee's total period of entitlement is about 353 weeks.

In another instance, we noted that REPP moving expense provisions contained in section 212(b) of the act are required to be administered in accordance with requirements contained in section 505(g) of the Regional Rail Reorganization Act of 1973. Moving expense benefits are provided by this act for

--expenses incurred in moving household and personal effects,

--expenses incurred in returning to the location from which originally moved,

--reimbursing an employee for any loss suffered in the sale of a house for less than fair market value, and

--costs of canceling a lease.

In one case, however, REPP has gone further than the law specifically provides, by reimbursing an affected employee for up to 3 months of the employee's residence mortgage costs while the residence was on the market for sale. We question the appropriateness of providing such benefits because of the potential cost involved and because the enabling legislation does not indicate that mortgage payments are intended to be covered under the act. The State Employment Service coordinator said he believed Labor is trying to encourage people to keep their homes on the market long enough so that they will sell at or near fair market value to absolve Labor from having to reimburse employees for homes that sell below their fair market value. The coordinator stated that Labor's practice of reimbursing employees for their mortgage payments, however, is a "ripoff" because there is no reason to believe that employees will get any more for their homes at the end of this period than they would get otherwise.

FEW JOBS CREATED BY FEDERAL EFFORTS

The objective of enhancing job opportunities for affected employees by giving them preference in hiring or by encouraging economic development of the area is not being met. The act directs certain Federal agencies to use their programs and existing authority to assist in mitigating the adverse employment and economic effects of park expansion. These agencies, along with other identified employers, were required to provide for the preferential hiring of affected employees to fill employment vacancies.

Section 103(a) of the act requires the Interior Department to use the skills of affected laid-off workers to assist in rehabilitating, protecting, and improving lands acquired by the act. In this regard, the act authorizes the Secretary of the Interior to hire 7 permanent and 31 temporary employees. Section 103(b) authorizes the Secretary of the Interior to hire 2 permanent and 20 temporary employees to administer the expanded Redwood National Park. The act directed Interior to give preference to affected employees in filling these 22 positions.

Section 102(b) of the act also directs the Secretaries of Commerce and Labor to use their existing authority to

establish employment programs with Federal, State, county, and private employers pursuant to the recommendations of an economic impact report that was prepared in accordance with section 102(a). In addition, section 102(c) provides that the Secretary of Agriculture shall prepare and transmit to the Congress a study of timber harvest scheduling alternatives for the nearby Six Rivers National Forest.

The Forest Service has completed its study of timber harvesting alternatives for Six Rivers National Forest and has presented it to the Congress for action. For various reasons, however, including environmental concerns of increasing harvest outputs, none of the alternatives could help mitigate the short-term adverse economic effect arising because of park expansion.

The Economic Development Administration, an agency in the Department of Commerce, had provided about $5.5 million in grant funds to the area affected by park expansion as of September 1979. Two projects were under construction, an air freight facility and an airport terminal building. A third proposed project, a study of the feasibility of processing hardwood, was essentially complete. Projects that were approved but not yet funded included a boat construction and repair yard. Timberland and business development loan funds totaling $935,000 were also provided under the grant, but as of July 1979, no loans had been made. The Economic Development Administration expects that these initial funds will create about 120 new jobs in the affected area.

In response to our draft report, an official of the Economic Development Administration told us that, as of March 1980, the agency had committed a total of $13.5 million in assistance to the area affected by park expansion.

Lack of interest in employment

National Park Service officials believe that the disincentive to work caused by REPP benefits contributed to problems in hiring and retraining affected workers. According to the officials, five of the six affected employees they first hired under the act requested that they be terminated. The jobs that these employees were hired to fill were seasonal positions for laborers that paid $5.98 an hour.

National Park Service officials told us that most problems they have encountered in hiring and retraining affected employees stem from the following two reasons: (1) REPP

weekly layoff benefits are reduced by the full amount of National Park Service earnings and (2) employees are often required to do more difficult work than they normally performed. Another contributing factor is that it is difficult to locate jobs for affected employees because average wages in the lumber industry are greater than average wages for most of the other industries in the area. National Park Service officials told us that 11 affected employees had obtained jobs as a result of the various Federal job creation efforts.

National Park Service officials said that, although they have not directly hired many affected employees, they have made a practice of including a standard clause in contracts with vendors that requires vendors to give maximum consideration to hiring affected employees. Many vendors that the National Park Service contracts with are small family-type operations that do not have the same opportunity to hire affected employees as would a large contractor. The officials noted that one vendor they contracted with hired 20 new employees and attempted to hire some of them through EDD. For unknown reasons, however, no affected workers were hired by the contractor.

NO ASSURANCE THAT EMPLOYERS ARE GIVING PREFERENCE TO AFFECTED EMPLOYEES

Although a few affected employees have been given preference for jobs, Labor should do more to ensure that job preference provisions are effectively implemented. The act not only requires selected Federal, State, county, and private employers to give preference to affected employees seeking employment in the area, but also makes Labor responsible for assuring that affected employees are given this preference.

Labor is required to seek the cooperation of California and local governments within Humboldt and Del Norte Counties in carrying out this responsibility.

As of September 1, 1979, little had been done to ensure that job preference was given to affected workers. Reasons for this situation are that Labor had not identified the agencies and employers subject to these provisions and had not developed procedures to enforce the provisions. In addition, we noted that some employers were reluctant to give REPP workers preference in hiring because they were concerned about how this preferential hiring would affect their affirmative action programs.

A Forest Service official, for example, told us that he did not know what job preference hiring actually means, but that his agency would continue to give first preference to veterans in filling job vacancies. A private employer we contacted said that some type of "hold harmless clause" will be needed to protect his company from any problems the preferential hiring requirement may create relative to the company's Equal Employment Opportunity and affirmative action programs.

In response to our draft report, Labor stated it has developed and will transmit shortly instructional procedures designed to inform employers of the provisions of REPP. Labor stated these procedures will assure affected employees full consideration for specific job opportunities with employers who are required by law or who volunteer to give such consideration. Labor added that these new procedures do not supersede any provisions under existing laws, regulations, or contracts in effect on March 27, 1978, nor do they create any additional or alternative rights with respect to veterans preference, equal employment opportunity, or affirmative action considerations.

CHAPTER 6

CONCLUSIONS AND RECOMMENDATIONS

CONCLUSIONS

REPP provides extremely generous benefits to laid-off redwood workers; yet, some benefits have not been fully provided.

Employees whose layoffs were not related to park expansion have qualified for REPP benefits because of a provision in the law which presumes that layoffs within a specified period of time are related to park expansion. Also, Labor has not restricted the certification of affected employers to only those portions of a company engaged in or related to operations in the park expansion area.

REPP's attractive benefits reduce incentives to work and have caused some senior workers to seek layoffs in preference to continued employment. In addition, because REPP's legislative requirements are so complex, the program is difficult to administer and sometimes treats employees in similar situations differently.

Certain legislative restrictions prevent some adversely affected employees from obtaining program benefits. Unless the Congress amends the REPP act, program eligibility will continue to be based on factors not related to park expansion and will unnecessarily increase program enrollment and cost even while some adversely affected employees will continue to be treated inconsistently and possibly denied benefits. Changes to the REPP act would also help to eliminate some of the administrative problems in delivering benefits.

Labor has not managed the program well. It needs to clarify lines of authority and responsibility and needs to provide timely guidance to EDD. Labor also needs to more adequately monitor and evaluate EDD controls and procedures. Also, Labor has been very slow in developing procedures necessary to implement fringe benefit and retraining entitlements for the eligible employees.

RECOMMENDATIONS TO THE CONGRESS

We recommend that the Congress amend the REPP act to:

--Delete the conclusive presumption provision in section 203 of the law and require the Secretary

of Labor to certify that layoffs are related to a decrease in operations caused by park expansion before REPP eligibility can be established.

--Require Labor to identify REPP recipients whose eligibility has been established for reasons other than park expansion and terminate their eligibility for future benefits.

--Eliminate differences in eligibility requirements between union and nonunion employees.

We also suggest that the Congress consider legislative action to minimize disincentives to employment and help eliminate some of the administrative problems associated with the delivery of benefits to affected workers. Some options would be to:

--Require that workers exhaust unemployment benefits before receiving cash payments under the Redwood Employee Protection Program.

--Provide that monetary benefits be continued at an amount not more than available under unemployment insurance, rather than replacing the full amount of workers average weekly net wage.

RECOMMENDATIONS TO THE SECRETARY OF LABOR

We recommend that the Secretary:

--Develop criteria to restrict certification of affected employers to operations directly affected by park expansion.

--Clarify the authority and responsibility of the various labor groups involved with administering REPP.

--Provide guidance and direction to EDD on eligibility and benefit determination matters more promptly.

--Evaluate EDD controls and procedures and take necessary action to insure that information supplied by employees and employers is routinely verified and that eligibility and benefit determinations and entitlement calculations are periodically checked.

--Require that EDD adjust eligibility and benefit determinations affected by subsequent procedural changes and insure that benefit overpayments are collected.

--Accelerate the implementation of health, welfare, and pension coverage.

--Define the level of technical and professional training that is reasonable and necessary to enhance an affected employee's prospects for obtaining suitable employment.

AGENCIES' COMMENTS AND OUR EVALUATION

Labor did not comment on the merits of our recommendations to the Congress for amending the act but, Labor generally agreed with our recommendations to the Secretary and said it has already begun implementing most of them. (See app. III.) EDD characterized the report as thorough and generally agreed with the findings. However, EDD believed tying program benefits more closely to the regular unemployment insurance program appeared to exceed the needs to accomplish constructive reforms and suggested alternative solutions. (See app. IV.)

Labor said it has taken steps to restrict the opportunity for contract and mill employees to become eligible for program benefits and has completed arrangements to handle health benefit and pension continuation. Labor also indicated that efforts have been made to keep in closer contact with all REPP program components and that plans were being developed for a meeting with all REPP program components to discuss unresolved issues and problems. Labor stated that new procedures to provide for routine spot checks of information supplied by claimants were being implemented. Labor also stated that in October 1979, it submitted to EDD specific procedural guidelines which define the retraining eligibility criteria and instructions which differentiate the levels of training approval commensurate to an individual's employability development plan.

Labor does not believe there is any opportunity for developing restrictive criteria to apply to the affected woods employers, nor does Labor believe such an effort would be compatible with the express language of the act.

While we understand Labor's interpretation of the statute given the act's language, we disagree with Labor on whether the legislation could be more narrowly interpreted. We believe the legislation permits Labor to administratively restrict certification of an affected woods employer to those operations directly affected by park expansion just as it does for contract and mill employers. We believe a more restrictive approach would help insure that program benefits go only to persons laid off by park expansion.

Concerning the need to clarify the authority and responsibility of the various Labor groups involved with administering REPP, Labor said it did not concur that any formalized clarification effort was necessary or appropriate. Labor recognized that joint administration by several groups can lead to a situation of competing and conflicting points of view concerning policy questions and problems. However, Labor stated that differences of opinion do not diffuse authority and responsibility. Labor noted that program authority within the Department of Labor was clearly fixed by Secretary's Order 6-78, entitled "Delegation of Authority and Assignment of Responsibility for the Redwood National Park Expansion Legislation," and the responsibility of EDD was set forth in the State agreement between the Secretary of Labor and the California Employment Development Department. In addition, a handbook of procedures was prepared and disseminated to all program components.

We disagree with Labor's position that further clarification of authority and responsibility is not needed. Although there are documents formalizing the delegation of authority and assignment of responsibilitiy for administering REPP, our review showed that program implementation has been hindered by confusion over the roles and functions of the Labor staff at the local level and that clarification was needed to correct these problems. This condition was confirmed by EDD in its response to our draft report. EDD stated that the responsibility of the local LMSA representative in responding to policy questions was not clear and that LMSA national office representatives frequently telephone the EDD field office directly, bypassing established lines of communication when questions arise.

Labor said it concurred in part with our recommendation that EDD adjust eligibility and benefits affected by subsequent procedural changes and insure that benefit overpayments are collected. Labor stated that most procedural changes have not required EDD to adjust basic eligibility changes

retroactively. Labor added that policy changes resulting in procedural changes having retroactive impact have included a requirement that appropriate cases be reviewed and properly adjusted. Labor said that chapter VI of the REPP Handbook provides for the prevention, detection, establishment, and recovery of overpayments.

EDD said recipients should be treated equitably; however, it believes there should be some finality in the decision-making process. EDD believes there should be a limit to the number and degree of changes that can be made on prior decisions. EDD also indicated that there is a conflict in the guidelines on waiving prior overpayments.

We disagree with Labor that most program changes have not had the impact of requiring EDD to adjust basic eligibility changes retroactively. Labor has reversed the certification of an employer from not affected to affected which changed the eligibility status of many employees.

We recognize that it would be unreasonable and impractical to require EDD to retroactively adjust or recoup payments as a result of any future modifications to scale down the program. We agree with EDD that such adjustments should become effective on some specified future date. We believe that adjustments should become effective as soon as possible after regulatory or legislative changes.

COMPARISON OF PROTECTION PROGRAMS (note a)

Protection program	Monetary benefits (note b)	Duration	Health, welfare, and pension payments	Training	Job search allowance	Relocation allowance
Regional Rail Reorganization Act of 1973 Public Law 93-236 January 2, 1974	Monthly allowance based on previous 12-month gross average with $2,500 monthly maximum or a lump-sum separation allowance not to exceed $20,000. The law also provides termination allowance for employees with less than 3 years service.	Monthly allowance until age 65 for employees with 5 or more years shall continue for a period equal to the prior years of service. All other benefits cease with taking of lump-sum severance payment.	Yes	No	No	Yes
Trade Act of 1974 Public Law 93-618 January 3, 1975	Weekly allowance equal to 70 percent of average gross weekly wage previously earned.	Weekly allowance for 52 weeks except workers who reach age 60 when affected or workers in an approved training program are eligible for 26 additional weeks (78-week maximum).	No	Yes	Yes 80 percent of allowable cost with $500 maximum	Yes 80 percent of reasonable cost and lump-sum equivalent to three times weekly average with $500 maximum
Redwood Employee Protection Program Public Law 95-250 March 27, 1978	Weekly benefit equivalent to 100 percent of previous earnings with no dollar maximum, or lump-sum equivalent to weekly benefit times length of creditable service not to exceed 72 weeks (no dollar maximum).	Weekly for up to 11 years if affected employee reaches age 60 on or before September 30, 1984. Lump sum terminates benefits for certain employee categories but not for all employees.	Yes During protection period	Yes	Yes 80 percent of allowable cost with $500 maximum	Yes Reasonable expenses
Airline Deregulation Act of 1978 Public Law 95-504 October 24, 1978	Secretary of Labor to determine monthly amounts for each class and craft through regulation. Proposed regulations indicate monthly assistance equivalent of 70 percent of average monthly wage with a $1,200 maximum.	Monthly until recipient obtains employment, but no longer than 6 years.	No	No	No	Yes Reasonable cost

a/In addition to these recent special worker compensation programs, there are three other Federal programs that provide compensation to unemployed workers. These are: (1) Unemployment insurance established in 1935 as part of the Federal-State employment security program, (2) Unemployment compensation programs for Federal civilian employees and veterans, and (3) Disaster Unemployment assistance for individuals whose employment is terminated because of a natural disaster.

b/Monetary benefits are generally reduced by the full amount of unemployment compensation and a percentage of any earnings during the period benefits are paid. Redwood and Rail act payments are reduced by estimated Federal-State income taxes. Redwood benefits are further reduced by applicable Social Security taxes, and Rail benefits are reduced by contributions to the Railroad Retirement fund.

APPENDIX I

RELATED GAO REPORTS

Worker Compensation Programs

Assistance to Nonrubber Shoe Firms	CED-77-51	Mar. 4, 1977
Certifying Workers for Adjustment Assistance--The First Year Under the Trade Act	ID-77-28	May 31, 1977
Letter Report to Representative Charles A. Vanik on the Need To Improve Coordination of Trade Adjustment Assistance Program for Workers, Firms, and Communities	ID-78-5	Dec. 6, 1977
Worker Adjustment Assistance Under the Trade Act of 1974--Problems in Assisting Auto Workers	HRD-77-152	Jan. 11, 1978
Adjustment Assistance Under the Trade Act of 1974 to Pennsylvania Apparel Workers Often Has Been Untimely and Inaccurate	HRD-78-53	May 9, 1978
Worker Adjustment Assistance Under the Trade Act of 1974 to New England Workers Has Been Primarily Income Maintenance	HRD-78-153	Oct. 31, 1978
Adjustment Assistance to Firms Under the Trade Act of 1974--Income Maintenance or Successful Adjustment?	ID-78-53	Dec. 21, 1978
Unemployment Insurance--Inequities and Work Disincentives in the Current System	HRD-79-79	Aug. 28, 1979
Employee Protection Provisions of the Rail Act Need Change	CED-80-16	Dec. 5, 1979
Restricting Trade Act Benefits to Import-Affected Workers Who Cannot Find a Job Can Save Millions	HRD-80-11	Jan. 15, 1980

APPENDIX II

Redwood National Park

Letter Report to Chairman, Subcommittee on Environment, Energy and Natural Resources, House Committee on Government Operations, on the Cost of the Redwood National Park	CED-79-34	Jan. 15, 1979

APPENDIX III

U.S. Department of Labor

Office of Inspector General
Washington, D.C. 20210

Reply to the Attention of:

MAR 2 4 1980

Mr. Gregory J. Ahart
Director
Human Resources Division
U.S. General Accounting Office
Washington, D. C. 20548

Dear Mr. Ahart:

This is in reply to your letter to Secretary Marshall requesting comments on the draft GAO report entitled, "The Congress Should Scale Down the Redwood Employee Protection Program".

The Department's response is enclosed.

The Department appreciates the opportunity to comment on this report.

Sincerely,

Marjorie Fine Knowles

MARJORIE FINE KNOWLES
Inspector General

Enclosure

GAO note: Page references have been changed to agree with the final report.

APPENDIX III

U.S. Department of Labor's Response to the Draft General Accounting Office Report Entitled--

THE CONGRESS SHOULD SCALE DOWN THE REDWOOD EMPLOYEE PROTECTION PROGRAM

Recommendation No. 1:

Develop criteria to restrict certification of affected employers to timber harvesting and related operations in the park expansion area or mill or contract operations related to timber harvesting operations in the expansion area.

Response:

The Department concurs, in part, with this recommendation. The Department of Labor is now circulating for final clearance a new policy directive which will restrict the definition of "affected contract employer" by requiring covered employees of contract employers to meet the requirements of Section 201(4) of the Act. This more narrow interpretation of the Act will have the effect of limiting the number of contract employees who can become eligible for benefits to those employees who personally worked in operations related to timber harvesting operations in the expansion area.

In reviewing companies for possible certification as an "affected mill employer" the Department has consistently inquired about the structure of each company with the objective of certifying only the major portion or division responsible for wood processing. It should be noted that companies meeting the definition of "affected mill employer" are mostly small, single site companies with no internal divisional structure. In those few instances where a company contained multiple operations or units the Department has reviewed each unit and has made divisional certifications, to the extent possible.

The Department does not believe there is any opportunity for developing restrictive criteria to apply to the "affected woods employers" nor does the Department believe such an effort would be compatible with the express language of the Act.

APPENDIX III

Section 201(7) calls for an affected woods employer to be that "...major portion or division of the industry employer directly responsible for ... harvesting operations". Section 201(8) calls for a mill to be an affected mill employer if the mill "...is a wholly owned mill of an affected woods employer". The Department believes its original certifications of the affected woods employers were correct and finds no basis for decertification of any portion of these employers.

GAO note: As a result of this comment, we deleted an example that appeared in our draft report which dealt with potential savings that would result from applying a more restrictive definition of a woods employer. The reason for the deletion was that some of the activities discussed in the example might have qualified as affected under the definition of a mill employer even though they were components of a woods employer.

APPENDIX III

U.S. Department of Labor's Response to the Draft General Accounting Office Report Entitled--

THE CONGRESS SHOULD SCALE DOWN THE REDWOOD EMPLOYEE PROTECTION PROGRAM

Recommendation No. 2:

Clarify the authority and responsibility of the various labor groups involved with administering REPP.

Response:

The Department does not concur, that it should undertake an effort to clarify the authority and responsibility of the various labor groups involved with administering REPP. The Department recognizes that joint administration can lead to a situation of competing and conflicting points of view concerning policy questions and problems. Differences of opinion, however, do not diffuse authority and responsibility.

Each REPP program component, be it LMSA, ETA, or EDD, continues to be responsible for following the chain of command within its own organization. Nothing in the REPP program has in any way affected pre-existing organizational charts. Within each organization the proper person to request information from is the individual's immediate superior. Where the superior does not have the information sought, the question should be raised to the next highest level and so forth.

The Department notes that authority within the Department of Labor was clearly fixed by Secretary's Order 6-78. Secretary's Order 6-78 is entitled "Delegation of Authority and Assignment of Responsibility for the Redwood National Park Expansion Legislation". The responsibility of the EDD was set forth in the State agreement between the Secretary of Labor and the State of California Employment Development Department. Work assignments and areas of responsibility were created pursuant to the Secretary's Order and the State Agreement. In addition, a handbook of procedures was prepared and disseminated to all program components and all program components received a copy of the proposed regulations in 1979.

APPENDIX III

National Office personnel are available at all times to answer any questions that arise concerning areas of authority and responsibility. For all of the above reasons the Department does not believe that any formalized "clarification" effort is necessary or appropriate.

U.S. Department of Labor's Response to
the Draft General Accounting Office Report
Entitled--

THE CONGRESS SHOULD SCALE DOWN
THE REDWOOD EMPLOYEE PROTECTION
PROGRAM

Recommendation No. 3:

Provide guidance and direction to EDD on eligibility and benefit determination matters in a more timely manner.

Response:

The Department concurs, that its response time in providing guidance and direction to the EDD has not been as timely as would be desired. From the time a question arises at the local level EDD office, is raised with EDD Sacramento, is directed to ETA San Francisco Regional Office and is forwarded to ETA National Office in Washington, several weeks can have elapsed. If the question involves policy matters ETA National Office involves LMSA National Office. The LMSA prepares new policy guidance, clears the policy with the Solicitor's Office, and starts the reply back through the same chain that was followed by the incoming question. At the most optimal this chain is going to involve a month's time in developing a response to a question.

Comments:

The Department has tried repeatedly to make National Office representatives available to local personnel for the purpose of discussing the REPP program. The Department is presently developing plans for a meeting in April, 1980 to which all REPP program components will be invited. The purpose of this meeting is to discuss unresolved issues and problems. Where answers cannot be given immediately the Department will move quickly to develop a position on a question and will then inform all program components simultaneously.

In October, 1979, a special LMSA-ETA Task Force visited all California REPP program components for two weeks in an effort to identify unresolved questions and to provide

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immediate and timely policy guidance. In August, 1979, ETA sent two National Office representatives to California for two weeks to test a program accountability review outline. In connection with that visit all REPP program components were visited and efforts were made to discuss program problem areas and questions. Since January, 1979, LMSA has sent a National Office representative to Eureka quarterly to discuss REPP problem areas and to develop an agenda of questions to be answered by the National Office.

APPENDIX III

U.S. Department of Labor's Response to
the Draft General Accounting Office Report
Entitled--

THE CONGRESS SHOULD SCALE DOWN
THE REDWOOD EMPLOYEE PROTECTION
PROGRAM

Recommendation No. 4:

Evaluate EDD controls and procedures and take necessary action to insure that information supplied by employees and employers is routinely verified and that eligibility and benefit determinations and entitlement calculations are periodically checked.

Response:

The Department concurs, as a normal part of EDD's operation, conflicting or questionable data gathered for purposes of making a determination are verified with the employer or claimant. In addition, procedures exist for review of eligibility and benefit determinations and eligibility calculations.

Although a verification program was a consideration in development of the procedure, positive efforts for such verification were not made until after the issuance of the REPP Handbook. Arrangements were made in August 1979 to utilize local tax auditors to visit employers to verify information reported by the employers and the claimants. Further procedures to provide for routine spot checks of information supplied by claimants on their weekly claims forms are to be issued. After the REPP payment process becomes automated, there are plans to include REPP in the post audit program conducted by EDD for all programs.

APPENDIX III

U.S. Department of Labor's Response to
the Draft General Accounting Office Report
Entitled--

THE CONGRESS SHOULD SCALE DOWN
THE REDWOOD EMPLOYEE PROTECTION
PROGRAM

Recommendation No. 5:

Require that EDD adjust eligibility and benefit determinations affected by subsequent procedural changes and insure that benefit overpayments are collected.

Response:

The Department concurs, in part, with this recommendation. Most procedural changes have not had the impact of requiring EDD to adjust basic eligibility changes on a retroactive basis. Policy changes, resulting in procedural changes having retroactive impact have included a requirement that appropriate cases be reviewed and properly adjusted.

Chapter VI of the REPP Handbook provides for the prevention, detection, establishment and recovery of REPP overpayments. Other than by direct payment, EDD may recover the amount to be repaid, or any part thereof, by deductions from any benefits payable under the REPP Act, any Federal unemployment compensation law, or any other Federal law administered by the EDD that provides for assistance or allowances with respect to any week of unemployment. EDD is charged with, and follows established procedures for recovery of overpayments including notification of overpayment and follow-up to assure that all reasonable efforts are made to recover overpayments.

APPENDIX III

U.S. Department of Labor's Response to the Draft General Accounting Office Report Entitled--

THE CONGRESS SHOULD SCALE DOWN THE REDWOOD EMPLOYEE PROTECTION PROGRAM

Recommendation No. 6:

Accelerate the implementation of health, welfare, and pension coverage.

Response:

The Department concurs. Since the time the GAO conducted its review, the health, welfare and pension coverage systems have been implemented.

Comments:

It should be emphasized that the Department's delay in developing arrangements to handle health and pension benefits will not result in any employee losing any entitlement under the Act. All employees will be made whole, retroactively, for their health and pension entitlements under Section 204. The Department urges the GAO to correct the misimpressions it has left on pages 59, 60 and 65 of the report which suggest that employees may lose pension credits to which they are entitled or may have to bear the expense of their own medical benefits. Both of these suggestions are emphatically untrue.

APPENDIX III

U.S. Department of Labor's Response to
the Draft General Accounting Office Report
Entitled--

THE CONGRESS SHOULD SCALE DOWN
THE REDWOOD EMPLOYEE PROTECTION
PROGRAM

Recommendation No. 7:

Define the level of technical and professional training that is reasonable and necessary to enhance an affected employee's prospects for obtaining suitable employment.

Response:

The Department concurs. In October, 1979, the Department submitted to the EDD specific procedural guidelines which define the retraining eligibility criteria and instructions which differentiate the levels of training approval commensurate to an individual's employability development plan.

APPENDIX III

The Department wishes to make some general observations to the GAO report.

Almost without exception the Department has already implemented the recommendations of the GAO report between the time the report was compiled and the time the report was released to the Department (February 19, 1980). The Department has completed arrangements to handle health benefit continuation and pension continuation; the Department has taken steps to restrict the opportunity for contract employees to become eligible for program benefits. Repeated efforts have been made to keep in contact with all REPP program components and presently the Department plans a major meeting in April, 1980 to which all program components will be invited; and the Department will shortly send a letter to other federal Departments advising them of their full consideration responsibilities under Section 103 of the Act.

In addition to the above general observations, the Department would like the GAO to consider the Department's comments on the following specific points from the GAO Report.

CITATION

On pages 13-16, the report discusses the employer certification process. In the opinion of the GAO, the Department of Labor has been remiss in the procedure it has followed of certifying non-respondent employers as not affected and then permitting the claimant employee to file an appeal with an Administrative Law Judge.

COMMENT

The DOL is no longer following this procedure. DOL has again written each of the three woods employers and has obtained from them the name of each contract employer who worked for them in the Park expansion area. A new letter has been sent to those contract employers whom the woods employers identified as having worked in the expansion area. If the contract employer does not respond in a timely fashion to this letter, LMSA intends to subpoena the employer's records.

CITATION

On pages 18-20 the report suggests in at least two places that the Department has improperly certified companies not affected that should properly be certified as affected.

APPENDIX III

In these same pages the report faults the Department for having to clarify its initial certification criteria to meet circumstances that arose later in the program.

COMMENT

The Department will welcome the opportunity to review any evidence the GAO has that a particular employer has been certified "not affected" when in reality that employer can meet the Act's requirements for certification.

The Department believes its willingness to adapt its criteria to meet unforseen circumstances is evidence of the Department's responsiveness in administration of the program. The fact that the Department could not anticipate every conceivable eventuality at the time it developed its initial criteria does not appear to be a well-founded criticism.

CITATION

Paragraph on page 3 and paragraph 5 on page 32 state: "EDD has signed a contract with Humboldt County Comprehensive Employment and Training Act (CETA) prime sponsor to provide training". (See GAO note.)

COMMENT

While it is true that the Humboldt County CETA prime sponsor did operate the training program for several months in 1979 it should be noted that this agency opted not to renew the agreement with EDD to continue providing training as of September 30, 1979. As of October 1, 1979, EDD became directly involved in administering the training provisions and training enrollment has increased since that time.

CITATION

On page 43 the report discusses the review which took place "16 months after the program began" and observes that this review failed to "identify all of EDD's problems in administering the program".

COMMENT

ETA's two week program review was initially scheduled for September, 1978. Because of a fear of disrupting the newly established payment operations the review was rescheduled for December, 1978. The December review was

GAO note: This sentence in the draft report was changed based on new data.

rescheduled for April 1979 due to the reported FBI and GAO investigations. The April date was subsequently shifted to June, 1979 and ultimately to August, 1979 at the request of California program personnel. While the National Office staff review may not have identified all of EDD's remaining problems it should be noted that the Regional Office staff made many reviews and visits keyed to specific problems and transmitted to the National Office the need for specific action to deal with these situations and problems.

CITATION

On pages 50-51 the report discusses the delay in making training available and raises the possibility that claimants may in some cases be unable to avail themselves of training because of the expiration of their period of protection.

COMMENT

The Department has promulgated new policy guidance greatly liberalizing the eligibility requirements for training and permitting all claimants to start a new period of protection for training purposes only beginning with the availability of training in June, 1979. As part of the revised policy guidance, individuals who accepted new employment will not be denied the opportunity to enroll in training because of the subsequent employment. Accordingly, the statement attributed to an employee on page 51 of the report that he did not seek employment because he would have been ineligible for training is no longer valid.

CITATION

On page 55, the first paragraph of the GAO report recommends that the Department of Labor assure that the job preference provisions are effectively implemented and that affected employees are given this preference.

COMMENT

The Department of Labor has developed and will transmit shortly instructional procedures designed to inform employers of the provisions of the Redwood Employee Protection Program (REPP). These procedures will assure affected employees full consideration for specific job opportunities with employers who are required by law or who volunteer to give such consideration. We wish to further clarify that these provisions do not supersede any provisions under existing laws, regulations or contracts in effect on March 27, 1978, nor do they

APPENDIX III

create any additional or alternative rights with respect to veterans preference, equal employment opportunity, or affirmative action considerations.

In concluding these special comments the Department would like to call attention to the following three situations:

1. Delays in making initial payments to program beneficiaries were not caused by any failure on the Department's part to promulgate procedures in a timely fashion. Training sessions on program procedures were held in early July, 1978. Initial payments were delayed because appropriations were not forthcoming until September, 1978.

2. The Act expressly mandates in Section 205(b)(2) that eligibility for REPP benefits shall be based on eligibility for California U.I. Because the two programs have been linked together by the Act, the Department is required to accept whatever eligibility determinations are permissible under California U.I. One may disagree with the eligibility results that are forthcoming under California U.I., but it is not a matter over which the Department has any controls. Thus the Department would have it noted that criticisms of certain eligibility determinations are not criticisms of procedures promulgated by the Department but rather are criticisms of the California U.I. Code.

3. Section 213(f) of the Act instructs that:

> In all cases where two or more contructions of the language of this title would be reasonable, the Secretary shall adopt and apply that contruction which is most favorable to employees.

This section has the effect of awarding all questionable decisions to the employee even though program administrative personnel might be inclined to adopt more restrictive interpretations in the absence of these instructions.

APPENDIX IV

STATE OF CALIFORNIA—HEALTH AND WELFARE AGENCY EDMUND G. BROWN JR., Governor

EMPLOYMENT DEVELOPMENT DEPARTMENT (916) 445-9212
Sacramento, CA 95814

March 27, 1980

REFER TO:
40:2:fy

Mr. Gregory J. Ahart
Director
Human Resources Division (HR9-170)
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Ahart:

Thank you for the opportunity to review and comment on the draft report to Congress on the Redwood Employee Protection Program (REPP). We commend the GAO staff on the thoroughness of the report and appreciate their understanding of the burden under which the Employment Development Department (EDD) must operate in its administration of REPP.

Generally, we agree with the findings contained in the report. We were pleased to see that your findings clearly indicate that EDD has successfully administered an extremely difficult and burdensome program. We are also aware of additional information not cited in the report that substantiates your findings and are including this information in our comments in case you wish to supplement the report.

A few of the recommendations appear to us to exceed the need to accomplish constructive reforms. We are including alternate recommendations that we feel will meet the needs of program equity, fair administration and worker occupational reorientation. If you do not desire to consider them in the final draft of your recommendations, we request that they be included in an appendix as alternate approaches recommended by EDD.

Following are our comments, organized by chapter: 1/

CHAPTER 1

Program Benefits and Eligibility

On page 2, we recommend adding that REPP entitlement represents the full amount of an affected employee's prior gross wages, including overtime. We believe the fact that overtime is included in calculating benefits is crucial to understanding the problems which arise under the partial benefit procedures. Also, to date, REPP entitlements have been reduced by Federal taxes that would be owing on the benefits if they were wages, but entitlement has not been reduced by State income tax. The California Legislature has recently rejected

1/Attachments to EDD's comments are not included.

APPENDIX IV

taxation of UI benefits. Although we have been verbally informed by staff in the Employment and Training Administration, Region IX, that a change will be made to "deduct" State taxes, as yet we have no formal notice of this change.

Under Program Operations on page 3, although EDD formerly contracted with the Comprehensive Employment and Training Act (CETA) prime sponsor to provide training, this is no longer true. The current training contracts are with Humboldt State University and College of the Redwoods.

CHAPTER 2

Layoffs Unrelated to Park Expansion

Due to problems mentioned in the report which result from the conclusive presumption provision, and others hereafter identified, we strongly agree that qualifying layoffs should be related solely to the park expansion.

In addition to applicants gaining eligibility under the conclusive presumption provision due to temporary maintenance layoffs, weather, etc., as cited in the draft, reference should also be made to the qualifying effect of a partial layoff. Under the Act, ". . . a calendar week in which all pay received is 10 per centum less than the layoff . . . benefit . . .", allows a fully employed individual who, for example, works five instead of ten hours overtime, to collect partial benefits even though that applicant may have no overall reduction in the yearly amount of available overtime. The combining of the conclusive presumption and partial layoff definitions has resulted in applicants claiming many retroactive weeks of partial benefits occurring prior to their layoff. More recently, applicants have demanded that either EDD or their employer review each week of employment beginning on and after May 31, 1977, in order to identify a ten percent reduction in income, and establish a qualifying layoff. This demand is increasing in intensity as September 30, 1980 nears.

In addition, an October 2, 1979, Department of Labor telegram advises that all terminations not disqualifying under the California Unemployment Insurance Code, including a voluntary quit, are covered by the conclusive presumption. (See Attachment I.) We have disagreed. Based upon EDD Legal Office advice, we have implemented procedures which hold that a quit, with or without good cause, does not establish program liability.

With respect to the effect of temporary layoffs on eligibility (page 10), as of January 1980, there continued to be indications that applicants and/or employers may be conspiring to achieve program eligibility through contrived layoffs. For example, on a recently filed unemployment insurance claim form, a claimant newly employed by an affected employer stated he had been laid off because the employer had to hire back an employee who had run out of seasonal REPP benefits. For this reason, we felt constrained to again appeal for employer cooperation in preventing program abuses. (See Attachment II - letter sent to Chief Executive Officer of all affected employers.)

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Employer Certification Unrelated to Park Expansion

We would add the following points:

Inadequate investigation by and the reliance by LMSA upon EDD's appeals process to gather affected employer information has resulted in the scheduling and hearing of many unnecessary appeals, unnecessarily clogging the appeals calendar, increasing administrative and applicant expense, and creating untold ill feeling by applicants against EDD and DOL.

In an attempt to facilitate LMSA decision making, EDD is currently implementing a procedure which triggers an applicant signed request to the local LMSA representative concerning whether an employer is affected. This procedure also advises the applicant that processing of his or her REPP claim will be held in abeyance pending LMSA affected employer determination.

DOL interpretation of the legislation pertaining to affected employers has also resulted in REPP entitlement to applicants who may never have worked near the park expansion area, such as the applicants employed by a Modoc county division of an affected contract employer, those applicants laid off from an Oregon plant of the same employer, and those applicants employed by a Sonoma county department of an affected woods employer.

On page 20, the last paragraph should be changed to state that as of March 1980, published regulations are still lacking.

Under this chapter, we would add the impact of Assistant Secretary Hobgood's decision in the case of one REPP applicant, Mr. Lanning. This decision would permit individuals who were initially eligible as short service employees to accrue service subsequent to filing a claim and achieve long service status and entitlements. A letter clarifying the intent of the decision advises EDD to contact all individuals who had received a lump sum short service severance payment and advise them of their right to repay these monies should they desire to change their status through subsequent additional work with employers deemed affected. We expect that this decision will greatly increase the total amount of benefits to which recipients would ultimately be entitled.

CHAPTER 3

Controversial Impact Of Program Benefits

On page 21, it should be noted that under California's Unemployment Insurance Code (Section 1256) a voluntary layoff out of order of seniority raises a potentially disqualifying issue. Unless the worker can show good cause, it would be a disqualifying quit. However, where there is collusion between worker and employer to report the separation as a reduction in force, etc., EDD may be unaware of the out-of-order layoff.

We agree that the generosity of REPP benefits creates a disincentive to work. REPP benefits not only replace earned wages, but in some cases, due to the method of Weekly Layoff Benefit calculation provided in Section 207, can replace earnings far in excess of those actually received. For example, in one instance,

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a worker simultaneously held both full and part-time jobs with an affected employer. In his full-time work, he earned $10.20 per hour. For the part-time work which he performed 17 1/2 hours weekly, he earned $2.90 per hour. Using the Weekly Layoff Benefit calculation, which includes all hours of work times and the highest permanent wage, results in wage replacement of $10.20 hourly even for the work he formerly performed for $2.90 per hour.

Although the report recommends that REPP benefits not exceed the amount available under the unemployment insurance program, we feel that limiting REPP benefits to a mere extension of regular UI payments does not recognize the very severe impact park expansion has had on the local labor market. We suggest that you consider alternate recommendations such as a reduced replacement rate not to exceed 80% of net wages, a simplified formula for computing benefits based on average weekly earnings and/or a reasonable ceiling on the maximum weekly benefit payable.

Besides the cited examples of requested layoffs and refusal of overtime, REPP's attractiveness has also stimulated the ingenuity of applicants to find loopholes in the Act by which they may claim entitlement. For example, several applicants who are fully employed on a rotating shift claimed benefits during those calendar weeks which happened to include three of their normal, regular days off. Although we have since disqualified these workers, the push to find any means at qualifying can be expected to continue among workers in general.

Lump sum severance payments and provisions for their repayment should the individual return to work in the industry are also proving to be a disincentive to return to work. A claimant who was informed of his responsibility to repay the lump sum severance payment when he returned to work in the industry stated he would quit the job rather than make the repayment. If he did continue to work, and refused to make restitution, it appears that EDD would be able to exercise little influence on the current employer to reduce amounts owed from the individual's salary and remit it to the Department. Indeed, recipients of lump sum severance payments may simply delay returning to work in the industry until after September 30, 1980 when they are no longer obligated to make repayment.

Benefits Difficult and Burdensome to Administer

With respect to the statement on page 26, providing information does indeed place a heavy burden on the employers. EDD has attempted to the extent possible to alleviate this burden. Field office personnel have visited employers when questions arise regarding Employee Form completion, and employers have been asked to call with questions they may have.

Required employer time can only increase, however, as September 30, 1980, nears and applicant requests increase. As I indicated earlier, anxious applicants, with no idea of when a possible 10% entitling downgrade may have occurred, have requested that both EDD and employers laboriously review their weekly wage records beginning May 31, 1977, searching for a qualifying week. One employer recently reported spending two hours producing records at one individual's

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demand. The animosity caused by requests such as these have resulted in an increased reluctance by employers to provide to EDD specific, more readily available information. This in turn results in increased claim computation time and an increased chance of inaccurate computations.

Another employer, insisting that his own method of calculation is more accurate than that provided by DOL, has at times instigated his employees' appeals of REPP entitlements, and appeals of adjustments made as the result of Administrative Law Judges' decisions. This employer is currently refusing to advise on weekly certifications whether his employees have been available for all work. Instead, he has insisted that EDD make individual telephone requests for this information.

It is presumed by Labor that EDD has the full burden of assuring that all possible claims are filed and all information necessary is obtained and absolutely correct. We believe, however, that there are limits to this burden when an applicant asks, for example, that EDD search records for a potential partial layoff occurring sometime in the past or "find" hours over a period of years that might have been missed by the employer in its report. Some applicants to date have had as many as six recomputations. Therefore, unless workers can provide some clue as to when over a period of years, a layoff or an error in time reported occurred, we are declining to comply with such requests.

A potential future administrative burden is that the law does not place a time limit on when the applicant can file for REPP benefits. Though layoffs or partial layoffs must occur prior to September 30, 1980 in order for the applicant to be eligible, an individual is not limited as to when this claim must be filed. According to oral advice from ETA, EDD must be prepared to take, compute and pay claims for an indefinite future period.

Inconsistent Program Benefits

We would add that the legislation's differing treatment of union employees is perhaps most obvious in the provision that retired employees must be in receipt of pension benefits in order to be paid a severance payment. Those employees of small, nonunion companies receive neither pension benefits from their employers nor benefits from the Act, while employees of larger unionized companies receive both.

However, modifying the program towards more equitable nonunion application could significantly increase benefit costs if the liberal union provisions were applied to nonunion applicants.

To help correct the inconsistency cited on page 27, EDD suggested in its July 1979 comments to DOL's proposed REPP regulations that the "in the industry" SIC clarification be expanded beyond the 2,000 series; this would prevent such technical qualification for REPP severance as occurred when one employer sold trucks to another that had been issued a 4,000 series industry code. To date, no change to the definition has been forthcoming.

The legislation is extremely difficult to administer, partially because no one authority appears able to decide and guide its intent. The legislation, written

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for the substantial number of employees expected to suffer one permanent separation from the industry, provides for benefits based upon this one separation. Due primarily to the conclusive presumption clause, eligibility has been extended far beyond the original intent, including applicants who have never suffered permanent layoffs. Attempts to apply legislation written towards one purpose to another, has resulted in conflict and confusion. Neither the Act, the proposed regulations, nor the handbook, written for one purpose, is adequate to meet the unintended application.

CHAPTER 4

Lines of Authority Need Clarification

To date, EDD has been provided only the legislation, the proposed regulations and the REPP Handbook as guidance towards program administration, and there are conflicts within the Act, between the Act and the Handbook and between the Act, Handbook and proposed regulations. For example, in calculating vacation replacement benefits for seasonal employees, there is a conflict between language of the Act and Handbook instructions. The same is true with regard to computing Weekly Layoff Benefits of seasonal employees.

Assistant Secretary Decisions, intended by DOL to provide policy guidance, are often in direct conflict with the Act and Handbook and they totally ignore provisions of the California Unemployment Insurance Code. As a result, these decisions simply raise more questions.

Although numerous issues and conflicts have been presented to DOL, except for written instructions relating to the conclusive presumption and backdating of claims prior to March 27, 1978, to date most policy guidance has been verbal.

One example is the date of April 1, provided as the beginning date upon which seasonal weekly benefits may be paid. This date was decided upon by DOL. A recent attempt to discover the rationale and written authority for this date resulted in the statement that it was not available and that in any event it may be subject to change in the final regulations. Meanwhile, EDD must continue to establish or deny claims and to pay benefits based on a verbal statement by DOL, which may or may not be correct.

Guidance and Direction Have Not Been Timely

As previously stated, guidance and direction have not been timely, and guidance provided has been confusing.

Although guidance to EDD should follow lines of authority from DOL National Office, to DOL Regional Office to EDD Central and finally, field offices, LMSA National Office representatives frequently call the EDD field office directly, bypassing all established lines of communication.

In addition, the responsibility of the local LMSA representative in responding to policy questions is not clear, as demonstrated by the attached letter which

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allowed the eligibility of those Oregon applicants (Attachment III). DOL ETA has recently verbally advised that this decision will be reversed.

EDD's Controls and Procedures Not Adequate

We agree that supervisory reviews and management evaluations are necessary. To date, however, tremendous amounts of staff time have been devoted to fighting brush fires, trying to resolve never-ending policy issues, conflicts between the Act and Handbook, and attempting to analyze and commit to written instructions, policies that were previously verbally issued. The initial pressure to pay benefits as quickly as possible, in conjunction with expansion of the program far beyond original estimates, has precluded a more orderly implementation and management. So far, a policy base has not been established against which performance can be measured. The result is an inordinately expensive program patched together with verbal band aids which are gradually coming loose.

Despite all of these problems, EDD has nevertheless initiated a number of program improvements including:

- Sending the attached cautionary letter to affected employers to discourage fraudulent activities.
- Installing a system to provide the FBI with information about potential fraud.
- Establishing an auditor position specifically for verification of REPP claimant/employer wage information.
- Completing preliminary planning for an automated management information and fraud detection system.
- Planning a system to detect persons who received severance pay and returned to work for affected employers prior to September 30, 1980.
- Installing a program of conducting periodic eligibility reviews (PER's) for REPP beneficiaries in continued claim status.

Even with these corrective actions, however, until all parties involved can agree upon the intent of the legislation, set that intent into writing, and finally establish the procedure by which this intent will be carried out, we question how correctly the performance of EDD staff who are currently attempting to establish claims and pay benefits, can be judged.

No Procedure to Adjust Prior Eligibility and Benefit Determinations Affected By Subsequent Procedural Changes

While recipients should be treated equitably, EDD believes there should also be some finality in the decision making process. Payment decisions are being made on the sands of constantly shifting policies. There is, or should be, a limit to the number and degree of changes that can be made on prior decisions. Though

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there is conflict in guidelines on waiving prior overpayments, EDD plans to follow the ruling of the United States Court of Appeals, Ninth Circuit, in Tongol vs. Usery in applying state waiver standards to this federal program.

We note some inconsistency in the observation that EDD has not searched files to correct prior claims when a policy is changed and the recommendations that the program be scaled back. We trust it is not implicit in the recommendations that all payments and adjusted payments made prior to any scaling back would be required to be further adjusted and perhaps recouped should such Congressional program modification be enacted. As individuals claimed and received benefits under existing law and criteria, it would be against equity and good conscience to require that they be repaid if determinations should be reversed due to Congressional action. Therefore, we suggest that the recommendations include the condition that changes in program entitlement and eligibility be effective as of a specified future date and not retroactively.

CHAPTER 5

Retraining Benefits Were Delayed

These benefits were initially delayed because funding and procedures were not available until April 1979. The retraining policy guidelines provided December 1979 raised many questions in the areas where those guidelines conflict with the Act. EDD is currently attempting to resolve these questions in order to provide guidance which will not raise added questions in the future.

Lastly, let me reiterate that we believe we have taken every reasonably available step to insure the sound management of the REPP program. Given the very difficult circumstances EDD staff have had to cope with, this program has operated extremely well. Again, thank you for the opportunity to comment on your report.

Sincerely,

GENE LIVINGSTON
Acting Director

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