

DOCUMENT RESUME

07441 - [C2727831]

Laws Protecting Union Members and Their Pension and Welfare Benefits Should Be Better Enforced. HRD-78-154; B-164292. September 28, 1978. Released October 23, 1978. 34 pp. + 2 appendices (2 pp.).

Report to Sen. Sam Nunn, Vice Chairman, Senate Committee on Governmental Affairs: Permanent Subcommittee on Investigations; by Elmer B. Staats, Comptroller General.

Issue Area: Consumer and Worker Protection (900); Law Enforcement and Crime Prevention (500).

Contact: Human Resources Div.

Budget Function: Income Security: Federal Employee Retirement and Disability (602).

Organization Concerned: Department of Labor; Department of Justice; Labor-Management Services Administration.

Congressional Relevance: Senate Committee on Governmental Affairs: Permanent Subcommittee on Investigations. Sen. Sam Nunn.

Authority: Labor Management Reporting and Disclosure Act (29 U.S.C. 401). Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001). Comprehensive Employment and Training Act of 1973 (29 U.S.C. 801). 29 U.S.C. 521. 29 U.S.C. 1134. 29 U.S.C. 1141. 29 U.S.C. 1135. 29 U.S.C. 527. 18 U.S.C. 664. Executive Order 11491.

The Labor Management Reporting and Disclosure Act (LHRDA) imposes Federal standards and reporting and disclosure requirements to help eliminate or prevent improper and corrupt practices by labor unions and their officers and representatives. The Employee Retirement Income Security Act (ERISA) regulates the private pension and welfare plan systems for providing working Americans with retirement income and welfare benefits. Findings/Conclusions: Both LHRDA and ERISA clearly delineate the respective areas of investigative responsibility and jurisdiction for the Departments of Labor and Justice, and coordination between the departments is generally adequate. However, the Labor Management Services Administration (LMSA) has limited its enforcement of LHRDA and ERISA. Most of its enforcement effort under LHRDA is directed toward investigating election complaints and supervising election reruns. For ERISA, LMSA directed most of its efforts to activities other than enforcement and compliance of either the civil or criminal provisions of the act. LMSA's national office computerized report processing and desk audit systems are principally directed to achieving voluntary compliance with reporting and disclosure provisions of both laws and not to verifying the accuracy of the reported data. According to officials, insufficient investigative staff is a primary cause of the lack of enforcement of the two laws and of the limited field audit activity. Recommendations: The Secretary of Labor

should determine the additional resources needed to effectively enforce the criminal and civil provisions of both laws and provide this information to the Congress. He should direct the LMSA to: strengthen the area office audit activity; establish procedures to notify the Department of Justice of investigative activities to avoid duplication; establish procedures to require direct, continuous, and day-to-day coordination between internal investigative staffs at area offices; improve the timeliness of area offices' investigation of cases with potential criminal violations; and review the training of area office field staff to ensure that auditors and compliance officers receive the training needed to effectively carry out their duties. (R2S)

REPORT BY THE
Comptroller General
OF THE UNITED STATES

Laws Protecting Union Members And Their Pension And Welfare Benefits Should Be Better Enforced

The Labor-Management Reporting and Disclosure Act of 1959 protects the rights of union members from improper and corrupt practices by their officers and representatives. The Employee Retirement Income Security Act protects union members against the misuse and abuse of their pension and welfare benefit funds.

Most of the Department of Labor's efforts and priorities in 1977 dealt with other than potential criminal violations of the two laws. Also, Labor uses the national office computerized report processing and desk audit systems principally to achieve voluntary compliance with the laws. The systems only identify potential criminal violations which are voluntarily disclosed and are not designed to assure that reported data is valid. Weaknesses exist in the investigative and audit activities at Labor's area offices. Labor particularly needs to increase its staff and the number and quality of field audits at labor organizations and at pension plans.

GAO recommends ways to improve staffing and Labor's enforcement efforts under both laws.





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

B-164292

The Honorable Sam Nunn
Vice Chairman, Permanent Subcommittee
on Investigations
Committee on Governmental Affairs
United States Senate

Dear Mr. Chairman:

As requested in your November 29, 1977, letter and later agreements with your office, we have reviewed the Department of Labor's enforcement of the Labor-Management Reporting and Disclosure Act pertaining to labor organizations and the Employee Retirement Income Security Act pertaining to labor organizations' pension and welfare benefit plans.

At the request of your office, we did not follow our normal practice of obtaining agency comments on this report. Also, as agreed with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days after it is issued. At that time, we will send copies to interested parties and make copies available to others upon request.

Sincerely yours,

A handwritten signature in black ink, appearing to read "James B. Stuck".

Comptroller General
of the United States

REPORT BY THE
COMPTROLLER GENERAL
OF THE UNITED STATES

LAWS PROTECTING UNION MEMBERS
AND THEIR PENSION AND WELFARE
BENEFITS SHOULD BE BETTER
ENFORCED

D I G E S T

More vigorous enforcement is needed to detect and investigate potential criminal as well as civil violations of the Labor-Management Reporting and Disclosure Act of 1959 and the Employee Retirement Income Security Act of 1974.

The Labor-Management Reporting and Disclosure Act imposes Federal standards and reporting and disclosure requirements to help eliminate or prevent improper and corrupt practices by unions and their officers and representatives.

The Employee Retirement Income Security Act regulates the private pension and welfare plan systems for providing working Americans with retirement income and welfare benefits. (See p. 1.)

GAO believes that the two laws, and agreements entered into under them, clearly delineate the respective areas of investigative responsibilities and jurisdiction for the Departments of Labor and Justice. Also, officials in U.S. attorney's offices in Philadelphia and San Francisco were satisfied with the coordination under the acts and agreements as well as the quality of Labor's investigations of criminal violations referred to Justice. (See ch. 2.)

Labor, however, directs most of its efforts and priorities toward other than criminal violations of the two laws. In 1977 Labor expended most of its efforts on and gave priority to enforcing the civil election provisions of the Labor-Management Reporting and Disclosure Act. Labor expended more than half of its resources under the Employee Retirement Income Security Act in nonenforcement activities, such as provid-

ing technical assistance to the public including responding to written and oral inquiries. (See ch. 3.)

Also, the Labor-Management Services Administration national office computerized report processing and desk audit systems are principally directed to achieving voluntary compliance with the reporting and disclosure provisions of both laws. The systems identify only potential criminal violations which the labor organizations or benefit plan administrators voluntarily report and are not designed to assure that the data reported are valid or determine the level of compliance with the two laws. (See ch. 4.)

At the Philadelphia and San Francisco area offices, the following weaknesses in investigations and audits of labor organizations and pension plans were noted.

- Inadequate coordination between Labor and Justice in investigating some cases with potential criminal violations under the Labor-Management Reporting and Disclosure Act.
- Lack of internal coordination between area office staff investigating criminal and civil violations under both acts.
- Little investigative effort by the area offices to follow up on reasons for deficient reports submitted by labor organizations or pension plan administrators.
- Lack of sufficient field audit work at the labor organizations and pension plan administrators.
- Inconsistencies in the process of selecting labor organizations for audit and inadequacies in the audits made.
- Insufficient staff to enforce both laws and little formal training provided to area office investigative and audit staffs. (See chs. 5, 6, and 7.)

Labor-Management Services Administration officials cited insufficient staff as a primary cause of the lack of effective enforcement of the provisions of the two acts. They said that more staff was needed to effectively administer the day-to-day operations, do more field audit work, and educate people affected by the two laws. Although operating officials have requested additional staff, both the Department of Labor and the Office of Management and Budget have not fully granted these requests. (See chs. 7 and 8.)

RECOMMENDATIONS TO THE SECRETARY OF LABOR

To make improvements needed in the enforcement programs, including increased onsite field audits, the Labor-Management Services Administration needs more staff than requested by Labor and the Office of Management and Budget and approved by the Congress.

GAO recommends that the Secretary of Labor determine the additional resources needed to effectively enforce the criminal and civil provisions of both laws and provide this information to the Congress for its consideration.

In determining the additional resources needed to effectively use the enforcement staff, the following recommendations should be considered. GAO recommends that the Secretary direct the Labor-Management Services Administration to

- strengthen the area office audit activity by increasing the number of onsite field audits made on labor organizations and benefit plans and assure that consistent, high-quality audits are made;
- establish procedures to notify Justice of its investigative activities to avoid duplicative investigations;
- establish procedures to require direct, continuous, and day-to-day coordination between the internal Labor investigative staffs at the area offices;

- improve the timeliness of the area offices' investigation of cases with potential for criminal violations; and
- review the training of area office field staff to ensure that the auditors and compliance officers receive the training needed to effectively carry out their duties.

C o n t e n t s

		<u>Page</u>
DIGEST		i
CHAPTER		
1	INTRODUCTION	1
	The Labor-Management Reporting and Disclosure Act	1
	The Employee Retirement Income Security Act	2
	Enforcing LMRDA and ERISA	3
	The Office of Special Investigations	5
	Scope of review	5
2	RESPONSIBILITIES OF LABOR AND JUSTICE DE- PARTMENTS REGARDING CRIMINAL VIOLATIONS ARE CLEARLY DEFINED	7
	Responsibilities of Labor and Justice	7
	Agreements between Labor and Justice	8
	Views of U.S. attorneys on Labor's co- ordination and investigation efforts	10
3	MOST OF LMSA'S EFFORT AND PRIORITIES DEAL WITH OTHER THAN CRIMINAL VIOLATIONS	12
	Most enforcement time under LMRDA spent on election activities	12
	Most time under ERISA spent on non- enforcement work	13
	Science Management Corporation report on LMSA field services	14
4	NATIONAL OFFICE REPORT REVIEW AND DESK AUDIT SYSTEMS DESIGNED TO ACHIEVE VOLUNTARY COMPLIANCE	16
	Review of LMRDA reports	16
	Review of ERISA reports	17
	Other sources of potential criminal violations	19
5	WEAKNESSES IN INVESTIGATIVE ACTIVITIES AT LMSA AREA OFFICES	20
	Investigative cases under LMRDA	20
	Investigative cases under ERISA	23

		<u>Page</u>
CHAPTER		
6	WEAKNESSES IN LMSA AREA OFFICE FIELD AUDITS	24
	Few field audits made	24
	Insufficient increase in field audits planned	26
	No consistent basis for selecting field audits	27
	Inadequacies in field audits	28
7	INADEQUATE STAFFING FOR ENFORCEMENT OF LMRDA AND ERISA	29
	LMSA's requests for increased staffing denied	29
	Staff qualifications and training	31
8	CONCLUSIONS AND RECOMMENDATIONS	32
	Conclusions	32
	Recommendations to the Secretary of Labor	33
APPENDIX		
I	Labor-Management Services Administration organization	35
II	Labor-Management Services Administration present regional/area office organization structure	36

ABBREVIATIONS

ERISA	Employee Retirement Income Security Act
GAO	General Accounting Office
LMRDA	Labor-Management Reporting and Disclosure Act
LMSA	Labor-Management Services Administration
OMB	Office of Management and Budget

CHAPTER 1

INTRODUCTION

This report discusses the Department of Labor's enforcement of the criminal provisions of the Labor-Management Reporting and Disclosure Act (LMRDA) (29 U.S.C. 401) pertaining to labor organizations and the Employee Retirement Income Security Act (ERISA) (29 U.S.C. 1001) pertaining to labor organizations' pension and welfare benefit plans.

THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT

LMRDA, enacted in 1959 and amended several times, directly affects millions of people throughout the United States. It applies to labor organization (union) members, employers, labor relations consultants, and other persons as well as labor organizations and surety companies.

LMRDA was passed to help eliminate or prevent improper and corrupt practices on the part of labor organizations, labor relations consultants, and their officers and representatives. The act imposed Federal standards on labor organization activities to protect the rights of union members and the election of officers, and it established requirements for labor organization officials to report and disclose the organizations' financial and administrative practices. It also imposed fiduciary responsibilities on labor organization officials. It includes criminal provisions covering various corrupt practices, such as the embezzlement of organization funds, which was made a Federal offense.

LMRDA applies to all labor organizations and employees subject to collective bargaining agreements even if not union members, except organizations representing public employees working for a State or its political subdivisions. Most agencies of the Federal executive branch, their employees, and unions that represent such employees were made subject to provisions similar to LMRDA by Executive Order 11491, effective January 1, 1970.

About 54,000 private labor organizations are covered by LMRDA. Another 3,000 labor organizations for Federal employees are covered by Executive Order 11491. In 1977 the Department's Bureau of Labor Statistics made an analysis of 1974 data which showed membership in national and international unions at about 21.6 million members. The analysis

also showed an additional 1.4 million Federal employees and 1.3 million State and local government workers enrolled in unions in 1974.

The Department of Labor has primary responsibility for administering and enforcing LMRDA, although it shares responsibility for enforcing the criminal provisions with the Department of Justice. (See ch. 2.)

THE EMPLOYEE RETIREMENT INCOME SECURITY ACT

ERISA, enacted on September 2, 1974, is the first comprehensive Federal legislation regulating the private pension plan system for providing working Americans with retirement income. ERISA was enacted because of indications that pension plan misuse and abuse was resulting in lost pension benefits to employees, even those with many years of service. ERISA is to make sure that an estimated 57 million participants in about 500,000 private pension plans receive earned benefits. The assets of these plans were estimated at \$280 billion as of January 1, 1978. About 18,000 of the pension plans are union related and cover about 19 million workers.

To protect employees' interests, ERISA established comprehensive minimum standards and requirements that specify how employees become eligible to participate in pension plans (participation standards), how employees earn a non-forfeitable right to pension benefits (vesting standards), how the plans are to be funded (funding provisions), how the plans are to be operated in the best interests of plan participants (fiduciary standards), and to what extent plan information is to be reported and disclosed to the Federal Government and plan participants (reporting and disclosure requirements). The act also established an insurance program to guarantee the payment of certain benefits to participants of defined benefit plans 1/ if the plan terminates without sufficient assets to provide vested benefits.

ERISA's provisions are to be carried out by the Department of Labor, the Internal Revenue Service, and the Pension Benefit Guaranty Corporation. Labor is primarily responsible for issuing regulations on and enforcing ERISA's reporting,

1/Defined benefit plans are plans which provide definitely determinable benefits to participants based on such factors as years of employment and compensation received.

disclosure, and fiduciary provisions. The Internal Revenue Service issues regulations on and enforces the act's participation, vesting, and funding provisions. The Pension Benefit Guaranty Corporation, established by ERISA, administers the defined benefit plan termination insurance program.

ERISA provides civil enforcement authority. Criminal enforcement authority is also provided for willful violation of the reporting and disclosure provisions. Cases involving embezzlement, kickbacks, or related violations are to be referred to the Department of Justice for prosecution under title 18 of the United States Code. (See ch. 2.)

ENFORCING LMRDA AND ERISA

Within the Department of Labor, the Labor-Management Services Administration (LMSA), under the Assistant Secretary of Labor-Management Relations, administers and enforces LMRDA and ERISA. Within LMSA, the Office of Labor-Management Standards Enforcement is responsible for enforcing LMRDA and the Office of Pension and Welfare Benefit Programs is responsible for enforcing ERISA. These offices provide guidance, direction, and supervision to staff assigned to LMSA's 6 regional offices and 24 area offices throughout the United States. (See apps. I and II.)

Each regional office, under a regional administrator, is responsible for assuring effective operations and adherence to LMSA policy directives issued by the national office operating components. Each regional office has assistant regional administrators for LMRDA and ERISA, who serve as program experts and provide technical guidance and staff assistance to the regional administrator and the area offices in the administration and enforcement of the acts.

The area offices have primary responsibility for enforcing both acts and are organized functionally into "tracks," which are responsible for investigating possible violations under each act. The LMRDA track staff consists of compliance officers, while the ERISA track has both compliance officers and auditors. A third track, not included in our review, is responsible for enforcing the provisions of the veterans' reemployment rights statutes and other labor-management relations activities, such as the major parts of Executive Order 11491 which govern the labor-management relations of Federal unions.

Functions of the area offices include

- initiating and conducting investigations concerning alleged violations under the acts;
- reviewing and administratively closing cases within delegated authority and recommending to the regional office disposition of those not within their authority to close; and
- maintaining liaison with the regional solicitor, the Internal Revenue Service, and the local U.S. attorney for matters involving investigative action.

LMSA, in carrying out its enforcement responsibilities under LMRDA and ERISA, is assisted by the Department's Office of the Solicitor. Each region has a regional solicitor, who acts as a legal advisor to LMSA's regional and area office staffs. Regional solicitors prepare, try, or help try cases and prepare advisory opinions on questions. For LMRDA, the regional solicitor is responsible for reviewing criminal cases involving violations of the act and recommending prosecution before they are sent to the local U.S. attorney. For ERISA, however, the regional solicitor has not been delegated such authority. All ERISA criminal as well as civil matters are handled by the Solicitor's national office in Washington.

LMSA also has a Special Investigations Staff, at the national office, which plans, develops, and conducts highly complex and sensitive investigations of the operations of selected employee benefit plans suspected of violating ERISA. This staff, formed in January 1976, was originally intended to investigate the activities of the International Brotherhood of Teamsters' Central States, Southeast and Southwest Areas Pension Fund. At that time it was responsible to the Secretary of Labor. In late 1977 the staff was placed under the Pension and Welfare Benefit Programs office.

LMSA is also responsible for carrying out the Department of Labor's duties under the Federal Government's War Against Organized Crime program established in 1967 under the direction of the Department of Justice. As part of the program, Justice established Organized Crime Strike Forces to launch a coordinated attack on this serious national problem. The strike forces are comprised of staff and resources from various Federal law enforcement agencies. Large numbers of LMSA personnel have served as strike force members since 1970. These personnel have been used to audit and investigate criminal racketeering activities of labor organizations.

Neither the activities of the Special Investigations Staff nor its participation in the Organized Crime Strike Force was covered in our review.

THE OFFICE OF SPECIAL INVESTIGATIONS

In June 1978, the Department of Labor established the Office of Special Investigations, reporting directly to the Secretary, which will be responsible for most of the Department's audit and investigative functions. The audit and investigative functions of the following offices will be consolidated into the new office by October 1, 1978.

- The Directorate of Audit and Investigations, Office of Assistant Secretary for Administration and Management, which makes internal audits and management reviews or surveys of Department activities, including the investigation of fraud and misconduct by the Department's employees.
- The Office of Investigation and Compliance, Employment and Training Administration, which investigates fraud and misconduct in manpower programs, such as the Comprehensive Employment and Training Act of 1973 (29 U.S.C. 801).
- The Division of Investigations, Employment Standards Administration, which is responsible for investigating fraud in the Department's workers' compensation programs.
- The Organized Crime Program work being done by LMSA, including any dealings and coordination with the Department of Justice.

The new office will be responsible for planning, directing, and conducting a comprehensive audit and investigation program in the Department and for reviewing the Department's conduct of investigations and audits to detect and prevent program abuse, fraud, and statutory violations. This will include reviewing LMSA's enforcement activities of LMRDA and ERISA.

SCOPE OF REVIEW

Our review focused on

- whether LMSA's responsibilities for detecting and investigating potential criminal violations of LMRDA and ERISA provisions are clearly defined;

--whether LMSA's organization, procedures, and staffing are adequate to fully discharge its enforcement responsibilities; and

--LMSA's coordination with the Department of Justice.

We made the review at LMSA's national office in Washington, D.C., and at its Philadelphia and San Francisco regional and area offices. At the national office we reviewed enforcement policies, priorities, and procedures, and the computerized report processing and desk audit systems for LMRDA and ERISA. At the regional and area offices, we evaluated the enforcement efforts by reviewing (1) selected closed and pending investigative cases for fiscal year 1977 pertaining to labor organizations and pension and welfare benefit plans and (2) all self-initiated field audits made at the labor organization or plan sites during 1977. We interviewed enforcement and management personnel at the field and national offices.

We also reviewed the independent study 1/ of LMSA's field activities and organizational structure made by the Science Management Corporation of Washington, D.C.

We interviewed officials of the U.S. attorney's offices in Philadelphia and San Francisco to discuss their coordination with LMSA officials regarding investigations of potential criminal violations of the two laws. We also reviewed the agreements between Justice and Labor, entered into under the two laws, detailing their respective investigative responsibilities and jurisdiction. We reviewed pertinent sections of the two laws' legislative histories and Labor's and Justice's responsibilities for detecting and investigating potential criminal violations of the laws.

1/"Final Report on Evaluation of the Delivery of LMSA Field Services," submitted November 18, 1977, by Decision Studies Group, a division of Science Management Corporation.

CHAPTER 2

RESPONSIBILITIES OF LABOR AND JUSTICE

DEPARTMENTS REGARDING CRIMINAL VIOLATIONS

ARE CLEARLY DEFINED

In our opinion, both LMRDA and ERISA and the agreements entered into under the acts clearly delineate the respective areas of investigative responsibility and jurisdiction for Labor and Justice. Also, officials in the local U.S. attorney's offices in Philadelphia and San Francisco were generally satisfied with the coordination under the laws and agreements and with the quality of Labor's investigations referred to them.

RESPONSIBILITIES OF LABOR AND JUSTICE

The Department of Labor is primarily responsible for detecting and investigating civil and criminal violations of LMRDA and ERISA (29 U.S.C. 521 and 29 U.S.C. 1134, respectively). The Department of Justice, as the chief law enforcement agency of the Government and generally responsible for the investigation of Federal criminal laws, is responsible for investigating possible violations of title 18 of the United States Code. Because certain crimes designated in title 18 are related to violations of LMRDA and ERISA, the responsibilities of Labor and Justice overlap in certain areas. For example, section 511 of ERISA (29 U.S.C. 1141) makes it a criminal offense to interfere with the rights of a participant or a beneficiary of an employee benefit plan through the use of fraud, violence, or coercion. Section 664 of title 18, on the other hand, prohibits the theft or embezzlement of assets of a plan.

In carrying out its primary responsibility to detect and investigate violations of the ERISA fiduciary provisions, when a Labor investigation discloses potential embezzlement by a fiduciary of a plan, which may also involve a violation of 18 U.S.C. 664, under 29 U.S.C. 1136 Labor must refer the case to Justice for consideration for prosecution. Under an agreement between Justice and Labor, the Justice Department has the option of deciding whether it or Labor will complete the investigation which may result in criminal prosecution. On the other hand, Justice does not need Labor's concurrence to initiate investigations when embezzlement of plan funds is suspected.

AGREEMENTS BETWEEN LABOR AND JUSTICE

In recognition of this overlap and to provide for efficient operations, the Secretary of Labor and the Attorney General have entered into agreements, as permitted under LMRDA and ERISA, detailing their Departments' respective investigative responsibilities and jurisdiction. Under both agreements, and as required by the two laws, any evidence of criminal violations obtained by Labor must be referred to Justice for consideration for prosecution. (29 U.S.C. 527 and 29 U.S.C. 1136, respectively.)

Labor-Management Reporting and Disclosure Act

Under the LMRDA agreement, Labor investigates criminal provisions and matters relating to

- false reporting by labor organizations,
- labor organizations' bonding coverage,
- loans by labor organizations to their officers and employees,
- labor organizations' payments of fines incurred by their officials or employees, and
- trusteeships of labor organizations established over subordinate organizations to correct corrupt practices or financial malpractice.

Justice investigates

- embezzlement of labor organization funds,
- employers' payments of fines incurred by a labor organization official or their employees,
- prohibitions against certain persons' holding office,
- ~~ex~~stortionate picketing, and
- deprivation of rights by force and violence.

LMRDA provides severe penalties for persons convicted of violating its criminal provisions. The penalties range from (1) a fine of \$1,000 and not more than a year in prison, or both, for violating section 610--depriving a union member's

rights by force and violence--to (2) a fine of \$10,000 and not more than 20 years in prison, or both, for violating section 602--attempting extortion during picketing.

During a preliminary investigation under LMRDA by a Labor area office, if a potential criminal violation, usually embezzlement, is indicated, area office officials consult with the U.S. attorney having jurisdiction in the region as to who will investigate the violation. If Labor has staff available, it usually requests that the investigation be handled by its area office.

At the Philadelphia area office, the local U.S. attorney usually delegated responsibility for the investigation to Labor. In contrast, the Labor San Francisco area office usually requested that Justice investigate the case because the office lacked sufficient staff to make the investigations.

Employee Retirement Income Security Act

Under the ERISA agreement, Labor investigates criminal matters involving violations of ERISA's reporting and disclosure provisions.

Justice investigates criminal matters related to ERISA prohibitions against (1) certain persons holding office and (2) interference with the right of a participant or beneficiary by fraud or coercion. Justice also investigates related offenses under title 18, such as theft or embezzlement from employee benefit plans; false statements and concealment of facts in relation to documents required by ERISA; and offer, acceptance, or solicitation to influence operations of employee benefit plans.

ERISA and title 18 also provide severe penalties for persons convicted of violating the criminal provisions. For example, conviction for embezzlement of pension plan funds or assets can result in a fine of not more than \$10,000 or 5 years in prison, or both.

When a Labor area office becomes aware of a potential criminal violation of ERISA that is Justice's responsibility, the office forwards a summary of the case to Labor's national office with a recommendation as to whether the case should be developed civilly or criminally, or both. The area office also indicates whether it wants to continue the criminal investigation and whether it has the staff to do so.

Labor's national office officials consult with Justice to determine who should investigate the case. Justice generally handles investigations of cases involving potential criminal violations of ERISA.

VIEWS OF U.S. ATTORNEYS
ON LABOR'S COORDINATION
AND INVESTIGATION EFFORTS

We discussed the coordination between Labor and Justice in the enforcement of LMRDA and ERISA and how the agreements were working with officials of the local U.S. attorney's offices in Philadelphia and San Francisco. In general, these officials were satisfied with the coordination and noted that, because of the agreements, there has not been any overlapping investigations by Labor and Justice.

The officials also were generally satisfied with the quality of Labor's investigations, but their opinions and observations varied somewhat. For example, officials we spoke to in the San Francisco U.S. attorney's office made the following comments:

- Labor has some highly skilled personnel with expertise in the area of labor management but lacks sufficient staff.
- The dual investigative responsibilities between Labor and Justice have not created any problems. In complicated cases which would be referred to Justice, Labor would also be involved because of its expertise in matters of labor law.
- The dual investigative responsibilities should be abolished. Either Labor's staff should be increased so that it can undertake the investigations or the responsibility should be given to Justice.
- Justice manages its cases better than Labor and concentrates solely on the criminal aspects of a case. However, since Labor is responsible for enforcing both the civil and criminal provisions of the law, it often gets tied up in the civil areas at the expense of the criminal areas.

The San Francisco officials concluded, however, that Labor's investigative efforts were generally satisfactory.

An official in the Philadelphia U.S. attorney's office made the following comments:

- Both Labor and Justice refer potential criminal cases to him for delegation of investigative authority. This is advantageous, because he can select the agency with the most expertise.
- Labor's Philadelphia area office does not have sufficient staff to handle all the criminal investigations, but the staff is qualified to make such investigations.
- Labor's review of annual reports submitted by labor organizations and pension and welfare plans is not a realistic method to detect sophisticated embezzlers who prepare proper reports to cover their actions. This type of violation can best be uncovered by field audits.

The official also said that no formal procedure exists for notifying Labor of potential violations that Justice is investigating.

CHAPTER 3

MOST OF LMSA'S EFFORT AND PRIORITIES

DEAL WITH OTHER THAN CRIMINAL VIOLATIONS

We analyzed LMSA's staff time for fiscal year 1977 to determine the effort devoted and priorities given to enforcing the criminal provisions of both laws. Our analysis showed that LMSA directed most of its enforcement effort and priorities on LMRDA to civil election provisions and that LMSA expended more than half of its effort on ERISA to non-enforcement activities, such as providing technical assistance to the public and responding to written and oral inquiries.

MOST ENFORCEMENT TIME UNDER LMRDA SPENT ON ELECTION ACTIVITIES

According to LMSA officials, there is no written policy establishing the priorities for dealing with violations, either civil or criminal, under LMRDA. Their approach, however, is to try to achieve voluntary compliance. Also, the law requires that, if its investigation of a complaint on a labor organization's election discloses a violation, Labor must bring civil action against the organization in a U.S. district court within 60 days of the filing of the complaint.

The law, in effect, has set the priorities. In practice, LMSA's priorities are (1) investigating election complaints, (2) supervising election reruns, (3) investigating all other complaints, and (4) making self-initiated field audits.

Nationally, during fiscal year 1977 LMSA spent 79 percent of its time enforcing LMRDA; the remaining time was spent on nonenforcement work, such as technical assistance and training. About 46 percent of the total time spent nationally, 60 percent in Philadelphia, and 37 percent in San Francisco dealt with enforcing the civil election provisions. Also, only about 21 percent of the time in Philadelphia and 40 percent of the time in San Francisco was spent on other investigative and audit work with potential for detecting criminal violations.

The table below shows the percentages of staff time spent on LMRDA enforcement and nonenforcement work nationwide and at the two area offices.

	Nation- <u>wide</u>	<u>Area office</u>	
		<u>Philadelphia</u>	<u>San Francisco</u>
----- (percent) -----			
Enforcement work:			
Noncriminal			
violations--election			
activities	46	60	37
Potential criminal			
violations	<u>33</u>	<u>21</u>	<u>40</u>
	<u>79</u>	<u>81</u>	<u>77</u>
Nonenforcement work:			
Technical assistance	8	11	10
Training	3	5	4
Other, e.g., travel,			
clerical	<u>10</u>	<u>3</u>	<u>9</u>
	<u>21</u>	<u>19</u>	<u>23</u>
Total	<u>100</u>	<u>100</u>	<u>100</u>

MOST TIME UNDER ERISA SPENT
ON NONENFORCEMENT WORK

According to LMSA's policy, its primary concern under ERISA is to protect the interests of participants and beneficiaries. As under LMRDA, the basic enforcement strategy is to try to achieve voluntary compliance because, according to LMSA officials, its limited resources make reviewing all reports and plans impossible. Priority for compliance investigations and audits is given to cases in which the most participants and assets are involved. LMSA's practice is to first, secure the assets; second, recover any losses; and third, prosecute.

For ERISA, LMSA set a goal for fiscal year 1977 that 65 percent of area office time was to be spent on enforcement work. This goal was not met. Less than half of the staff time nationally and in Philadelphia and San Francisco was spent on compliance and enforcement work.

Of the remaining time, about 30 percent nationally and about 31 and 39 percent in the Philadelphia and San Francisco area offices, respectively, was devoted to providing technical assistance to the public. This is shown in the following table.

	Nation- wide	Area offices	
		Philadelphia	San Francisco
(percent)			
Enforcement work with:			
Potential criminal violations	41	41	43
Noncriminal violations	<u>6</u>	<u>5</u>	<u>3</u>
	<u>47</u>	<u>46</u>	<u>46</u>
Nonenforcement work:			
Technical assistance	30	31	39
Training	12	13	8
Other, e.g., travel, clerical	<u>11</u>	<u>10</u>	<u>7</u>
	<u>53</u>	<u>54</u>	<u>54</u>
Total	<u>100</u>	<u>100</u>	<u>100</u>

According to LMSA officials, the large percentage of time spent on technical assistance was due to the newness and complexity of ERISA. Technical assistance usually consisted of such planned activity as seminars, workshops, and speeches for educational purposes or activities associated with responding to written or telephone inquiries and walk-in visitors. According to LMSA officials, technical assistance serves two purposes--to reduce the number of complaints resulting from ignorance of the law and to encourage the filing of meaningful petitions and complaints.

Area officials advised us that planned technical assistance activities are considered part of a supervisor's overall job responsibility. However, most of the time spent on technical assistance at the two area offices was being spent by staff members, not supervisors.

SCIENCE MANAGEMENT CORPORATION
REPORT ON LMSA FIELD SERVICES

In November 1977 the Science Management Corporation provided LMSA with an independent study on LMSA's field activities and organizational structure. Overall, the study pointed out how LMSA could better use its staff and improve

delivery of services by reducing levels of supervisory field review and restructuring field offices. The study noted that LMSA had no comprehensive policy for administering technical assistance activities in the field and that the lack of such policy would probably result in misdirected time and a reduction in the program's effectiveness. The study recommended that policy be clarified to guide field personnel in carrying out technical assistance activities.

At the end of March 1978, LMSA national office officials were still evaluating Science Management's conclusions and recommendations.

CHAPTER 4

NATIONAL OFFICE REPORT REVIEW AND DESK AUDIT SYSTEMS DESIGNED TO ACHIEVE VOLUNTARY COMPLIANCE

The national office computerized report processing and desk audit systems are principally directed to achieving voluntary compliance with the reporting and disclosure provisions of LMRDA and ERISA. The systems identify only (1) potential criminal violations that labor organizations and plan administrators voluntarily disclose and (2) situations in which conflicting data is reported. They are not designed to assure that the reported data is valid.

In fiscal year 1977, LMSA received annual financial reports from about 54,000 labor organizations under LMRDA and about 500,000 pension and welfare plans covered under ERISA, of which about 18,000 were labor organization related.

LMSA depends on labor organizations and plan administrators to voluntarily submit the initial report on their organizational structure as the primary means of identification. This is supplemented by other sources, such as outside inquiries, complaints, or news articles. LMSA then tries to assure through its national office computerized operation that it continues to receive the required reports. However, we found no indications that LMSA had (1) determined the total number of labor organizations or benefit plans subject to LMRDA and ERISA reporting and disclosure requirements or (2) assessed the extent to which labor organizations and plan administrators are complying with the act's criminal or civil provisions.

REVIEW OF LMRDA REPORTS

LMRDA requires labor organizations to report and disclose extensive information about their financial condition and operations. At LMSA's national office the reports are stored and selected data elements--flag items--are computerized for analysis and evaluation. The flag items deal with bonding coverage; loans to labor organization officers, employees, or members; losses of funds; and inconsistencies or errors in financial data reported. When the computer identifies questionable responses to any flag item, the report is scheduled for desk audit by an LMSA staff accountant at the national office.

In fiscal year 1977 the national office processed 84,000 annual financial reports filed by about 54,000 labor organizations subject to LMRDA. About 13,000 reports were flagged by the computer because of deficiencies in the financial information, such as prior years' balances incorrectly reported or errors in reconciling receipts and cash balances reported.

Desk audits were made on about 3,000 of the 13,000 deficient reports. These audits covered primarily labor organizations with annual receipts of more than \$30,000. LMSA officials said no desk audits were made on the other 10,000 reports because of a lack of sufficient staff. For LMRDA, the national office has 15 staff accountants who perform desk audits. LMSA officials stated that 30 additional accountants would be needed to make desk audits of all deficient reports.

The procedures generally used to resolve the questionable or flag items provide for the staff accountant to contact the labor organization to have an amended report submitted to correct the deficiencies or violations. The accountant is not required to examine the organization's records. If a questionable response cannot be resolved during the desk audit, the national office requests the appropriate area office to investigate the deficiency.

In 1977 the national office's computer and audit operation identified no criminal violations under LMRDA on the 3,000 deficient reports on which desk audits were made. However, the national office sent 500 of the deficient reports to the area offices for further investigation.

REVIEW OF ERISA REPORTS

ERISA requires pension and welfare plan administrators to report and disclose extensive information about their plans, operations, and financial condition. Certain plan financial statements are also required to be certified by an independent public accountant.

At the national office, the reports are stored and selected data elements--flag items--are computerized for analysis and evaluation. When the computer identifies questionable responses to any flag item, the report is scheduled for desk audit by a staff accountant. Flag items include (1) whether plan fiduciaries were bonded, (2) whether there was a bonding loss involving fraud or dishonesty of a plan official or other persons handling funds, (3) whether

the public accountant's opinion was qualified or adverse, and (4) whether a schedule of party-in-interest transactions was included.

By the end of fiscal year 1977, the national office had received about 500,000 annual reports filed under ERISA for the 1975 plan year. In October 1977 the national office made its initial computer analysis of these reports. The analysis flagged 29,600 reports with such items as questionable financial entries, potential violations of bonding, and adverse or qualified opinions by public accountants.

LMSA officials said that they do not have sufficient staff to desk audit all questionable reports identified by the computer. They said that they try to protect the greatest number of plan assets and participants by analyzing the larger plans. Therefore, LMSA assigned the following priorities to plans for desk audit:

- Those involving congressional or labor inquiries.
- Those that are large.
- Those with prior suspected or actual violations.

The national office has 15 staff accountants to make desk audits on the ERISA reports. LMSA officials have not estimated how many additional accountants would be needed to perform desk audits on all the deficient reports. They added that all questionable responses may not represent actual deficiencies or violations.

The national office made desk audits on 2,250 reports during fiscal year 1977. These audits, however, did not result from the computer analysis of the reports because the computer system was not operational at that time. Rather, they resulted from complaints received from participants, congressional inquiries, news articles, or a random selection of reports received.

The procedures generally used to resolve the questionable or flag items provide for the staff accountant to contact the plan administrator to obtain the necessary information to correct the deficiencies or violations. The accountant is not required to examine the plan records to determine whether the violations or deficiencies resulted from a criminal act such as embezzlement. If a questionable response cannot be resolved during the desk audit, the national office requests the appropriate area office to investigate the deficiency.

In 1977 none of the national office audits resulted in the detection of criminal violations under ERISA. The 2,250 audits disclosed 1,760 potential violations. About 660 of the problems identified were resolved by the national office after contacting the plan administrators and requesting additional information. The other 1,100 potential violations involved more complicated issues which required both personal contacts with plan administrators and a review of plan records. These were referred to the area offices for further investigation.

OTHER SOURCES OF POTENTIAL CRIMINAL VIOLATIONS

The national office appears to be more successful in identifying potential criminal violations under both laws from sources outside the computer processing and desk audit systems. These sources include complaints from labor organization members, reports by parent labor organizations on assuming trusteeship over a subordinate organization, and surety company reports.

Surety companies are required by both LMRDA and ERISA to report to LMSA any claims for losses sustained by labor organizations or their pension and welfare plans. For example, under LMRDA we noted two instances in which a surety company reported losses claimed by labor organizations. These losses were not reflected on either labor organization's financial reports for its last reporting period and, therefore, the reports were not flagged by the computer. However, based on the surety company's reports, both claims were referred by the national office to the appropriate area offices for further investigation.

For ERISA, we also noted that for the year ended December 31, 1976, six surety companies reported 14 claims totaling about \$1 million, with one claimed loss of about \$492,000. According to a national office official, these claims would also be referred to the appropriate area offices for further investigation.

CHAPTER 5

WEAKNESSES IN INVESTIGATIVE ACTIVITIES

AT LMSA AREA OFFICES

At the Philadelphia and San Francisco area offices, we examined selected investigative cases which may have had potential criminal violations of LMRDA or ERISA--for example, breaches of fiduciary responsibility by labor organization or benefit plan officials. The cases selected were either closed or pending during fiscal year 1977.

We wanted to determine (1) whether cases with potential criminal violations were closed within the Department of Labor without referral to Justice, (2) whether potential criminal cases were adequately coordinated with Justice, (3) the reasons for and extent of delays in processing cases, and (4) the adequacy of LMSA's investigations. Overall, we found that:

- LMSA closed cases administratively when voluntary compliance was achieved, no violation was detected, or a case was referred to Justice.
- A lack of coordination existed between LMSA and Justice on some LMRDA investigations.
- Inadequate coordination existed between the LMRDA and ERISA staffs in their investigations.
- LMSA's investigations of cases with potential criminal violations were delayed due to a lack of staff or higher priority election work.
- The area offices made little effort to follow up on reasons for deficient LMRDA reports identified by national office desk audits.

INVESTIGATIVE CASES UNDER LMRDA

In addition to information received from the national office, the area office staffs open investigations based on complaints from labor organization members, employees, officials, and employers and news media releases. Under LMRDA, LMSA has enforcement programs covering both civil and criminal violations of the act. Enforcement programs covering civil violations primarily involve investigating election complaints and supervising election reruns where violations have occurred. Programs involving potential criminal violations include

delinquent and deficient reporting, bonding and trusteeship violations, and mismanagement of funds.

The Philadelphia and San Francisco area offices had a total of 86 closed and pending cases which we believe may have included potential criminal violations. We examined 64 cases--19 pending and 45 closed cases. Of the 64 cases, 26 were opened as a result of desk audits by the national office, 11 were based on information received from other sources by the national office, and the others were initiated by the area office based on complaints. Details of our case work follow.

Cases closed administratively

The two area offices closed 37 of the 45 LMRDA cases after the labor organizations voluntarily agreed to comply with the act or the investigation detected no violations.

Two of the remaining eight cases were closed administratively although fund shortages with possible criminal violations were uncovered. LMSA considered the first case to be unsuitable for prosecution because the (1) subject was 70 years old, (2) she repaid \$6,500 of the \$14,400 shortage, and (3) the remaining \$7,900 owed on the shortage was less than the salary (about \$37,800) apparently owed and never paid to her by the labor organization. In the second case, the subject had died before the receipt of the complaint and the start of the investigation.

Four cases were closed by the area offices after they were referred to Justice. Justice and LMSA agreed not to prosecute one case since the amount of the potential embezzlement (\$378) was nominal and the subject agreed to repay the funds. In the other three cases, Justice initiated criminal action against the subjects.

Coordination with Justice

For the other two cases, investigations were closed after the LMSA investigators found that Justice had completed an investigation of one case and was still investigating the other. LMSA lacks formal procedures for notifying Justice of cases under investigation. Area office officials believed that such procedures were needed.

Coordination between investigative staffs

There was a lack of internal coordination between the area office staff who worked on LMRDA and ERISA cases. For example, in one pending LMRDA case, the staff was unaware that the labor organization was being investigated by the ERISA staff and Justice. Also, according to LMSA officials, their investigative procedures do not include cross-checking to determine whether individuals being investigated under an LMRDA case also held a fiduciary position in the management of pension and welfare plans subject to ERISA.

Delays in case investigations

The period of investigation for the 64 cases ranged from about 1 to 28 months. Many investigations were delayed or suspended primarily because of higher priority election investigations.

For one pending case, LMSA opened its investigation in early 1977 and requested delegation of authority for an investigation of potential embezzlement from Justice in April 1977. As of March 1978, Justice had not responded and the case was still open. There was no indication that the area office followed up on its request.

In another pending case, the area office investigation had been open for at least 2 years even though LMSA believed that union funds had likely been embezzled. The subject of the investigation is a business agent of a local labor organization as well as a trustee of its pension plan, which gives him continued access to pension funds. Area office officials indicated that the investigation had been delayed because of higher priority election work and changeover of investigators. The investigation was resumed in March 1978. Area office officials said the case will be referred to Justice when the fund shortage is determined.

Followup investigations

We reviewed the area office investigative efforts on the 26 cases opened as a result of national office desk audits. These followup investigations consisted primarily of having the labor organization file an amended report and verifying and reconciling the fund balances shown on that report. The area offices made little investigative effort to determine the reasons for the deficiencies noted in the desk audit. If the amended report was obtained and the fund balances reconciled, then voluntary compliance was deemed to have been achieved and the case closed.

INVESTIGATIVE CASES UNDER ERISA

LMSA area offices open investigative cases under various enforcement program categories covering possible violations of ERISA provisions. We selected for review programs that could have included possible criminal violations, such as delinquent and deficient reports, fiduciary breaches, improper bonding, and persons prohibited from holding office. We excluded programs for which potential criminal violations were unlikely.

The two area offices had 204 closed and pending cases with potential criminal violations. We selected 78 cases for review--27 pending and 51 closed cases. Fifty-two of the total closed and pending cases were initiated as a result of desk audits at or other information received by the national office indicating delinquent or deficient reporting or fiduciary violations. The remainder resulted from complaints received by the area offices from plan participants who alleged that fiduciary violations occurred or plan administrators failed to provide benefit or bylaw information to them.

The two area offices closed 50 of the 51 cases because their investigation disclosed no civil or criminal violations or the plan administrators agreed to voluntarily comply with the act. The other case was administratively closed because Justice was already taking action against the plan administrator.

Some of the pending and completed ERISA investigations were delayed. The period of the investigations for the 51 closed cases ranged from about 1 week to about 18 months. Area office officials said the delays were primarily due to heavy workloads and the need to provide technical assistance to the public and attend training sessions.

CHAPTER 6

WEAKNESSES IN LMSA AREA OFFICE

FIELD AUDITS

LMSA could improve its enforcement under both acts by making more field audits at labor organizations and pension and welfare benefit plan sites, developing a more systematic method for selecting organizations and plans for audit, and making better field audits.

Field audits are initiated by LMSA area offices and are made onsite at the labor organization or wherever the pension and welfare plans' records are located. Generally, the audits are to (1) verify the accuracy of the labor organizations' or plans' reports, (2) determine the adequacy of financial records and bonding coverage, (3) verify compliance with the provisions of the laws relating to reporting and disclosure, financial operations, and fiduciary responsibility, and (4) investigate violations.

FEW FIELD AUDITS MADE

During fiscal year 1977 LMSA staff made few field audits of labor organizations and pension and welfare plans. Nationwide, only about 1 percent of LMSA's staff-days was spent on field audits of labor organizations and only 3 percent on pension and welfare plans.

The Philadelphia and San Francisco area offices spent only 2 percent of their staff time on field audits during that period. Also, some audits were delayed because of insufficient staff or priority work such as election cases.

For LMRDA, during fiscal year 1977, the Philadelphia and San Francisco area offices completed seven and two audits, respectively. The offices noted no potential criminal violations in these nine cases.

The Philadelphia office also had one audit in process at the end of the fiscal year. This audit, however, was delayed because the staff had to work on election and pension cases.

The San Francisco area office had five audits in process at the end of the year. However, four of these were delayed, three because of election cases and one because of the death of the compliance officer. This audit was initiated because

of an allegation by the labor organization's auditor that funds were being embezzled and that he was denied access to the organization's records. The complaint was originally made to the area office in 1972; however, the office did not act at that time.

In July 1974 the auditor again brought these allegations to the attention of the area office and requested an audit of the books. He again charged that the funds were being embezzled and added that fraud and misappropriation of funds had occurred. The area office finally initiated a field audit in January 1975, which continued until May 1976, when the LMSA compliance officer performing the audit died.

The field audit disclosed questionable expenditures of about \$2,500 for such items as personal telephone calls, refreshments, and a loan to a member of the labor organization. Nothing in the files indicated that these questionable items had been resolved. In addition, the LMSA national office had made a desk audit and questioned the categorization of various amounts shown on the organization's 1972 and 1973 financial reports.

According to area office officials, the field audit was delayed because of a lack of staff. However, the area office had opened three new field audits within the month following the compliance officer's death. These audits were opened because it was believed that the labor organizations' annual reports contained some potential for review. One of these audits was closed in less than 5 months and the other two were pending at the end of fiscal year 1977.

In April 1978 area office officials also advised us that there was little chance of developing enough evidence to warrant prosecution and that the audit was scheduled to be closed in April 1978, upon receipt of additional data from the labor organization. After we discussed the case with the officials, they agreed to obtain the local U.S. attorney's opinion before closing it.

The two area offices did not complete any field audits for ERISA during fiscal year 1977. Philadelphia had eight audits in process at the end of the year, and San Francisco had one. Six of the Philadelphia audits were delayed because the LMSA national office could not locate the plans' annual reports; one was delayed because plan representatives questioned the application of ERISA to their plan; and the other was delayed because of higher priority investigative work and unavailability of staff.

During fiscal year 1978 LMSA also initiated a pilot program in the Philadelphia region for the compliance review of 30 ERISA pension and welfare benefit plans. The criteria used to select the 30 plans were designed to provide for a mixture according to (1) geographic area, (2) single employer and multiemployer plans, (3) pension and welfare plans, (4) insured and self-insured plans, and (5) number of participants. In reviewing the 30 plans, the region used a checklist designed to obtain information about the plans and to determine whether they were basically in compliance with ERISA.

Deficiencies were disclosed in 13 plans, and as a result, the region initiated more detailed investigations of such items as fiduciary responsibilities, bonding coverage, and deficient or delinquent reports. We were told that none of the deficiencies appeared to be potential criminal violations.

The Philadelphia regional officials reacted favorably to the pilot program. They plan to recommend that the national office expand the program to about 60 plans in the Philadelphia region and extend it to two other area offices.

INSUFFICIENT INCREASE IN
FIELD AUDITS PLANNED

LMSA national and area office officials agreed that field audits are valuable as a deterrent and that more audits should be made to provide better enforcement of both acts.

During fiscal year 1978 LMSA said it plans to increase the number of field audits for both LMRDA and ERISA. Another increase is planned for ERISA in fiscal year 1979. The field audits completed during fiscal year 1977 and those planned for fiscal years 1978 and 1979 are compared below.

	Fiscal year 1977 audits completed	Fiscal year 1978		Fiscal year 1979	
		<u>Audits planned</u>	<u>Percent increase</u>	<u>Audits planned</u>	<u>Percent increase</u>
LMRDA	43	60	39	60	-
ERISA	32	64	100	105	64

These planned increases are an improvement in audit coverage, but the number planned is still relatively insignificant in relation to the estimated 54,000 labor

organizations and 500,000 pension and welfare benefit plans known to LMSA and reporting under the acts.

NO CONSISTENT BASIS FOR
SELECTING FIELD AUDITS

The Philadelphia and San Francisco area offices used different bases for selecting labor organizations and pension and welfare benefit plans for field audits.

Audit guidelines for LMRDA provide that in selecting labor organizations, area offices should achieve the widest possible diversity by (1) geography, (2) parent labor organizations, and (3) trade or industry. Audit guidelines for ERISA, however, do not have any criteria for selecting benefit plans.

For the seven LMRDA field audits completed in 1977, the Philadelphia area office selected various size labor organizations with between 582 and 36,000 members and receipts ranging from about \$61,600 to \$592,000. One audit was initiated at the national office's request. On the other hand, the San Francisco area office selected labor organizations on the basis of complaints and review of the organizations' financial reports to identify those with the most potential for discrepancies.

For ERISA the Philadelphia area office selected only labor organization vacation funds for the eight field audits in process during fiscal year 1977. Area office officials said this type of fund was selected because it had not received audit coverage and they believed that most plan administrators had not been filing the required reports.

In San Francisco the one ERISA field audit was initiated because of questionable administrative costs and cash balances in the plan's annual report and complaints by the plan's trustee alleging improper handling of plan funds and assets.

Better selection of labor organizations and plans for audits is needed. Such data as volume of annual receipts, prior audit findings, and date of last audit is available at the national office from which the universe of reporting labor organizations and plans could be identified and stratified. Based on the data available, statistical sampling techniques could be used to randomly select both labor organizations and benefit plans for field audit.

INADEQUACIES IN FIELD AUDITS

Although LMSA has comprehensive guidelines for making field audits, the audit reports and supporting working papers disclosed the following inadequacies in the performance and documentation of some audits.

Seven LMRDA audit reports stated that the labor organization's internal controls were adequate even though the compliance officer's working papers for six indicated that accounting duties were not adequately segregated. For the seventh, the working papers did not identify who maintained the books or who performed other accounting duties.

In one LMRDA audit, an accountant for the labor organization stated in August 1976 that a former treasurer who had not held office since 1971 had not deposited checks sent to the organization but had since repaid any money owed. The working papers did not disclose the amount involved, the date of the occurrence, whether this matter was investigated further, or whether verification of the claimed repayments was made. An area office official stated that, because of the time lapse between the date of the alleged act and its disclosure during the audit, the compliance officer probably reasoned that the statute of limitations precluded action against the former official. The official agreed that the compliance officer should have explained in the working papers why the matter was not pursued.

In another LMRDA audit, the compliance officer concluded that bonding coverage was adequate. LMRDA requires that all persons who handle funds be bonded and establishes criminal sanctions for willful violations. The working papers showed that, in addition to the officer covered by the bond, another officer also received checks and an employee of the organization received checks and cash. Neither was covered by the bond. We brought this matter to the attention of area office officials, and they agreed to have the organization correct the bonding coverage.

CHAPTER 7

INADEQUATE STAFFING FOR ENFORCEMENT

OF LMRDA AND ERISA

LMSA does not have adequate staff to effectively carry out its enforcement responsibilities under LMRDA and ERISA, and its requests for additional staff have met with little success. The background of personnel in the area offices visited appears appropriate for their positions, but they receive little formal training.

LMSA'S REQUESTS FOR INCREASED STAFFING DENIED

LMSA had 479 approved positions for enforcing LMRDA and 589 for enforcing ERISA in fiscal year 1977. At yearend LMSA had 450 LMRDA enforcement staff members on board--301 professional and 149 clerical. LMSA had 516 employees to enforce ERISA, of which 331 were professional and 185 clerical.

The Philadelphia area office had six professionals assigned to LMRDA enforcement work and seven assigned to ERISA. San Francisco assigned six professionals to LMRDA and five to ERISA.

For fiscal years 1978 and 1979, LMSA requested increases in staff for enforcement of both acts. Only a part of the requested increases was approved by the Department of Labor and the Office of Management and Budget (OMB). In 1978 the Department approved 20 of the 111 additional staff requested for LMRDA, but OMB denied the entire increase. LMSA's request for a staff increase of 134 for 1979 was denied by the Department.

For ERISA the Department approved 109 of 234 additional positions requested in 1978, but OMB reduced the increase to 59 positions. For 1979, LMSA requested 755 additional staff. The Department approved an increase of 18; however, OMB reduced the staffing to a point below the level approved by the Congress for 1978.

Details on LMSA's staff requests are shown on the following page.

<u>Fiscal year</u>	<u>Location</u>	<u>Requested by LMSA</u>	<u>Approved by Labor</u>	<u>Approved by OMB</u>	<u>Approved by the Congress</u>
--------------------	-----------------	--------------------------	--------------------------	------------------------	---------------------------------

Requests for staff to enforce LMRDA

1977	National	167	167	147	147
	Field	<u>417</u>	<u>312</u>	<u>332</u>	<u>332</u>
	Total	<u>584</u>	<u>479</u>	<u>479</u>	<u>479</u>
1978	National	173	153	147	147
	Field	<u>417</u>	<u>346</u>	<u>332</u>	<u>332</u>
	Total	<u>590</u>	<u>499</u>	<u>479</u>	<u>479</u>
1979	National	161	147	147	(a)
	Field	<u>452</u>	<u>332</u>	<u>332</u>	
	Total	<u>613</u>	<u>479</u>	<u>479</u>	

Requests for staff to enforce ERISA

1977	National	470	350	350	350
	Field	<u>209</u>	<u>239</u>	<u>239</u>	<u>239</u>
	Total	<u>679</u>	<u>589</u>	<u>589</u>	<u>589</u>
1978	National	373	360	350	350
	Field	<u>450</u>	<u>338</u>	<u>298</u>	<u>298</u>
	Total	<u>823</u>	<u>698</u>	<u>648</u>	<u>648</u>
1979	National	824	344	344	(a)
	Field	<u>579</u>	<u>322</u>	<u>298</u>	
	Total	<u>1,403</u>	<u>666</u>	<u>642</u>	

a/The request was being considered by the Congress as of July 1978.

Philadelphia area office officials estimated a need to increase their staff for LMRDA from 6 to 12 and the staff for ERISA from 7 to 15. San Francisco officials estimated a need for 9 additional staff members for LMRDA and 10 for ERISA. According to area office officials, additional field staff is needed in the daily operations, if the field is to do more self-initiated field audits and to play a greater role in educating the rank-and-file union members and the

public on the two acts--particularly ERISA because of its newness and complexity.

San Francisco officials added that the situation for LMRDA will become critical in the next couple of years if additional staff is not obtained. They said that the present experienced staff will retire and no one will be available to train future staff members. This is especially important in view of the limited formal training now being provided.

STAFF QUALIFICATIONS AND TRAINING

Most of the LMRDA and ERISA professional staff at the two area offices are college graduates with bachelor's degrees in such fields as accounting, business administration, and political science. Many were previously employed in other offices within the Labor Department, at other Federal agencies, or in private industry, and their work experience appears appropriate with their enforcement responsibilities.

However, LMSA has provided little formal classroom training to its LMRDA and ERISA staffs. Nationwide, LMRDA and ERISA staffs reportedly spent 3 and 12 percent, respectively, on training. In Philadelphia, the LMRDA staff reported that 5 percent of its efforts were spent on training, and the ERISA staff 13 percent. In San Francisco, the LMRDA staff reported that 4 percent of its time was spent on training and the ERISA staff reported 8 percent for training.

The training provided the field staff, however, consisted primarily of on-the-job activities, such as reviewing regulations to keep current and attending meetings at which cases were discussed and analyzed. Little, if any, formal classroom training was provided.

The Science Management Corporation study completed in November 1977 concluded that training provided field staff was inadequate due to a lack of planning, organization, and management commitment. The study recommended that training be monitored through visits and spot checks of cases. LMSA national office officials are still evaluating the study's conclusions and recommendations.

In January 1978 LMSA issued a strategy document for implementing an enforcement policy and providing guidance to the staff working on ERISA. The document stated that staff training was mandatory and the immediate training components were to focus on the fiduciary provisions of ERISA. In addition, each national office director and each regional administrator will be required to submit an annual plan for personnel development and training.

CHAPTER 8

CONCLUSIONS AND RECOMMENDATIONS

CONCLUSIONS

We believe that the investigative responsibility and jurisdiction of the Departments of Labor and Justice are clearly defined and that the coordination between the Departments is generally adequate. LMSA, however, needs to improve its coordination (1) with Justice to eliminate duplicative investigations of the same potential criminal violations and (2) between its LMRDA and ERISA investigative staffs at the area offices.

Most importantly, however, LMSA has limited its enforcement of LMRDA and ERISA. Most of its enforcement effort under LMRDA is directed to investigating election complaints and supervising election reruns since under this act these civil violations are to be given priority. For ERISA, LMSA directed most of its efforts to activities other than enforcement and compliance of either the civil or criminal provisions of the act--primarily because the law was new and complex and the public needed substantial technical assistance.

Much of LMSA's limited investigative efforts are directed to complaints from outside sources and deficiencies flagged in its national office computerized report processing and desk audit systems. These systems, however, are principally directed to achieving voluntary compliance with the reporting and disclosure requirements of the laws and not to verifying the accuracy of the reported data. Nor is the system designed to determine the level of compliance with the acts' requirements by labor organizations and pension plan administrators.

In our opinion, more vigorous enforcement is needed to detect and investigate criminal as well as civil violations of the two laws.

We believe that field audits can be the most practical means to help LMSA effectively enforce LMRDA and ERISA. A more aggressive field audit program--properly planned and carried out--would help enhance compliance with civil requirements of LMRDA and ERISA and serve to identify potential abuses, such as embezzlement, that warrant criminal investigation. It could also serve as an indicator and verifier of the accuracy of the financial and other data being reported and disclosed by the labor organization and pension plan administrators.

LMSA needs to (1) strengthen the area office field audit activities by increasing the number of onsite field audits made at labor organizations and benefit plans and (2) assure that consistent, high-quality audits are made. In making its selection, LMSA could (1) use data available at the national office, such as volume of annual receipts, prior audit findings, and data of last audit, and (2) apply scientific sampling methods to randomly select labor organizations and benefit plans for field audits.

LMSA plans to increase the number of field audits under both laws in fiscal year 1978 and under ERISA in 1979. In our opinion, however, these planned increases are insufficient.

According to LMSA officials at both the national and the area offices, insufficient investigative staff is a primary cause of the lack of effective enforcement of the two laws and the limited field audit activity. According to national office officials, this is also a reason that more desk audits are not made.

LMSA has recognized the need for additional staff to meet its increased workload and has requested more staff for enforcing both acts. These requests have not been fully met by OMB. In fact, LMSA's staff for ERISA enforcement, as approved by OMB for 1979, was less than that approved by the Congress for fiscal year 1978.

For LMSA to improve its enforcement responsibilities under LMRDA and ERISA---particularly its field audit activities---more staff will clearly be needed. LMSA, however, needs to develop data on the level of compliance being attained for both laws through its voluntary compliance activities. This would enable LMSA to determine its additional enforcement needs and its future staff and resource requirements.

Also, some weaknesses we noted, such as poor coordination, could be alleviated through improved program administration. Our review, and the Science Management study, showed that LMSA needs to increase the training provided the area office staff.

RECOMMENDATIONS TO THE SECRETARY OF LABOR

Labor needs more vigorous enforcement to detect and investigate potential criminal and civil violations of LMRDA and ERISA. To make the improvements needed in its enforcement programs, including increasing its field audit activity, LMSA

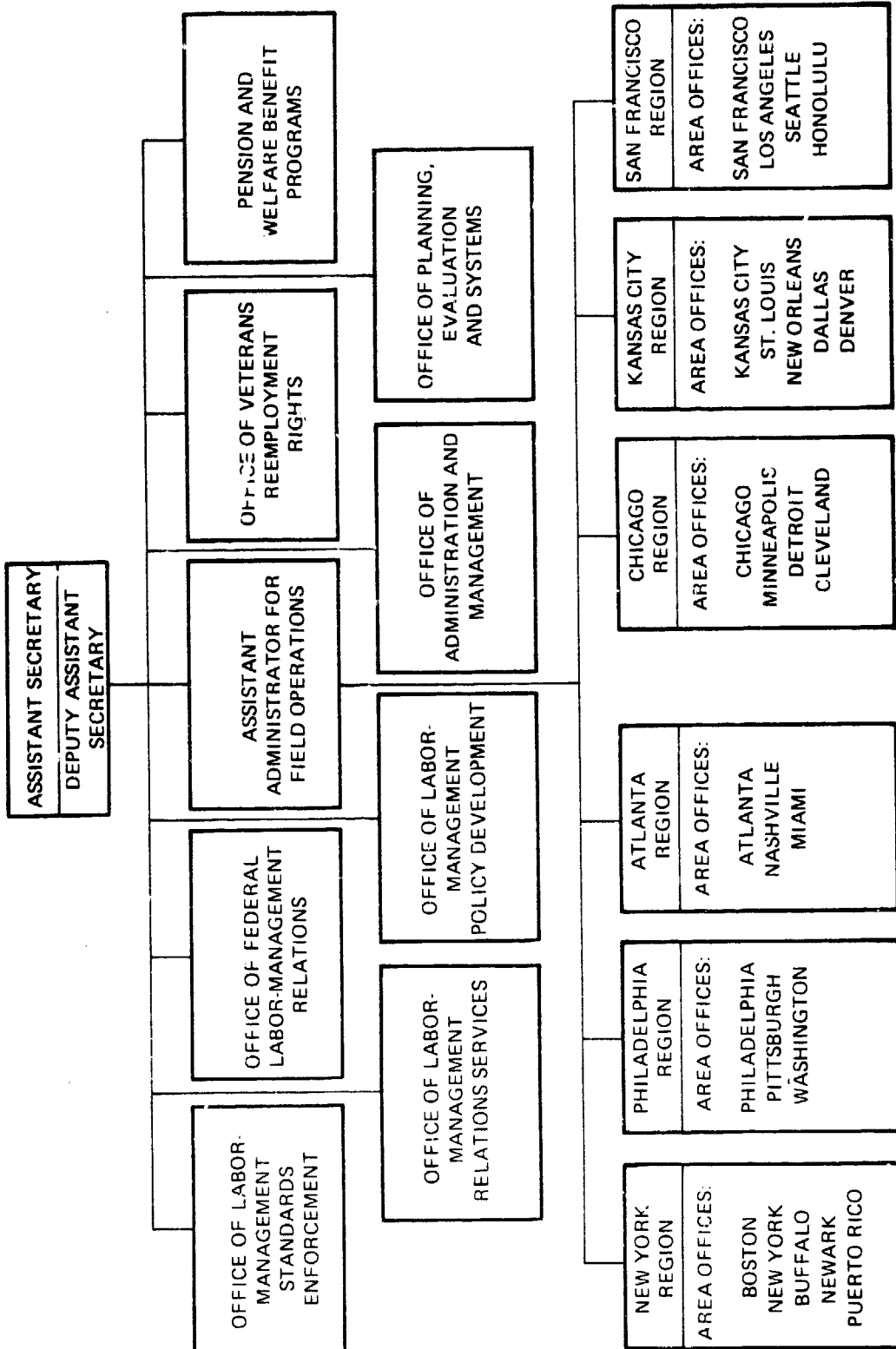
needs more staff than requested by Labor and OMB and approved by the Congress.

We recommend that the Secretary of Labor determine the additional resources needed to effectively enforce the criminal and civil provisions of both laws and provide this information to the Congress for its consideration.

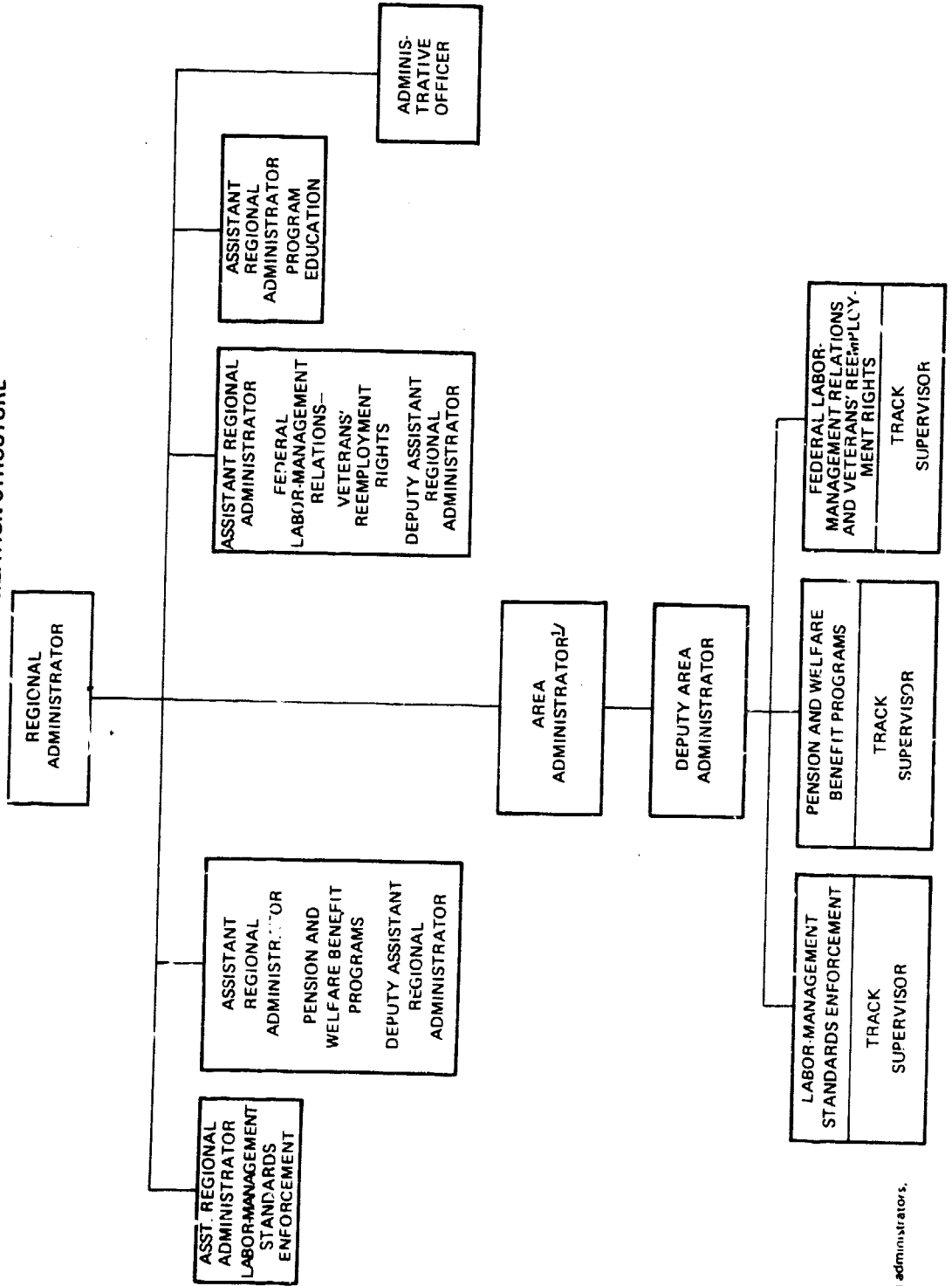
In determining the additional resources needed to effectively use the enforcement staff, the following recommendations should be considered. We recommend that the Secretary direct the Labor-Management Services Administration to

- strengthen the area office audit activities by increasing the number of onsite field audits made at labor organizations and benefit plans and assure that consistent, high-quality audits are made;
- establish procedures to notify Justice of its investigative activities to avoid duplicative investigations;
- establish procedures to require direct, continuous, and day-to-day coordination between the ERISA and LMRDA investigative tracks at the area offices;
- improve the timeliness of the area offices' investigation of cases with potential for criminal violations; and
- review the training of LMSA area office field staff to ensure that the auditors and compliance officers receive the training needed to effectively carry out their duties.

LABOR-MANAGEMENT SERVICES ADMINISTRATION ORGANIZATION



LABOR-MANAGEMENT SERVICES ADMINISTRATION
PRESENT REGIONAL/AREA OFFICE ORGANIZATION STRUCTURE



(20726)

There are 24 area administrators, see appendix 1