



Testimony

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Affairs, U.S. Senate

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TRANSIT GRANTS

Department of Labor's Certification Process

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G A O

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Mr. Chairman and Members of the Committee:

We are pleased to be here today to discuss labor protection arrangements for transit employees. As you know, the Transportation Equity Act for the 21st Century (TEA-21) authorized about \$42 billion for transit programs for fiscal years 1998 through 2003. Funds are provided through grants to states and local/regional transportation authorities for the construction, acquisition, improvement, and operation of transit systems. But before the Department of Transportation's Federal Transit Administration (FTA) can release funds to grant applicants, the Department of Labor (DOL) must certify that adequate arrangements (commonly called "section 13(c) arrangements") are in place to protect the interests of employees affected by the assistance.¹ Labor protection requirements were included in the 1964 Urban Mass Transportation Act to protect employees who might be adversely affected by industry changes resulting from federal assistance, specifically through technological advances or the transfer of transit operations from private companies to the public sector. The provisions were not designed to improve the positions of transit employees, but to protect against a worsening of their positions and preserve existing rights and benefits. Among other things, labor protection arrangements are required to include provisions for continuing collective bargaining rights. As part of the certification process, DOL sends recommended labor protection terms and conditions to relevant union organizations and the grant applicants for their review.

Because of congressional concerns about the timeliness of DOL's certification process, the Department established a goal, effective in January 1996, of certifying grant applications within 60 days. You asked us to review a number of issues related to DOL's section 13(c) responsibilities, including its timeliness. Because we only recently initiated our work in response to your request, we have not yet evaluated the impact of section 13(c). Our testimony today is based on preliminary work and will (1) describe DOL's process for issuing certifications for grant applications and discuss how DOL defines and

¹ The Department of Transportation has determined that certain grants and loans for special needs of elderly individuals and individuals with disabilities do not require a labor protection certification.

calculates how long it takes to issue certifications and (2) discuss trends and factors affecting the length of DOL's certification process. I should note, Mr. Chairman, that we have not yet contacted any labor union officials or local/regional transit officials to obtain their views on section 13(c) requirements.

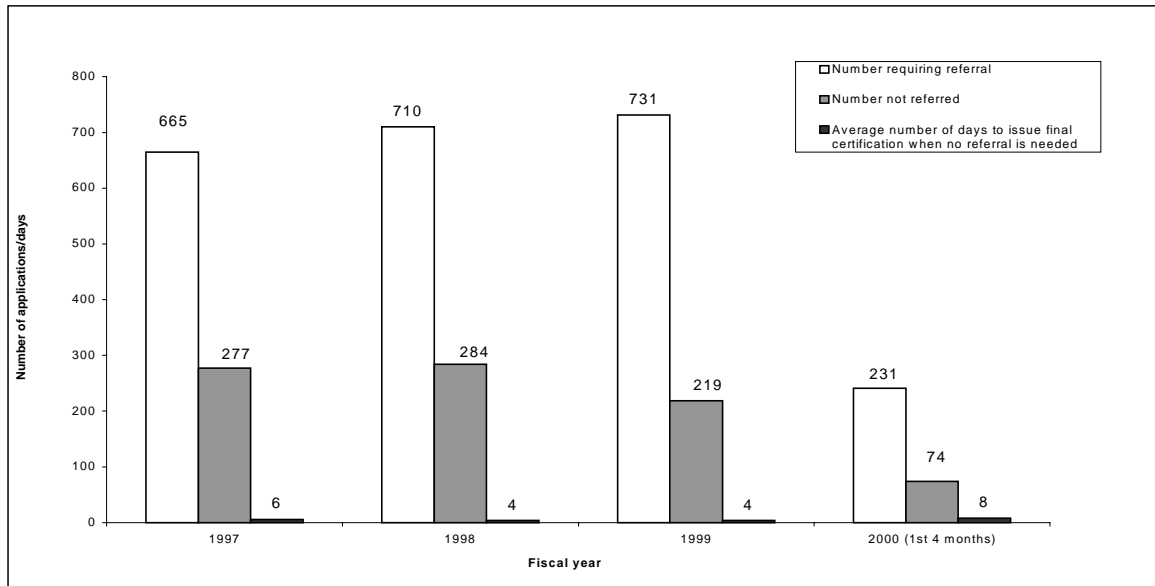
Following are the highlights of our work to date. First, we will discuss our preliminary observations concerning DOL's certification process.

- DOL's certification process begins when FTA forwards a grant application to the Department. DOL reviews the application for completeness. If it is incomplete, DOL notifies FTA, requests the missing information, and suspends further processing. If the application is complete, DOL recommends the employee protection terms and conditions that will apply to the grant and in most cases sends them to both the relevant labor unions and the grant applicant for review. This is when DOL's 60-day clock starts. The unions and/or the grant applicant can file any objections it may have with DOL, which then rules on them. If DOL decides the objections are not sufficient (valid), it will issue a certification based on its recommended terms and conditions. If DOL determines an objection is valid, the parties are provided additional time to resolve their differences. (App. I presents a flowchart depicting the certification process applicable to transit grants).
- DOL's certification process allows "fast tracking" for applications that do not require union referral. About 25 percent of the applications submitted from October 1996 through January 2000 were fast tracked and terms and conditions did not need to be referred to unions for review.² Figure 1 illustrates the number of applications that did not require referral compared with the total number of applications referred since fiscal year 1997. The figure also indicates that, on average, DOL was able to issue a

² DOL does not refer an application to a union and it can be fast tracked through the certification process under a number of circumstances, such as if there is no union in the service area of the proposed project, if the project represents the routine replacement of equipment and/or facilities of like kind and character with no potential material effect on employees, or if the project represents an amendment or revision to a previously approved project and there is no change in scope to the project.

certification in 4 to 8 days if the terms and conditions did not need to be referred to any union for review.

Figure 1: Applications Requiring Referral Compared With Number Not Referred



Source: GAO's presentation of data from DOL.

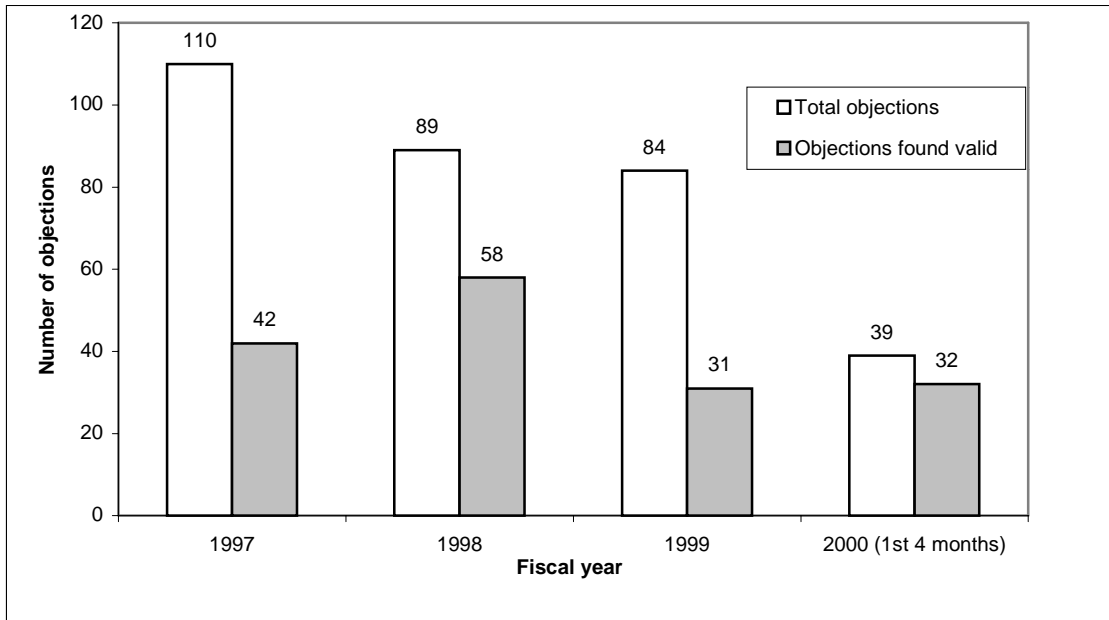
Overall, DOL's data indicate that the Department has met its 60-day processing goal for 98 percent of the applications processed since January 1996. However, we note that the 60-day processing time does not include the time from DOL's initial receipt of an application until DOL refers labor protection terms and conditions to the applicable parties. In general, DOL's timeliness depended on whether an application was complete and whether any of the parties objects to the terms and conditions recommended by DOL. In this regard, we have identified some trends and factors that could affect DOL's overall certification time.

- DOL stated that fewer than 8 percent of all the applications it has processed since 1996 have been suspended as incomplete or inactive applications. However, the latest information available indicates that an increasing percentage of applications are being placed in a suspended status—a status that DOL does not count in its processing time. DOL suspended 20 percent of all applications it received from FTA

during the first 4 months of this fiscal year—up from 7 percent in 1998. We reviewed an October 1999 list of 28 suspended applications. Seventeen of them had been suspended for more than 60 days—four for more than 100 days. DOL and FTA officials attributed the increase in suspensions to more applications from nontraditional transit grant programs, such as applications for job access grants, authorized by TEA-21. However, only 9 of the 28 applications on the October 1999 list were for these nontraditional grants.

- As we pointed out, DOL's 60-day timetable does not start until after DOL has reviewed an application for completeness and recommended terms and conditions to the grant applicant and unions. DOL established a goal of making such referrals within 5 days of receiving an application from FTA. DOL's data indicate that referrals were made, on average, 4 days after the receipt of an application from FTA for fiscal years 1998 and 1999. However, during the first 4 months of fiscal year 2000, referrals averaged 11 days from the time an application was received from FTA. For 55 percent of these applications, the referral did not occur until 6 to 15 days from the receipt of an application from FTA, and for an additional 11 percent of the applications, the referral did not occur until 16 days to over 30 days after an application was received. DOL officials told us that they were aware of the increase in referral time and attributed it to several factors, including an increase in the number of applications being processed because of newly authorized programs, such as the Job Access and Reverse Commute Program. DOL officials also remarked that the office responsible for processing labor protection certifications—the Office of Labor-Management Standards, Division of Statutory Programs—is chronically understaffed, and that it is seeking additional staffing for fiscal year 2001.
- Since 1996, union or applicant objections were filed for 12 to 16 percent of all referrals. However, as shown in figure 2 the number that DOL determined to be valid has fluctuated, ranging from a low of 37 percent of objections in fiscal year 1999 to a high of 82 percent for the first 4 months of this year. DOL officials did not know why the percentage of objections considered valid has fluctuated since 1997. If this increase continues, it could adversely affect the timeliness of DOL's process.

Figure 2: Objections Compared With the Number of Objections Found to Be Valid

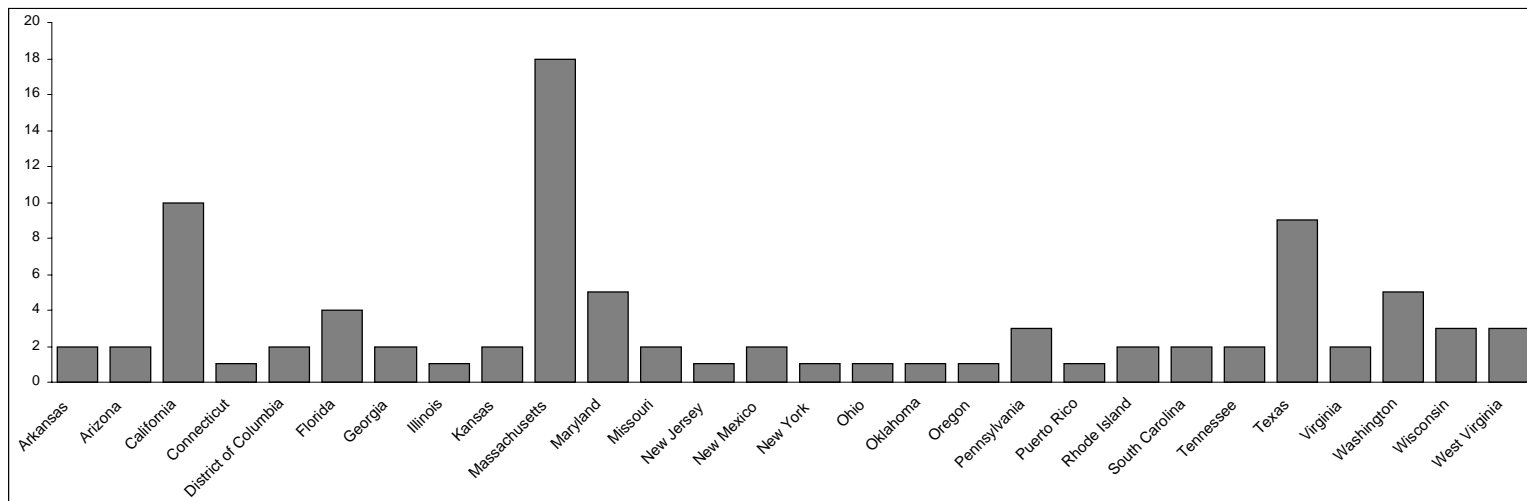


Source: GAO's presentation of data from DOL.

If DOL decides all objections are not valid, it issues a certification based on the original terms it recommended. If this is not acceptable to the applicant, it can forgo federal assistance. We were not able to determine how often applicants chose this option because neither FTA nor DOL tracks this information.

- Figure 3 shows that a significant percentage of the applications that exceeded DOL's processing goal were from five states—California, Maryland, Massachusetts, Texas, and Washington. These five states accounted for over 50 percent of the 90 certifications that took longer than 60 days. DOL and FTA officials could not identify the factors that caused most of the late certifications to be concentrated in five states. They speculated that it was probably due to specific problems such as the contracting out of services.

Figure 3: Applications Exceeding the 60-Day Processing Goal, by State



Source: GAO's presentation of data from DOL.

- Finally, DOL's guidelines provide that if the parties are unable to reach agreement within 60 days after DOL recommends terms and conditions, DOL can issue an interim certification, with terms and conditions no less protective than those recommended, permitting the release of federal grant funds. However, since 1996, DOL has used interim certifications for only about 1 percent of the applications. DOL officials said they rarely use interim certifications because they prefer that the parties reach agreement before grant funds are released.

In summary, Mr. Chairman, DOL states that it is meeting its 60-day goal for about 98 percent of the applications processed. It should be noted that this statistic does not include suspended grant applications, which are apparently increasing, and does not consider the increasing time DOL takes to initially review and refer grant applications before the clock starts running on its 60-day goal.

As we progress further with the work you requested, Mr. Chairman, we expect to focus on your question about the impact of section 13(c) requirements on transit grantees. In addition, we will address the following questions in more detail: (1) Why are an increasing number of grant applications being suspended? (2) What can DOL or FTA do

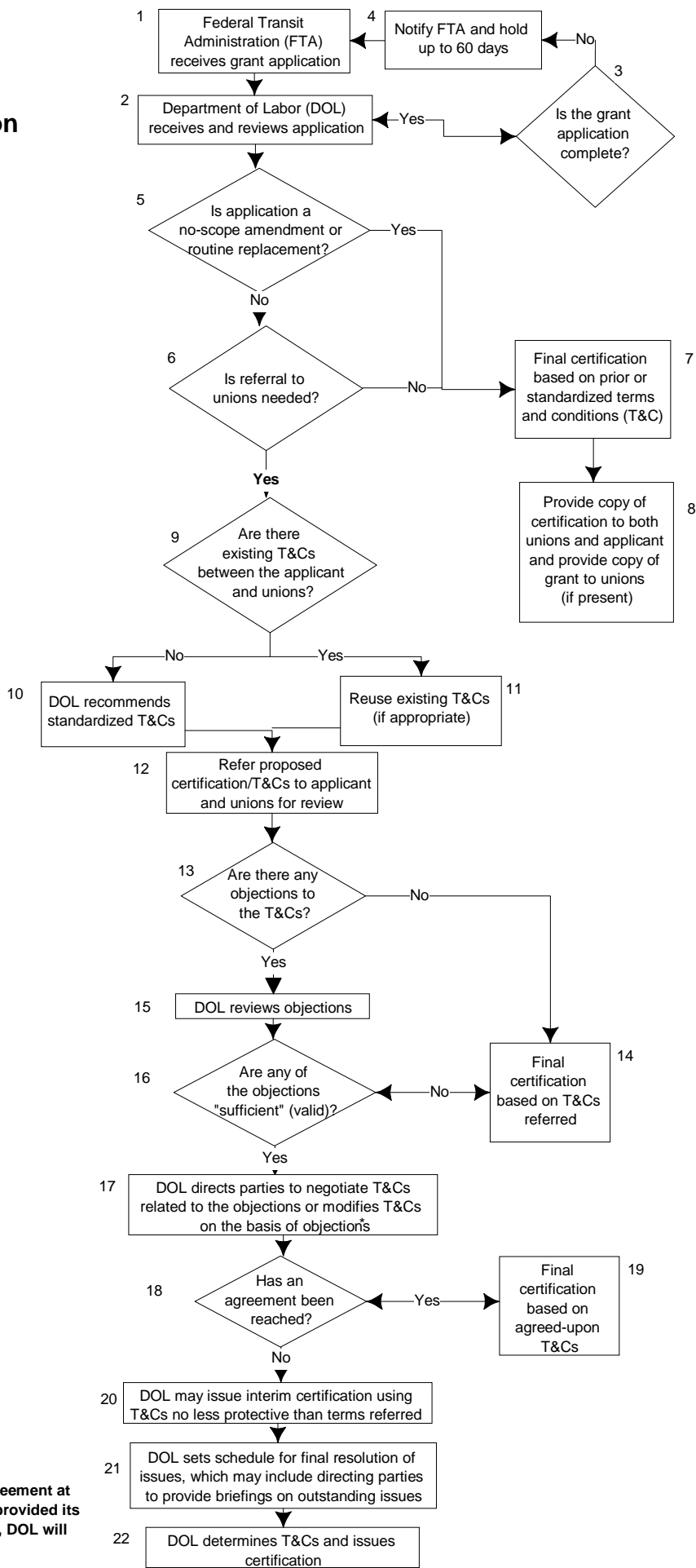
to help nontraditional grantees comply with labor protection requirements? (3) Why do some certifications take more than 60 days? (4) Why does DOL issue interim certifications so infrequently?

Contact and Acknowledgments

For future contacts regarding this testimony, please call John H. Anderson, Jr., at (202) 512-2834. Individuals making key contributions to this testimony included Yvonne Pufahl, Ronald Stouffer, and Wendy Wierzbicki.

Appendix I:

**Department of Labor's
Labor Certification
Process**



* Should the parties reach agreement at any time during steps 17-21, provided its meets statutory requirements, DOL will issue a final certification.

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