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SUMMARY FINDINGS OF THE 2004-2005 PIECP COMPLIANCE ASSESSMENTS

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**SUMMARY FINDINGS OF THE 2004-2005
PRISON INDUSTRY ENHANCEMENT CERTIFICATION PROGRAM (PIECP)
COMPLIANCE ASSESSMENTS**

BACKGROUND

As stated in the 2004-2005 PIECP Assessment Training Guide prepared for the Bureau of Justice Assistance (BJA) by the National Correctional Industries Association (NCIA), "The PIECP assessment process was developed to provide BJA with sufficient information to assure that all PIECP activities are in compliance with the program's underlying statutory and administrative requirements." NCIA has performed this function for BJA since 1995, completing four assessment cycles prior to the current cycle.

Preparation for the fifth round of assessments began in August 2003 with a debriefing session for assessors and independent observers who had completed the 2002-2003 round of assessments. Then in December 2003, the PIECP assessment working group¹ met in Baltimore to revise and improve training techniques, to determine which cost accounting centers (CACs)² to assess, and to begin to make necessary changes to the assessment materials and protocol. The working group met again in February, March and May 2004 to upgrade and finalize materials for use in this round of assessments. Assessment instruments were field tested in Indiana in July 2004. Also held that same month in Chicago, Illinois, was training for new PIECP administrators and first-time assessors on "PIE 101", plus an "Orientation to the Correctional Environment" for new Independent Observers (IOs).

Training for assessors, co-assessors, independent observers, and Certificate Holders to be assessed was conducted in Minneapolis in September 2004. The entire training approach was modified in an effort to include more "hands on" experience for assessors and independent observers. For the first time, on-site training was conducted inside a medium security prison so that participants could interact with actual PIECP operations and workers. Significant changes to the content of assessment materials were made as well with increasing emphasis on PIECP wage requirements – still the most complicated of the compliance requirements to assess.

The assessments were conducted between November 2004 and March 2005. Assessments were of two types – on-site assessments where an assessment team travels to the CAC and observes the operation first-hand, and desk assessments, where the assessor reviews financial and other documents but does not actually see the work being performed on-site.

¹ PIECP practitioners from Texas, Florida, Indiana, Tennessee and Idaho (Robert Carter, Brian Connett, Becky Gillam, Patsy Grooms, and Lynn McAuley-*retired*), along with consultants Dr. Patrick Henry, Dr. Cindy Smith, Lenny Ewell, Barbara Auerbach and NCIA employees Gwyn Smith Ingley, Sahra Nadiir and Lizzie Condon.

² Compliance assessments were organized by cost account centers or CACs, the term BJA uses to identify each separate PIECP operation. Financial and other records are kept by CAC as well.

THE ASSESSMENT PROCESS

The 2004-2005 PIECP assessments had several key features:

- ❑ For "new" CACs (those designated after the initiation of the prior assessment cycle, falling between 10/1/02 and before 9/1/04), a significant part of the assessment process was completed at NCIA headquarters. All information already collected at NCIA headquarters which is not time-sensitive was reviewed in-house for all CACs that had not previously been reviewed.
- ❑ Only CACs that were desk assessed during the 2002-2003 assessment cycle, those designated after the time of the last assessment cycle, CACs for which compliance-related issues arose during the 2002 assessment cycle, and those with piece work wage systems, were reviewed on-site. All other CACs were assessed using NCIA's desk assessment process.
- ❑ An Assessment Resource Board was available to provide support to the desk assessor.³
- ❑ One experienced assessor acted as the team leader for each on-site assessment. Individuals who had not conducted an assessment in the past, and who wished to be trained for future assessments, were assigned as co-assessors. Co-assessors participated in all aspects of the assessment process. An independent observer who would report separately to BJA on the integrity, objectivity and thoroughness of the process was part of each on-site assessment team.

As much information as possible was provided to the team prior to the assessment visit. NCIA provided a summary of the documents it had already reviewed and the Certificate Holder provided current information on wages, deductions, benefits, and voluntary participation on all CACs to be assessed. Thus, the teams arrived on-site already familiar with the CACs to be reviewed and ready to gather the additional information necessary to make a compliance recommendation to BJA.

- ❑ As much as possible, NCIA personnel, the assessor, and/or the desk assessor utilized email to transfer information among the parties to the assessment. All of NCIA's 2004-2005 assessment materials were created in Microsoft Word and Microsoft Excel so that all parties could easily manipulate the information necessary to complete the assessment. Assessment materials also were available on NCIA's website: www.nationalcia.org.
- ❑ On-site time was devoted as much as possible to those tasks which could only be performed on-site – interviews, records verification, visual observation of worker job tasks, processes and environmental impact.

³ Robert Carter (Texas), Brian Connett (Florida), Becky Gillam (Indiana), Patsy Grooms (Tennessee), and Lynn McAuley (retired, Idaho). All served as members of NCIA's Assessment Working Group.

SCOPE OF THE ASSESSMENT PROCESS

As of September 1, 2004 (the cutoff date for inclusion in this round of assessments), there were 30 jurisdictions with active PIECP operations.⁴ Of those, three (3) jurisdictions had desk assessments only (Connecticut, North Dakota, and Virginia). Eleven (11) jurisdictions had both site and desk assessments (Arizona, California, Florida, Kansas, Maine, Minnesota, Nebraska, Nevada, Oregon, South Carolina, and Texas). Thirteen (13) jurisdictions had on-site assessments only (Colorado, Idaho, Indiana, Iowa, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, Tennessee, Utah County, Utah, and Wyoming). Through NCIA, BJA conducted a combination of 24 on-site assessments and 14 desk assessments, plus two (2) special on-site assessments for jurisdictions with unusual circumstances,⁵ for a total of 137 CACs assessed.

Assessment participants included 24 experienced assessors, 20 new co-assessors, and 11 independent observers. Sahra Nadiir, NCIA's PIECP Grant Coordinator, managed the assessment process and follow-up technical assistance. She was aided by Lizzie Condon, NCIA's PIECP Grant Assistant. Mr. Lenny Ewell, NCIA's PIECP Desk Assessor/Consultant, assisted NCIA by performing the in-house document reviews as well as the desk assessments; Patrick Henry, Ph.D., Eckerd College, NCIA's PIECP IO Coordinator/Consultant, managed the independent observer process. Ms. Barbara Auerbach, NCIA's PIECP Technical Coordinator, reviewed all draft assessment reports in concert with NCIA and drafted compliance plans in conjunction with the assessors and BJA.

⁴ There were 9 inactive Certificate Holders as of 9/1/04 including: Alaska, Belknap County (NH), Montana, New Mexico, Ohio, Vermont, Washington, Washington State Jail Industries Board and Wisconsin.

⁵ Washington State's PIECP program had been deemed unconstitutional by the Washington State Supreme Court and the Department of Corrections requested an on-site examination of its PIECP records as part of its close out procedures even though its operations were inactive. South Dakota had been scheduled for a desk assessment only, but complications arose with obtaining required documentation which necessitated an on-site visit; no inmate interviews were conducted.

PIECP ON-SITE ASSESSMENT TEAMS 2004-2005

Certificate Holder	Assessor	Co-Assessor	Independent Observer
1. Arizona	Judy Chapman	Dennis Gilbertson	Joe Trpik
2. California	Alan James Kevin Keck	Scott Anderson; Terry Martin Dawn Mattson; Kevin Simondet	Joe Trpik Morgan Reynolds
3. Colorado	Shannon Davis	Kevin Keck	Debra Stanley
4. Florida	Giles Spaulding; Connie Simon	Scott Gilmore	Ken Bensimon
5. Iowa	Tony Ellis	---	Ken Bensimon
6. Idaho	Bob Carter	Sahra Nadiir; Laura Skager	Phyllis Cooney
7. Indiana* *also used as test site for instruments & protocol	Lynn McAuley	Lenny Ewell; Patsy Grooms; Lizzie Condon	Patrick Henry
8. Kansas	Bob Carter	Steve Martinez	Steve Strawn
9. Louisiana	Bruce Farley	---	Morgan Reynolds
10. Maine	Angel Ybarra	Dawn Mattson	Bob Huckabee
11. Maryland	Lee Bond	Chris Davis	Tom Petersik
12. Minnesota	Lynn McAuley	Dennis Fracassi	Fred Mantooth
13. Mississippi	Chris Faulhaber	Mike Savala	Phyllis Cooney
14. North Carolina	Brian Connett	Mike Grimes	Tom Petersik
15. Nebraska	Jerry Campbell	Ray Allen	Kimberley Garth-Lewis
16. Nevada	Judy Chapman	Denise Ehlenz	Tom Petersik
17. Oklahoma	Bob Carter	---	Morgan Reynolds
18. Oregon	Brian Connett	Lizzie Condon	Tom Petersik

19. S. Carolina	Lynn McAuley	Robin Knab	Kimberley Garth-Lewis
20. Tennessee	Bert Senning	Hisako Yoshikawa	Steve Strawn
21. Texas	Richard Selapak	Lizzie Condon	Bob Huckabee
22. Utah County	Patsy Grooms	Randy Lee	Debra Stanley
23. Utah	Patsy Grooms	Randy Lee	Debra Stanley
24. Wyoming	Lee Bond	---	Tom Petersik

Assessment teams were composed of an experienced trained assessor (a correctional industries professional) who could make reasoned compliance/non-compliance recommendations to BJA; a co-assessor (also a correctional industries professional in most cases) who would assist the assessor and observe the process in preparation for future assessments; and an independent observer (academics, business, government and other professionals) who would report to BJA independently about the integrity of the assessment process. They were also asked to note positive aspects of industry operations that contribute to success and negative aspects that detract from success. NCIA staff and consultants provided a variety of logistical, substantive and technical support services to the teams.

The assessment process itself was relatively straightforward:

- ❑ First, NCIA staff created an accurate list of all CACs active as of October 1, 2002, the initial start date for the selection period for this assessment round.
- ❑ Next, for each CAC, documentation on file at NCIA headquarters, which had been submitted as part of the certification process or at the time of designation, was reviewed for completeness. In some cases, missing information was supplied by the Certificate Holder to enable NCIA to complete its review. Through this process, all active CACs were determined to be in compliance as to the five non time-sensitive criteria (eligibility, displacement, consultation with labor, consultation with private industry, and NEPA at the time of designation). The results of the file review were forwarded to the assessment teams for inclusion in their assessment reports.
- ❑ Certificate Holders were then asked to provide NCIA with current (time-sensitive) information (covering wages, deductions, benefits, and voluntary participation information) for each active CAC. That information also was forwarded to the assessment team in advance of the site visit.
- ❑ Next, the on-site visits were conducted. Because the teams had familiarized themselves with the relevant documents and information before the visit, they were able to use the site visit to "fill in the blanks," re-examine the tentative

conclusions made in advance of the visit, and observe specific aspects of the program firsthand. Assessors interviewed department of corrections officials, correctional industries representatives, a random sample of inmate workers, and in some cases, private sector partners. Visual observations and random sampling of payroll and other data helped the assessors to complete their understanding of PIECP compliance and related activities at the site. The independent observers also arrived prepared to understand what they were observing, again due to the provision of relevant background information prior to the visit.

- ❑ When they returned home, the assessors prepared a draft compliance report and emailed it to the PIECP Technical Coordinator for review. Once approved, the draft reports were sent to the PIECP Managers in each jurisdiction who could respond either by agreeing with the draft report or by contesting any of its findings. In those cases where non-compliance was found, a compliance plan was drafted and implemented. Final reports were sent to the Certificate Holder, BJA, and team members.
- ❑ Simultaneously, the independent observers prepared reports which were first reviewed by the Independent Observer Coordinator and then forwarded directly to BJA. At the close of the process, those reports will be forwarded to team members and to the Certificate Holder as well as to BJA.
- ❑ The desk assessment process (used for CACs which had been assessed in prior cycles without issue) used the same set of procedures, with the exception of the site visit. NCIA's Desk Assessor sent his assessment reports to the on-site assessors in cases where PIECP Certificate Holders were receiving a combination of on-site and desk assessments. In instances where only a desk assessment was performed, the desk assessment was sent directly to the PIECP Manager in each jurisdiction.

For each Certificate Holder:

- Program performance was compared against statutory and administrative requirements for participation in the PIECP.
- Random testing was performed to verify that prevailing wages were actually being paid to PIECP inmate workers.
- A visual confirmation that inmate workers were performing within their job descriptions was made.
- Supporting documentation from the State economic security agency for prevailing wage and non-displacement determinations was reviewed and verified.
- Deductions for various taxes, room and board, victims' compensation, and family support were examined and verified as well.
- The existence of Workers' Compensation insurance was verified by reviewing actual Workers' Compensation insurance policies or their equivalent.
- The voluntary status of inmate workers was confirmed through interviews with inmate workers and verification of relevant documents.

- Consultation with organized labor and local private industry was verified through the review of appropriate records.
- Finally, ongoing compliance with the NEPA was verified through a visual check of the physical circumstances of each CAC.

What follows is an issue-by-issue description of the findings of the assessment teams. A summary of substantive findings as well as the processes and procedures developed for this assessment round completes this report. All assessment instruments were developed in cooperation with and approved by BJA. They are publicly available at <http://www.nationalcia.org/pieforms.html>.

COMPLIANCE ASSESSMENT FINDINGS AND BJA DETERMINATIONS

1. Eligibility

BJA's 1999 Guideline states that all departments of correction and juvenile justice agencies authorized by law to administer correctional industry programs are eligible for PIECP certification. Once certification is awarded, the Certificate Holder must determine which specific operations should be included under the PIECP. All production operations, where a non-agricultural commodity/product is produced for sale to the for-profit sector on the open market and the product moves in interstate commerce, must be designated under the PIECP. Additional enterprises may be included at the Certificate Holder's discretion. Once included, all PIECP mandatory requirements must be met for all Cost Accounting Centers.

Findings:

This element was reviewed and verified for all CHs at NCIA headquarters as part of the document file review that preceded the site visits and desk assessments. Eligibility documents for all CACs were compiled and reviewed and all CACs were found to be in full compliance.

2. Inmate Worker Wages

The PIECP statute requires that inmate workers be paid "at a rate which is not less than that paid for work of a similar nature in the locality in which the work is performed." BJA's administrative Guideline sets out procedures for determining the appropriate wage under various conditions. The Guideline expressly states that wage determinations must be made by State department of economic security (DES) agencies.

Findings:

Again this cycle, wages were the single most complex requirement for PIECP Certificate Holders to implement. NCIA requested two separate payrolls for each CAC it assessed, thus providing the assessors with a more complete picture of wage practices over time. Thirteen (13) of the 24 jurisdictions assessed had wage issues of some kind, almost twice as many as were found during the last assessment cycle. However, most of the wage issues were relatively minor

and the result of error or a misunderstanding of PIECP wage requirements. All but two have been resolved as of this writing.

Job Descriptions Inaccurate or Inadequate

Given that all State economic security agencies now provide wage data to PIECP Certificate Holders based upon standard occupational classification (SOC) codes, job descriptions submitted to those agencies by PIECP managers are the key to accurate wage setting. Most Certificate Holders have been successful at accurately describing the work being done in their CACs, but a few continue to struggle with this issue.

In five jurisdictions, workers were lumped under one broad job description (SOC Code) that did not accurately describe the work actually being performed by all of the inmates involved. As a result, machinery operators, for example, were being paid less than they would have been paid if they were separately identified and classified. All five jurisdictions have remedied the problem by creating accurate job descriptions and paying back wages where necessary.

Conversely, in two jurisdictions when the DES was asked to determine the appropriate SOC code for some specific functions, wages were revised downward when it was learned that the inmate worker did not perform all of the tasks normally performed under that job description.

Training Wage Misunderstood or Misused

There is confusion among Certificate Holders about whether or not a "training wage" is acceptable and, if so, how that wage should be determined. BJA has been consistent in stating that it does not have the authority to make this determination and that it is a matter for determination by the DES agency. While a number of jurisdictions now have implemented training wages at a rate that is less than the entry level wage, such plans are acceptable to BJA only if they are explicitly approved by the state DES agency and at no time fall below the Federal minimum wage.

This assessment round revealed that two jurisdictions had implemented training wages below the lowest percentile determined by their DES agency (usually the 10th percentile wage) without approval of the DES agency. This practice does not meet compliance requirements and the jurisdictions in question remedied the problem by revising their training wage approach and, if necessary, paying back wages to the inmates involved. In another jurisdiction, back wages were paid when it was discovered that a small number of inmates had exceeded the allowable number of hours at the training wage.

Annual Wage Updates Not Requested or Not Implemented

In most cases annual wage updates were obtained and implemented in a timely fashion. Even though BJA's Guideline is clear that wage rates must be updated through the state DES on an annual basis, some jurisdictions allowed this requirement to lapse. Additionally, some jurisdictions which asked for and received updated wage information failed to implement the necessary changes on or before the anniversary date of the last wage update.

In three jurisdictions, the Certificate Holder did not implement the annual wage update requested of and received by the DES agency. All have now remedied the problem by implementing the appropriate wage range and paying back wages.

Piece Work Rates Misunderstood

In one jurisdiction, wage issues stemming from the complex nature of piece work in a PIECP operation were identified. Workers were not meeting the incentive bonus and were not aware of how they could do so; some non-production workers (such as clerks and janitors) were being paid on an incentive basis and had overtime based upon \$5.15, not the DES identified wage for their positions. These issues have now been remedied through the payment of back wages and the creation of a new pay plan.

Other Issues

Other issues included incentive pay plans that referenced industry-wide occupational standards without sources; workers excluded from PIECP wages on the assumption they were not performing "notable tasks"; payroll records that did not track whether an inmate had worked more than 40 hours in a week; and unpaid overtime. All of these issues have now been remedied.

3. Displacement

The PIECP statute requires that a PIECP project not "result in the displacement of employed workers, or be applied in skills, crafts, or trades where there is a surplus of available gainful labor in the locality, or impair existing contracts for services." The 1999 Guideline repeats this same language, stating that the State department of economic security must verify that the proposed PIECP project will not displace employed workers. In addition, the private sector company involved must provide a written statement that it will not displace its own workers in favor of PIECP inmates. A definition of displacement is provided in the Guideline that includes all the prohibited activities noted above, as well as the inappropriate transfer of private sector job functions to PIECP inmates.

Findings:

This element was reviewed and verified for all CHs at NCIA headquarters as part of the document file review that preceded the site visits and desk assessments. Displacement documents for all CACs were compiled and reviewed and all CACs were found to be in full compliance at the time of certification. Annual wage re-verifications also take displacement into consideration.

4. Benefits

Federal law requires that PIECP workers "have not solely by their status as offenders been deprived of the right to participate in benefits made available by the Federal and State

government to other individuals on the basis of their employment, such as workmen's compensation." BJA's 1999 Guideline states that workers' compensation, and under certain circumstances (that is, for employer model projects where the inmate works directly for the private sector company), Social Security (FICA) must be provided to PIECP inmate workers.

Findings:

Workers' Compensation: There were no workers' compensation issues reported by the assessment teams this cycle.

FICA: All employer model projects were found to be covering their PIECP workers under FICA, as is required by the PIECP Guideline.

5. Deductions

Federal law provides that "wages may be subject to deductions which shall not, in the aggregate, exceed 80 per centum of gross wages, and shall be limited as follows: (a) taxes; (b) reasonable charges for room and board as determined by regulations which shall be issued by the chief State correctional officer; (c) allocations for support of family pursuant to State statute, court order, or agreement by the offender; (d) contributions to any fund established by law to compensate the victims of crime of not more than 20 per centum but not less than 5 per centum of gross wages." BJA's 1999 administrative Guideline makes it clear that participating CACs are not required to take deductions from PIECP inmate wages. However, some deductions may be required under other Federal statutes, such as the Internal Revenue Code.

Findings:

In one jurisdiction a question arose when it was learned that child support orders were being deducted solely from the inmate's 20% remainder, on the rationale that this was a legal fine and as such could be deducted from the inmate's net wage. Upon further discussion it became clear that in this jurisdiction the room and board deduction operates on a sliding scale, depending upon the inmates' other deductions. BJA recognized that its Guideline is not specific as to the sequence of deductions and that this jurisdiction had made a reasonable assumption in determining its deductions policies.

No other deductions issues were found.

6. Voluntary Participation

Federal law requires that inmates "have participated in such employment voluntarily and have agreed in advance to the specific deductions made from gross wages pursuant to this section, and all other financial arrangements as a result of participation in such employment."

Findings:

All Certificate Holders had signed voluntary forms on file for all CACs. In two cases the forms were dated after the shop had begun operations. In both jurisdictions procedures have been revised to ensure that inmates agree to deductions and volunteer for employment in any CAC *prior to* the commencement of operations. In a small number of cases Certificate Holders were advised to revise their voluntary participation forms to include more specific deduction information.

7. Consultation with Organized Labor

Federal law requires that representatives of local union central bodies or similar labor union organizations have been consulted prior to the initiation of any project qualifying for any exemption created by this section. The 1999 Guideline expands the consultation requirement slightly by asking the Certificate Holder to contact all relevant unions, not just a single union which may or may not be the most directly involved in the production of items similar to those produced in a PIECP CAC. In addition, if there is no local labor union, the State organization must be informed in its stead.

Findings:

This mandatory criterion is among those reviewed by NCIA as part of the in-house file review of all CHs preceding the site visit and/or the desk assessment. No problems in consulting with organized labor were found as a result of the file review relating to the time of CAC designation, and no problems were found as a result of the on-site visits or the desk assessments. Certificate Holders either sent letters to the relevant unions or had written records of advisory board meetings where organized labor was represented.

8. Consultation with Local Private Industry

BJA's 1999 administrative Guideline states that applicants must consult with representatives of local businesses that may be economically impacted by CAC production prior to beginning operations and lays out minimum criteria for that consultation.

Findings:

This mandatory criterion is among those reviewed by NCIA as part of the in-house file review of all CHs preceding the site visit and/or the desk assessment. No problems in consulting with local private industry were found as a result of the file review relating to the time of CAC designation, and no problems were found as a result of the on-site visits or the desk assessments. All jurisdictions either sent letters to the local chamber of commerce or included representatives of local private industry on a correctional industries advisory board. Some jurisdictions did both. In a small number of cases, the department of corrections publishes its intentions to initiate a new PIECP CAC in a local newspaper.

9. National Environmental Policy Act (NEPA)

BJA's 1999 Guideline requires that all PIECP CACs must comply with NEPA and other related Federal environmental review requirements. Certificate Holders submit a request for BJA approval at the time they designate each CAC and BJA approves or disapproves the request at that time. The function of the assessment team, therefore, is to visually verify that the CAC is producing its products in the manner provided in the NEPA description provided to BJA at the time of designation of the CAC, and that no significant changes in production process or location have taken place since the time of the original approval.

Findings:

This mandatory criterion is among those reviewed by NCIA as part of the in-house file review of all CHs preceding the site visit and/or the desk assessment. No NEPA issues were found as a result of the file review relating to the time of CAC designation. One jurisdiction was questioned by the assessor on a particular matter, but it was resolved when the appropriate state agencies determined that no issue existed. No other issues were found as a result of visual observations made or questions asked during the on-site visits.

SUMMARY

Substantive Findings

Twenty-four (24) active jurisdictions were assessed and 13 non-compliance recommendations were made to BJA by the assessment teams. Of the 13, most were the result of a misunderstanding of PIECP requirements and were resolved relatively easily. Two remained open, both of which involved wages. In those two cases, a 60-day time limit for reaching compliance was provided by BJA and both successfully remedied the matters.

Predictably, wages remained the most problematic area for PIECP managers. The role of job descriptions and SOC codes dramatically increased in importance during this assessment cycle due to the advances in wage data collection techniques experienced by all State DES agencies. Today, all states display wage data by SOC codes and wage data are universally available on the Internet. Certificate Holders and their private sector partners no longer receive the tailored wage determinations they had been receiving in the past, and as a result, some PIECP managers feel that wage determinations are less accurate.

Problems in wage setting for PIECP CACs no longer stem from the lack of available data, but from the potential lack of appropriateness of that data. In some cases, there is no available data for the geographic area where the CAC is located (often a rural area where wages could be expected to be lower than in the state's industrialized and urban centers) and CACs are forced to use data from a larger area than they feel is appropriate. In other cases, PIECP workers do not perform all the tasks associated with a given SOC code, either because security measures prevent them from doing so or because they are not trained or experienced enough to do so. Certificate Holders may be required to pay inmate wages comparable to non-inmate wages when the inmate workers are not performing comparable tasks.

As noted above, one response to the wage pressures CAC operators experience is to develop training wage plans at lower wage levels, sometimes with DES approval (as required by BJA), and sometimes without consulting either BJA or the State DES agency. BJA has stated that it will accept the decision of the state DES agency as to training wages, but that without DES approval, it will find such practices out of compliance with PIECP requirements. All instances of this form of non-compliance were resolved during this round of assessments. However, it is clear that state DES agencies do not believe they have the power to grant exemptions to state wage requirements either, and that there is a need to review PIECP wage policies with the aim of finding a more equitable solution.

Another response is to ignore or delay annual wage updates or to create amorphous job descriptions that include all of the workers in a CAC. Assessors found increased instances of these responses compared to the last assessment cycle.

The move to the Internet as the source of wage data also means that PIECP managers must make a decision as to what wage level equates with BJA's requirement of comparability in wages. Some jurisdictions use only 25%, 50% and 75% benchmarks; most present a range extending from the 10th to the 90th percentile. BJA has for some years accepted either approach as a reasonable entry point for PIECP inmate workers, relying on the State DES to make this decision. The variability in what constitutes comparability, however, concerns some PIECP managers who sense there may be inconsistencies in the availability of receiving the lowest wage possible for their private sector partners. Some jurisdictions continue to argue that they should be allowed to enter at the Federal Minimum Wage.

Overall, it appears that PIECP managers make a strong effort to comply with the PIECP Guideline and that they have responded positively to assessment findings by making the necessary corrections without hesitation. This assessment round, several of the issues prevalent during the 2002-2003 round had disappeared. For example, there were no "split wage" issues discovered during this assessment round. Piece work issues had largely disappeared as well, though this remains an area of confusion for some. There were no Workers' Compensation issues, a noticeable improvement over the last assessment round.

Several factors contribute to this improved performance. Assessment training itself provides an enhanced understanding of the PIECP mandatory criteria and therefore leads to improved performance. The experience of assessing CACs in their jurisdictions--the chance to see first hand how other PIECP programs operate--is described as extremely valuable by almost every assessor. The need to fully understand PIECP mandatory criteria so as to make careful compliance recommendations to BJA about other jurisdictions strengthens performance at home. Just preparing for an assessment causes PIECP managers to review their own policies and practices and to make necessary adjustments in their own operations.

On the other hand, challenges to the PIECP Guideline continue to occur. Wage issues in particular do not go away. PIECP Certificate Holders seem to fall into two distinct groups – the majority who follow the intent of the PIECP legislation by working with their State DES agencies to accurately identify the appropriate wage range for the work being performed, and the

few who work with their State wage setting agencies to obtain the lowest possible wage determinations regardless of the work performed.

Processes and Procedures

As was true during the last assessment cycle, the in-house review of non time-sensitive materials significantly lessened the paperwork burden on assessors, co-assessors, and independent observers, and increased the freedom the assessment teams had to observe critical factors while on-site. The use of the in-house file review was a logical step, given the repetitive nature of the assessment process approximately every two years. Nonetheless, its impact was even more positive than the assessment teams and NCIA had anticipated. Coupled with the new desk assessments, it allowed for a more efficient and more workable experience across the board.

A much improved training curriculum resulted in better trained assessment teams and a more thorough job on-site as well. Teams were trained in advance in a mock assessment on-site at a Minnesota prison, and as a result were more likely to recognize potential compliance violations when they saw them in the field.

The use of desk assessments was key to the success of this assessment round. Approximately one-third of the total number of CACs were desk assessed, providing BJA with a cost-effective look at its problem-free CACs.

The complex nature of PIECP requirements, coupled with high turnover among PIECP managers, creates the ongoing potential for non-compliance among PIECP CACs. Clearly, there is a need for regular review of operations so that BJA can continue to evolve its policies to meet the changing needs of its Certificate Holders. PIECP assessments are the logical vehicle to achieve that end. As of this writing, it appears that funding limitations at BJA will curtail the practice of performing broad and in-depth full-scale on-site assessments on a 24-month cycle. That being the case, lessons learned during this assessment cycle should be reviewed and incorporated into whatever new approach BJA develops to ensure that its PIECP Certificate Holders continue to meet all mandatory requirements.