CITY OF OAKLAND

AGENDA REPORT

2007 JUN 21 PM 9:35

TO: Office of the City Administrator
ATTN: Deborah Edgerly
FROM: City Administrator's Office-Equal Opportunity Programs Division
DATE: June 12, 2007

RE: **Action on a Follow-Up Report on the Status of the Implementation of the Equal Access Ordinance and Recommendations for Improving Language Access to City of Oakland Services**

SUMMARY

This report provides the City Council with additional information and recommendations requested by the Finance and Management Committee on July 11, 2006 regarding the City's progress on implementing the Equal Access Ordinance.

FISCAL IMPACT

None.

BACKGROUND

At the July 11, 2006 Finance and Management Committee meeting, the Committee directed staff to create an Equal Access Task Force. The Committee also requested that someone from the City Administrator's office sit on the Task Force to ensure that the Task Force recommendations moved forward. The Task Force began its work on July 13, 2006. It was represented by individuals from City staff and community based organizations as listed below:

1. Luz Buitrago, Executive Director, Law Center for Families
2. Kathy Gillespie, Director of Litigation, Law Center for Families
3. Willie Nguyen, Staff Attorney, The Legal Aid Society
4. Linda Okahara, Community Services Director, Asian Health Services
5. Jennifer Allen, Services Manager, Language 411, Family Bridges Program
6. Patricia Kernighan, City Councilmember, District 2
7. Kevin Liao, Legislative Aid, District 2
8. Cheryl A.P. Thompson, Assistant City Administrator, City Administrator's Office
9. Tricia Freitas, Assistant to the City Administrator, City Administrator's Office
10. Don Jeffries, Equal Employment Opportunity Manager, City Administrator's Office
11. Deborah R. Liu, Assistant to the City Administrator for Equal Access, City Administrator's Office

The Committee also directed staff to provide information in the fall quarterly report which included:

1. Clear timelines for concrete recommendations
2. Hiring goals for bilingual employees
3. A list defining public contact positions
4. Deadline for Departmental Compliance Plans
5. Boiler plate language for job announcements to recruit bi-lingual employees

KEY ISSUES AND IMPACTS

City staff and community Task Force members explored the background, intent and deliverables required by the Ordinance. The Task Force also sought to interpret Council's intent to address Limited English Proficiency (LEP) service levels or, more specifically, how to apply more focused efforts to increase the number of bilingual employees in public contact positions.

Some community Task Force members advocated a broad interpretation of the Ordinance beyond that of providing service to the limited English speaking community to that of making preferential placements of bilingual individuals. From a legally compliant perspective, staff interpreted the Ordinance to reflect its objective intent to be that of "providing equal access to city services and programs to all Oaklanders, including those with limited proficiency in English." On this point, staff and community members of the Task Force could not reach full agreement and will defer to Council for clarification.

The Task Force reviewed previously completed Compliance Plans. There was general consensus that the data obtained did not adequately capture all the information requested by the Ordinance. Staff independently determined that much of the information acquired was unreliable and could leave the Council with an inaccurate perception that some agencies/departments were not fully cooperating in achieving the desired program objectives. As a result, the Task Force initiated a more rigorous compliance data collection survey document, intended to remedy their concerns. The Compliance Plan was renamed the Language Access Plan (LAP). The Task Force spent a number of meetings attempting to determine how best to collect, analyze, and act on the information obtained, as well as to more accurately define public contact positions. The Task Force also agreed that a method for periodically collecting community input may be helpful in determining any language related service gaps that may not be evident in our data collection processes. Community representatives on the Task Force agreed to help identify sources of information for consideration in addressing perceived service deficiencies.

Staff reviewed the U.S. Department of Labor's Limited English Proficiency Guidelines, Title VI, the Dymally-Altorre Act, the San Francisco Equal Access Ordinance and other information to acquire an appreciation of other guidance, models and broader consideration of methodologies to achieve program objectives. Staff noted that the City's ordinance does not provide specific methodology guidance. Staff found that the City's ordinance was closely modeled after a San Francisco ordinance, although the two ordinances differed in a number of ways:

1. the thresholds for determining a substantial number of limited English speaking positions,
2. the methodology for assessing an adequate service level to the LEP community, and
3. the available organizational flexibility to determine how best to address unmet needs.

Staff also determined that the City did not conduct an internal legal analysis of the Ordinance. Section 401(6) of the City Charter states that "...the City Attorney, ...as counsel, ... shall advise all officers, boards, commissions, and other agencies of the City on legal matters referred to him or her and shall render written legal opinions when the same are requested in writing by the Mayor or a member of the Council or the City Administrator or any other officer, board or commission of the City. He or she shall draft such ordinances, resolutions, contracts and other legal documents as directed by the Council or requested by the Mayor or City Administrator or any official board or commission of the City."

An April 24, 2001 letter from the City Attorney's Office to Council states that the Finance and Management Committee asked the City Attorney's Office to "describe the requirements of state law vis-à-vis employment of bilingual persons in "public contact positions."

As a result of this narrow legal review, staff believes that the Ordinance, as currently written, may contradict equal opportunity provisions of Executive Order 11246, Title VI and VII, the Civil Rights Act of 1991, the Uniform Guidelines for Employee Selection Procedures, the U.S Equal Employment Opportunity Commission's Equal Opportunity and Affirmative Action Guidelines, state and federal Equal Pay Act(s), Article I of the California Constitution (Proposition 209), the California Fair Employment and Housing Act, the Dymally-Altorre Bilingual Services Act, the Oakland City Charter, Article IX, Personnel Administration (Sections 900(a) and (b)), and the hiring and promotion provisions of the City's bargaining agreements.

Section 2.30.030 (c) of the Ordinance enumerates the laws with which the Ordinance is intended to be consistent. Staff believes however, that the Ordinance may not be consistent with all of the laws cited. Staff recommends that the Ordinance be referred to the City Attorney for a comprehensive legal analysis that can ultimately be incorporated into the Finance and Management Committee's considerations.

It is important to note that some of the community Task Force members believe the Ordinance could withstand any legal challenges. Staff believes however, that a full legal analysis must be conducted before a reliable determination of potential liability can be made. In addition, staff notes that the perspectives of the Office of Personnel Resources Management and the Equal Opportunity Programs Division are conspicuously absent from the Ordinance. As a result, substantial operational impact considerations may have been overlooked.

Staff requests that the Council consider revising the Ordinance in order to address outstanding issues and include additional perspectives on operational impacts. Some of the community Task Force members expressed reluctance to amending the Ordinance.

The Finance and Management Committee expressed concern about the 50 percent guideline for identifying Public Contact Positions (PCP). Staff worked with the Office of Personnel and other departments to more accurately identify PCP positions. Based on a recent internal survey, approximately 79.5% of all public contacts are in English. The remaining 20.5% are in other languages. Staff determined that of 1397 currently identified public contact positions, 320, or approximately 23%, receive bilingual pay. Of those receiving bilingual pay, 174 or 12.46% provide Spanish language services. Another 58 employees, or 4.15%, provide Cantonese language services. Mandarin language services are provided by 28, or 2% of these public contact positions. The remaining 5.37% of the public contact positions provide language services in other languages.

Among potentially qualified job applicants from the ethnic groups most likely to possess Spanish and Chinese language speaking capabilities, the representation is approximately 29.88% (14.07% Hispanic and 15.81% Asian). Without more substantial evidence however, it is not reasonable to conclude that every member of these two ethnic groups is unable to effectively communicate in English or more narrowly, that those from among these qualified applicant pools are bilingual.

For purposes of visual clarity, staff has prepared a PowerPoint presentation (Attachment A) and a work plan (Attachment B) to help clarify the current implementation status and planned strategies.

RECOMMENDATIONS AND RATIONALE

The responses and recommendations requested by the Finance and Management Committee discussed at the July 11, 2006 meeting are discussed below:

1. **Clear timelines for concrete recommendations**

   Recommendation: Staff proposes to amend language within the Ordinance to incorporate, City Attorney, Office of Personnel Resources Management, and Equal Opportunity compliance considerations based upon a comprehensive legal analysis.
   Timeline: July 30, 2007

   Recommendation: Develop comprehensive Administrative Instructions that articulate procedures for program administration and bilingual compensation.
   Timeline: July 30, 2007

   Recommendation: Revise the existing Language Access Plans (Department Compliance Plans). Distribute, collect and analyze compliance data from all City organizations.
   Timeline: July 30, 2007

   Recommendation: Establish community resource and organizational coordinators.
   Timeline: July 30, 2007

Recommendation: Conduct biennial language assessment surveys, determine if disparities exist, develop remedial plans, and update Language Access Plan.
Timeline: January 2008

2 List for Public Contact positions

Public contact positions are currently defined by the Ordinance as follows: "Public contact position" shall mean a position, whether of a clerical, service, professional or sworn nature, that emphasizes greeting, meeting, contact, or provision of information and/or services to the public in the performance of the duties of that position.

Recommendation: Consider revising this language to indicate a position in which a primary job responsibility consist of meeting, contacting, and dealing with the public in the performance of the duties of that position. The current list of public contact positions includes positions that do not meet this more appropriate definition and should not be included. The list should be modified appropriately.
Timeline: June 30, 2007

3. (Establish) Hiring goals for bilingual employees

Placement goals are remedial in nature and should only be established based upon a comprehensive analysis of public contact data. The results of the analysis will identify any potential disparities. When problems are identified, specific remedial strategies are to be devised and implemented. As written, the City's Ordinance establishes hiring goals for bilingual employees, but does not provide a working methodology to accomplish the goals. Staff researched successful methods employed by other governmental agencies.

Recommendation: When deficiencies are identified, establish appropriate remedial strategies which may include placement goals. Monitor, evaluate and refine public contact positions. Use targeted recruitment as well and other appropriate techniques to address any deficiencies identified. Evaluate the effectiveness of recruitment efforts through periodic monitoring and report status annually to the Council.
Timeline: February, 2008

4. Deadline for departmental compliance plans

Departmental Compliance Plans (Language Access Plans) will facilitate the analysis of the City's needs for service.

Recommendation: Conduct biennial survey, so that the data is available before the end of the fiscal year.

Timeline: TBD

5. **Boiler plate language for job announcements to recruit bilingual employees**

To ensure compliance with existing legal standards, i.e., collective bargaining agreements, civil service rules, equal opportunity laws and, specifically, the Uniform Guidelines for Employee Selection Procedures, staff evaluated the objectives of the Ordinance. Placement considerations emanate from an essential function analysis of a position. The City currently has additional language for job announcements that addresses bilingual skills as a minimum qualification or highly desirable qualification.

Recommendation: Where bilingual ability is determined to be an essential job function, the City should indicate this on the appropriate job announcements as a minimum qualification requirement. Where bilingual ability is not an essential job function, the City should ensure that all employment opportunities are broadly communicated to all qualified applicant groups. Broad-reaching marketing efforts should be incorporated into the City's existing recruitment efforts.
Timeline: TBD

ACTIONS REQUESTED OF THE CITY COUNCIL

Staff recommends the Council:

1. Accept this report, including the timelines and recommendations.
2. Schedule the Equal Access Office to return with an updated status report in October 2007.

Respectfully submitted,

Don Jeffries
Manager,
Equal Opportunity Programs

Attachments:

APPROVED AND FORWARDED TO THE
FINANCE & MANAGEMENT COMMITTEE:

Office of the City Administrator

Item: _____
Finance and Management Committee
June 12, 2007

Equal Access Ordinance Status Report

Ordinance Objective

- Provide equal access to city services and programs to all Oaklanders, including those with limited proficiency in English.

How do we know who has limited English proficiency (LEP)?

- State guidance suggests capturing LEP contact data through a biennial survey.
- Services must be provided to any group when their contact numbers approach or exceed an established threshold
- Other models suggest capturing data
- Ordinance is silent

Staff concerns...

- Remedies (bilingual hires) are established before a service problem has been validated
- Bilingual applicants may enjoy preferential treatment and status
- No methodology is articulated

Potential issues...

- Narrow analysis by City Attorney's Office describes only the requirements of state law vis-à-vis employment of bilingual persons in public contact positions.
- More comprehensive analysis may be necessary to ensure conformance with existing law

Potential conflicts...

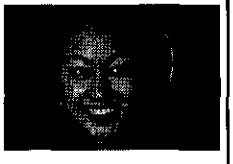
- State and federal EEO laws, rules, and regulations.
- City Charter, Article IX, Sect. 900 (a) & (b)
- MOU seniority provisions

More potential issues…

- According to the Uniform Guidelines *for Employee Selection Procedures*, bilingual ability must be an essential job function to be a legitimate minimum qualification requirement.
- Inappropriate population comparisons have been used to determine the number of public contact positions.

What is a public contact position?

- State law (GC Sec. 7297): a position determined by the agency to be "one in which emphasizes the ability to meet, contact and deal with the public in the performance of the agency's function.
- Ordinance: a position, whether clerical, service, professional or sworn nature, that emphasizes greeting, meeting, contact, or provision of information and/or *services to the public in the* performance of the duties of that position.



Standard methodology

To determine the appropriate number of individual group public contact positions, multiply the group representation rate by the number of total public contact positions:

Group representation rates

- *English speaking:* *79.5%*
- *Spanish speaking:* *12%*
- *Cantonese speaking:* *6.5%*
- *Mandarin speaking:* *2.0%*

Of the City's 1397 total pcp's...

- Approx. 1111 would be English-speaking
- Approx. 167 (12%)would be Spanish-speaking
- Approx. 91 (6.5%) would speak Cantonese, and
- Approx. 28 (2%) would speak Mandarin.

Among the 320 employees being paid bilingual pay Citywide distribution is:

- 12.46% Spanish (174 employees)
- 4.15% Cantonese (58 employees)
- 2.00% Mandarin (28 employees)
- 5.37% Other languages (75 employees)

(Total bilingual pcp's are approximately 23.98% of all pcp's.)

More comparison considerations...

- It is inappropriate to simply compare total population numbers to City employment opportunities.
- Qualified applicants come from much smaller job groups.
- The demographics within these job groups do not match the City's general population.

For example...

- The City's workforce is divided into 8 major job groups.
- We compare demographics (race and gender) in City job groups against 2000 U.S. census data.
- Where disparities are found, we initiate proactive steps to eliminate them.

Bilingual representation

- Staff was unable to confirm that there are insufficient bilingual staff in PCP positions to serve the LEP community.
- The City may choose to hire more bilingual employees to meet the standards of the Ordinance.
- The City may also elect use other methods to meet any unmet needs of the LEP community.

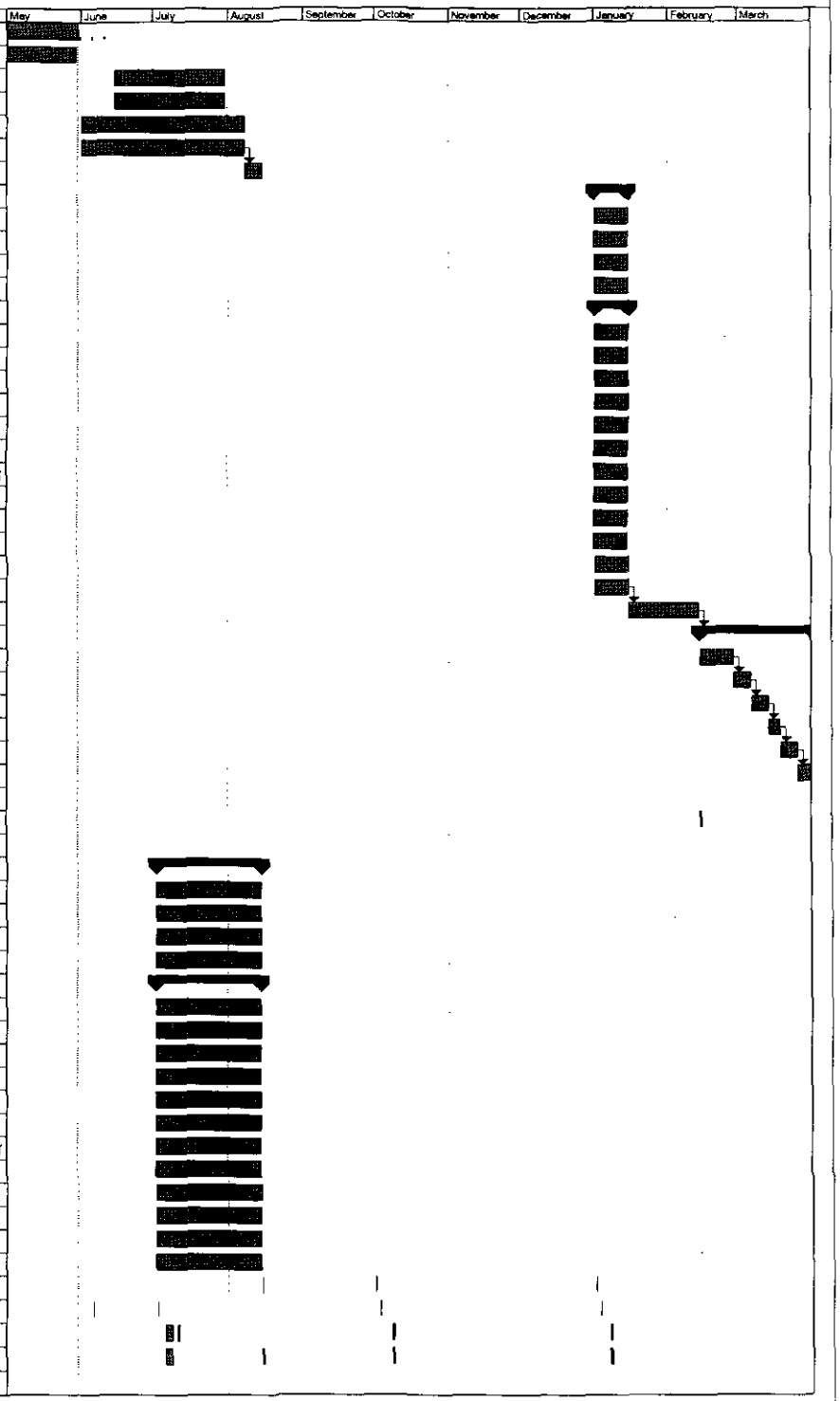
Proposed accountability measures...

- Work Plan
- Biennial Surveys
- Data Analyses
- Remedial Strategies
- Language Access Committee
- Organization Coordinators
- Progress Monitoring
- Periodic Adjustments
- Annual Reporting

Staff Recommendations:

- Conduct comprehensive legal analysis for compliance
- Include all relevant city agencies in deliberations
- Revise Ordinance
- Develop new Administrative Instructions

Attachment B

Equal Access Work Plan

ID		Task Name	Duration	Start	Finish	Resource Names
1		**Refine list of public contact positions**	45 days	Mon 3/26/07	Thu 6/14/07	EAO,EEO,OPRM
2		**Replace Equal Access Director**	60 days	Thu 3/1/07	Tue 5/29/07	CAO
3		**Comprehensive Review by City Attorney**	30 days	Fri 6/15/07	Mon 7/30/07	
4		**Revise Administrative Instructions**	30 days	Fri 6/15/07	Mon 7/30/07	EAO,OPRM CAO
5		**Standardize bilingual pay/reporting**	45 days	Fri 6/1/07	Tue 8/7/07	EAO,EEO,OPRM
6		**Equal Access Administrator Orientation**	45 days	Fri 6/1/07	Tue 8/7/07	EAO,EEO,OPRM
7		**Organizational Coordinator Training**	5 days	Wed 8/8/07	Wed 8/15/07	EAO
8		**Biennial Survey**	10 days	Tue 1/1/08	Tue 1/15/08	EAO
9		Mayor	10 days	Tue 1/1/08	Tue 1/15/08	TBD
10		City Clerk	10 days	Tue 1/1/08	Tue 1/15/08	Crystal Bing
11		City Attorney	10 days	Tue 1/1/08	Tue 1/15/08	Cheryl Moore
12		Auditor	10 days	Tue 1/1/08	Tue 1/15/08	TBD
13		City Administrator	10 days	Tue 1/1/08	Tue 1/15/08	Receptionist
14		CPRB	10 days	Tue 1/1/08	Tue 1/15/08	Josie Phillips
15		Neighborhood Services	10 days	Tue 1/1/08	Tue 1/15/08	Claudia Albano
16		Contract Compliance	10 days	Tue 1/1/08	Tue 1/15/08	Deborah Barnes
17		Police	10 days	Tue 1/1/08	Tue 1/15/08	Warrel Harral
18		Fire	10 days	Tue 1/1/08	Tue 1/15/08	Jacqueline Curtis
19		*Public Works*	*10 days*	*Tue 1/1/08*	*Tue 1/15/08*	*Stephanie Hom*
20		Library	10 days	Tue 1/1/08	Tue 1/15/08	Crystal-Ramie-Adam
21		Museum	10 days	Tue 1/1/08	Tue 1/15/08	TBD
22		CEDA	10 days	Tue 1/1/08	Tue 1/15/08	Bevelin Wolf
23		FMA	10 days	Tue 1/1/08	Tue 1/15/08	Earlene Williams
24		Human Services	10 days	Tue 1/1/08	Tue 1/15/08	Dana Perez
25		Parks and Recreation	10 days	Tue 1/1/08	Tue 1/15/08	Mary Perisic
26		**Survey Data Analysis**	20 days	Tue 1/15/08	Wed 2/13/08	EAO
27		**Develop remedial strategies**	32 days	Thu 2/14/08	Wed 4/2/08	EAO,EEO,OPRM
28		Define problems	10 days	Thu 2/14/08	Thu 2/28/08	EAO,EEO,OPRM
29		Collect information needed	5 days	Thu 2/28/08	Thu 3/6/08	EAO,EEO,OPRM
30		Develop, evaluate, select alternatives	5 days	Fri 3/7/08	Fri 3/14/08	EAO,EEO,OPRM
31		Establish timelines	3 days	Fri 3/14/08	Wed 3/19/08	EAO,EEO,OPRM
32		Coordinate staff	5 days	Wed 3/19/08	Wed 3/26/08	EAO,EEO,OPRM
33		Assign responsibilities	3 days	Wed 3/26/08	Tue 4/1/08	EAO,EEO,OPRM
34		Assess hiring goals (if necessary)	1 day	Tue 4/1/08	Wed 4/2/08	EAO,EEO,OPRM
35		Boilerplate recruitment language	1 day	Thu 2/14/08	Fri 2/15/08	EAO,EEO,OPRM
36		**Implement solutions**	10 days	Wed 4/2/08	Wed 4/16/08	EAO,EEO,OPRM
37		**Departmental compliance plans**	30 days	Mon 7/2/07	Tue 8/14/07	EAO
38		Mayor	30 days	Mon 7/2/07	Tue 8/14/07	TBD
39		City Clerk	30 days	Mon 7/2/07	Tue 8/14/07	Crystal Bing
40		City Attorney	30 days	Mon 7/2/07	Tue 8/14/07	Cheryl Moore
41		Auditor	30 days	Mon 7/2/07	Tue 8/14/07	TBD
42		City Administrator	30 days	Mon 7/2/07	Tue 8/14/07	Receptionist
43		CPRB	30 days	Mon 7/2/07	Tue 8/14/07	Josie Phillips
44		Neighborhood Services	30 days	Mon 7/2/07	Tue 8/14/07	Claudia Albano
45		Contract Compliance	30 days	Mon 7/2/07	Tue 8/14/07	Deborah Barnes
46		Police	30 days	Mon 7/2/07	Tue 8/14/07	Warrel Harral
47		Fire	30 days	Mon 7/2/07	Tue 8/14/07	Jacqueline Curtis
48		Public Works	30 days	Mon 7/2/07	Tue 8/14/07	Stephanie Hom
49		Library	30 days	Mon 7/2/07	Tue 8/14/07	Crystal-Ramie-Adam
50		Museum	30 days	Mon 7/2/07	Tue 8/14/07	TBD
51		CEDA	30 days	Mon 7/2/07	Tue 8/14/07	Bevelin Wolf
52		FMA	30 days	Mon 7/2/07	Tue 8/14/07	Earlene Williams
53		Human Services	30 days	Mon 7/2/07	Tue 8/14/07	Dana Perez
54		Parks and Recreation	30 days	Mon 7/2/07	Tue 8/14/07	Mary Perisic
55		**Language Access Committee meetings**	277.06 days	Wed 8/15/07	Wed 10/1/08	EAO
62		**Organizational Coordinator meetings**	263.94 days	Wed 6/6/07	Thu 7/3/08	EAO
69		**Progress monitoring**	245.69 days	Fri 7/6/07	Tue 7/8/08	EAO
76		**Program adjustments**	245.69 days	Fri 7/6/07	Tue 7/8/08	EAO
83		**Annual Reporting**	245.69 days	Tue 7/1/08	Thu 7/2/09	EAO