



Fiscal Year 2001 Budget Request

March 2000

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I. Summary and Highlights

The Occupational Safety and Health Review Commission is requesting \$8,720,000 in funding for FY 2001. This amount is 3 percent above the amounts available for FY 2000 (\$8.470 million). At the time the President's budget was prepared, we had anticipated rent increases in both Fiscal Years 2000 and 2001, based on estimates provided by the General Services Administration (GSA). The \$8,720,000 request includes funds for this rent increase. However, since the President's budget was submitted, we have renegotiated the rent amounts with GSA. The negotiations resulted in a savings of \$380,000 in FY 2001. We propose to use these savings to assist the Review Commission in meeting its goals under the strategic plan of retiring old and complex cases, expediting decision making on newer cases, and improving services to its customers. A series of employee details and temporary hires would be used to expedite the processing of these old and complex cases. The funds would also provide the ability to enhance our website to include older Review Commission decisions, to improve search capability of cases on the website, and to provide links to appropriate state sites.

Through FY 1999, the Review Commission offset a large proportion of the cost of pay raises and other cost increases by generating internal cost savings. Given the extent of those earlier savings, however, it has become increasingly difficult to locate additional cost reductions.

With the requested budget, the Review Commission can continue to fulfill its legislative mandate to resolve disputes between the Occupational Safety and Health Administration (OSHA) and employers charged with safety and health violations (or with employees or their representatives). Specifically, it would allow us to:

- (1) support 74 FTEs (to be reduced to 70 FTE in future years), while funding a mandatory pay raise in January of 2001,
- (2) absorb an expected increase in judicial workload,

- (3) continue to retire old and complex review level cases,
- (4) enhance our website to include older Review Commission decisions, to improve search capability of cases on the website, and to provide links to appropriate state sites,
- (5) continue investing in our employees, and
- (6) maintain our technology which has contributed to productivity increases.

Our request would also allow us to fully implement our strategic plan, which targets increased productivity, higher quality decisions, reductions in case cycle times, higher quality service to the public, and additional management improvements. Our request assumes additional productivity increases in judicial case processing, without which our overall case inventory would continue to grow, particularly if the expansion of OSHA's enforcement jurisdiction over the United States Postal Service (USPS) increases our overall caseload significantly.

In an attempt to reduce case cycle times, in FY 1999 we implemented a major pilot initiative to resolve high penalty cases more quickly and economically with mandatory settlement talks under the supervision of a judge, we will continue this pilot through FY 2000. This "settlement part" to our procedural rules requires formal settlement efforts before a trial is scheduled for cases where the proposed penalty is \$200,000 or more, or if the Chief Judge decides that it is appropriate. Such cases have a higher probability of going to trial, and when they do, they are likely to take more than two years to resolve under our conventional process. The evaluation of the program will be completed by the beginning of FY 2001. However, this settlement procedure, initiated on February 19, 1999, has already resulted in the settlement of a majority of the cases assigned to the program.

We believe that the requested increase is reasonable and well justified, particularly in light of the following major factors:

Workloads - We are requesting the minimal staffing we believe is necessary to handle our anticipated workload which is expected to grow in FY 2001, as it has done gradually over the past three years. Between FY 1996 and FY 1999 we experienced a 39 percent growth in the number of new cases. The number of cases in general, and the number of large or complex cases in particular, is now at a historic high, and the addition of the USPS cases to OSHA's jurisdiction has begun to have some effect on our case load. During the last half of FY 1999 we received 29 USPS cases. In the first three and one half months of FY 2000, we received 11 such cases. Our experience during the remainder of FY 2000 should give us further indication of whether the USPS cases will become a significant factor in our caseload.

Meanwhile, the impact of a series of extended vacancies on the Commission has resulted in the largest inventory of old and complex review cases pending before the Commission in many years. During 1998 and 1999, we were without one or two Commissioners and their appointed staffs for a significant part of each year. The vacancies greatly reduced Commission case dispositions. The reduction of case dispositions has meant that there is a substantial number of old and complex cases which need to be resolved. The savings realized in our rents would be used to continue to retire these cases through the use of employee details and temporary hires.

Pay and Benefit Costs - Cumulative increases in pay and benefits since FY 1996 have added more than \$700,000 to the cost of funding staff years. However, we have been able to produce savings in this area by eliminating three full time permanent positions during FY 1999. Closing our Boston office allowed us to eliminate two support positions. A third position was eliminated in headquarters. We also experienced above-average personnel vacancies in recent years due to an unusually long period of Commissioner vacancies and to our 1996 reduction in force. As a consequence of these and related savings, by the end of FY 1999, we had returned or de-obligated more than one million dollars to the Treasury for FYs 1996 through 1999. In FY 2000 our cost savings will no longer offset even a portion of the January 2000 and January 2001 mandatory pay increases. We expect full use of our FTE. During the last nine months of FY 2000 we will have a full Commission.

Past Cost Savings - OSHRC has been able to realize significant cost savings by downsizing our staff, negotiating rent reductions, closing offices, and paring expenses such as subscriptions, postage, phone service, transcripts, and printing. Although most of these savings have now been absorbed by successive pay increases, the cumulative impact of these savings has been critical to our success, and will exceed more than \$700,000 in FY 2000.

Technology Costs - Because automation played little or no role in our productivity prior to 1994, technology costs have grown faster than inflation in recent years. New expense categories have emerged gradually, such as software and equipment upgrades, contractual support, system development costs, website maintenance and upgrades for enhanced communications capabilities, data storage and transfer charges, and increased equipment maintenance costs. For example, this budget includes \$153,000 (1.7 percent) for indispensable technology related expenses that were either small or nonexistent as recently as FY 1994. Accelerated hardware purchasing in 1999 with the surplus created by Commissioner vacancies allowed us to request less for FY 2000. This advantage will disappear in FY 2001. We would use the savings in rents to enhance our website to include older Review Commission decisions, to improve search capability of cases on the website, and to provide links to appropriate state sites.

Background

The Review Commission is an independent, adjudicatory agency created by the Occupational Safety and Health Act of 1970. Its sole statutory mandate is to serve as an administrative court providing just and expeditious resolution of disputes between OSHA and employers charged with violations of federal safety and health standards (or with employees or their union representatives). The Review Commission was designed by Congress as an agency completely independent of the Department of Labor to ensure that OSHA's enforcement actions are carried out in accordance with the law and due process and that all parties are treated consistent with due process. In fact, it was the provision that established the Review Commission (the "Javits Compromise") that ended the stalemate in Congress and led to the Act's passage.

Workload in Relation to OSHA Activity

Although we are completely independent of OSHA, our workload is strongly influenced by the nature of OSHA's enforcement activity and by the overall number of OSHA inspections. Thus, OSHA's emphasis during recent years on more serious workplace hazards, and the consequent increase in proposed penalties, has translated into more complicated cases, more costly trials and, from the employer's perspective, harder fought cases with higher economic stakes. This is illustrated by the fact that the number and proportion of large (those with proposed penalties over \$50,000) or complex cases have steadily increased in recent years. Most recently, in FY 1999, there was a 23% increase in this type of case.

Current Workload

There has been a historic relationship between the number of OSHA inspections and the total contested cases. In recent years, OSHRC's workload has grown both in terms of the number of new cases and in terms of the number of large and complex cases.

A good indication of this growing workload is the fact that in FY 1999 we received 290 cases with penalties proposed in excess of \$50,000 (the large cases). This is well above the 235 such cases received in FY 1998. We estimate that we will receive 364 cases with penalties over \$50,000 in FY 2001.

Perhaps the best indicator of workload and judicial productivity -- the number of case dispositions after a hearing -- jumped by 50 percent in 1998 to 158 cases, from 106 such dispositions in 1997. The number of case dispositions after a hearing remained relatively stable in 1999 with 156 such cases.

Workload for Fiscal Years 2000 and 2001

Overall we estimate that judicial workload will continue to increase in FYs 2000 and 2001. OSHA

currently projects 34,500 and 35,600 inspections in FYs 2000 and 2001, respectively. Based on recent experience, we estimate that the Review Commission will receive at least 2,450 and 2,550 cases in FYs 2000 and 2001, respectively. We estimate that in FY 2000, 325 of these cases will be in the large (penalties exceeding \$50,000) or complex category. In FY 2001 we estimate 364 such cases. This would be the highest intake of these large or complex cases the agency has experienced.

It is also possible that the inclusion of the USPS in OSHA's enforcement jurisdiction will increase our workload beyond the estimated level. These cases began arriving the last half of FY 1999. Our experience in FY 2000 should give us an indication of whether the USPS cases will become a significant workload factor.

As mentioned earlier, the impact of a series of extended vacancies on the Commission during the past few years has resulted in the largest inventory of old and complex cases at the review level in many years.

As noted above, we would also use the savings in rents to enhance our website to include older Review Commission decisions, to improve search capability of cases on the website, and to provide links to appropriate state sites.

Strategic Plan Progress and Fiscal Year 2000 and 2001 Goals

The requested funding will allow the Review Commission to continue to handle its expected workload and support the pursuit of the goals of OSHRC's strategic plan. Highlights of the Review Commission's progress in addressing certain of its strategic goals and some expectations for the next two fiscal years are summarized below. The Review Commission's strategic plan and FY 2001 performance goals are included in section III.

In developing our FY 1997-2002 strategic plan, which is required under the Government Performance and Results Act, we held focus groups with our major stakeholders -- management attorneys, employers, Department of Labor attorneys and labor unions. Because these focus groups were invaluable to us, we intend to continue to use focus groups as we refresh our strategic plan in September of 2000. The candid discussions provided useful insights, and many of the initiatives in our plan, such as our new settlement program, came directly from those focus groups.

- **Public Service Goal: *Assure the ready availability of fair, user friendly, and timely adjudication of all disputes brought before the Review Commission and its judges and achieve a high level of readability and quality in Review Commission legal decisions.***

In the last five years the Review Commission has achieved significant reductions in overall judicial case processing times. Cycle time for cases going to trial before its judges was reduced from 520 days in 1994 to 357 days in 1999. The Review Commission implemented the E-Z Trial process which resulted in a reduction in processing time at the ALJ level for less complex cases. We reduced the inventory of very old cases.

The Review Commission developed the E-Z trial process in FY 1995 to reduce the time and legal expenses to employers contesting relatively small penalty cases. It dispenses with a variety of time consuming legal processes, such as pleadings and discovery, requires the Labor Department to provide inspection reports to employers and generally simplifies the litigation process for the small employers for whom it was designed. This new process was explicitly designed to ease the burden on small businesses who otherwise might pay a fine or admit to a violation, in order to avoid costly legal bills. The agency received a Hammer Award for the E-Z Trial Program in FY 1999 which, as noted earlier, had a significant impact on case processing times.

In FYs 2000 and 2001, the Review Commission expects to make greater use of the E-Z Trial and to evaluate its effectiveness. To date, the procedure has been very effective in achieving more user friendly and timely adjudication of cases. Twenty-eight percent of the

cases were assigned to the program in FY 1998 and 31 percent of cases in FY 1999. We estimate that one-third of the new cases will be assigned to E-Z trial in 2000 and 2001. During the first quarter of FY 2000, cases assigned to E-Z trial averaged 98 days to decide (188 days for those cases which were heard and 95 days for cases that were settled without a hearing). Cases assigned to E-Z Trial were decided in FY 1999 in an average of 166 days. Likewise, in FY 1999, cases that were settled without a trial were processed more quickly under E-Z Trial --- 97 days as compared to 155 days under the conventional process.

- **External Communications Goal: *Significantly enhance the efficiency and effectiveness of communications between the Review Commission and the public, its customers and other stakeholders.***

To date, the agency has:

- established a website and has been posting decisions, procedural rules, process guides, press releases, and other information for ready access by the public and litigants,
- published and widely distributed two user-friendly guides for its Conventional and E-Z Trial procedures, and one draft guide for unions and employees,
- developed a helpful E-Z Trial video which is provided to small employers litigating cases before the Review Commission, and completed the initial format redesign of some decisions, orders and legal documents.

OSHRC has also implemented visual standards for all nonlegal Review Commission documents, upgraded all printing and reproduction processes and equipment, and made legal writing training available to most judges and attorneys.

In FY 1999, we published a draft procedural guide describing the role of employees and labor unions in OSHRC proceedings. Our earlier guides were targeted primarily to employers. We will continue our efforts to complete the redesign of both judicial and Commission decisions and improve their readability. We plan to undertake the redesign of additional legal documents in FY 2000.

In FY 1999, we added Administrative Law Judge (ALJ) and Commission decisions from earlier years to our website. We have now published decisions on CD-ROM for use by litigants and depository libraries. In FY 2000, we plan to enhance the website's appearance and searching capabilities to permit more efficient and meaningful research by the user. The Review Commission plans to issue two updated CD-ROMs in FY 2000 and we will also issue a Biennial Report for FYs 1998 and 1999.

In FY 1998, the Review Commission organized the first National Safety and Health Adjudicator's conference which was attended by 74 state level officials -- review board commissioners, judges and administrators -- from 19 states, Puerto Rico and the Virgin Islands. The purpose of the meeting was to study technical topics, share ideas and discuss common problems; the agenda was based on a survey of potential participants.

In addition, in FY 2001, the Review Commission will survey its customers and stakeholders to identify and prioritize what the Review Commission needs to improve. The Review Commission plans to work in coordination with appropriate Federal and state agencies, and other stakeholders. This exchange of information will be mutually beneficial and will assist us in learning lessons from the states - the vital laboratories of democracy - to more effectively enhance our adjudicating responsibilities.

- **Information Technology Goal: *Modernize computer information management systems to better serve internal and external customers and operate more efficiently.***

During the last four years, the Review Commission has (1) obtained computers and

productivity enhancing software for every employee and begun to upgrade and replace these as necessary, (2) installed and upgraded a wide area network and an e-mail system linking all employees in the National Office and the regions, (3) completed a comprehensive case tracking/case management system, (4) provided technology training to nearly all its employees, (5) converted many routine paper documents to electronic form, (6) provided a variety of desktop legal research capabilities to all legal staff, and (7) made Internet connections available to staff, as needed. This is in stark contrast to the situation in 1994, when many employees had no computers and those who did were using outdated equipment and rudimentary software and had no electronic communication capability. The Review Commission also established a world wide website which receives approximately 20,000 hits per month. As part of our stakeholder survey, OSHRC will obtain input on the utility of its website.

In FY 1999 the Review Commission continued to improve its internal and external data communications, enhance its website and fully realize the benefits of its technology. In FY 2000 we replaced the cabling that connects employees to the network in the National Office. By the end of fiscal year, we will complete migration to a client server environment in the National Office to increase the speed of case processing, data analysis, and data transfer. Finally, in FY 2001-2002 we will develop Intranet communications for the national office and for the regional offices.

The Review Commission has also implemented an automated financial management system which is replacing the inefficient manual system. It is operational. In conjunction with a semi annual financial audit (which was done for the first time in Review Commission history during FY 1997) and which was repeated during FY 1999, this financial system will allow the Review Commission to better manage its funds, assure the integrity of its financial processes, and greatly reduce the amount of paper shuffling needed to procure goods and pay invoices.

- **Human Resource Management Goal: *Build a highly motivated workforce by developing a first class human resource management system, including highly effective recruitment, training, awards and performance management processes.***

It is an axiom of the workplace that well trained people do a better job. This is the focus of the Review Commission's Human Resource Management goal. During the past two years, the Review Commission identified training and development needs for its judges, attorneys, and other employees, and provided training on significant workplace hazards and decision writing for legal staff, and extensive computer training for the majority of our staff. In addition, most judges, all attorneys and most of our other staff have attended other significant courses related to their job duties and professional competence. For FY 1998, the Review Commission set a goal of expanding training to achieve an ideal level of annual job-related technical training for all employees. That goal was advanced with an average of 34 hours of training per employee, up from 25 hours the previous year. For FYs 1999 and 2000 our goal is 40 hours for each employee. In particular, the Review Commission will provide additional in-depth safety and health training to attorneys and judges, further case management training to judges, management training to most supervisors and advanced evidence, alternative dispute resolution and other technical training to additional judges and attorneys. As part of this training effort, during FY 2000, the Review Commission will hold its first three-track training workshop for judges, Commissioners and attorneys, and administrative and information resource personnel. This workshop will enable the Review Commission to explore technical and legal topics, technological advances, and develop plans for its strategic plan.

In FY 1999, we also (1) developed award programs aimed at encouraging creativity and sustained quality improvements, (2) implemented a family-friendly Flextime program, and (3) redesigned the appraisal system to emphasize mission performance and strategic plan objectives. In FY 2000, we implemented the Chairman's Award Program. In FY 2001, we will develop succession plans, knowledge management strategies, and competency models for mainstream occupations in the Review Commission. In FY 2001, the Review Commission will also identify, define, and enhance values and create a culture that

incorporates those values, and create an employee partnership for workplace issues. These initiatives will assist us in recruiting and retaining a trained, specialized, and highly skilled workforce.

Lack of Quorum

While we have made progress in improving the operations of the Commission and expect the progress to continue, there are two critical concerns right now which will affect our FY 2000 performance. The first is that we were without a quorum for several months during FY 1999 which means that for the appellate portion of our operation, contested motions could not be granted, cases could not be decided and petitions for interlocutory appeal could not be considered. This had a negative effect on case productivity and cycle times in FY 1999. With a quorum assured for FY 2000 (and the fact that we will concentrate on the Commission's review process during the remainder of the fiscal year), we hope to make steady progress during the year.

Impact of Past Savings

As noted earlier, the Review Commission has already made significant contributions to this government-wide effort by making changes which in essence reduce our annual operating costs from what they would have been by nearly three-quarters of a million dollars. We believe it is noteworthy that, at the same time, we implemented new technology and information systems, invested in our employees and improved our overall effectiveness. Some examples of major savings achieved in recent years are:

- **Lower office rents.** By reducing space and renegotiating office rents, we reduced our space costs by more than \$200,000 annually.
- **Streamlined support staffing.** Through automation, process reengineering, and job restructuring, we cut support positions resulting in an annual savings of \$130,000.
- **Reduced Library expenses.** Through careful pruning, we eliminated unnecessary legal periodicals and reference books from our library, saving more than \$40,000 annually from this area of expense, where annual price increases for renewals have been running 10 percent in recent years.
- **Regional Office Restructuring.** By closing a regional office which was no longer needed, we are saving at least \$140,000 annually in rent, salaries and other expenses.

We have also achieved literally dozens of other small savings in local and long distance phone services, mail, express delivery services, transcription costs, supplies, reproduction, equipment maintenance, travel and support services. We will continue to look for ways to achieve additional cost savings in the future.

Fiscal Year 2001 Request in Detail

As noted earlier, the budget request of \$8,720,000 represents a 3 percent increase over the amount appropriated for FY 2000. As noted earlier, since the President's budget was submitted, we have renegotiated the rent amounts with GSA. The renegotiations resulted in a savings of \$380,000 in FY 2001. We propose to use these savings to assist the Review Commission in meeting its goals under the strategic plan of retiring old and complex cases, expediting decision making on newer cases, and improving services to its customers. A series of employee details and temporary hires (a total of 3 FTE in FY 2000 and an additional FTE in FY 2001) would be used to expedite the processing of these old and complex cases. These and temporary employees would research cases and help process last-in, less complex cases, thereby allowing the more senior attorneys to handle the more complex cases. The funds would also provide the ability to enhance our website to include older Review Commission decisions, to improve search capability of cases on the website, and to provide links to appropriate state sites. We plan to enhance the website's appearance and searching capabilities to permit more efficient use and more meaningful research for the user. The Review Commission plans to issue two updated CD-ROMs in FY 2000 and we will also issue a Biennial Report for FYs 1998 and 1999. Together, direct salary and personnel benefits costs account for \$7,030,000 or 81 percent of the request. We believe that with 14 judges we will be able to meet the anticipated workload as we continue to reap the benefits of automation, E-Z Trial, our new settlement program, and other changes.

Highlights of the FY 2001 budget request, more fully detailed in the attachments, are as follows:

- The pay request reflects (1) the payroll and benefit increases due to mandatory cost of living and locality pay increases, benefit changes and within grade increases, and (2) the fact that no Commission or judicial vacancies are anticipated in FY 2001. A series of employee details and temporary hires would be used to expedite the processing of these old and complex cases.
- Office space rent is forecast to cost \$750,000, an increase from FY 2000, but below the \$1,140,000 needed in FY 1994, reflecting a variety of agency cost reduction actions including office closings and savings from our negotiations with GSA.
- Judicial travel and transcript costs total \$175,000 in FY 2001, a modest increase from the 1999 level as our caseload continues to grow and in anticipation of the potential dual impact of our new settlement program and airfare increases.
- The funds would also provide the ability to enhance our website to include older Review Commission decisions, to improve search capability of cases on the website, and to provide links to appropriate state sites.
- With fewer staff and greater use of automation and technology, ADP related expenses including hardware, software and contractual support have become a significant factor in our budgets.
- Although the initial acquisition of ADP equipment for most OSHRC staff will be complete in FY 2000, OSHRC needs to replace printers and some remaining equipment which are obsolete and to begin a four-year replacement cycle. We accelerated the purchase of replacement personal computers in FY 1999 in order to complete the cycle in the year 2000. After FY 2000, we would anticipate replacing desktop and network computers, software and peripherals on a four-year cycle.

Conclusion

Spending has been pared to the maximum extent possible in every area. Approval of our budget request will ensure that our ALJs and Commissioners can continue to hear, review and dispose of cases promptly, and that we can continue our reinvention efforts. Without the needed funding (1) the number of backlogged cases would increase unacceptably, (2) service to the public would suffer and (3) our reinvention efforts would stall.

Last Updated: March 27, 2003

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