



Federal Prison Industries

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Summary

UNICOR, the trade name for Federal Prison Industries, Inc. (FPI), is a government-owned corporation that employs offenders incarcerated in correctional facilities under the Federal Bureau of Prisons (BOP). UNICOR manufactures products and provides services that are sold to executive agencies in the federal government. FPI was created to serve as a means for managing, training, and rehabilitating inmates in the federal prison system through employment in one of its industries.

By statute, UNICOR must be economically self-sustaining, thus it does not receive funding through congressional appropriations. In FY2009, FPI generated \$885.3 million in sales. UNICOR uses the revenue it generates to purchase raw material and equipment; pay wages to inmates and staff; and invest in expansion of its facilities. Of the revenues generated by FPI's products and services, approximately 80% go toward the purchase of raw material and equipment; 17% go toward staff salaries; and 4% go toward inmate salaries.

Although there have been many studies on the recidivism rate and societal factors that may contribute to it, there are only a handful of rigorous evaluations of the effect that participation in correctional industries (i.e., FPI) has on recidivism. What research exists suggests that inmates who participate in correctional industries are less likely to recidivate than inmates who do not participate, but the results are not conclusive.

The previous Administration made several efforts to mitigate the competitive advantage UNICOR has over the private sector. Going beyond the previous Administration's efforts, Congress took legislative action to lessen the adverse impact FPI has caused on small businesses. For example, in 2002, 2003, and 2004, Congress passed legislation that modified FPI's mandatory source clause with respect to procurements made by the Department of Defense (DOD) and the Central Intelligence Agency (CIA). In 2004, Congress passed legislation limiting funds appropriated for FY2004 to be used by federal agencies for the purchase of products or services manufactured by FPI under certain circumstances. This provision was extended permanently in FY2005. In the 110th Congress, the National Defense Authorization Act for Fiscal Year 2008 (P.L. 110-181) modified the way in which DOD procures products from FPI. In 2011, Congress granted FPI the authority to carry out pilot projects in partnership with private companies to produce items that are currently manufactured outside of the United States.

There are several issues Congress might consider as it continues its oversight of FPI, including whether FPI should be involved in emerging technology markets as a way to provide inmates with more job-ready skills for post-release employment and how FPI implements the new authority Congress gave it to enter into partnerships with private manufacturers.

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Introduction

UNICOR,¹ the trade name for Federal Prison Industries, Inc. (FPI), is a government-owned corporation that employs offenders incarcerated in correctional facilities under the Department of Justice's (DOJ's) Federal Bureau of Prisons (BOP).² UNICOR manufactures products and provides services that are sold to executive agencies in the federal government. Although UNICOR industries are located within various federal prisons, they operate independently from the prison. FPI was created to serve as a means for managing, training and rehabilitating inmates in the federal prison system through employment in one of its eight industries.

UNICOR's enabling legislation³ and the Federal Acquisition Regulation (FAR)⁴ require federal agencies to procure *products* offered by UNICOR, unless authorized by UNICOR to solicit bids from the private sector.⁵ (See discussion below, under the "Legislative History" section.) Such waivers can be granted by UNICOR to executive agencies if its price exceeds the current market price for comparable products.⁶ Federal agencies, however, are not required to procure *services* provided by UNICOR but are encouraged to do so pursuant to FAR.⁷ It is this "mandatory source clause"⁸ that has drawn controversy over the years.

This report opens with a discussion of FPI's background and a brief review of the research on whether participating in correctional industries reduces recidivism. It then summarizes the statutory history of FPI and other laws affecting the industry. The report concludes with an examination of some policy considerations relating to FPI. This report does not address the related debates on inmate labor, criminal rehabilitation, or competitive versus noncompetitive federal government contracting.

Background

As the federal prison system was established in the first decade of the 20th century, factories were constructed within prisons to manufacture products needed by the federal government and to provide prisoners with job skills and keep them from being idle. Labor organizations, however, had been making arguments against prison industries since the late 1800s due to the poor conditions in which inmates were working and their perception that the industries were taking

¹ UNICOR and the FPI are used interchangeably throughout this report.

² This report does not cover industries in state prison, often referred to as the Private Sector/ Prison Industry Enhancement Certification (PIE) program. The PIE program was authorized by Congress in 1979 in the Justice System Improvement Act (P.L. 96-157).

³ See 18 USC §4121 *et seq.*

⁴ FAR was developed in accordance with the requirements of the Office of Federal Procurement Policy Act of 1974 (P.L. 93-400).

⁵ Under current law (18 USC §4124(a)) and regulations (48 C.F.R.), federal agencies must procure products from FPI, unless granted a waiver by FPI (48 CFR 8.604), that are listed as being manufactured by UNICOR in the corporation's catalog or schedule of products.

⁶ See Bureau of Prisons Program Statement 8224.02, *FPI Pricing Procedures*.

⁷ FAR encourages federal agencies to treat UNICOR as a "preferential source" in the procurement of services. See 41 CFR §101-26, 107; 48 CFR §302-5, 8.002, 8.602, 8.603, 8.605(f), and 8.704.

⁸ Also referred to as "superpreference," "sole source," or "preferential status."

jobs away from law abiding citizens. The Depression of the 1930s and the resulting high levels of unemployment crystalized the debate. UNICOR was established in 1934 under an executive order issued by President Franklin Delano Roosevelt.⁹ The purpose of UNICOR was to consolidate the operations of all federal prison industries in order to provide training opportunities for inmates and “diversify the production of prison shops so that no individual industry would be substantially affected.”¹⁰

Authority

FPI is administered by a six-person Board of Directors that is appointed by the President. Its enabling act¹¹ requires that representatives of industries, agriculture, labor, and retailers and consumers serve as board members.¹² The board’s decision-making regarding products to be manufactured and areas of expansion are driven by a goal of employing the greatest possible number of inmates.¹³

Activities

UNICOR has 98 factories in federal prisons representing seven different industrial operations. UNICOR’s seven industrial operations are comprised of roughly 175 different types of products and services.¹⁴ UNICOR’s industrial operations include the following:

- clothing and textiles;
- electronics;
- fleet management and vehicular components;
- industrial products;
- office furniture;
- recycling activities; and
- services (which includes data entry and encoding).¹⁵

UNICOR is economically self-sustaining and does not receive funding through congressional appropriations. In FY2009, FPI generated \$885.3 million in sales.¹⁶ UNICOR uses the revenue it

⁹ See Executive Order 6917.

¹⁰ Franklin Delano Roosevelt, *The Public Papers and Addresses of Franklin D. Roosevelt*, vol. 3 (New York: Random House, 1938), p. 497. These principles are reflected in the current statutory authority for FPI, see 18 USC §4122(b).

¹¹ See 18 USC §4121.

¹² In addition to the five board members who must be from the aforementioned groups, the Attorney General and the Secretary of Defense (or their designee) also serve as board members.

¹³ Under 18 USC §4122(b)(1), this goal is explicit, along with other goals to “diversify, so far as practicable, prison industrial operations,” and to “so operate the prison shops that no single private industry shall be forced to bear an undue burden of competition from the products of the prison workshops, and to reduce to a minimum competition with private industry or free labor.”

¹⁴ Federal Prison Industries, Inc., *Annual Report 2009*, http://www.unicor.gov/information/publications/pdfs/corporate/catar2009_C.pdf.

¹⁵ Ibid.

¹⁶ Ibid.

generates to purchase raw material and equipment; pay wages to inmates and staff; and invest in expansion of its facilities. Of the revenues generated by FPI's products and services, approximately 80% go toward the purchase of raw material and equipment; 17% go toward staff salaries; and 4% go toward inmate salaries.¹⁷ Inmates earn from \$0.23 per hour up to a maximum of \$1.15 per hour, depending on their proficiency and educational level, among other things. Under BOP's Inmate Financial Responsibility Program, all inmates who have court ordered financial obligations must use at least 50% of their FPI income to satisfy those debts; the rest may be retained by the inmate.¹⁸

Inmate Participation in FPI

Under current law, all physically able inmates who are not a security risk are required to work.¹⁹ Those inmates who are not employed by FPI have other labor assignments in the prison. FPI work assignments are usually considered more desirable because wages are higher and because they allow inmates to learn a trade. However, this is not to discount the importance of regular prison work assignments. Both regular and FPI work assignments can provide inmates with "soft skills" (e.g., punctuality, learning the importance of doing a job correctly, following directions from supervisors). Also, both types of work assignments can contribute to institutional order by reducing inmate idleness. Nevertheless, regular prison work assignments provide for the operation and maintenance of prison facilities, hence these work assignments will exist as long as BOP operates prisons; the availability of FPI work assignments is more volatile.

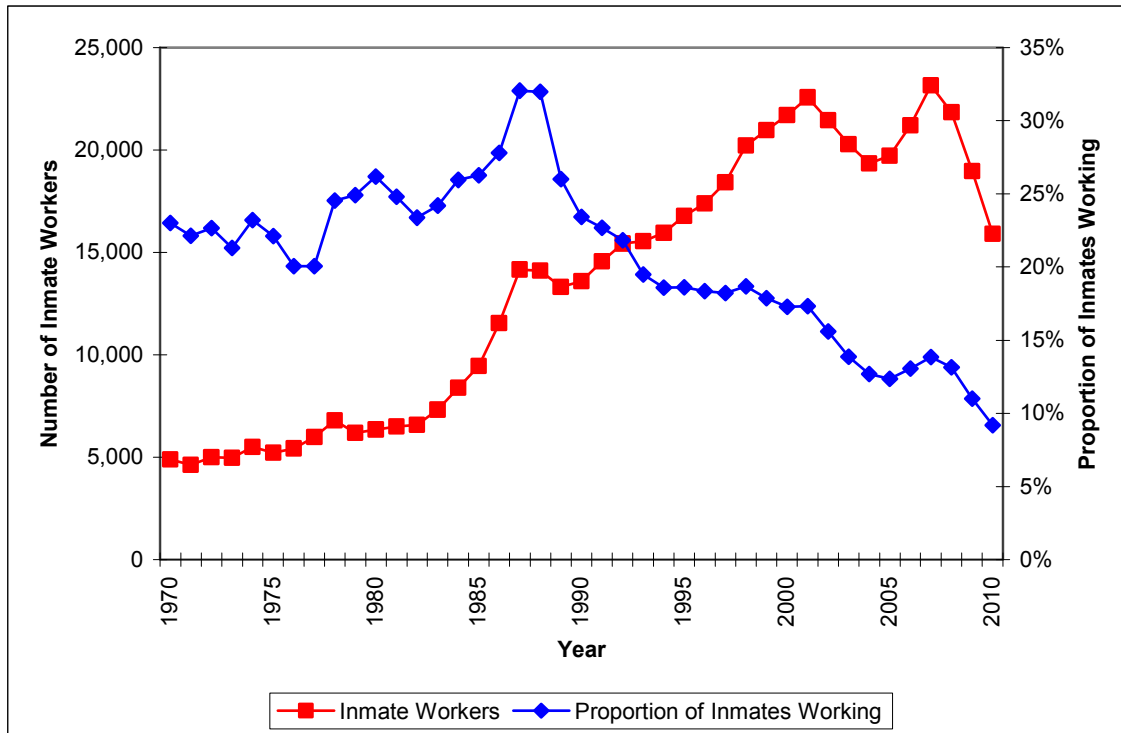
Data suggest that the availability of FPI work assignments is decreasing. As shown in **Figure 1**, in nearly every year between 1970 and 2001, the number of inmates employed by FPI increased. Between 2001 and 2010, the number of inmates employed by FPI fluctuated between high of approximately 23,200 inmates in 2007 and a low of approximately 15,900 in 2010. However, even though the number of inmates that had an FPI work assignment has, in general, increased since 1970, the proportion of the inmate population employed by FPI has generally decreased since the late 1980s.

¹⁷ Ibid.

¹⁸ Ibid; John W. Roberts, *Work, Education, and Public Safety: A Brief History of Federal Prison Industries*, at http://www.unicor.gov/about/organization/history/overview_of_fpi.cfm.

¹⁹ Title XXIX, §2905 of the Crime Control Act of 1990 (P.L. 101-647) required that all offenders in federal prisons must work (the act permitted limitations to this rule on security and health-related grounds).

Figure I. Federal Inmates Employed in FPI and Proportion of Total Inmate Population Employed by FPI, 1970-2010



Source: CRS presentation of data provided by the U.S. Department of Justice, Bureau of Prisons.

Effect of Correctional Industries on Recidivism

Although there have been many studies on the recidivism rate and societal factors that may contribute to it, there are only a handful of rigorous evaluations of the effect that participation in correctional industries (i.e., FPI) has on recidivism. What research exists suggests that inmates who participate in correctional industries are less likely to recidivate than inmates who do not participate, but the results are not conclusive. This section of the report provides a brief overview of two studies that synthesized the results of evaluations of correctional industries.

A 2006 analysis of two different studies of correctional industries programs evaluated the impact of these programs on recidivism.²⁰ The results of the analysis indicated inmates who worked in correctional industries were less likely to recidivate than those who did not. However, the researcher concluded that given the limited number of rigorous evaluations of correctional industries programs, it was not possible to make any definitive conclusions about the ability of these programs to reduce recidivism.

Another analysis conducted in 2000 that summarized the results of four evaluations of correctional industries programs also found that inmates who participated in correctional

²⁰ Doris Layton MacKenzie, *What Works in Corrections: Reducing the Criminal Activities of Offenders and Delinquents* (New York: Cambridge University Press, 2006), p. 102.

industries programs were less likely to recidivate.²¹ However, the researchers reported that they could not rule out sampling error as a possible explanation for the positive effect. The researchers also reported that many of the studies included in the analysis lacked stringent methodological rigor, thereby preventing the researchers from concluding that the programs lead directly to decreased re-offending.

Administrative Efforts to Reform FPI

Over the years, critics have asserted that FPI has an unfair advantage over private business. They argue that FPI's mandatory source clause produces a monopoly-like environment that usurps and supplants the bidding process for federal contracts. FPI maintains that the mandatory source clause is paramount to keeping prison industries in operation. Furthermore, FPI asserts that the work opportunities it provides are necessary to manage and rehabilitate federal inmates. UNICOR made several efforts, however, to lessen the impact of its industries on small businesses by leveling the playing field with respect to its mandatory preference over the private sector. Efforts have also been taken to reduce FPI's reliance on its mandatory source preference.²²

For example, in May 2003 UNICOR's Board of Directors adopted a resolution that raises the threshold for mandatory use of FPI from \$25 to \$2,500. By raising the threshold, FPI's Board of Directors in essence eliminated FPI's mandatory source clause for purchases up to \$2,500 and is now allowing federal agencies to go directly to the private sector for any purchase under \$2,500. On a related matter, FPI's Board of Directors adopted a resolution that now requires that FPI approve requests for waivers in all cases where the private sector provides a lower cost. Prior to the board's decision regarding waivers, FPI, on average, granted 87% of waivers that were requested.²³ Its Board of Directors also directed FPI to waive its mandatory source status for products where the FPI's share of the federal market is in excess of 20%. Finally, the Board of Directors requires prison-made products sold by FPI to have at least 20% of its value contributed by inmate labor.

In addition to FPI's Board of Director's decisions, federal agencies have begun to evaluate FPI's contract performance. According to testimony at a Senate hearing on FPI, "while this [the evaluation of FPI's contract performance] did not change FPI's mandatory preference status, it was an important first step in helping FPI better monitor and improve its own performance ... [which would assist] FPI as they move toward being more competitive in the federal marketplace."²⁴

²¹ David B. Wilson, Catherine A. Gallagher, and Doris L. MacKenzie, "A Meta-analysis of Correctional-based Education, Vocation, and Work Programs for Adult Offenders," *Journal of Research in Crime and Delinquency*, vol. 37 (2000), p. 356.

²² A previous effort to eliminate FPI's mandatory source clause came during the Clinton Administration in 1993 when Vice President Al Gore recommended that the mandatory source provision be eliminated and that UNICOR be exempt from the FAR in order to better compete with the private sector in terms of delivery schedules and costs.

²³ CRS analysis of FPI waiver data from FY1994 to the first six months in FY2004.

²⁴ Testimony of Jack R. Williams, Jr., in U.S. Congress, Senate Committee on Governmental Affairs, Subcommittee on Financial Management, the Budget, and International Security, *Making Federal Prison Industries Subject to Competitive Bidding*, hearing on S. 346, 108th Cong., 2nd sess., April 7, 2004 (Washington: GPO, 2004).

Legislative History

While UNICOR was originally authorized in 1934 through P.L. 73-461 and Executive Order 6917, the *current* statutory authority for UNICOR was first codified in the 1948 revision of the “Crimes and Criminal procedure” statutes.²⁵ The only amendments to the statute were provisions added in 1988, 1990, 1992, and 2002.²⁶

The question of whether UNICOR is unfairly competing with private businesses, particularly small businesses, in the federal market has been an issue of debate. In 1989, Congress considered a proposal that would have provided the private sector with greater opportunity to compete for DOD contracts. In 2002, Congress passed legislation that modified FPI’s mandatory source clause with respect to the DOD,²⁷ see discussion below.

The absence of legislative activity on this issue for over a half century (from 1934 to 1988) is notable. However, over the past several decades, the erosion of the nation’s manufacturing sector and the increase in the federal inmate population at the same time the federal government was downsizing increased congressional interest in FPI.

Only those laws that made substantial changes to the operation of FPI will be discussed below.

The Anti-Drug Abuse Act of 1988

The Anti-Drug Abuse Act of 1988 (P.L. 100-690) required that UNICOR meet specific requirements to ease the impact of its activities upon the private sector. Before approving the expansion of an existing product or the creation of a new product, the act required UNICOR to

- prepare a written analysis of the likely impact of UNICOR’s expansion on industry and free labor;
- announce in an appropriate publication the plans for expansion and invite comments on the plan;
- advise affected trade associations;
- provide the UNICOR board of directors with the plans for expansion prior to the board making a decision on the expansion;
- provide opportunity to affected trade associations or relevant business representatives to comment to the Board of Directors on the proposal; and
- publish final decisions made by the Board of Directors.

²⁵ P.L. 80-772, codified at 18 USC §4121 *et seq.*

²⁶ The 1988 Anti-Drug Abuse Act (P.L. 100-690) authorized UNICOR to borrow from and invest in the U.S. Treasury and added the “reasonable share” language regarding market capture. The 1990 Crime Control Act (P.L. 101-647) required federal agencies to report information on the purchase of UNICOR products and services. The Small Business Research and Development Enhancement Act of 1992 (P.L. 102-564) modified the reporting requirements so that federal agencies provide separate reports of UNICOR purchases to the Federal Procurement Data System.

²⁷ See 10 USC §2410n.

The National Defense Authorization Act for FY2002

The National Defense Authorization Act for FY2002 (P.L. 107-107) required the Secretary of Defense to use competitive procedures for the procurement of the product if it is determined that the product is not comparable in price, quality and time of delivery to products available from the private sector. In doing so, the act required the Secretary of Defense to conduct research and market analysis with respect to the price, quality and time of delivery of FPI products prior to purchasing the product from FPI to determine whether the products are comparable to products from the private sector.

The Bob Stump National Defense Authorization Act for FY2003

Similar to P.L. 107-107, the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (P.L. 107-314) also required the Secretary of Defense to use competitive procedures for the procurement of the product if it is determined that the product is not comparable in price, quality and time of delivery to products available from the private sector. With respect to the market research determination, the act made such determinations final and not subject to review. The act required that FPI perform its contractual obligations to the same extent as any other contractor for the DOD. It prohibits a DOD contractor or potential contractor from using FPI as a subcontractor and it also prohibits the Secretary of Defense from entering into a contract with FPI under which an inmate worker would have access to sensitive information.

The Consolidated Appropriations Act of 2004

The Consolidated Appropriations Act of 2004 (P.L. 108-199) modified FPI's mandatory source clause during FY2004 by prohibiting funds appropriated by Congress for FY2004 to be used by any federal executive agency for the purchase of products or services manufactured by FPI unless the agency making the purchase determines that the products or services are being provided at the best value, which are in line with government-wide procurement regulations.

Consolidated Appropriations Act, 2005

The Consolidated Appropriations Act, 2005 (P.L. 108-447) permanently extended the provision in the Consolidated Appropriations Act of 2004 (P.L. 108-199) related to FPI's mandatory source clause. The provision prevents federal agencies from using appropriated funds for purchasing FPI products or services unless the agency determines that the product or service provides the best value for the agency.

Intelligence Authorization Act for FY2004

The Intelligence Authorization Act for FY2004 (P.L. 108-177) required the Director of the Central Intelligence Agency to only make purchases from FPI if he determines that the product or service best meets the agency's needs.

The National Defense Authorization Act for FY2008

The National Defense Authorization Act for Fiscal Year 2008 (P.L. 110-181) amended current law to require the Secretary of Defense to do market research to determine whether an FPI product is

comparable to products available from the private sector that best meet the needs of Department of Defense (DOD) in terms of price, quality, and time of delivery before purchasing a product that FPI produces in which FPI does not have a significant market share. If the Secretary determines that an FPI product is not comparable to private sector products in terms of price, quality, or time of delivery, the Secretary must then use competitive procedures for the procurement of the product, or make an individual purchase under a multiple award contract in accordance with the competition requirements applicable to such a contract. In cases where FPI is determined to have a significant market share, the Secretary of Defense can purchase a product from FPI only if the Secretary uses competitive procedures for procuring the product, or makes an individual purchase under a multiple award contract in accordance with the competition requirements applicable to such a contract.

Commerce, Justice, Science, and Related Agencies Appropriations Act, 2011

In the conference report for the Commerce, Justice, Science, and Related Agencies Appropriations Act, 2011 (P.L. 112-55), Congress expressed concern that inmates did not have access to meaningful work opportunities.²⁸ In addition, Congress acknowledged that FPI functions as a means of preparing inmates for reentry and that if FPI were allowed to enter into partnerships with private businesses, it could bring some lost manufacturing back into the United States while providing inmates with opportunities to learn skills that will be marketable after release.²⁹ As a part of the act, Congress amended the authorizing legislation for the Prison Industry Enhancement Certification Program (PIECP) to allow FPI to carry out pilot projects in partnership with private companies to produce items that are currently manufactured outside of the United States. Issues related to partnerships between FPI and private companies are discussed below.

Policy Considerations

This section of the report provides an overview of some select issues Congress might consider as it continues oversight of FPI. Among the issues Congress might consider is whether FPI should be involved in emerging technology markets as a way to provide inmates with more job-ready skills for post-release employment and whether FPI should be allowed to enter into partnerships with private businesses.

Providing Inmates with Current Skills

Most of FPI's current operations are based on a manufacturing, mass-production, low-skilled labor economy of the 1930s. Inmates employed in FPI are working in "a labor-intensive manner" where the emphasis is on employing as many inmates as possible with each inmate producing little output.³⁰ While inmates can learn critical skills such as good workplace habits,

²⁸ U.S. Congress, House Committee on Appropriations, *Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Programs for the Fiscal Year Ending September 30, 2012, and for Other Purposes*, Conference Report to Accompany H.R. 2112, 112th Cong., 1st sess., November 14, 2011, H.Rept. 112-284 (Washington: GPO, 2011), p. 241.

²⁹ *Ibid.*, p. 242.

³⁰ Statement of BOP Director Kathleen Hawk Sawyer, in U.S. Congress, House Committee on the Judiciary, *Federal* (continued...)

accountability and the importance of being dependable, there is some concern about whether the trade skills inmates learn while participating in FPI are marketable after they are released. As FPI notes, the U.S. economy is changing and many jobs requiring minimal technical skills are being moved overseas.³¹ According to FPI, it is exploring ways to develop more opportunities for inmates to learn skills in emerging technologies such as the environmental and alternative energy sectors.³² Congress could consider modifying recent changes to FPI's mandatory source clause so that federal agencies would be required to purchase emerging technology products and services from FPI while continuing to require agencies to purchase other products only if the agency determines that the product provides the best value. This option may promote FPI expansion into markets that will provide some inmates with skills that are more in-tune with the economy. However, there might be some concern that FPI would gain too large of a share of the federal market, thereby pushing out private vendors.

Public-Private Partnerships for FPI

As discussed above, most federal agencies are required to procure goods from FPI, if the agency determines that the goods offered by FPI provide the best value. However, over the past decade, out of concern that FPI has an unfair advantage over private businesses when it came to procuring federal contracts, both the Administration and Congress have taken actions to limit the scope of FPI's mandatory source clause. According to FPI, the changes to the mandatory source clause are affecting FPI's ability to provide work opportunities to inmates. FPI reported that in FY2009 it downsized factories at 19 facilities because of "prior legislative changes and procurement directives, increased competitive pressures, and a soft economic climate."³³ According to BOP, in FY2000 FPI operated 103 factories.³⁴ The number of factories operated by FPI peaked in FY2007 at 110. In FY2009, FPI operated 98 factories. One issue Congress might consider is whether there is a way to modify FPI's mandatory source clause to allow it to provide work opportunities to federal inmates while also minimizing FPI's competition with private business.

As discussed above, Congress amended the authorizing legislation for PIECP to allow FPI to carry out pilot projects to produce items that are currently manufactured outside of the United States. There are several issues Congress might consider as it oversees BOP's implementation of pilot programs or if Congress chooses to modify the authority it gave FPI to enter into public/private partnerships. Under PIECP, private businesses can use prison workers to make products that can be sold on the open market,³⁵ but the program has several conditions to protect

(...continued)

Prison Industries, hearings, 106th Cong., 2nd sess., October 5, 2000.

³¹ U.S. Department of Justice, Bureau of Prisons, Federal Prison Industries, *Federal Prison Industries, Inc. Annual Report 2009*, p. 8, <http://www.unicor.gov/information/publications/pdfs/corporate/catar2009.pdf>.

³² Ibid.

³³ Ibid.

³⁴ Data supplied by the U.S. Department of Justice, Bureau of Prisons.

³⁵ Prisoner-made goods produced through PIECP-certified programs are not subject to the prohibitions set forth in the Amherst-Sumners Act or the Walsh-Healey Act. The provisions of the Amherst-Sumners Act (18 U.S.C. §1761(a)) create exemptions to federal restrictions in the marketability of prison-made goods. Generally, it is illegal for an individual to transport such goods in interstate commerce or from a foreign country. Exemptions are delineated for certain individuals on parole, probation, or supervised release. In addition, the prohibition on interstate commerce of prisoner-made goods does not apply to agricultural commodities or parts for the repair of farm machinery, nor to commodities manufactured in a federal, District of Columbia (DC), or state institution for use by the federal government, the District of Columbia, or any state or political subdivision of a state or not-for-profit organizations. The (continued...)

private employees from unfair competition from incarcerated individuals.³⁶ Allowing FPI to enter into partnerships with private businesses to produce goods for sale on the open market might reduce some of the tension surrounding FPI's mandatory source clause and access to federal contracts for small businesses because FPI would not have to rely on sales to the federal government to provide work opportunities for inmates. Some oversight issues Congress might consider are whether partnerships between FPI and private companies result in additional job opportunities for inmates or create more federal contracting opportunities for private vendors. Congress could also consider expanding the authority it gave FPI to participate in PIECP so FPI could enter into manufacturing markets where products are not solely produced outside of the United States. For example, FPI might become more involved manufacturing solar panels or other "green" technologies. This could provide inmates with opportunities to learn skills that would be more marketable after release. These partnerships with private companies could also provide inmates an opportunity to connect with companies that might employ them after they are released, an option that would likely not be available to an inmate producing goods that are manufactured by companies overseas. Congress might also consider whether to require a certain percentage of inmate wages to be placed in an account that would serve as "start-up" money for the inmate after being released.

Despite some of the potential benefits that could be realized by allowing FPI to partner with private businesses, there might also be concerns about prison workers competing for jobs with non-incarcerated individuals, especially as the country is rebounding from a recession and unemployment remains comparatively high. In addition, one researcher found that there is a poor track record when it comes to private businesses partnering with correctional agencies to employ prisoners. The researcher reported that in 2002, there were 188 partnerships between state correctional agencies and private businesses, employing approximately 3,700 inmates (less than 0.3% of the prison population).³⁷ According to the author, few firms find it economically viable to

(...continued)

act effectively prevents most jail and prison inmates in the United States from producing goods for sale in open markets.

Under the Walsh-Healey Act (41 U.S.C. §35), any contract made and entered into by any Executive department, independent establishment, or other agency of instrumentality of the United States, District of Columbia, or any corporation whose stock is owned by the United States for the manufacture or furnishing of materials, supplies, articles, and equipment in any amount exceeding \$10,000 is subject to certain stipulations under the act. One of these stipulations is that the contractor cannot use convict labor to manufacture, produce, or furnish any of the materials, supplies, articles, or equipment included in the contract.

³⁶ A PIECP-certified program must have (1) legislative authority to pay wages at a rate not less than that paid for similar work in the same locality's private sector; (2) written assurances that the program will not result in the displacement of previously employed workers; (3) authority to provide worker benefits, including workers' compensation or its equivalent; (4) authority to involve the private sector in the production and sale of prisoner-made goods; (5) written assurances that inmate participation is voluntary; (6) legislative or administrative authority to collect and provide financial contributions of not less than 5% and not more than 20% of gross wages to crime victim compensation/assistance programs and legislative or administrative authority for crime victim compensation/assistance programs to accept such financial contributions; (7) written proof of consultation with organized labor and local private industry before program startup; and (8) compliance with the National Environmental Policy Act and related federal environmental review requirements. In addition to deductions for crime victim compensation, correctional departments may take deductions for room and board, taxes (such as federal, state, FICA), and family support. Deductions cannot exceed 80% of gross wages. The Bureau of Justice Assistance (BJA) is responsible for certifying that correctional institutions are adhering to the program's requirements. For more information, see U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, *Prison Industry Enhancement Certification Program*, Program Brief, NCJ 193772, July, 2002, <http://www.ncjrs.gov/pdffiles1/bja/193772.pdf>.

³⁷ Jeremy Travis, *But They All Come Back: Facing the Challenges of Prisoner Reentry* (Washington, DC: Urban Institute Press, 2005), p. 156.

enter into partnerships with correctional agencies because there are higher costs associated with operating a business in a prison environment and employers are required to pay inmates the prevailing wage even though they tend to be lower-skilled than the rest of the workforce.³⁸

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³⁸ Ibid., pp. 156-157.