REPORT BY THE

Comptroller General

OF THE UNITED STATES

RELEASED

Longshoremen's And Harbor Workers' Compensation Act Needs Amending

Since the 1972 amendments to the Longshoremen's and Harbor Workers' Compensation Act, injuries have more than tripled, and benefit payments have increased by an estimated 600 percent. Staff shortages and a reluctance to enforce certain provisions of the act have hampered effective program administration.

Legislation has been proposed which would limit the act's jurisdiction and the amounts of compensation payments. In deliberating such legislation, the Congress should consider defining the act's jurisdiction as specifically as possible and providing greater incentives to return to work by basing compensation payments on spendable earnings rather than gross earnings.

Labor should make claimants more aware of their rights and require that employers comply with the act's requirements regarding insurance coverage, reporting, and benefit payments.

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

B-203632

The Honorable George Miller, Chairman
The Honorable John N. Erlenborn,
Ranking Minority Member
Subcommittee on Labor Standards
Committee on Education and Labor
House of Representatives

In January 1980, the former Subcommittee Chairman and the Ranking Minority Member asked us to evaluate the effect of the 1972 amendments to the Longshoremen's and Harbor Workers' Compensation Act and to review the Department of Labor's administration of the act. On June 12, 1981, we provided you with an interim report containing our preliminary findings. This is our final report.

As arranged with your offices, we plan no further distribution of this report until 3 working days from its issue date. At that time, we will send copies to interested parties and make copies available to others upon request.

Charles A. Bowsher

Comptroller General
of the United States

COMPTROLLER GENERAL'S REPORT TO THE CHAIRMAN AND RANKING MINORITY MEMBER, SUBCOMMITTEE ON LABOR STANDARDS, HOUSE COMMITTEE ON EDUCATION AND LABOR

LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION ACT NEEDS AMENDING

D I G E S T

Employers and insurance carriers, who pay the benefits provided by the Longshoremen's and Harbor Workers' Compensation Act, have expressed concern over the unclear jurisdiction and high benefits that resulted from its 1972 amendments, which expanded jurisdiction and increased benefits. Injuries to workers covered by the act have about tripled, and benefit costs have increased by an estimated 600 percent. Congressional hearings have been held on the act in each of the last several years. Employee groups have opposed any attempts to curtail the act's benefits or coverage. Legislation proposed in the 97th Congress would, among other things, narrow the act's jurisdiction and limit benefits. (See p. 3.)

GAO made the review at the requests of the former Chairman and the Ranking Minority Member of the Subcommittee on Labor Standards, House Committee on Education and Labor. GAO's review focused on the effects of the 1972 amendments to the act and the Department of Labor's administration of the act.

ISSUES AFFECTING COMPENSATION BENEFITS AND INSURANCE COSTS NEED RESOLUTION

Compensation insurance is costly, and coverage is sometimes difficult to obtain. Compensation benefits, which had significantly increased as a percentage of net earnings since the act was passed, often came close to preinjury net earnings, thus providing little incentive for injured employees to return to work. Employees with high earnings received a higher percentage replacement of net earnings. Also, in some cases, payments from other sources, such as disability pensions, combined with workmen's compensation could exceed preinjury net earnings. Proposed legislation would base compensation on spendable earnings and reduce compensation for benefits received

from certain other sources. GAO agrees that basing compensation on spendable earnings and considering other disability-related income in determining the compensation level is desirable to provide incentives to return to work. (See p. 13.)

The unclear jurisdiction of the act has resulted in much litigation and has made insurers reluctant to provide compensation coverage. Many jurisdictional issues have been resolved through litigation. However, some jurisdictional questions remain. (See p. 17.)

A Special Fund, administered by Labor but financed by employers and insurance carriers, assumes liability for certain compensation payments. Some employers and insurance carriers had a strong incentive to limit their liability by obtaining relief from the fund. Although Labor agreed with employers and insurance carriers that many liabilities assumed by the fund should not have been, Labor said that it lacked the resources to challenge claims against the fund. (See p. 22.)

Some employers had avoided the high cost of insurance by failing to either obtain insurance or become authorized self-insurers. Others had obtained less costly insurance from an unauthorized insurance carrier which Labor believed had inadequate financial resources. Such employers may not have sufficient resources to pay compensation claims, and defaulted claims could become a liability of the Special Fund. These employers may also have an unfair competitive advantage over employers who meet the act's costly insurance requirements. Labor needs to take stronger action to ensure that employers comply with insurance requirements. (See p. 19.)

PROBLEMS IN CLAIMS ADMINISTRATION

In 1976, GAO reported that Labor was not effectively overseeing claims to assure that injured employees received proper benefits under the act. Labor has acted to improve program administration; however, the main problem identified by GAO in 1976--lack of sufficient staff to handle a greatly increased workload--still exists.

Claims backlogs were large, and claims processing and informal adjudications were untimely. Sufficient efforts were not made to ensure that workers' rights were protected and that compensation benefits were timely and accurate. Decreases in the claims' administration staff were expected, and Labor's Benefits Review Board had a large claims backlog.

GAO believes that, since Labor cannot provide timely protection of workers' rights, it should do more to make workers aware of their rights, so they can help protect themselves. Labor should also penalize employers when required reports are not made or are untimely and when compensation payments are untimely. (See p. 30.)

RECOMMENDATIONS TO THE SECRETARY OF LABOR

The Secretary should direct the Deputy Under Secretary for Employment Standards to:

--Require that penalties and interest are assessed for late reports and compensation payments.

--Improve the letter used to inform injured workers of their rights and send it promptly in all cases where injury reports indicate that compensation will be due.

--Require that employers meet insurance requirements.

MATTERS FOR CONSIDERATION BY THE CONGRESS

In its deliberations on legislation to amend the act, the Congress should consider:

--Defining the act's jurisdiction as explicitly as possible.

--Providing greater incentives for injured employees to return to work by (1) revising the level of compensation benefits to recognize the significant changes between gross and net pay that have occurred since the act was passed and (2) establishing overall benefit levels in recognition of the availability of benefits to injured workers from other sources. GAO believes

that whatever level of benefits is selected should provide uniform replacement rates for most income levels.

--Permitting the contributors to the Special Fund to challenge questionable claims and more clearly defining the circumstances under which the fund should assume liability.

AGENCY COMMENTS

Labor agreed with GAO's recommendations to the Secretary. However, the Department believed that the act permitted discretion in assessing penalties for late injury reports and that only habitual offenders should be penalized. Labor also believed that most questions of the act's jurisdiction were resolved in 1979 and the only remaining issue of significance is pending before the Supreme Court.

GAO agrees that penalties need not always be assessed for late injury reports. However, GAO believes that employers generally should be penalized for subsequent violations after receiving written warning, even if they are not habitual violators. GAO agrees that many jurisdictional issues have been resolved. However, some jurisdictional questions remain.

Labor also said that the scope of the review was not sufficient to say that GAO's findings on claims administration are representative of Labor's longshore district offices. Labor provided additional data on program accomplishments which it believed should be reflected in the report.

GAO agrees that, although little improvement was noted in the district offices visited in both this review and its prior review, its findings may not be representative of all of Labor's district offices. For further discussions of agency comments and our evaluation, see pages 27 and 43.

Contents

ABBREVIATIONS

GAO	General Accounting Office
OSHA	Occupational Safety and Health Administration

CHAPTER 1

INTRODUCTION

We reviewed the administration and impact of the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 901, as amended) at the requests of the former Chairman and the Ranking Minority Member of the Subcommittee on Labor Standards, House Committee on Education and Labor. Our review focused on the effects of the 1972 amendments to the act and the Department of Labor's administration of the act.

LEGISLATIVE HISTORY

In 1917, the U.S. Supreme Court determined that our Nation's navigable waters were under Federal jurisdiction, and States did not have workers' compensation authority beyond the water's edge.

The act was enacted in 1927 to provide workers' compensation to employees injured (including injury by occupational disease) while engaged in maritime employment upon U.S. navigable waters.

Other employee groups were given coverage under the act by the following legislation:

--The District of Columbia Workmen's Compensation Act (1928) extended coverage to employees of private employers in Washington, D.C.

--The Defense Base Act (1941) extended coverage to employees of Federal contractors at military bases or on public works contracts performed in any place outside the continental United States.

--The Nonappropriated Fund Instrumentalities Act (1952) extended coverage to civilian employees of nonappropriated fund instrumentalities of the Armed Forces (such as post exchanges).

--The Outer Continental Shelf Lands Act (1953) extended coverage to employees on the U.S. Outer Continental Shelf involved in exploring for and developing natural resources.

The act has been amended 10 times. Amendments in 1934, 1938, 1948, 1956, 1960, 1961, and 1969 revised or increased the act's benefits. In 1958, the act was amended to require employers to maintain a reasonably safe work environment. The Secretary of Labor was directed to issue and enforce safety and health regulations. The 1959 amendments provided that, in certain cases, employees may collect compensation and bring suit against third parties.

The major changes to the act came with the 1972 amendments that expanded the program's coverage, improved benefits, and substantially altered the second injury provision and claims administration and adjudication.

1972 amendment changes

The act originally limited coverage to injuries literally occurring on the water or in a drydock. A worker who fell and landed on a vessel was covered. A worker who landed on a dock or pier was not. Injuries on land were covered by State workers' compensation programs, whose benefit levels varied.

In September 1972, the House Committee on Education and Labor stated that:

> "* * * compensation payable to a longshoreman or a ship repairman or builder should not depend on the fortuitous circumstance of whether the injury occurred on land or over water. Accordingly, the bill would amend the Act to provide coverage of longshoremen, harbor workers, ship repairmen, ship builders, shipbreakers, and other employees engaged in maritime employment * * * if the injury occurred either upon the navigable waters of the United States or any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other area adjoining such navigable waters customarily used by an employer in loading, unloading, repairing, or building a vessel."

Coverage now includes injuries occurring in the "adjoining areas customarily used" in "maritime employment," including longshoring, shipbuilding, and ship repair work.

The minimum and maximum compensation benefits were increased, and a provision was made for automatic annual increases in compensation.

The act was revised to encourage employers to hire handicapped workers by limiting employers' compensation liability for subsequent (second) injuries. Compensation in excess of the employer's limit is paid from a Special Fund primarily financed from annual assessments of insurance carriers and self-insured employers. Employers remained liable for all medical payments arising from the subsequent injury.

The 1972 amendments made significant changes in the administration and adjudication of claims. Labor is required, upon request, to help injured employees process claims and is required to supervise their medical care. Labor may also provide legal

assistance. The amendments transferred formal hearing authority from the Deputy Commissioners to Administrative Law Judges.

CONCERNS ABOUT THE ACT

In each of the last 5 years, hearings have been held on the act. The concerns expressed by employers, insurance carriers, unions, and employee representatives have generally been the same at all of the hearings. Employers and carriers are concerned about unclear jurisdiction, generous benefits, unrelated death benefits, annual adjustments in compensation, the Special Fund's growing liability, and the timely administration and adjudication of claims. Employee representatives are concerned about the timely administration and adjudication of claims and do not want the act's coverage or benefits curtailed.

Over the past few years, several bills have been introduced to amend the act, but none have passed.

Legislation introduced in the 97th Congress would significantly change the act. Both S. 1182 and H.R. 25 would

--reduce the act's jurisdiction;

--base compensation on spendable earnings rather than gross earnings;

--limit annual increases in compensation;

--limit total benefits from compensation and certain other sources, such as employee welfare plans, to 80 percent of spendable earnings;

--eliminate benefits for death that is unrelated to the compensable injury;

--transfer formal hearing authority from Labor; and

--provide for representation to protect the Special Fund's interests.

On October 5, 1981, Labor testified on S. 1182 at hearings of the Subcommittee on Labor, Senate Committee on Labor and Human Resources. Labor generally supported the bill and offered to work with the Subcommittee to develop legislation.

BENEFITS PROVIDED BY THE ACT

Under the act, self-insured employers and insurance carriers provide compensation and other benefits for covered employees injured or killed on the job. These benefits include (1) medical,

surgical, and hospital treatment; (2) assistance in obtaining medical and vocational rehabilitation services; and (3) compensation for temporary or permanent disability or death suffered from the injury. Compensation may be paid

--for specified time periods (called scheduled awards) for the loss, or the loss of use, of a member or function of the body (e.g., loss of the use of an arm is compensable for 312 weeks), whether or not time is lost from work, or

--semimonthly for the loss of wages or wage-earning capacity for as long as the disability continues.

These tax-free benefits are equal to two-thirds of (1) the employee's average weekly wage for total disability or (2) the difference between the employee's preinjury average weekly wage and his or her wage-earning capacity after the injury for partial disability. If the injured employee dies (whether from work-related injuries or other causes), compensation is payable to the employee's spouse, children, and certain other dependents. For total disability, the maximum amount payable is 200 percent of the national average weekly wage 1/ adjusted annually each October, and the minimum amount payable is the lesser of 50 percent of the national average weekly wage or the employee's average weekly wage.

Under certain conditions, compensation and other benefits may be paid from the Special Fund established under the act instead of by the responsible employer or insurance carrier. When benefits to an eligible injured employee are paid from this fund, the employer limits its compensation liability to a maximum of 104 weeks or the duration of a scheduled award, whichever is greater.

Each employer must secure payment of benefits by purchasing insurance from a Labor-approved carrier or by acting as a self-insurer. Self-insurers must furnish Labor with proof of their ability to pay benefits. Employers are required to notify Labor of all reported injuries and certain actions taken on an employee's claim, such as payment of compensation, provision of medical treatment, or denial of the claim.

A claim begins when an employee reports any job-related injury to his or her employer and/or to Labor. If the employer accepts the claim, it must provide the necessary medical treatment and compensation if applicable, and if the employer denies the claim, the employee may file a claim with Labor for adjudication.

1/The act defines the term "national average weekly wage" as the national average weekly earnings of production or non-supervisory workers on private nonagricultural payrolls. As of October 1, 1981, the average weekly wage was $248.35.

Adjudication may consist of several steps. The first is an informal conference between the parties in which one of Labor's district office officials attempts to ascertain the facts and have the parties mutually agree on all issues and final resolution of the claim. If the parties do not agree, the claim is referred for a formal hearing before one of Labor's Administrative Law Judges, who issues a decision that may later be appealed to Labor's three-member Benefits Review Board. Board decisions may be appealed to a U.S. Circuit Court of Appeals.

In June 1981, the head of the Benefits Review Board said that 96 percent of all longshore claims are settled at the district office. About 4 percent reach the Office of Administrative Law Judges, of which only about a half reach trial. He said the Benefits Review Board receives about 1 percent of all longshore claims, and the U.S. Courts of Appeals receive about 0.1 percent.

PROGRAM ADMINISTRATION AND GROWTH

The Secretary of Labor is responsible for administering the compensation program authorized by the act. The Secretary has delegated this responsibility to the Employment Standards Administration. The Administration's Office of Workers' Compensation Programs administers the act through the Division of Longshore and Harbor Workers' Compensation. This division, headed by an Associate Director in Washington, D.C., has district offices nationwide.

Each district is directed by a Deputy Commissioner or an Assistant Deputy Commissioner. The districts' primary functions are to mediate claims and to monitor benefits provided by employers or their insurance carriers to ensure that injured employees receive required medical treatment and that employees, or their surviving dependents, receive compensation payments due them under the act.

Since the 1972 amendments, the number of claims and the cost of the program have grown substantially. The number of reported injuries has gone from 72,087 in fiscal year 1972 to 238,274 in fiscal year 1980. During the same period, the number of injury cases in which time was lost from the job was estimated to have increased from 17,667 to 59,594. Labor estimates that the cost of compensation and medical benefits, which are paid by employers and carriers, rose from $33 million in 1972 to $220 million in 1980.

Labor's administrative costs for the program have increased from about $1.4 million in fiscal year 1973 to about $5.1 million in fiscal year 1981. During the same period, the number of staff positions authorized for administering the program increased from 100 to 174. Labor estimates that about 270,000 employees are

covered by the longshore act and another 245,000 are covered by its extensions, excluding the District of Columbia Workmen's Compensation Act.

OBJECTIVES, SCOPE, AND METHODOLOGY

Our review focused on (1) the impact of the 1972 amendments and (2) Labor's administration of the act. Our examination of administration was directed toward Labor's oversight of claims to assure that injured employees received proper benefits, its adjudication of contested claims, and its actions to ensure that employers met insurance requirements. Our examination of the impact of the 1972 amendments was aimed at determining whether, and if so how, these amendments had resulted in substantially increased compensation costs and difficulties in obtaining insurance. We also reviewed proposals to alleviate these problems.

We made a detailed review at 2 of Labor's 15 district offices. 1/

We selected the San Francisco district because it was reviewed for our 1976 report 2/ and the New York district for a variety of reasons, including the opportunity to obtain data on the Waterfront Commission of New York Harbor's fraud detection program and New York's program for reviewing the merits of claims against its Special Fund, which is similar to the Special Fund administered by Labor. At the two districts, we randomly selected for detailed review 100 claims that had been made into case files in the first 6 months of fiscal year 1980.

These 200 cases consisted of:

--151 longshore cases and 49 defense base and nonappropriated fund cases.

--34 controverted (liability disputed by employer or insurance carrier) cases and 166 noncontroverted cases.

--70 open cases and 130 closed cases.

--135 time-lost cases, 50 no-time-lost cases, and 15 cases where the records did not show if time was lost.

1/The 15 offices do not include the Washington, D.C., district office, which administers benefits under the District of Columbia Workmen's Compensation Act and is financed by the District.

2/"Improvements Needed in Administration of Benefits Program for Injured Workers Under the Longshoremen's and Harbor Workers' Compensation Act" (MWD-76-56, Jan. 12, 1976).

We also reviewed 144 randomly selected cases referred by the two districts to Labor's Office of Administrative Law Judges for formal adjudication between October 1978 and June 1980 to determine how long it took the Office to process contested cases.

Our sample data are not statistically projectable to Labor's 15 district offices.

We reviewed the act and its legislative history and Labor's regulations, implementing policies, and procedures. We also reviewed accountability reviews of the district offices and other Labor reports. We interviewed headquarters and district office personnel and officials of the Office of Administrative Law Judges and the Benefits Review Board. In addition, we interviewed union, industry, and insurance carrier officials affected by the act and reviewed legislative hearings about the act.

We prepared a detailed questionnaire on the administration and adjudication of the program that was completed by all 15 districts. We also made brief visits to the Long Beach, Houston, New Orleans, and Boston districts.

We asked the 24 Administrative Law Judges that deal primarily with longshore appeals to respond to a questionnaire on various aspects of the formal adjudication process. Twenty-two of them responded.

We also reviewed a Labor-funded study of insurance problems under the act. Labor had this study reviewed by two insurance experts and an actuarial firm. The reviewers generally agreed with the study's approach and findings. (See p. 8.)

Our work was performed in accordance with GAO's "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions."

CHAPTER 2

INSURANCE ISSUES REQUIRE ACTION

Insurance for longshore benefits is costly and sometimes difficult to obtain. A Labor-funded study concluded that the high cost and limited availability result from high accident rates, high benefits, tendencies to exaggerate claims, and an insurance rating process affected by unclear jurisdiction.

While there may be little that the Government can do to reduce accident rates or the number of questionable claims, the Congress could clarify the act's jurisdiction and modify its benefits to provide greater incentives for injured employees to return to work.

Some employers have avoided high insurance costs by doing without insurance or obtaining it from a low-cost unauthorized carrier. If such employers do not have sufficient funds to pay compensation claims against them, injured employees might not receive benefits or the Special Fund could become liable for such benefits. Also, employers with proper insurance coverage can be competitively disadvantaged. Labor needs to do more to ensure that employers make proper arrangements to secure payment of compensation claims.

Another way some employers and carriers reduce costs is to attempt to shift liability for compensation payments to the Special Fund. Special Fund payments to injured workers with preexisting disabilities have increased significantly, and the criteria for establishing preexisting disabilities sometimes appear inconsistent with the purpose of the legislative provision.

STUDY OF INSURANCE PROBLEMS

Labor contracted with a private consulting firm, Cooper and Company, to study insurance problems under the act. The Cooper study, which was made from October 1977 to October 1978, involved a review of data from Labor and the National Council on Compensation Insurance and a national survey of over 1,000 employers and insurance carriers. The survey consisted mostly of mail questionnaires. However, there were interviews with selected personnel from the survey population and with major trade associations.

The study concluded that:

> "In substance, there exist serious problems under the act. There is clearly a tightening of availability of insurance, accompanied by very high

costs. These are fundamentally caused by high underlying accident rates, very liberal benefits, a propensity to make and exaggerate claims, and a rating process which is responsive to the uncertainties caused by unclear jurisdiction. Unless a concerted effort is made to reduce some of these problems, their intensity is apt to worsen, undermining the entire system."

Labor had the Cooper study reviewed by two insurance experts (from two universities) and an actuarial firm. Although the reviewers had some disagreements, they believed the analytical methods used were generally reasonable and they substantially agreed with the study's findings. Their prime area of disagreement involved ratemaking. Even the Cooper study qualified its comments about ratemaking, stating that:

"* * * It is hard to believe that whatever we can say from a technical viewpoint about the validity of rates has any important bearing if the Insurance companies simply are not willing to invest their resources under the present rate structure."

HIGH ACCIDENT RATES

The Cooper study stated that longshoring is probably the most unsafe occupation in the country, with an accident severity rate 10 times that of the all-industry average, and while not as bad, ship and boat building and repairing is the 11th worst of over 200 industrial classifications. The study noted that the accident rates have changed little since 1970.

Labor's Occupational Safety and Health Administration (OSHA) is responsible for establishing workplace safety and health standards and making compliance inspections of the more than 5 million businesses that are estimated to be covered by the Occupational Safety and Health Act of 1970.

An OSHA official said that work on the docks and work in shipyards are among the most dangerous occupations in American industry, and that the injuries incurred are usually severe. According to him, many inspections are made as a result of complaints or serious accidents, and a particular dock or shipyard could be inspected as often as every 6 months or as infrequently as every 3 years or longer.

There is little evidence of the impact of OSHA on workplace injuries. According to an OSHA official, OSHA's studies have not

been very successful in measuring the effects of its inspections on accident rates. In a 1975 study 1/ of longshoring (marine cargo handling) accidents made for OSHA, Cooper and Company concluded that:

> "* * * The accident rate in longshoring has not changed very much since 1969. OSHA's effectiveness judged by this statistic alone would be in serious doubt. However, the industry itself has a number of unique and special problems, which virtually make OSHA's task almost insurmountable. * * * The special problems in this industry are its well documented inordinately poor industrial relations, complicating effective supervision of work; a long in-bred tradition of doing things unsafely and accepting it; a serious problem of alcoholism and a number of economic incentive factors which mitigate against improvement in safety. There are a number of things OSHA can do to improve its immediate compliance posture * * *. We do not believe, however, that inspection and compliance activities can have a serious effect on the accident rate, given the nature of the industry's problems, without inordinate expenditure of resources and extremely repressive enforcement."

FRAUD OR ABUSE SELDOM DETECTED

Section 31 of the act provides that any person who willfully makes any false or misleading statement or representation to obtain benefits or payments shall be guilty of a misdemeanor and, upon conviction, be punished by a fine of up to $1,000 and/or imprisonment of up to 1 year. The previously mentioned proposed legislation, S. 1182, provides that such actions be punishable as a felony with a fine of up to $50,000 and/or up to 5 years' imprisonment. It also provides that the local U.S. attorney, in conjunction with any appropriate Federal agency, shall make every reasonable effort to promptly investigate each complaint.

We were requested to look at the extent of claims exaggeration and fraud, especially in light of a 1976 report of fraudulent longshore compensation claims in the New York Harbor area.

1/"A Causal Study of Accidents in the Longshoring Industry and OSHA's Effectiveness," Cooper and Company, 19 Third Street, Stamford, Conn., 06905, August 15, 1975.

Although there have been allegations that many longshore claims are fraudulent or overstated and some general indications that these allegations may have validity, few specific instances of such claims have been identified recently.

After a 1976 investigation, the Waterfront Commission of New York Harbor reported finding a significant number of fraudulent workers' compensation claims in the Port of New York and New Jersey. In December 1976 the Commission reported that:

--A sizable portion of the high compensation costs in the port was the result of fraudulent and exaggerated claims.

--Time-lost claims decreased 33 percent after the Commission announced its investigation. It was estimated that $8 million would be saved annually from this reduction.

--An unusually large number of claims are filed during vacation months or when a pier closes. This pattern could be attributed only to fraud.

The Commission's report stated that because:

"The exposure of actual cases of fraudulent Workmen's Compensation claims requires laborious and time-consuming investigative efforts * * * the number of actual fraudulent claims that can be exposed must necessarily be limited."

The Commission also noted that compensation costs in the Port of New York and New Jersey were much higher than elsewhere in the country.

As a result of the December 1976 report, pier superintendents and licensed stevedores were required to report to the Commission all suspected fraudulent claims and all claims for injuries involving more than 14 days of lost time. When we met with Commission officials in December 1980, they told us that the number of claims reported was 678, 509, 589, and 422 for 1977, 1978, 1979, and the first 9 months of 1980, respectively. They said most of the reported claims were for injuries exceeding 14 days, and only five or six claims a year were reported as suspected fraud.

According to these officials, there were no statistics on the number of claims investigated. They estimated that 27 to 30 investigations had been made since August 1977, and about one-half of them resulted in administrative hearings where claimants lost their licenses to work on the waterfront. The officials said investigations are very expensive, and they believed a special fraud program would not be worthwhile because most longshoremen are "street wise" as a result of the December 1976 report.

Labor officials believe that fraud is relatively rare and that less than 1 percent of time-lost claims are fraudulent. In comments on a draft of this report, Labor said that its records showed that, from fiscal year 1978 to the end of fiscal year 1981, fewer than 60 allegations of fraudulent claims were made to its district offices. This is much less than 1 percent of the over 200,000 lost-time injuries reported in the same time period. However, they believe that many claims are exaggerated. Labor officials also told us that it is normal for employees to overstate their injuries while employers tend to understate the extent of injuries.

The high cost of disputing, investigating, and prosecuting cases results in few cases being challenged by employers. A claims examiner told us many claimants realize that their employers will accept a 3- to 5-percent permanent partial disability award because it is not worth the legal expense to fight it.

One employer's spokesperson told us it is too expensive to dispute cases where claimants are only out of work for 1 or 2 weeks even when the employer's physician finds that the claimant does not need time off. He said impartial medical examinations would counteract this, but they take up to 30 days to arrange, and even when the impartial physician finds that the employee can return to work, compensation must still be paid up to the day of the impartial medical examination.

Labor requires that district claims examiners report any suspicion of fraud or abuse to the Office of the Inspector General. When sufficient evidence exists, the Office presents the case to the U.S. attorney for possible prosecution. However, few cases are referred to the Office or the U.S. attorney.

One reason few cases of fraud are referred is because Labor and employers do not devote the resources to detect them. Having no investigators of their own, district offices rely on informants and employers to detect exaggerated claims and potential fraud. According to a Labor official, employers' monitoring efforts are minimal. Several employers told us that the type of surveillance work needed to uncover fraud is very expensive.

As of May 1980, the Office of the Inspector General had investigated only 10 longshore claims. Of three closed cases, two were declined by the Federal prosecutors, 1/ and in the other case, the claimant was convicted. Seven cases were still open.

1/In one case, the U.S. attorney declined prosecution because restitution (of $770.76) was made. In the other case, involving a claimant who was working while receiving compensation, prosecution was declined because the claimant had made no false statements regarding his employment. The claimant had not submitted any information about working; therefore, no fraud was committed.

COMPENSATION BENEFITS MAY DETER SOME EMPLOYEES FROM RETURNING TO WORK

Ideally, the benefits provided to a disabled worker would (1) allow a worker to maintain a standard of living somewhat comparable to the worker's standard of living before the disabling injury, (2) be less than the amount of the worker's previous income by the amount of work-related expenses, and (3) provide sufficient incentive for the worker to seek rehabilitation and prompt reemployment, where possible. 1/ The National Commission on State Workmen's Compensation Laws stated in its 1972 report 2/ that the compensation provided to disabled workers must balance incentives to employers to improve safety--thus reducing compensation cost--with incentives to the disabled workers to use rehabilitation services and return to work.

Benefits approach, and may exceed, net earnings

The act provides for total disability compensation benefits, subject to minimums and a maximum, of 66-2/3 percent of gross pay. When this percentage was established, gross pay approximated net pay. However, primarily due to income taxes and social security taxes, the gap between gross and net pay has widened over the years. Thus, tax-free compensation benefits replace a higher percentage of net pay than they did in the past. 3/ In addition, some workers are eligible for other benefits which, when combined with compensation, could result in benefits that substantially exceed preinjury net pay.

A March 1980 Labor survey of 550 closed cases (see p. 16) showed that compensation paid under the act, on the average, equaled 88 percent of preinjury take-home pay. The percentage of take-home pay replaced generally was higher at higher income

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1/"White Paper on Workers' Compensation," prepared by an interdepartmental group from the Departments of Labor, Commerce, Health and Human Services, and Housing and Urban Development working on workers' compensation, May 1974.

2/"The Report of the National Commission on State Workmen's Compensation Laws," July 1972.

3/Our report "Federal Employees' Compensation Act: Benefit Adjustments Needed to Encourage Reemployment and Reduce Costs" (HRD-81-19, Mar. 9, 1981) discusses a similar issue. Some of the data discussed in this section are taken from that report.

levels. 1/ For example, a worker earning $272.70 a week received compensation equal to 85 percent of take-home pay, while a worker earning $524.40 a week received compensation equal to 96 percent of take-home pay.

If there were additional family income that would put a worker in a higher tax bracket, such as from a working spouse, tax-free compensation would replace a higher percentage of the employee's income. Also, such work-related expenses as commuting and child-care costs, which have increased over the years as people have tended to live farther from work and multiple-wage earner and single parent households have become more common, could be reduced.

In all States except two, workers who are temporarily or totally disabled generally received benefits equal to at least two-thirds of their predisability wages. Dr. Peter Barth, an expert in workers' compensation, has stated that nothing indicates that two-thirds of wages is high enough to be adequate and simultaneously low enough to offer workers some inducement to return to work as promptly as medically possible and that the same statement applies to any other wage percentage. He believes the two-thirds figure is used only because it is widely accepted and, in turn, widely recommended.

Evidence from private, long-term disability insurance programs indicates that high compensation rates cause disability incidence rates to increase. Private insurance plans with compensation rates over 70 percent of predisability gross income have incidence rates two-thirds above the average, while plans with compensation of 50 percent or less have incident rates one-third below the average. Because of this, private insurers generally attempt to limit disability benefits to 50 to 60 percent of gross earnings.

For some workers, benefits in addition to compensation could further increase income. A worker covered by the International Longshoremen's Association guaranteed annual income program would earn a minimum of $464 a week during the first year of its 1980 contract. A worker who was injured and unable to work, assuming earnings of $464 a week, would receive compensation under the act equal to two-thirds of that amount, or $309 per week tax free. In addition, the Association would supplement this compensation up to the guaranteed amount during the first year of injury. If the worker had a family of four, this supplement would amount to $155 gross or $141 net a week for a total of $450 per week. The worker's normal take-home pay would be $364 a week after

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1/Workers with very low earnings received compensation that exceeded take-home pay because their tax-free compensation is 100 percent of their average weekly wage.

deductions for Social Security and Federal income taxes. Thus, the worker would receive $86 more a week than when working.

Employees who have been members of the International Longshoremen's and Warehousemen's Union for 13 or more years who become totally and permanently disabled are entitled to a disability pension regardless of the cause of disability. Such employees may receive both a disability pension and compensation benefits, after a 26-week offset period.

Additional benefits are also available under the Social Security Disability Insurance Program. If injured employees meet eligibility requirements, compensation can be supplemented up to 80 percent of gross wages after 6 months of disability.

It should be noted, however, that additional benefits would be available only in a limited number of cases. Of the 200 cases in our sample, only 4 percent involved disabilities that lasted longer than 6 months. Also, most workers covered by the act are not members of the unions and/or are not eligible for the union benefits described above.

The Labor study compared the percentage of predisability take-home pay that would be replaced at four different benefit levels with the percentage being replaced under the current method of compensation for 550 closed compensation cases.

Based on Labor's study, setting the compensation rate at a percentage of spendable income would appear to be more equitable, because the spendable income approach provides income replacement that remains fairly constant at varying income levels. The taxable income methods and the existing method provide higher replacement percentages as gross income increases until the maximum compensation rate is reached.

It is difficult, if not impossible, to state at what income replacement level employees will be most inclined to return to work. A worker is not necessarily discouraged from returning to work only when his or her full wages are replaced. Even without accounting for savings from such work-related expenses as transportation and child care, some employees will prefer to remain away from employment for less than 100 percent of their net wages, especially in multiple-income households. Other employees will return to work as soon as physically possible, regardless of the economic disincentive to do so.

Based on Labor's study, the current level of benefits provides compensation that comes closer to full replacement of net earnings than to the 66-2/3-percent replacement anticipated when the act was passed. In addition to minimizing incentives to

Longshore Act: Average Weekly Benefit Received Under Current Method and Alternative Methods, Expressed As a Percentage of Take-Home Pay for Selected Wage Intervals of Employees with 2.5 Federal Exemptions in States With Graduated Income Taxes, Closed Cases

Weekly predisability gross pay, selected intervals	Percent of total cases	Average weekly predisability gross pay	Average weekly predisability take-home pay (note a)	Percent of average weekly predisability take-home pay replaced: Current method (66-2/3 percent)	80 percent of gross subject to Federal/State income tax	75 percent of gross subject to Federal/State income tax	85 percent of spendable income (note b)	80 percent of spendable income (note b)
$1 to $50	0.38	$ 27.00	$ 24.00	c/109	c/109	c/109	c/109	c/109
$51 to $100	2.48	82.62	75.31	c/110	c/110	c/110	c/110	c/110
$101 to $150	11.26	125.69	109.25	c/98	c/98	c/98	c/98	c/98
$151 to $200	12.02	171.60	142.95	81	91	86	88	82
$201 to $250	16.60	223.61	180.27	83	91	86	88	82
$251 to $300	18.51	272.70	214.98	85	91	85	88	83
$301 to $350	12.40	322.23	248.92	87	91	86	88	83
$351 to $400	10.31	372.96	282.47	89	91	86	88	83
$401 to $450	4.96	419.12	309.98	91	92	87	88	83
$451 to $500	3.24	473.35	340.23	93	94	89	88	83
$501 to $550	2.86	524.40	367.00	96	94	88	88	83
$551 to $600	1.91	581.00	397.10	98	94	90	88	83
$601 to $650	1.34	622.71	417.77	100	95	90	88	83
$651 to $700	0.57	677.33	443.31	d/97	95	91	88	83
$701 to $750	0.76	726.00	466.07	d/92	d/92	91	88	83
$751 to $800	0.38	788.50	495.31	d/87	d/87	d/87	d/87	83
Average all cases	-	285.95	219.26	88	93	88	90	85

a/Take-home pay equals gross pay minus Federal and State income taxes, social security (FICA) taxes, and estimated deductions for maritime union dues.

b/Spendable income equals gross pay minus Federal and State income taxes and social security (FICA) taxes.

c/Benefit amount is $106.56 (or the employee's actual wage if less than $106.56), which is 50 percent of the applicable national average weekly wage, the minimum payment established by the Longshore Act.

d/Benefit amount is $426.26, which is 200 percent of the applicable national average weekly wage, the maximum payment established by the Longshore Act.

return to work, compensation that approaches take-home pay gives little recognition to a basic concept of workers' compensation that there should be some sharing of risk between employer and employee for work-related illness or injury.

Proposals to reduce benefits

Both S. 1182 and H.R. 25 would provide compensation at 80 percent of an employee's spendable earnings; that is, an employee's average weekly wage reduced by the amounts required to be withheld from such wage under Federal and State tax laws. The amounts to be withheld would be determined based on the reasonable anticipated tax liability considering the deductions for personal exemptions. These bills also provide that disability compensation be reduced for any benefits received from: (1) Federal Old-Age, Survivors, and Disability insurance benefits; (2) employee benefit plans subject to the Employee Retirement Income Security Act of 1974; (3) unemployment benefits; and (4) compensation in the nature of any other workers' compensation benefit so that total compensation does not exceed 80 percent of spendable earnings.

Objections have been raised to reducing compensation payments because workers receive payments from other sources. Employee representatives point out that it is inequitable to allow employers and carriers to reduce disability compensation to injured workers by amounts received from other programs which are financed by taxpayers and the workers. They say this results in the public subsidizing the employer's unsafe working conditions.

Some employer and insurance carrier representatives suggest that compensation be primary rather than secondary as proposed in S. 1182 and H.R. 25. For example, no other form of employer-funded compensation would be available from Federal, State, or other programs once an injured employee's compensation was at the 80 percent of spendable income level.

UNCERTAIN JURISDICTION OF THE ACT

The Cooper study stated that perhaps the most serious single problem under the act is jurisdiction because it makes potential liabilities unpredictable. It said that, until a means for settling the jurisdictional issue is devised, it is unlikely that the availability of insurance coverage will return to pre-1972 amendment status.

The Congress extended the act's coverage in 1972 to include injuries occurring in "adjoining areas" customarily used by an employer in loading, unloading, repairing, or building a vessel.

The definition of an employee was extended to include any person engaged in "maritime employment."

Labor has not defined by regulation who is covered, preferring to let the courts and other adjudicating bodies resolve this issue. In 1979 testimony before the Subcommitte on Labor Standards, House Committee on Education and Labor, Labor's Assistant Secretary for Employment Standards said that ultimately the decision on coverage resides in the courts.

Over the last 9 years, the courts and the Benefits Review Board have clarified some jurisdictional issues. However, several questions remain unresolved. Both of the changes brought by the 1972 amendments--the extension to adjoining areas and the definition of an employee--are continuing to be litigated. For example:

--In 1978, the Board held that a sheet metal worker who repaired and maintained buildings in a shipyard was covered. However, in November 1980, the Board held that a claimant who maintained and repaired masonry in many buildings in a shipyard was not covered.

--On March 9, 1981, the U.S. Court of Appeals of the Second Circuit reversed the Board's decision and held that guards on piers were maritime employees. However, the Second Circuit Court rejected the Sixth Circuit Court's suggestion that:

"to avoid the judicial morass involved in determining whether each worker in any of the almost infinite range of conditions of waterfront employment is or is not involved in the process of unloading vessels, the Act should be construed to cover all waterfront employment."

--In November 1980, Labor prepared a list of the 90 cases being appealed to the U.S. Courts of Appeals which showed that, in 35 cases, jurisdiction was one of the issues being appealed.

--In 1977, the U.S. Supreme Court commented that the determination of status is made difficult "by the failure of Congress to define the relevant terms - 'maritime employment,' 'longshoremen,' 'longshoring operations,' - in either the text of the Act or its legislative history."

The head of the Benefits Review Board said that the limits of jurisdiction in several major areas have been set as a result of numerous decisions by the Board and the courts. However, there

are several areas where jurisdiction is still somewhat unsettled--for example, where employees spend only part of their time in an activity covered by the act. He also noted that the status of persons engaged in the very preliminary steps of ship building remains unclear and that the jurisdictional status of ship repair workers often depends on the factual pattern of the case.

Representatives of the maritime and insurance industries have expressed concern about the difficulty of defining the scope of the act's coverage. For example, a stevedore association representative stated in September 1980 that 8 years of litigation have brought some clarification of the act's inland jurisdiction, particularly as it relates to transferring cargo between vessels and land transportation systems. However, the jurisdictional picture facing other segments of the maritime industry is somewhat foggier, and jurisdictional disputes in the marine construction field are just beginning. A representative for a national property and casualty insurance trade association stated that the 1972 amendments extended the coverage landward but left doubts about how far and to whom.

S. 1182 and H.R. 25 would generally limit coverage to employees working in areas not covered by any State workers' compensation system. These bills are supported by employers and insurance carrier representatives and opposed by employee representatives.

The head of the Benefits Review Board stated that the above bills would tie jurisdiction to whether an employee was injured when the cargo was being moved inbound or outbound, thus creating litigation over the direction in which materials were moving when the injury occurred. He also said that the bills may cause jurisdictional problems with employees working in and out of coverage--a problem the 1972 amendments were supposed to solve.

LABOR DOES NOT ENFORCE COMPLIANCE WITH INSURANCE REQUIREMENTS

Section 32 of the act requires employers to secure their obligations to pay compensation and provide medical care to injured employees by either (1) obtaining coverage through any insurance company authorized by Labor or (2) becoming a self-insurer. Employers who wish to be self-insured must apply for authorization. An insurance examiner reviews the applicant's financial status to determine if it qualifies. Self-insured employers must obtain an indemnity bond or deposit securities in a Federal Reserve Bank.

Deputy Commissioners are required to ensure that employers have the required insurance coverage. Any employer failing to secure compensation is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than $1,000 and/or by imprisonment of not more than 1 year.

If an employer cannot pay compensation to a claimant, the act provides that the Special Fund may, subject to the discretion of the Secretary of Labor, assume the liability so that the claimant will not suffer. The claimant must first attempt to serve a court judgment on the employer who has defaulted. If the judgment cannot be satisfied, payment may be made by the fund. According to Labor's January 11, 1982, comments on our draft report, usually an employer must be insolvent before Labor will consider payment from the fund, and only five longshore cases are being paid from the fund due to an uninsured employer becoming insolvent.

In our 1976 report, we noted that the districts did not identify all employers who were subject to the act and, therefore, did not know who they should monitor for insurance compliance.

In this review, we found that none of the district offices have attempted to identify all employers covered by the act within their districts. Many stated that identifying all of them would be impossible with their limited staff. One Assistant Deputy Commissioner pointed to the nebulous jurisdiction under the act as a reason he cannot identify all employers subject to the act. Six of the 15 districts responding to our questionnaire stated that they knew of employers operating in their districts without insurance. However, none of these uninsured employers have been penalized. Labor officials said that, in most cases, penalties are not recommended because the uninsured employers have not defaulted on claims or are still under investigation.

We visited three of the six districts which reported that they knew of uninsured employers--New Orleans, Long Beach, and San Francisco.

In New Orleans there were claims outstanding against two uninsured employers. No action had been taken to penalize these employers because they have paid claimants compensation comparable to the amount required under the act. At the time of our visit, one employer had obtained insurance. The other had applied for authorization to be a self-insured employer. A New Orleans official told us that Labor believed penalties should be used only if an uninsured employer refuses to pay compensation and to obtain coverage. He stated that, since the Solicitor's Office probably will not take the case, he is reluctant to recommend any penalties.

Long Beach has received complaints from insured employers about uninsured employers. The insured employers say that the high cost of insurance places them at a disadvantage when competing with uninsured employers. The district has not investigated or acted to penalize the uninsured employers. The district did notify Government agencies that have awarded contracts to these uninsured employers that they should specify in their contracts

that insurance coverage is required. However, the district had not had much success in gaining their cooperation. A Long Beach official said he was told by headquarters not to take any action against uninsured employers who have not defaulted on a claim except to warn them of their liability. He said he knew of no uninsured employer who had defaulted on a compensation payment.

The San Francisco district had one uninsured employer who had left town and could not be located; therefore, no penalty had been assessed. The district became aware of this uninsured employer when two employees filed longshore claims.

The Seattle district, which we did not visit, responded to our questionnaire that one uninsured employer had defaulted on a claim that could involve compensation of $150,000. It appeared that the employer was bankrupt. According to the Seattle questionnaire response, no attempt had been made to penalize uninsured employers because they have either paid benefits and then secured coverage or have declared bankruptcy.

Both San Francisco and Long Beach have another type of employer--those covered by an insurance carrier not authorized by Labor. This carrier, United Marine Mutual Indemnity Association Limited, a foreign-based company, offers insurance at a lower rate than authorized carriers. According to Labor, the carrier was attempting to operate as a Protection and Indemnity Club within the statutory language of the act and had not applied to Labor for authorization. Labor officials believed that the unauthorized carrier was not financially sound.

The district offices first became aware of this carrier in 1977. In 1978, Labor wrote to employers insured by this carrier that it was not an authorized insurance carrier, and the employers were liable under the act. The carrier filed an application for a temporary restraining order to stop Labor from writing letters to its clients because it was losing business. The court denied the order.

Labor also notified agencies awarding contracts to employers insured by this carrier that their contracts should specifically require Labor-authorized insurance coverage. Only the Port of Long Beach responded favorably to Labor. The Department of the Navy told Labor that it will continue to award contracts to such employers until Labor takes appropriate legal action against the carrier.

In 1981, a Federal district court ruled that the carrier must obtain prior authorization from Labor before it can provide longshore coverage. This decision has been appealed. The carrier was still writing longshore coverage, but Labor did not know how

many employers were insured by it. However, as of April 1981, the San Francisco district office had 552 claims against 46 companies insured with this carrier.

As of April 1981, several years after Labor became aware of the problem, none of the employers insured by this carrier have been penalized for insuring with an unauthorized carrier. Labor planned to write stronger letters to employers.

SPECIAL FUND NEEDS PROTECTION

The Special Fund, established by section 44 of the act, is financed primarily by assessments on insurance carriers and self-insurers and pays for (1) some independent medical examinations, (2) claims against insolvent employers, (3) compensation payment adjustments relating to injuries occurring before the 1972 amendments, (4) vocational rehabilitation costs, and (5) payments for "second" injuries.

Usually, under the act, the employer or its insurance carrier is solely responsible for compensation. However, when an employee suffers a subsequent injury (second injury) defined by section 8(f) of the act, the self-insured employer's or insurance carrier's liability is limited to a scheduled award (see p. 4) or 24 months, whichever is greater. Any compensation payments due beyond these times are paid from the Special Fund. Thus, the liability in a second injury case is eventually shared by all self-insured employers and insurance carriers.

Approved second injury claims have increased from 18 in 1976 to 561 in 1980. In fiscal year 1976, the Special Fund paid about $3 million, of which about $80,000 was for second injury payments. In fiscal year 1980, the Special Fund paid about $10 million, of which about $6 million was for second injury payments. Labor estimates that in 1985 such payments will amount to $15 million.

This growth in compensation payments is a concern shared by some employers, insurers, and Labor. Labor is concerned that recent decisions by Administrative Law Judges, the Benefits Review Board, and some Courts of Appeals have broadened the interpretation of the act's provisions regarding second injury claims. Maritime industry and insurance company representatives are concerned that rising assessments needed to pay an increasing number of second injury claims will create a substantial future liability.

Future liabilities of the Special Fund are unfunded, and an insurance carrier representative estimated this liability to be in the "hundreds of millions of dollars." According to a spokesperson for a west coast stevedoring association, the current

Special Fund assessment mechanism imposes upon insurers and self-insured employers a potential liability which is both unknown in amount and subject to factors over which they have no control.

There is also concern that some insurance carriers and self-insured employers are obtaining Special Fund relief in a number of cases which seem to go beyond the purpose of the 8(f) provision. On September 16, 1980, Labor's former Assistant Secretary for Employment Standards, in hearings before the Senate Committee on Labor and Human Resources, stated that the purpose of this provision "was to encourage the hiring or rehiring of partially disabled workers by making second injury relief available only in those cases where the worker's previous disability was realistically manifest to the employer."

Some examples of cases approved for Special Fund relief noted during our review in which the preexisting injury did not appear to be realistically manifest are:

--One court ruled that hypertension was a preexisting disability.

--An Administrative Law Judge found that a pulmonary disease attributed to smoking satisfied the preexisting disability requirement.

While the courts have stated that the preexisting injury must have been "manifest" to the employer before the injury that is the basis for the compensation claim, the courts have also extended the meaning of the term "manifest" to cover a wide variety of situations where it was not shown that the employer knew or should have known of the disability. Although the term "manifest" was not used in the act, the term has been widely used in decisions written by the Administrative Law Judges, the Benefits Review Board, and the Federal appeals courts. According to the 1972 House Committee report on the bill to amend the act, the purpose of this section is to encourage the employment of the handicapped by limiting an employer's financial responsibility for a second injury to a scheduled award or to 104 weeks, whichever is greater.

Another reason for the increases in 8(f) awards--limiting a self-insured employer's or insurance carrier's liability--is that, in some of these cases, the Administrative Law Judges appear to be awarding employers Special Fund relief when the employer and employee have reached a "stipulated agreement." Labor is supposed to initially address 8(f) issues in its informal proceedings. However, according to a Labor study, employers and insurance carriers are able to bypass Labor by using "stipulated agreements." In these cases, a formal hearing before an Administrative Law Judge is requested to resolve issues that do not

include second injury issues. Later, the employer amends his petition for a hearing to include this issue. At the formal hearing, 8(f) becomes the only issue presented to the Administrative Law Judge for consideration; the employee and employer representatives having reached a "stipulated agreement" on all other issues.

A representative for an association of property and casualty insurance companies attributed the rapid growth in the number of cases being covered by section 8(f) to Labor's failure to represent the Special Fund at formal hearings. Regulations governing Labor's administration of the act permit the Solicitor of Labor to represent the interests of the fund at formal hearings or appeals. However, Labor officials said that sufficient resources are not available to routinely represent the fund in 8(f) cases decided at such hearings.

A number of Administrative Law Judges indicated to us that Labor's failure to represent the Special Fund in 8(f) cases invited collusion between employer and employee. The employee, who does not lose compensation benefits in 8(f) determinations, has little interest in the decision reached. However, the self-insured employer or insurance carrier significantly limits its future liability for compensation.

A representative of an association of property and casualty insurance companies suggested that, if Labor cannot represent the Special Fund in 8(f) cases, then it should at least give insurers and self-insured employers the opportunity to limit the fund's liabilities. He said that, in a number of States (e.g., New York and Michigan), the function of administering similar funds has been turned over to insurers and self-insured employers. He believed that a similar approach would be helpful in (1) controlling the number of claims which ultimately end up in the Special Fund and (2) limiting the fund's future financial liability.

We obtained information on New York State's Special Disability Fund. The State established a special committee to conserve the assets of the fund because of its poor financial condition. The committee investigates claims against the fund, challenges claims of no merit, investigates beneficiaries to make certain they are still entitled to such benefits, and generally gets involved in all matters concerning the fund.

The committee has five voting members, one each representing the stock carriers, the mutual carriers, the State Insurance Fund, the New York Compensation Insurance Rating Board, and the self-insurers, and three nonvoting advisory members. The committee annually appoints an attorney who is in charge of operations.

The committee's budget (about $1 million in 1979) is financed by assessments against insurance carriers and voluntary payments by self-insured employers. Total assessments for the second injury fund amounted to $26 million in 1978.

The committee's attorney has a staff of 54, including 4 attorneys, 15 paralegals, and 3 law students who can appear at formal hearings and informal pretrial conferences to defend the fund by cross-examining the carrier and disputing medical evidence.

The committee's attorney told us that, in 1980, the committee accepted 957 cases at pretrial conferences and rejected 700 cases, and carriers withdrew 753 cases. He said a committee survey of 124 rejected cases showed that the committee was overturned by the administrative law process in only 16 cases. In the other 108 cases, the committee's rejections were sustained.

CONCLUSIONS

The costs of longshore compensation have risen significantly since the 1972 amendments to the act, and insurance coverage has become costly and difficult to obtain. These problems have been attributed to high accident rates, questionable claims, high benefits, and a lack of clarity as to jurisdiction.

The Government can apparently do little to reduce accidents or questionable claims. Maritime inspections are not very frequent, and the impact of inspections on accidents is unclear. A Labor-funded study of marine cargo handling, the most hazardous maritime activity, concluded that inspections would not have a serious effect on accidents without an inordinate expenditure of resources and repressive enforcement.

While some compensation claims may be exaggerated, few such claims are challenged. Employers believe it costs less to pay such claims than to challenge them. While there were indications of widespread fraudulent claims in the New York area several years ago, our review did not identify indications of widespread fraud in recent years. Few allegations of fraud were referred to Labor's Office of the Inspector General. Labor's district offices, because they have no investigators, rely on informants and employers to identify potential fraud. Because of the high cost of investigations, employers and insurers apparently make little effort to detect fraud.

Proposed legislation, which would provide much stronger penalties, could help deter fraud. However, it is unknown to what extent stronger penalties would add to the financial incentive employers and insurance carriers already have to eliminate fraudulent claims.

Compensation benefits, which have significantly increased as a percentage of net earnings since the act was passed, usually come closer to preinjury net earnings than to the 66-2/3 percent of earnings envisioned when the act was passed and, thus, provide little incentive to return to work. Also, such high benefit levels give little recognition to a basic concept that the risk of work-related injury and illness should be shared by employer and employee. In some cases, payments from other sources, combined with workers' compensation, could result in payments that exceed preinjury net earnings.

Proposed legislation would base compensation on 80 percent of spendable earnings and would reduce workers' compensation payments, when benefits were available from certain other sources, so that the combined payments would not exceed 80 percent of spendable earnings.

We believe that basing compensation on spendable earnings is desirable because it would generally provide the same percentage of replaced earnings at different income levels. The current system generally replaces a higher percentage of spendable earnings as earnings increase. Disability benefits from other sources should be considered in establishing limits on compensation. However, allowing employers and insurers to reduce compensation because of such benefits may diminish their incentive to ensure safe workplaces.

The unclear jurisdiction of the act resulted in much litigation and made insurers reluctant to provide compensation coverage because of uncertainty as to the extent of their risk. Many jurisdictional questions have been resolved through litigation. However, there are still several areas where jurisdiction is unsettled.

Some employers have neither obtained insurance nor taken actions to become authorized self-insurers. Others have obtained insurance from an unauthorized carrier that Labor believes lacks adequate financial resources. These employers may be unable to pay compensation claims, and such claims could become liabilities of the Special Fund. They may also have an unfair competitive advantage over employers who meet the act's costly insurance requirements. Labor has not penalized such employers.

The Special Fund has experienced a great increase in second injury claims that now represent over half of the fund's disbursements. Employers and insurers have a strong incentive to reduce compensation costs by transferring liability to the fund.

Some of the claims being paid by the Special Fund appear questionable in view of the purpose of the Congress when it modified the second injury provision in 1972. Labor has done

little to challenge questionable claims against the fund in part because Labor lacks the resources to do so.

RECOMMENDATION TO THE SECRETARY OF LABOR

To reduce the potential for defaulted claims which could become Special Fund liabilities, we recommend that the Secretary direct the Deputy Under Secretary for Employment Standards to require that employers obtain proper insurance coverage or become authorized self-insurers. Actions should be initiated to prosecute employers who do not comply with insurance requirements.

MATTERS FOR CONSIDERATION BY THE CONGRESS

In its deliberations on legislation to amend the act, the Congress should consider:

--Defining the act's jurisdiction as explicitly as possible.

--Providing greater incentive for returning to work by (1) revising the level of compensation benefits to recognize the significant changes between gross and net pay that have occurred since the act was passed and (2) establishing overall benefit levels in recognition of the availability of benefits to injured workers from other sources. We believe whatever level of benefits is selected should provide uniform replacement rates for most income levels.

--Permitting the contributors to the Special Fund to challenge claims against the fund and more clearly defining the circumstances under which the fund should assume liability for compensation payments. The amendments to section 8(f) of the act proposed by H.R. 25 and S. 1182 appear to provide appropriate language for establishing a system to permit contributors to challenge claims against the fund.

AGENCY COMMENTS AND OUR EVALUATION

On January 11, 1982, Labor commented on a draft of this report. (See app. I.) Labor agreed with our recommendation that it act to ensure that employers meet insurance requirements and initiate action to prosecute noncomplying employers. According to Labor, to the extent the Department of Justice will prosecute, it will refer such cases to Justice. Labor also said it intends to require an uninsured employer to deposit sufficient funds in a Federal Reserve Bank to ensure payment of compensation for each of its injured employees.

Labor said the current penalty for failure to secure compensation appears to be somewhat inadequate and that increasing the penalty would greatly aid in providing increased incentive for employer compliance.

Labor noted that the number of employers that have been identified as not securing compensation is extremely small. We agree. However, our review showed that the districts' efforts to identify uninsured employers have been limited.

Our draft report questioned the effectiveness of Labor's letters to employers who had insurance with the unauthorized carrier discussed on page 21. Labor said that such letters have been effective; it believes that letters were instrumental in causing 24 of the 46 employers insured with the unauthorized carrier to obtain proper insurance. Labor added that the unauthorized carrier has continuously requested Labor to stop sending the letters for fear of losing business and is now trying to become authorized.

Labor said that, since January 1981, when a court decided that the carrier was not authorized in accordance with the act, Labor has been developing plans to institute court action against some of the 46 employers, the unauthorized carrier, or both. However, the number of employers that could be involved in court action was greatly reduced in July 1981, when the 24 employers obtained proper insurance.

We agree that the letters have been effective. However, we believe stronger actions are needed for the other 22 employers. It has been several years since Labor became aware of the problem of employers obtaining insurance from an unauthorized carrier and about 1 year since the court decision. We believe this is sufficient time to have developed a plan to deal with the problem.

Labor said that most major shoreside coverage questions were resolved in 1979 by two longshoring cases whose principles are easily applied to shipbuilding. According to Labor, the only remaining coverage issue of significance, which is now pending before the Supreme Court, involves marine construction over water, an activity clearly covered before 1972 but which is allegedly no longer covered.

Labor said that the percentage of cases in which jurisdiction has been raised before the Benefits Review Board has greatly decreased, and this is expected to carry over to the Courts of Appeals this year. According to Labor, this could result in an alteration of attitudes of insurance carriers. Labor said that this conclusion is consistent with the statements in our report from a representative of the stevedoring industry and the head of the Benefits Review Board, whereas matters cited to the contrary are generally dated.

We agree that many jurisdictional issues have been resolved. However, as shown on page 18, both the stevedore industry representative and the head of the Benefits Review Board point out that jurisdiction is still unsettled in some areas. In addition, several industry and insurance representatives stated, in June 1981 testimony before the Senate Labor and Human Resources' Subcommittee on Labor, that jurisdictional problems still remain.

We continue to believe that the Congress needs to more clearly define the act's jurisdiction.

Labor said that recent Benefits Review Board case law has strengthened the Special Fund's position when parties attempt to settle a case and impose liability on the fund. Labor said that the Board held that the Director, Office of Workers' Compensation Programs, must be aware of and acquiesce in making fund liability for second injuries part of the settlement.

Labor stated that it had proposed regulations in 1981 that would have prevented insurance carriers and self-insured employers from bypassing the Deputy Commissioners by raising the second injury issue for the first time at formal hearings. Labor said the proposed regulations provided that an application for second injury relief could not be considered for resolution by an Administrative Law Judge until it had been considered by Labor's district office and headquarters. Labor said that 33 comments, all unfavorable, were received on the proposed regulation. Labor said that the employers, carriers, and their representatives, the same group that objects to rising Special Fund assessments, objected to Labor's attempt to eliminate the circumvention of its Deputy Commissioners.

Labor stated that, in October 5, 1981, testimony before the Senate Labor Subcommittee, it recommended that the act be changed to (1) tighten the definitions of preexisting disability and substantially greater injury, (2) give Labor more authority to limit the fund's usage, and (3) charge the fund for its administrative and legal defense costs.

We agree that Labor has made efforts to protect the Special Fund. The idea of giving Labor more authority to limit the fund's usage and allowing Labor to charge the fund for Labor's costs has some merit. However, at the time of our review, Labor's district offices were understaffed, and Labor officials said that sufficient resources were not available to routinely represent the fund at formal hearings. Further staff decreases were expected. Without more personnel, more authority may have limited value.

CHAPTER 3

CLAIMS ADMINISTRATION

NEEDS IMPROVEMENT

Many of the problems identified in Labor's administration of the Longshoremen's and Harbor Workers' Compensation Act in our January 12, 1976, report still exist. Claims backlogs were large, and claims processing and informal adjudication were untimely. Sufficient efforts were not made to ensure that workers' rights were protected and that compensation payments were timely and accurate.

While Labor has made efforts to improve program administration, the main problem we identified in 1976--lack of sufficient staff to handle a greatly increased workload--still exists. Significant improvements in program administration would require increased staff. However, staff reductions are anticipated.

Labor needs to (1) do more to help claimants protect their rights and (2) let employers and insurers know that Labor will act to enforce these rights. Labor should give injured workers more information on their entitlements and penalize employers for late reporting and late compensation payments.

The time required for formal adjudication of claims by the Office of Administrative Law Judges appeared reasonable. However, the Benefits Review Board took an average of 10 months to decide appeals of judges' decisions and could take longer in the future.

ACTIONS TAKEN BY LABOR SINCE 1976

In our 1976 report, we reported that, due to the rapidly increasing claims workload, Labor was not effectively overseeing employers' compensation payments to injured employees as required by the act. Specifically, we reported the following problems:

--A significant number of claims were awaiting action.

--Injured employees were not receiving compensation payments in the required amounts or time periods.

--Labor was not assessing penalties on employers for late reports and late benefit payments.

--Labor did not actively supervise medical treatment given to injured employees.

--Long delays were occurring in informal hearings of contested claims.

We recommended that the Secretary of Labor act to ensure that adequate resources are available to effectively and efficiently carry out Labor's responsibilities under the act. We also recommended that (1) additional guidance and criteria for processing claims and assessing penalties be provided to the district offices, (2) district offices be required to follow prescribed policies and procedures in reviewing compensation payments, (3) effective programs be established to assist claimants in processing claims and to actively supervise medical care, and (4) district offices be systematically monitored by headquarters.

Labor revised and updated operating procedures and issued general guidelines on the act's coverage. Labor issued performance standards, revised and reissued its procedure and accountability manuals, and revised its examiner training program. Labor also increased the number of employees working on the program. However, increased workload greatly exceeded staff increases.

WORKLOAD OUTPACES STAFF

The following table shows that the staff authorized for the program has increased. However, the workload has increased at a much greater rate.

Reported Injuries, New Time-Lost Injuries, and Authorized Positions Budgeted by Labor 1972-82

Fiscal year	All injuries reported	Estimated new time-lost injuries		Authorized positions budgeted by Labor	
		Total	Percent change	Number	Percent change
1972	72,087	17,667	-	100	-
1974	151,274	32,944	86.5	118	18.0
1976	195,198	39,032	18.5	157	33.1
1978	217,367	46,467	19.0	174	10.8
1980	238,274	59,594	28.3	174	-
1982	a/253,000	a/67,000	12.4	a/157	-9.8

a/Labor's estimates.

From 1972 to 1980, the number of positions authorized increased by 74 percent, while both reported injuries and estimated new lost-time injuries more than tripled. Although further workload increases are estimated for 1982, due to budget constraints a reduction in authorized positions is expected.

Labor's Deputy Under Secretary for Employment Standards provided the following budget guidance in a May 29, 1981, memorandum:

"In developing the initial budget submission for FY 1983, we are requesting that [staffing] plans be formulated at the current level and at reduction levels * * *. Submission of enhancement levels will be optional, but are discouraged."

* * * * *

"During FY 1982 and FY 1983, the Longshore Program will be responsible for a growing workload with a reduction in overall staffing. * * * Note that program performance standards have been adjusted to reflect extended processing times."

Eight of 15 district offices responding to our questionnaire stated that the present number of claims examiners was inadequate. In Philadelphia, Norfolk, and Long Beach, the number of cases per claims examiner was about three times the standard of one examiner for 600 active cases. Only 4 of 15 districts were within the standard. Reports from 5 of the 15 district offices frequently cited clerical shortages as a problem. San Francisco's fiscal year 1982 budget/program planning forecast stated that, with 1981 resources, essential services would be minimally performed in a reactive manner. This district has since lost four of its authorized positions.

Labor made periodic accountability reviews of district office performance. Several of these reviews identified the same or similar problems with claims administration that are discussed on the following pages. On July 25, 1981, Labor's Longshore Associate Director told us that the district offices do not have enough staff to operate the program in conformance with the procedure manual. Specifically, he stated that the districts do not have adequate staff to process claims in a timely manner while still giving them the quality of review required in the procedure manual.

Large case backlogs (cases awaiting action) have continued to adversely affect the timeliness of claims processing since the act's 1972 amendments.

While the reported backlog at the end of fiscal year 1980 (11,514 cases) is an 18-percent decrease over 1975 (14,039 cases), it is still beyond what the performance standard classifies as an acceptable level. The 1980 backlog averaged over 200 cases per claims examiner, although the standard provides that a claims examiner should not have over 75 backlogged cases. Moreover, some districts may routinely understate the number of backlogged cases reported to the national office. Four of the six districts we visited (Houston, New Orleans, Long Beach, and San Francisco) should have included, but did not, cases that were not reviewed by the followup date set by the examiner.

UNTIMELY REVIEW OF CLAIMS

Timely reviews are needed to help ensure that claimants receive adequate medical care and timely and proper compensation payments. However, reviews of cases by claims examiners to assure timely processing were infrequent, and there were delays in reviewing incoming documents relating to cases.

The procedure manual requires that cases be periodically reviewed by claims examiners. A maximum of 45 days is allowed before a case is called up for review when missing documents are requested. Our questionnaire and case sample results showed that callup periods exceeding the standards were routine in Boston, Honolulu, Houston, Long Beach, New York, New Orleans, San Francisco, and Seattle. For example, callup dates set in our San Francisco sample averaged 75 days. In addition, about half of the cases were not reviewed on their callup dates. These cases averaged 121 days without review.

San Francisco officials said that callups of less than 60 to 90 days during heavy backlog periods are meaningless and only increase the workload problems. We were told that, should a missing document be received before the callup date, the case will be brought to the examiner for review. However, we believe that callups are needed so that claims examiners can identify and request documents which have not been received.

The procedures manual provides that new cases are to be reviewed within 1 week after a case file is made. 1/ Additional information pertaining to the case is to be reviewed upon receipt. As shown in the table on the following page, in both districts sampled, it usually took more than 3 weeks from the date case documents were date stamped in the mailroom until an examiner reviewed them. In some instances in New York and in many instances in San Francisco, we were unable to determine whether or when documents were reviewed.

WORKERS USUALLY NOT ADVISED OF RIGHTS

In the absence of timely case reviews, to help ensure that workers' rights are protected, Labor could provide claimants with information to help them monitor their own claims. In New York and San Francisco, the forms used to provide such information were generally not provided to injured workers or were not provided timely. Also, we believe that more information should be provided so that injured workers are better advised of their rights.

1/A case file is usually made after a report of injury or illness or a claim for compensation is received. The case file is to be established within 1 week.

Document	New York				San Francisco			
	Number received and requiring review	Cases where review dates were determinable		Average review time (days)	Number received and requiring review	Cases where review dates were determinable		Average review time (days)
		Number	Percent			Number	Percent	
Employer's first report of injury or occupational illness	90	90	100	37	95	38	40	20
First medical report	77	66	86	32	86	37	43	24
Payment of compensation without award	40	35	88	28	53	28	53	23
Notice of final payment or suspension of compensation payments	40	38	95	15	55	45	82	23
Final medical report	53	47	89	28	42	20	48	24
Notice to deputy commissioner that right to compensation is controverted (note a)	29	26	90	22	8	3	38	15
Request for informal conference	25	25	100	23	2	1	50	32

a/This form is used when an employer or its insurance carrier denies that an employee is entitled to compensation.

There are three forms for informing injured workers of their rights. One (LS-504) is a letter in English and Spanish. The others are post cards in English (LS-504a) and Spanish (LS-504b). The procedure manual provides little guidance to examiners on when these forms should be sent. The manual states:

> "* * * Depending on the severity of the injury, and if indicated in the CE's [claims examiner's] judgment, [a form] * * * should be sent to the claimant, regardless of whether the claimant is represented in the case at this time."

The accountability review manual states that district offices should use information forms and letters, such as the LS-504, extensively.

A form was sent in only 1 of the 100 cases we reviewed in the New York district. In June 1976, the New York Deputy Commissioner directed his office to discontinue sending out forms advising injured employees of their rights, stating that longshoremen in the district were well aware of their rights. However, many claimants may not have the awareness of their rights that longshoremen are believed to have. For example, 24 of the 100 cases involved workers who were covered by extensions of the act.

In San Francisco a form was sent in 41 of the 100 cases we reviewed. San Francisco claims examiners told us that they assume most claimants know their rights. Even in the cases where the form was sent, it was not sent out in time for the claimants to monitor their compensation payments. Injured workers in San Francisco were not sent a form until an average of 75 days after their injury or almost 2 months after they had already returned to work.

The information in the LS-504, LS-504a, and LS-504b falls short of what claimants need to monitor their own claims. These forms basically tell when compensation is due and whom to contact with questions. Among other things, they do not advise the injured worker (1) that the compensation rate while totally disabled should be two-thirds of the average weekly wage, (2) how to compute the average weekly wage, (3) the frequency of compensation payments, and (4) that payment is to be made for the first 3 days of lost pay (normally noncompensable) if the disability exceeds 14 days.

We believe Labor should revise the LS-504 so it provides more information on injured workers' rights. The revised form should be sent to the worker when a report of a lost-time injury is received rather than when the claims examiner reviews the case. We recognize that providing such information could result in inquiries that would increase the district offices' workload. However, in the absence of timely monitoring by Labor, we believe

that workers should be given information to help them determine whether they are receiving proper benefits.

LACK OF MEDICAL MONITORING

In enacting the 1972 amendments, the Congress required Labor to take a more active role in insuring that injured workers receive proper medical treatment. The Congress intended that Labor actively supervise the claimants' medical care by requiring periodic medical reports as appropriate. The act requires that a report be submitted within 10 days after the physician's first treatment. Labor's procedures provide that, if treatment continues, physicians be requested to provide periodic reports and a final medical report describing any residual permanent impairment when treatment has been completed.

As shown in the following table, Labor often did not receive medical reports or did not receive them timely.

Sample	Number of cases lacking required medical reports: Initial examination	Final examination	One or both	Number of cases with late initial examination (note a)
New York	23	13	30	19
San Francisco	14	23	28	20
Total	37	36	58	39

a/Date of preparation shown on report was at least 10 days after the medical examination. An additional 17 reports in New York and 12 reports in San Francisco, while dated within 10 days of the first treatment, were received more than 30 days after the first treatment.

Claims examiners in New York did not request 11 of the 23 missing initial medical reports. When requests were made, they were usually late--an average of 103 days after the date of injury. Only 1 of the missing 13 final medical reports was requested.

In San Francisco, claims examiners did not request 8 of the 14 missing initial medical reports. An April 1980 accountability review of this district stated that, in some cases, it took examiners more than 120 days to request this document. Only 12 of 23 missing final medical reports were requested.

Accountability reviews reported long delays in receiving, requesting, and/or reviewing medical documentation in six other districts. For example, the October 1980 Boston accountability review stated that medical reports were sparse and failed to

provide sufficient data for examiners to effectively monitor the claimants' medical care. In this district, the largest employer does not routinely send Labor copies of medical reports. In many instances, cases are closed with only an illegible dispensary report. The review team recommended that self-insured employers, insurance carriers, and the medical community be made aware of their reporting obligations.

INADEQUATE EFFORTS TO ENSURE PROPER COMPENSATION PAYMENTS

Claims examiners in New York and San Francisco routinely accepted the average weekly wage figures submitted by the employer unless the claimant complained. We noted 15 claims from our samples where the files contained inadequate or conflicting information regarding how much time (if any) the injured worker lost from the job. Yet, the examiners did not verify the length of disability. Payments in 36 of the 118 compensable cases we reviewed appeared incorrect or questionable.

The procedure manual requires that, if the claims data indicate that all income may not have been considered or the compensation rate appears low, Labor should request verification of compensation from the employee. In both New York and San Francisco, however, examiners routinely accepted the average weekly wage stated on the employer's report without requesting verification.

In New York, only one request for verification was sent to a claimant out of the 36 closed cases where compensation was paid. District officials told us that it is their policy to accept the average weekly wage reported by the employer, unless it seems totally out of line or is questioned by the claimant. They believe that verification is unnecessary since most claimants are represented by attorneys or claims representatives. However, we found seven cases where the claimant was not so represented and compensation was not verified although data indicated that all the employees' income may not have been considered. We also found other cases where the employers' reports failed to indicate the workers' average weekly wage or the date returned to work.

In our San Francisco sample, only four claimants were requested to verify wages (one request resulted from our inquiry). Six cases in our sample showed that the claimant received the minimum or below minimum rate. District officials said that they believed workers know their rights and would complain if they did not receive proper compensation.

While most employees in our samples appear to have been paid correctly, as shown below, in 31 percent--36 of the 118 compensable cases--either employees appeared to have been incorrectly paid or the amount paid appeared questionable based on data in the case file. We did not follow up with claimants or payers of compensation to determine which data were correct. In all but 4 of the 36 cases, the claimants may have been entitled to more compensation than they received.

Location	Compensable cases reviewed	Over-paid cases	Under-paid cases	Question-able cases	Total incorrect and questionable
New York	57	3	3	9	15
San Francisco	61	1	6	14	21
Total	118	4	9	23	36

Overpayments ranged from $1 to $162, and underpayments ranged from $3 to $122 for the entire period of compensation.

PENALTIES SELDOM ASSESSED

Labor may assess penalties on employers if certain reports are not provided timely or may assess penalties and interest if compensation payments are late. Such penalties and interest could provide an incentive for timely reporting and payment of compensation and reduce Labor's workload by reducing the number of callups and requests for missing documents. Although there were numerous instances of late reports and payments in the cases in our New York and San Francisco samples, penalties or interest were not assessed. Also, many other district offices apparently seldom assess penalties or interest.

The act requires that:

--Employers report injuries to Labor within 10 days after learning of them. An employer who does not comply is subject to a civil penalty of up to $500, which is to be paid into the Special Fund.

--Compensation is due, unless the claim is disputed, within 14 days of knowledge of the injury. There is a penalty of 10 percent added to any installment of compensation that is not paid within 14 days after it becomes due. 1/

--Labor should be advised within 16 days after the final compensation payment has been made. An employer who does not comply is to be assessed a penalty of $100, which is to be paid into the Special Fund.

As shown in the following table, required reports were sometimes prepared late and payments were often made late.

1/In addition, although not specified in the act, the courts have determined that interest is also to be awarded at 6 percent per year.

District	Injury report: Number received	Injury report: Prepared late	First payment of compensation: Number made	First payment of compensation: Made after 14 days	First payment of compensation: Made after 28 days	Report of final payment: Number received	Report of final payment: Prepared late
New York	90	18	40	23	9	40	3
San Francisco	95	10	53	23	11	55	6
Total	185	28	93	46	20	95	9

In addition, in many instances (1) the dates on reports indicated that they were prepared timely, but Labor did not receive them until long after they were due, (2) the reports were not dated, and (3) the reports were never received. The two districts did not record the postmark dates or save the envelopes for reports that were received late. Therefore, we could not determine whether such reports were submitted late.

Penalties were not assessed for any of the late or missing reports identified in our sample.

As shown above, nearly half of the first payments of compensation were made late. Although 20 of the 46 late payments were made more than 28 days after the employers knew of the injuries, penalties and interest were not assessed.

Some of the reasons cited by district officials for not assessing penalties or interest were that:

--Headquarters will not follow up on uncollected assessments due to small dollar amounts and the possibility of litigation.

--They did not want to hurt their rapport with employers with whom they have to continue to deal.

--They believe only habitual offenders should be penalized.

Failure to assess penalties has also been a continuing problem in other districts. For example:

--The Boston Assistant Deputy Commissioner stated that, before the October 1980 accountability review, 90 percent of the possible penalties and interest were not being assessed by the district.

--The April 1980 regional accountability review of the New Orleans district showed that this office did not meet performance standards for assessing penalties and interest. (In commenting on a draft of this report, Labor stated that a February 1981 accountability review showed that penalties and interest were being assessed.)

--Seven district offices responded to our questionnaire that they assessed penalties for late initial compensation payments in 5 percent or less of the eligible cases. However, they also responded that payments were seldom late.

ADJUDICATION OF CLAIMS

Disputed claims may be resolved through informal conferences conducted by a deputy commissioner or a designee. Disputes not resolved at that level are referred to Labor's Office of Administrative Law Judges for formal hearings. Decisions resulting from these formal hearings can be appealed to Labor's Benefits Review Board. The Board's decisions can be appealed to the U.S. Courts of Appeals.

Many districts were not holding conferences timely. The Office of Administrative Law Judges appeared to be deciding cases about as timely as reasonably possible. The Benefits Review Board took about 10 months before a case was decided. However, the head of the Board said that, because of a greatly increased workload, it could take about 2-1/2 years before future cases are decided unless the Board was enlarged. We did not look at cases that went to the U.S. Courts of Appeals.

Informal conferences

The procedures manual provides that informal conferences should generally be scheduled as soon as possible after a request is received, but not later than 30 days after the request. In responding to our questionnaire, only 3 of the 15 district offices reported that informal conferences were scheduled within 30 days of requests in fiscal year 1980. Five districts provided estimates of from 35 to 45 days, and six districts provided estimates ranging from 60 to 80 days. One district did not respond. In commenting on a draft of this report, Labor stated that there are certain circumstances when a longer period of time is allowed for scheduling conferences. (See p. 47.)

Two of the 100 San Francisco cases had requests for informal conferences. Neither conference was held. One was not held because the employer was out of business and could not be located; the other was canceled for reasons we could not determine.

Of the 100 New York cases, 25 involved requests for informal conferences. In nine of these cases, the conferences were generally not held because the parties settled before the date set for the conference or data needed for the conference were not provided to Labor. For the other 16 cases, the average number of days from the time the claims examiner reviewed a request for conference until the conference was held was 94 days. Most of the cases were settled at, or as a result of, the conferences. Several cases remained unsettled because additional information, such as an impartial medical report, was to be provided or the parties had not reached agreement. It averaged 23 days from the time New York received a request for an informal conference until the request was reviewed.

Formal hearings had not been requested for any of the cases in our New York or San Francisco samples.

Formal hearings

The number of longshore cases referred to the Office of Administrative Law Judges increased steadily from 421 in fiscal year 1974 to 2,526 in fiscal year 1980. 1/

During fiscal year 1980, the Office disposed of 2,335 cases consisting of 1,255 decisions and 1,080 final orders. Decisions generally involve cases in which a hearing is held and the judge must settle points of conflict. Final orders generally involve cases sent back to the district office for settlement at the request of both parties.

We randomly selected 144 cases referred to the Office from New York and San Francisco between October 1978 and June 1980. Of the cases, 101 were decided. The rest were remanded. An average of 163 days elapsed from the date a case was referred to the Office until it was decided. Sixty-three of the 101 decided cases were referred in fiscal year 1979. These cases, on the average, took 169 days (or about 5.5 months) to decide. The 38 cases decided in fiscal year 1980 averaged 153 days (or about 5 months).

The Associate Chief Administrative Law Judge told us that it takes (1) 1 to 2 weeks to assign a case, (2) 7 to 8 weeks after assignment until the hearing, (3) 30 days after the hearing to keep the record open for any supplemental information, (4) 2 weeks for the transcript, and (5) 2 weeks to write up the decision. These time periods, which total 4 to 4.5 months, seem reasonable, and it appears there is little room for improvement in the time it takes the Office to hear and decide cases.

The number of longshore decisions appealed to the Benefits Review Board increased from 72 in fiscal year 1974 to 437 in fiscal year 1980. The Board reported that it had decided 520 longshore cases during fiscal year 1980 and that longshore appeals had dropped by about 50 percent during that year. However, overall, the Board received 1,228 appeals and decided 675 cases during fiscal year 1980 and had a backlog of 1,248 cases as of September 30, 1980. The Board averaged about 10 months to issue its decisions. If compensation had been approved by an Administrative Law Judge, payments are usually continued while an appeal is reviewed by the Board.

1/The Office of Administrative Law Judges and the Benefits Review Board also hear cases relating to other Federal programs. Our statistics, unless otherwise stated, relate only to longshore cases.

The head of the Board stated in June 1981 that the three-member body cannot handle the present workload. He estimated that, if an appeal were filed at that time, it would take 2.5 years before the Board's decision would be issued. He recommended that the Board, which now consists of one panel of three members, be expanded to at least seven members, which would allow various combinations of panels of three. He told us that, while the size of the Board should be increased, he believed the Board's staff was adequate.

CONCLUSIONS

Labor has taken actions to improve claims administration in the longshore program. However, primarily because of a heavy workload, many of the problems we identified in 1976 continue to exist.

Case review and informal adjudication are untimely, and efforts to ensure adequate medical care are not sufficient. About half of the initial compensation payments made in our sample cases were late, and based on data in the case files, 31 percent were incorrect or questionable. Reports from employers and physicians were often submitted late or not at all.

Without additional staff, significant improvements in claims administration appear unlikely. However, decreases in the longshore staff are expected. We did not evaluate the efficiency of Labor's claims administration personnel. Therefore, we do not know to what extent additional staff would be required. Also, if legislation similar to S. 1182 or H.R. 25 were enacted and the act's jurisdiction narrowed, the claims workload would be reduced somewhat.

Since Labor is not providing timely protection of workers' rights, it should do more to advise injured workers of their rights so that they are better able to monitor their own claims. Labor should also assess penalties for late reports of injuries and final payments of compensation and should assess penalties and interest when compensation payments are made more than 28 days after employers are aware of injuries.

Formal adjudication by the Office of Administrative Law Judges appears reasonably timely, and in view of procedural requirements, significant improvements cannot be expected. It took the Benefits Review Board about 10 months to decide a case in fiscal year 1980, and because of an increased workload, future decisions could take 2.5 years. The head of the Board has recommended increasing the number of members from three to at least seven to permit more timely decisions.

RECOMMENDATIONS TO THE SECRETARY OF LABOR

We recommend that the Secretary direct the Deputy Under Secretary for Employment Standards to

--require that district offices assess penalties and interest,

--revise the letter (LS-504) designed to inform injured workers of their rights so that it provides more information on compensation payments and discontinue the use of the post cards (LS-504a and LS-504b), and

--require that districts send the LS-504, as revised, to workers upon receipt of a notice of injury when it appears that compensation will be due.

AGENCY COMMENTS AND OUR EVALUATION

Labor generally agreed with our recommendations. However, it expressed concern that our draft report indicated that the problems identified in our sample cases were representative of all its district offices. Labor said its accountability reviews and the responses to our questionnaires did not support our findings with respect to late payments of compensation and the assessment of penalties for late payments and late reports. Labor said we did not recognize the many improvements in the program since our prior review despite a greatly increased workload and limited staff. Labor also said our sample was too small, thereby contributing to some inaccurate findings and conclusions. According to Labor, we were inconsistent because we frequently cited questionnaire responses which supported our conclusions. However, Labor said many questionnaire responses, which can be supported by accountability reviews and other data, do not support our conclusions.

Based on our work and Labor's accountability reports, many of the questionnaire responses appeared to present a more favorable picture of the districts' performance than actually was the case. For example:

--San Francisco responded that penalties were assessed during fiscal year 1980 1/ for 95 to 100 percent of late first payments of compensation. Penalties were not assessed in any of the cases identified during our review.

--New Orleans responded that penalties were assessed in 80 percent of the cases involving late first payments of compensation. The April 1980 regional accountability review report said that: "As a rule, the New Orleans office does not assess the 10% penalty and 6% interest where compensation is paid late."

--In several districts, the times reported as specified for callups were understated and/or the cases were not reviewed at the times specified.

Thus, we hesitate to conclude that districts are performing well based on our questionnaire data.

Although our review showed little improvement in the districts we visited in our prior review (Boston, New York, and San Francisco), Labor's accountability review reports indicated improvements in some districts' performance and noted that some districts were performing well. We have revised our report to avoid the implication that most districts have the same problems we identified or that there have been no improvements in claims administration.

Labor said that our report did not fully recognize the program's many accomplishments and listed some of them (see p. 60). These accomplishments primarily involved actions taken to improve program administration, such as establishing procedures and training programs. Labor said that, until recently, when staffing levels were reduced, conference delays had been greatly reduced.

Of the 11 districts that responded to our questionnaire for both this and our prior review, 3 showed that it took less time to schedule conferences in 1980 than at the time of our prior review. Two districts showed that it took about the same time, and six districts showed that it took longer in 1980.

Labor said that the increased number of employees since our prior review and emphasis on our prior report and a task force report resulted in improvements in quality and timeliness for a while. Labor provided a number of statistics to show that workload increases over the past several years had vastly exceeded staff increases.

1/For fiscal year 1980 we asked the districts to respond as of June 30, 1980.

As our report indicates, we agree that staff increases were inadequate to cope with workload increases.

Labor said our report did not discuss staffing for fiscal year 1981, the year included in our review, and described a number of actions that reduced staffing during that period. Our review of cases was basically completed before the end of calendar year 1980. All the fiscal year 1981 actions noted by Labor that reduced staff took place in calendar year 1981 and thus had no impact on Labor's processing of the cases discussed in our report.

Labor generally agreed that penalties should be assessed for late reports. However, it believed only habitual offenders should be penalized for late injury reports. Labor said a 1976 longshore task force report recommended that (1) the facts of the situation, the employers' good faith, and the extent of damage or hardship suffered by the claimant be considered for penalties for late reports and compensation payments and (2) penalties not be assessed for late injury reports in no-time-lost cases unless the employer is guilty of gross and repeated violations after written warning.

Labor said that the language of the act suggests that imposing a penalty for late injury reports is discretionary. Labor believes that, should it determine that the program's best interests would be served by issuing a reminder or a warning rather than a fine, such action would not be prohibited by the act. Labor saw little value in imposing a penalty for a late injury report if compensation is timely paid and observed that, in such cases, a penalty could undermine the cooperation of the insurance carriers and employers with whom its districts deal.

We agree that Labor should not assess penalties in all cases. However, we believe that, rather than penalizing only habitual offenders, Labor should generally assess penalties for violations of injury reporting requirements that occur after warning has been given. Penalty amounts should be based on the frequency and nature of such violations.

Labor did not specifically address penalties for late reports of final payments of compensation.

Labor said our report indicates that there has been little progress in collecting penalties for late reports since 1976 and provided data on collections of such penalties. The data showed no major changes since fiscal year 1976 but did show significant increases in collections over fiscal year 1975.

Without data on how much should have been assessed and collected, Labor's collection data provide little insight into how often those who submit late reports are penalized. Also, the questionnaire responses showed that, for the first 9 months of

fiscal year 1980, two districts collected and submitted $8,525 in penalties, which was about two-thirds of the $13,010 in collections reported by Labor for all of fiscal year 1980. This indicates that many other districts are collecting few penalties.

Labor agreed that penalties should be assessed for late compensation payments and said that this is carefully reviewed in all accountability reviews. However, Labor had misgivings about the report's commentary on the imposition of penalties for late compensation payments.

According to Labor, a February 1981 accountability review found that the New Orleans district applied penalties and interest to late compensation payments. Labor said that the almost 50-percent figure cited in our report appears too high and that it believes probably less than 5 percent of compensation payments are late. Labor noted that questionnaire responses and accountability review data for New York and San Francisco showed much lower incidence rates of late payments than identified in our sample cases.

Labor noted that we placed emphasis on the questionnaire responses that seven districts assessed penalties for late payments in 5 percent or less of the eligible cases. Labor said, however, that we did not mention that the total number of late payments is 5 percent or less in five of the seven offices and 1 percent or less in two of those five.

It is likely that the assessment of penalties and interest had improved in New Orleans by the time of the February 1981 accountability review. The district's September 30, 1980, report on the corrective actions taken on the April 1980 accountability review stated that the standard for penalty and interest assessment had been applied more strictly by all claims examiners.

With respect to the questionnaire responses, they were estimates and, as previously stated, these estimates were often inconsistent with data developed during our work at the district offices. Also, the almost 50-percent figure identified in our report is not comparable with accountability review data, which are based on all sampled cases and focus on payments made more than 28 days after knowledge of the injury. Our review of 200 cases, which included noncompensable cases, identified 20 payments that were made more than 28 days after the employer knew of the injury. On that basis of comparison, our figure for late payments would be 10 percent rather than almost 50 percent.

The percentage of late payments and reports overall may be less than identified in the cases we reviewed in the two districts. However, we believe that our review shows that, when reports and payments were late, penalties were often not assessed.

Labor agreed with our recommendations to revise the letter (LS-504) designed to inform injured workers of their rights, to discontinue the use of post cards for that purpose, and to require districts to send the revised letter to workers upon receipt of a notice of injury when it appears that compensation will be due. Labor said that a number of district offices now send the letter in such cases, but the change in procedure will insure uniformity.

Labor said that, overall, its program to inform claimants of their rights, of which the letter is only a part, is considered effective. Labor said that other letters are used to inform workers of their rights under certain circumstances and that district offices periodically hold technical assistance seminars. Labor added that large unions assist their members and many claimants are represented by attorneys or lay representatives, thereby assuring that their rights are protected.

Labor said that the data in our report on New York's lack of medical monitoring were somewhat bewildering. It said the district had developed good procedures to cope with a large workload of medical reports and is a model office in the area of impartial medical examinations. Labor said an October 1981 accountability review, involving a sample of over 150 cases, showed that most files had appropriate medical documentation, missing reports were requested, and many impartial medical examinations were made.

After our review, we discussed our findings on medical monitoring with New York district officials, who agreed with the findings. Apparently, performance has since improved. The number of impartial medical examinations is not indicative of the timeliness or overall adequacy of medical monitoring. Such examinations are used to obtain an independent opinion on questions of medical condition or treatment. They are not a substitute for reports from the physicians who are providing treatment.

Labor said we did not cite the exceptions to the rule that informal conferences be scheduled not later than 30 days after they are requested. Labor stated that longer time periods are permitted when travel restrictions are involved, in death cases, and in permanent partial disability cases. Also, in many situations, the 30-day period is inadequate because factual and medical evidence is not sufficiently developed for a conference to be meaningful. In addition, the need to hold conferences in cities other than the district office location greatly affects the scheduling of conferences.

We agree that there are exceptions to the 30-day general rule and that certain factors affect scheduling. However, Labor did not indicate how frequently these situations occur.

Labor said our report discusses cases where it appears that compensation may have been paid incorrectly but does not state whether it was incorrectly paid or whether there was followup.

Our determinations that payments appeared incorrect or questionable were based on data in Labor's case files which conflicted with the amount of compensation reported as being paid. We did not follow up with claimants or payers of compensation to determine which data were correct. We provided district officials with data on the cases where payments appeared incorrect or questionable. Our fieldwork was completed shortly thereafter, so we do not know what action they took on these cases.

U.S. Department of Labor

Deputy Under Secretary for
Employment Standards
Washington, D.C. 20210

JAN 11 1982

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 the Secretary requesting comments on the draft GAO report entitled, "The Longshoremen's and Harbor Workers' Compensation Act Needs Amending and Better Administration."

The Department's response is enclosed.

The Department appreciates the opportunity to comment on this report.

Sincerely,

Robert B. Collyer
Deputy Under Secretary

Enclosure

GAO note: Page references in this appendix may not correspond with page numbers in the final report.

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

The Longshoremen's and Harbor Workers'
Compensation Act Needs Amending and
Better Administration

Recommendation:

"To reduce the potential for defaulted claims which could become Special Fund liabilities we recommend that the Secretary of Labor direct the Deputy Under Secretary for Employment Standards to ensure that employers obtain proper insurance or become authorized self-insurers. Action should be initiated to prosecute employers who do not comply with insurance requirements."

Response:

The Department concurs.

Comment:

To the extent that the Department of Justice will prosecute these cases the Department of Labor, will refer all such cases. Further, the Department of Labor intends to require an uninsured employer to deposit, in accordance with Section 14(i) of the Act, sufficient funds in a Federal Reserve Bank to ensure payment of compensation for each of its injured employees.

The GAO did not discuss one area of legislative change that would greatly aid in providing increased incentive for employers to secure compensation under the Act by either self insuring or by obtaining insurance from an authorized carrier, that is, by increasing the penalty that the courts can levy against convicted uninsured employers. The current penalty of $1,000 and/or up to one year imprisonment appears to be somewhat inadequate.

The number of employers that have been identified as not securing compensation in accordance with the Act is extremely small as compared to those that do. Four District

Offices were cited by the GAO as having identified uninsured employers. In New Orleans, two uninsured employers secured compensation in accordance with the Act; Seattle had one identified uninsured employer that went bankrupt; and Long Beach and San Francisco had 46 uninsured employers that had coverage provided from the unauthorized insurer discussed by the GAO. Action against these latter employers was put off pending the outcome of the court case in which this unauthorized insurer claimed that it was, in fact, an authorized insurer.

Since January, 1981, when the court decision was rendered that the insurer was not authorized in accordance with the requirements of the Act, the Department of Labor has been engaged in developing plans to institute court action against some of these uninsured employers, the unauthorized carrier, or both. The number of employers that could be involved in any court action that the Department would undertake was greatly reduced in July of 1981, when 24 (out of 46) of the uninsured employers secured compensation with an authorized insurer. The remaining employers, mainly small boat repair yards in Southern California, are still insured by the unauthorized insurer.

The Department of Labor disagrees with the GAO on the effect that DOL's stronger letter, referenced in the report on page 36, would have on stopping employers from obtaining insurance from the unauthorized lower-cost insurer. DOL believes that the letter was instrumental in causing the 24 employers mentioned above to obtain coverage with an authorized insurer. In addition, the unauthorized lower-cost insurer has continuously requested the Department to "stop sending those letters" because of their fear that other employers will cancel their coverage and seek an authorized carrier. The unauthorized insurer's concern has grown to the extent that they are now actively trying to become authorized under the Act.

Two misconceptions in the insurance discussion should be corrected. On page 35 the GAO states that a Labor source indicated that the unauthorized lower-cost insurer was not authorized because it was financially unsound. This is not really the case. The insurer in question was attempting to operate as a Protection and Indemnity Club within the statutory language of Section 38 of the Act and had not applied for authorization to operate under the Act. The other misconception discussed on page 32 is that if an employer cannot pay compensation that the Special Fund may assume the liability. This is not quite true. The language of Section 18 of the Act provides that the claimant must first attempt to serve a

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court judgment on the employer who has defaulted and if the judgment cannot be satisfied because of the employer's insolvency or other circumstances precluding payment, the Secretary may make payment from the Fund. The usual requirement of this Office is that an employer must be insolvent before a case will be considered for payment by the Fund. Default of compensation payment above does not qualify for Special Fund relief.

Recommendation:

"The Secretary of Labor direct the Deputy Under Secretary for Employment Standards to ensure that district offices assess penalties for late reports and compensation payments."

Response:

The Department concurs.

Comment:

While the Department concurs with this recommendation, the Department must point out certain possible misconceptions as well as errors in the report.

In enacting the Longshore Act, Congress intended to establish a program whereby employees may obtain swift compensation for work-related injuries, regardless of fault, and whereby the cost of resolving disputes related to such compensation would be kept to a minimum. Thus, we wish to affirm the position stated in the GAO Report that "only habitual offenders should be penalized" for submitting a late initial report of injury.

In 1976, a Longshore Task Force reviewed the entire program and recommended actions to improve the program. The OWCP Task Force Report of December 15, 1976, recommended the following:

1. OWCP should not assess penalties under Section 30 in "No-Lost-Time" injuries unless the employer is guilty of gross and repeated violations after having been warned in writing by the Department.

2. Any penalties assessed under Section 14 or 30 should carefully consider all the facts of the situation, both the good faith of the employer and the extent of damage or hardship suffered by the claimant.

The Associate Solicitor advised in a November 3, 1981, memorandum to the Director, Office of Workers' Compensation Programs: "... the use of the term 'shall be subject to' suggests that imposition of the Section 30(e) penalty is not mandatory. That discretion in the imposition of the Section 30(e) fine was anticipated by the provision's drafters is also indicated by the fact that the amount of the fine, up to $500, is discretionary. Thus, the fine's size may be varied according to the severity of the infraction. Consequently, in a given case, should the OWCP determine that the best interests of the program would be served by issuing a reminder or a warning rather than a fine, the Department believes that such action would not be prohibited by Section 30(e) of the Act".

Thus, if compensation is timely paid, the Department sees little value in imposing a mandatory penalty under Section 30(e). The local district offices must deal with insurance carriers and self-insured employers on a day-to-day basis: their cooperation is essential to the successful administration of the program. The imposition of penalties in such instances could severely undermine this cooperation. The Department concurs that habitual offenders must be penalized.

The Department has misgivings about the Report's commentary on the imposition of penalties under Section 14(e). On page 63 of the Report, it is stated that the New Orleans District Office did not meet performance standards for assessing penalties and interest as reported by the 1980 Accountability Review.

[See GAO note.]

An Accountability Review in February, 1981, found that the District Office applied 10 percent penalty and 6 percent interest when initial compensation was not timely paid. Further in response to the GAO questionnaire, the New Orleans Office reported that 80 percent of late initial compensation payments were assessed penalties.

The GAO Report further indicates that in their survey of cases "... nearly half of the first payments of compensation were made late." The total number of cases surveyed is listed as 93 cases in the New York and San Francisco Offices. By contrast, the October, 1981, Accountability Review of the New York District Office, which surveyed 158 cases, found seven (7) cases or 4.4 percent with late initial payments of compensation. In the April, 1980, San Francisco Accountability Review of 75 cases, two (2) cases or 2.6 percent were not timely paid. In the questionnaire, the New York Office indicated that the percentage of non-controverted lost time claims filed in FY 1980, when the claimant failed to receive the first check

GAO note: Deleted at Department's request.

within 28 days, was 10 percent. The San Francisco Office reported delayed payments in only 1 percent of these cases.

Thus, the almost 50 percent figure cited in the GAO Report appears much too high. Furthermore, in the questionnaire only Long Beach with 20 percent and New York with 10 percent reported delayed initial payments in more than 5 percent of the cases. The GAO Report places emphasis on the questionnaire response that seven (7) offices responded that they assessed penalties for late initial compensation payments in 5 percent or less of the eligible cases. However, GAO fails to mention that the total number of late payments is 5 percent or less in five (5) of the seven (7) offices and 1 percent or less in two (2) of those five (5).

Again, the Department concurs with the basic recommendation of imposing penalties under Section 14(e). This is very carefully reviewed in all accountability reviews. However, it is the Department's position that delayed initial payments are well below the 50 percent figure reported by GAO, and are probably less than 5 percent.

While the report further leads to the conclusion that there has been little progress in collecting penalties under Section 30(e) and 14(g) since 1976, we offer the following collection information:

FY 1975 -	$ 2,225	
FY 1976 -	$ 12,400	
FY 1976 -	$ 1,600	(Transition Quarter)
FY 1977 -	$ 12,700	
FY 1978 -	$ 7,510	
FY 1979 -	$ 9,500	
FY 1980 -	$ 13,010	
FY 1981 -	$ 15,750	

Recommendation:

"Revise the letter (LS-504 designed to inform injured workers' of their rights so that it provides more information on compensation payments and discontinue the use of the postcards (LS-504a and LS-504b)."

Response:

The Department concurs.

Comment:

Steps will be taken to revise the LS-504 letter to include additional information on compensation, such as its percentage

of average weekly wage, its frequency, and its extent. The Department will also discontinue the use of postcards (LS-504a and LS-504b).

The Department would like to stress, however, its belief that the overall technical assistance program currently in place in the Division of Longshore and Harbor Workers' Compensation relative to advising claimants of their rights under the Act and its extensions is considered quite effective. The mailing of the LS-504 letter is only one part of the program. Other informational letters such as the LS-209, LS-403, LS-426 and the LS-557 are also used to inform claimants of their rights and to assist them in properly developing their claims. The LS-209 transmits an employer's notice of controversion and informs the claimant of the actions he must take in response to it. The LS-403 transmits claim forms to claimants to complete and return when it is suspected that they may have sustained a permanent disability. The LS-426 requests clarification of wage earnings information when an employer has paid compensation at a tentative compensation rate. The LS-557 provides information concerning the maximum and minimum compensation rates currently in effect and the fact that claimants should receive 66-2/3 percent of their average weekly wage if their wage falls within a certain range. This form is sent to claimants when it is suspected that the compensation rate they are receiving is too low. In addition, all OWCP district offices periodically hold technical assistance seminars which are attended by covered workers, union representatives, insurance industry representatives, self-insured employer representatives and members of the local bar associations.

It must also be recognized, while it is not a part of the Department's technical assistance effort, that large unions whose members are covered under the Act, periodically hold their own technical assistance seminars for their members and also provide their members on a continuing basis with information about the Act. A large number of claimants are also represented by attorneys or lay-representatives, thereby assuring that their rights are protected under the Act.

Recommendation:

"Require that districts send the LS-504, as revised, to workers' upon receipt of a notice of injury when it appears that compensation will be due."

Response

The Department concurs.

Comment:

In response to the recommendation, the Department will amend its procedures to require that the LS-504 be sent in all cases where it is suspected that compensation will be due. This change will not represent a major departure from current practice, as a number of the district offices now send the LS-504 letter in all such cases. However, the change in procedure will insure that all offices will now uniformly send the form to claimants in all lost-time injury cases.

Additional Comments

A. Introduction

This part supplements and is integral to the Department's comments on the GAO Report recommendations. The draft report is the result of a review that began over two years ago which involved on-site GAO review teams in the National Office, San Francisco and New York for extended periods of time, and included additional on-site visits to Boston, Houston, Long Beach and New Orleans. It is surprising, therefore, that the review did not note the many improvements in the Program since the 1975 GAO review, despite a greatly increased workload and limited staff resources. The Department believes that the sample of 135 lost-time audited cases was far too small, thereby contributing to some findings and conclusions that are inaccurate. GAO also is not always consistent in its presentation of review material. For example, the questionnaires are frequently cited when the responses substantiate GAO's findings. However, in many instances the responses to the questionnaires provide information which do not support the GAO's conclusions. In many instances, further investigaton into these areas would have shown that accountability reviews and other available material supported the districts' responses. However, GAO often resorted to projecting its findings of its extremely limited sample to the entire program.

The following discusses the scope and methodology and findings and conclusions of the review. The Department's responses to each of GAO's four specific recommendations to the Secretary of Labor were provided in detail in the previous discussion.

B. Scope and Methodology of the Review

The GAO reviewed only 135 lost-time cases in two district offices - San Francisco and New York. This is an extremely limited sample for the scope and period of review, as compared to the total number of lost-time cases actually received by the Program. In FY 1980 and FY 1981 approximately 60,000 lost-time cases were reported each year to all of our Longshore district offices. The audit sample of 135 lost-time cases is only about .2 percent of all cases received -- insufficient to constitute a representative sample. Nonetheless, based on this data GAO states that while the sample data are not statistically projectable to Labor's 15 District Offices, they believe they are representative of conditions at many district offices because Labor's accountability reviews have identified problems similar to those identified by its review. This statement is not correct. ESA's accountability reviews and the district office responses to the GAO's questionnaire do not support GAO's findings with respect to late payment of compensation, failure to assess penalties under Section 14(e), and failure to assess penalties under Section 30(e) and 14(g) for late employer reports. Specific data on these findings are provided in our comments on the recommendation made by GAO in this area.

The discussion in the report on the lack of medical monitoring involved the cases sampled in the San Francisco and New York District Offices. The report on New York's lack of medical monitoring is somewhat bewildering. This Office has always received a large number of medical reports and has developed good work procedures to cope with this workload. This Office also is a model office in the area of impartial medical examinations. The ESA Accountability Review of New York in October, 1981, with a sample of over 150 cases, found that most files had appropriate medical documentation, missing reports were requested, and that almost 900 impartial medical examinations were conducted in FY 1981. It is unfortunate that questions on medical monitoring were not included in the GAO questionnaire so that a more accurate assessment relative to medical monitoring could have been developed.

In the report's discussion of compliance with the Act's insurance requirements, GAO recommends that Labor ensure that employers obtain proper insurance coverage or become authorized self-insurers. Labor fully concurs. However, it should be noted that other than the specific situation of United Marine Mutual Indemnity Association (UMMIA), there are very

few incidents of uninsured employers. Of the incidents reported in the GAO Report, most were later resolved or did not prevent the claimant from receiving compensation. There are only 5 Longshore cases being paid at the present time from the Special Fund due to an uninsured employer becoming insolvent. This situation will be addressed in greater detail under the specific recommendation.

C. Findings and Conclusions

Several of the findings and conclusions are in error, which appear to be the result of misconceptions, or the result of generalizations which lack sufficient documentation or substantiation. The Department offers the following clarifying comments.

1. Page 10 of the report states that Labor's administrative costs for the program have increased to almost $6 million in Fiscal Year 1981 The staffing figure for that year is stated as 174, which excludes the staff for the District of Columbia Compensation Act District Office (DCCA). Therefore, the correct comparable amount for administrative costs excluding DCCA, for FY 1981, should be $5.1 million.

2. Page 19 of the report states that Labor officials believe that fraud is relatively rare and that only about 1 percent of time-lost claims are fraudulent. While one percent does not sound like much, it is far in excess of what has actually been reported. In the GAO questionnaire, eight district offices responded that they estimated about one percent of the claims were fraudulent; the remaining district offices reported zero percent. One percent represents about 600 cases for FY 1980 and 600 cases for FY 1981. ESA/OWCP records and those of the OIG of FY 1978 to the end of FY 1981, show that less than 60 allegations of fraudulent claims have been made to our district offices. In this same period, over 200,000 lost-time injuries have been reported. One percent is far in excess of the situation relative to reported fraudulent claims.

3. Pages 29-32 of the report imply that considerable uncertainty remains concerning coverage under the present law. Although a great deal of litigation did ensue after the 1972 Amendments, most of the major shoreside coverage questions were resolved in 1979 by two longshoring cases whose principles are easily applied to shipbuilding as well. Northeast Marine Terminal Co. v. Caputo, 432 U.S. 249 (1977); P.C. Pfeiffer Co. v. Ford, 444 U.S. 69 (1979). The only remaining coverage issue of significance involves an activity clearly covered by the program prior to 1972 (marine construction activities over the waters)

but which, it is now alleged, is no longer covered. This matter is currently pending before the Supreme Court. While there are a variety of reasons why litigants continue to raise the issue of jurisdiction in pending litigation, the percentage of cases in which it has been raised before the Benefits Review Board has greatly decreased, and this is expected to carry over to the courts of appeals this year. A concommitant alteration of attitudes of insurance carriers, as reflected in the Cooper and Company study cited by GAO, could follow. This conclusion is consistent with the statements acknowledged by GAO from a representative of the stevedoring industry and the Chairman of the Benefits and Review Board (BRB), whereas matters cited to the contrary are generally dated.

We further note that, contrary to GAO's assertion that the provisions of Section 1182 and H.R. 25 would provide essentially the same coverage that existed prior to the 1972 Amendments, the bills would differ in a number of respects from both pre- and post 1972 law.

4. On page 32 of the report, the statements made concerning the reasons for increases in 8(f) awards are accurate; however, it should be noted that recent Board case law has strengthened the Special Fund's position in cases where the parties attempt to settle a case and impose liability on the Special Fund. The Board has held that "[T]he Director, in his position as guardian of the Special Fund, must be sufficiently informed of the settlement process involving Section 8(f) so as to protect the interests of the Special Fund. Furthermore, as an indispensable party to the settlement, he must acquiese in making Section 8(f) liability part of the settlement." Collins v. Northrop Corp., 12 BRBS 949 (1980).

5. In the discussion of the Special Fund which begins on page 36, the GAO report fails to mention that Labor has attempted to prevent insurance carriers and self-insured employers from by-passing the Deputy Commissioners on second injury cases by raising the Section 8(f) issue for the first time at the formal hearing level. Proposed regulations were issued on January 17, 1981, to ensure that the DLHWC district offices and the National Office review the applications for Section 8(f) relief in every case where Section 8(f) is an issue, regardless of when the petition was filed for second injury relief. Specifically, the proposed regulations provide that the application for Section 8(f) could not be considered for resolution by an Administrative Law Judge until the LHWC District Office and National Office had considered the application. Thirty-three (33) public comments were received on the proposed regulations, none of them favorable. In summary,

the employer and carriers and their representatives objected to Labor's attempt to eliminate the circumvention of the Deputy Commissioners. This is the same group which objects to the rising assessments resulting in the increase of Section 8(f) cases in the Special Fund.

Further evidence of the Department's concern about the excessive use of the special fund for second injury payments is indicated by Deputy Under Secretary Collyer's recommendations to the Senate Labor Subcommittee on October 5, 1981. During his testimony, the following changes in the law were recommended to curtail this use of the fund: (a) tighten the definitions of what is a preexisting disability and what is substantially greater injury; (b) give the Labor Department more authority to limit the fund's usage; and (c) charge the fund for the costs of its administration and its legal defense.

6. The statement on page 47 that there has been little improvement in Labor's administration of the Act since the 1975 review is not correct. While the Program's limited resources have prevented Labor from consistently performing in an efficient and timely manner, significant accomplishments have been made since the 1975 review. The one small summary paragraph on page 49 alludes to this but does not allow full recognition of the Program's many accomplishments which are delineated below:

a. Shortly after the 1975 GAO report was published, OWCP Task Forces were created (June 1976) to review the Longshore, FECA, and Black Lung programs to develop and implement a comprehensive plan for a more timely and effective delivery of services. A specific Longshore Task Force Report was published in December, 1976. Many of the recommendations of the Task Force have been implemented, which resulted in many of the other accomplishments which follow.

b. Performance Standards for all functions of a district office's operation, including quality control, were established in April, 1978. These standards have been used to evaluate district office managers and other district office staff in the operation of the district offices.

c. An intensified accountability review program was implemented, with National and Regional Office review teams evaluating district office performance. District Office Managers have been evaluated on the results of these reviews.

d. A two-week formal Longshore claims examiner training course was developed and given to Longshore claims examiners. Five such courses have been conducted.

e. Each district office was provided with a self-instructional course, "Interpreting Medical Reports," which is designed to provide claims personnel with basic medical knowledge needed to evaluate personal injury claims.

f. In 1977, Labor published several rules and regulations under Part 702 - Administration and Procedures. On August 23, 1977, guidelines were published for preparation and submission for approval of applications for fees for legal services rendered to claimants and new procedures were prescribed for referring claims to administrative Law Judges for formal hearing and for adjudicating claims after referral. On September 9, 1977, the rules applicable to the filing and adjudication of claims were clarified and expanded.

g. The Longshore Procedure Manual was comprehensively revised in December 1978, which included expanded procedures on medical monitoring and informal conferences and penalty assessments, as recommended by GAO in their prior review.

h. Direct payment of the pre-amendment permanent total disability and death cases was made from the Special Fund instead of the cumbersome reimbursement to carriers and self-insurers for making these payments.

i. Development and implementation of Special Fund ADP Systems as follows:

(1) Automation of annual assessment system.

(2) Automation of Special Fund disbursements and accounting functions.

(3) Development of a Loss Reserve Security System.

(4) Initiation of the development of a comprehensive nationwide ADP claims and information system.

j. Implementation of a referral system of suspected fraudulent claims to the OIG.

k. Extensively addressed the problem of exaggerated claims through standarizing procedures, including greater emphasis on impartial medical examinations.

l. Substantially increased emphasis on collection of penalty assessments, both for late compensation and late employer reports.

m. Substantially increased emphasis on technical assistance through an active service program.

n. Until recently, when staffing levels were reduced, conference delays had been greatly reduced, as indicated in many of our accountability review reports.

o. Additional positions were obtained in FY 1976 which did result in improved quality and timeliness, until recent budget cuts reduced staff.

p. Opening of a Long Beach District Office to better service clientele in the Southern California area.

The list is not complete but is illustrative of the failure of the report to reflect the program's accomplishments since the last review.

7. There is inadequate discussion regarding current staffing of the Program. As indicated in the report, the staff was increased after the 1975 review. Sixty-four (64) claims processing personnel and ten (10) rehabilitation specialists were added since 1972. For a period of time this additional staff, with the emphasis of the 1976 GAO Report and the Task Force Report, resulted in improvements in quality and timeliness, as indicated in the earlier part of this response. While the table on page 50 shows a decrease of staff from 174 in FY 1980 to 159 in FY 1982, there is no discussion of FY 1981, the fiscal year included in the GAO review. In February, 1981, an employment ceiling was imposed freezing employment at the level of on-board employment as of December 31, 1980. Employment in the Longshore Program at that date was 165 FTP positions. A reduction of eight (8) additional positions was mandated for the end of the fiscal year, which reduced the number of authorized FTP positions to 157 as of October 1, 1981. The end of fiscal year level was achieved in May, 1981, and employment was limited to that level for the remainder of the fiscal year. In January of 1981, temporary and student employees were substantially reduced and all overtime was eliminated. An existing claims processing staff

of 147 (157 minus ten rehabilitation specialist), an increase of only 47 percent over FY 1972 is certainly inadequate to cope with the claims workload of 60,000 lost-time claims received in FY 1981, an increase of over 300 percent since FY 1972.

8. On page 60, the GAO Report discusses the instances in its sample where it appears compensation may have been paid incorrectly. Nowhere in this paragraph does it state that compensation was incorrectly paid and, if so, whether the carrier informed by the district office with appropriate follow-up. Substantiation of these comments would help.

9. The discussions which begin on page 61 of the GAO Report regarding penalty assessments are addressed within the comments on GAO's recommendation in this area.

10. On page 63, GAO states that the April, 1980, Accountability Review of the New Orleans District Office showed that this Office did not meet performance standards for assessing penalties and interest. [See GAO note, p. 53.] However, a review in February, 1981, showed that the District Office had assessed substantial penalties under Section 14(g) and 30(e) and was applying the 10 percent penalty and 6 percent interest where initial compensation was not timely paid.

11. On page 64, GAO states that informal conferences should generally be scheduled as soon as possible after a request is received but not later than 30 days after the request. It then indicates the number of district offices which schedule conferences more than 30 days after request. The report should also indicate that the manual further states, "except where travel restrictions make such scheduling impossible". In addition, the report does not indicate that the procedure manual further provides a 60-day schedule standard for death cases, and 90-days or more for permanent partial disability cases allowing time for maximum medical improvement and medical evaluations on the degree of impairment. In addition, one of the performance standards on informal conferences states that an informal conference should not be conducted unless the case file is in posture for conference (factual and medical evidence is sufficiently developed to the extent that the conference will produce a useful and meaningful result). Thus, many times when a request for conference is received, a thirty-day period is inadequate. Also, many

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district offices must conduct conferences in cities other than the district office location. The extent of these types of cases and the distance to be traveled will significantly affect the scheduling of conferences. None of these factors are included in the GAO discussion.

In conclusion, while the report indicates that most deficiencies are related to the limited staff available to the program and Labor concurs with all of the recommendations, the Department has offered these comments so that a more accurate description of the program will be contained in the report.

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