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FAIR LABOR STANDARDS ACT

Better Use of Available Resources and Consistent Reporting Could Improve Compliance

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Highlights of [GAO-08-962T](#), a testimony to the Chairman, Committee on Education and Labor, House of Representatives

Why GAO Did This Study

Over 130 million workers are protected from substandard wages and working conditions by the Fair Labor Standards Act (FLSA). This act contains specific provisions to ensure that workers are paid the federal minimum wage and for overtime, and that youth are protected from working too many hours and from hazardous conditions. The Department of Labor's Wage and Hour Division (WHD) is responsible for enforcing employer compliance with FLSA.

To secure compliance, WHD uses enforcement actions, partnerships with external groups, and outreach activities.

In response to a congressional request, we examined (1) the trends in FLSA compliance activities from fiscal years 1997 to 2007, (2) the effectiveness of WHD's efforts to plan and conduct these activities, and (3) the extent to which these activities have improved FLSA compliance.

What GAO Recommends

To better plan and conduct FLSA compliance activities, GAO recommends that WHD evaluate complaint data, obtain and use input from external stakeholders, incorporate data from its studies, and leverage existing tools. GAO also recommends that WHD establish, consistently maintain, and report on its performance.

GAO provided a draft of this statement to WHD but it declined to officially comment prior to the hearing.

To view the full product, including the scope and methodology, click on [GAO-08-962T](#). For more information, contact Anne-Marie Lasowski at (202) 512-7215 or lasowskia@gao.gov.

FAIR LABOR STANDARDS ACT

Better Use of Available Resources and Consistent Reporting Could Improve Compliance

What GAO Found

From fiscal years 1997 to 2007, the number of WHD's enforcement actions decreased by more than a third, from approximately 47,000 in 1997 to just under 30,000 in 2007. According to WHD, the total number of actions decreased over this period because of three factors: the increased use of more time-consuming comprehensive investigations, a decrease in the number of investigators, and screening of complaints to eliminate those that may not result in violations. Most of these actions (72 percent) were initiated from 1997 to 2007 in response to complaints from workers. The remaining enforcement actions, which were initiated by WHD, were concentrated in four industry groups: agriculture, accommodation and food services, manufacturing, and health care and social services. WHD's other two types of compliance activities—partnerships and outreach—constituted about 19 percent of WHD's staff time based on available data from 2000 to 2007.

WHD did not effectively take advantage of available information and tools in planning and conducting its compliance activities. In planning these activities, WHD did not use available information, including key data on complaints and input from external groups such as employer and worker advocacy organizations, to inform its planning process. Also, in targeting businesses for investigation, WHD focused on the same industries from 1997 to 2007 despite information from its commissioned studies on low wage industries in which FLSA violations are likely to occur. As a result, WHD may not be addressing the needs of workers most vulnerable to FLSA violations. Finally, the agency does not sufficiently leverage its existing tools, such as tracking the use and collection of penalties and back wages, or using its hotlines and partnerships, to encourage employers to comply with FLSA and reach potential complainants.

The extent to which WHD's activities have improved FLSA compliance is unknown because WHD frequently changes both how it measures and how it reports on its performance. When agencies provide trend data in their performance reports, decision makers can compare current and past progress in meeting long-term goals. While WHD's long-term goals and strategies generally remained the same from 1997 to 2007, WHD often changed how it measured its progress, keeping about 90 percent of its measures for 2 years or less. Moreover, WHD established a total of 131 performance measures throughout this period, but reported on 6 of these measures for more than 1 year. This lack of consistent information on WHD's progress in meeting its goals makes it difficult to assess how well WHD's efforts are improving compliance with FLSA.

Mr. Chairman and Members of the Committee:

I am pleased to be here today to discuss the Department of Labor's (Labor) Wage and Hour Division's (WHD) efforts to enforce compliance with the Fair Labor Standards Act (FLSA), as amended, which protects over 130 million eligible workers from substandard wages and working conditions.¹ The act contains specific provisions designed to ensure that workers are paid at least the federal minimum wage and for overtime, and that youth are protected from working too many hours and from hazardous conditions.

In response to your request, we examined WHD's efforts from fiscal years 1997 to 2007 to ensure compliance with FLSA's provisions for minimum wage, overtime, and child labor. Accordingly, this statement provides information on (1) the trends in WHD's compliance activities from fiscal years 1997 to 2007; (2) the effectiveness of WHD's efforts to plan and conduct these activities; and (3) the extent to which WHD's activities have improved FLSA compliance over this period.

To address these objectives, we obtained and analyzed data from WHD's Wage and Hour Investigator Support and Reporting Database (WHISARD) on enforcement actions, back wages, penalties, partnerships, and outreach activities from fiscal years 1997 to 2007, as available.² All data we reported were assessed for reliability and determined to be sufficiently reliable for the purposes of this statement. We also analyzed annual performance plans and reports in light of GAO's work and guidance on strategic planning and performance management for regulatory agencies, and examined performance assessments conducted by outside experts at WHD's request. In addition, we reviewed relevant federal laws and regulations. Finally, we interviewed WHD officials at the national and regional level, and external organizations representing employers and employees affected by WHD's compliance activities and visited WHD and state offices in California, Georgia, New Hampshire, Texas, and Wisconsin. We conducted this performance audit from August 2007 through July 2008 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our

¹Pub. L. No. 75-718 (codified at 29 U.S.C. § 201 *et seq.*).

²For the remainder of this statement, when we refer to years, we are referring to the federal fiscal year (October 1 to September 30.)

findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. For more information on our scope and methodology, see attachment I.

Summary

From 1997 to 2007, the number of WHD's enforcement actions decreased by more than a third, from approximately 47,000 in 1997 to just under 30,000 in 2007. WHD's two other compliance activities—partnerships and outreach activities—constituted about 19 percent of the agency's staff time, based on available data from 2000 to 2007. In planning and conducting its compliance activities, WHD did not effectively take advantage of available information and tools. Specifically, WHD did not use information, including data on complaints and input from external groups, such as employer and worker advocacy organizations, to inform its planning efforts. Also, in targeting employers for investigation, WHD focused on the same industries from 1997 to 2007 despite information from its commissioned studies on low wage industries in which FLSA violations are likely to occur. As a result, WHD may not be addressing the needs of workers most vulnerable to FLSA violations. In addition, the agency does not sufficiently leverage existing tools, such as its partnerships, to encourage employers to comply with FLSA and reach potential complainants. The extent to which WHD's activities have improved FLSA compliance is unknown, because the agency frequently changes both how it measures and how it reports on its performance. While WHD's long-term goals and strategies have generally remained the same since 1997, WHD often changed how it measured its progress, keeping about 90 percent of its measures for 2 years or less. Moreover, although WHD established a total of 131 performance measures throughout the period from 1997 to 2007, it reported on 6 of these measures for more than 1 year. This lack of consistent information on WHD's progress in meeting its goals makes it difficult to assess how well its efforts are improving compliance with FLSA.

To better plan and conduct its FLSA compliance activities, we are recommending that WHD evaluate complaint data, obtain and use input from external stakeholders, incorporate data from its commissioned studies, and leverage existing tools. We are also recommending that WHD establish, consistently maintain, and report on its performance measures. We met with WHD officials to discuss our findings and recommendations and incorporated their comments as appropriate. We also provided a copy of our draft statement to WHD, but the agency declined to comment prior to the hearing.

Background

Since FLSA was enacted, Congress has amended it several times, including recently increasing the federal minimum wage from \$5.15 an hour, which it has been since September 1997, to \$7.25 an hour in three steps over a 2-year period ending in July 2009. In 2007, about 2 million workers were earning at or below the federal minimum wage.³ FLSA also limits the normal work week to 40 hours and requires that most employers pay 1½ times normal wages, or overtime pay, to eligible employees who work longer hours.⁴ Furthermore, FLSA and its regulations limit the types of jobs, number of hours, times of day, and types of equipment that youth can work.⁵

WHD's headquarters office, 5 regional offices, and 74 district and field offices with approximately 730 investigative staff are responsible for enforcing employer compliance with labor laws. In 2007, WHD's budget was approximately \$165 million.

WHD conducts several types of enforcement actions, ranging from comprehensive investigations covering all laws under the agency's jurisdiction to conciliations, a quick remediation process generally limited to a single alleged FLSA violation—such as a missed paycheck for a single worker, in which a WHD investigator contacts the employer by phone to try to resolve a complaint received from a worker.⁶

WHD also initiates enforcement actions in an effort to target employers likely to violate FLSA. For many years, WHD officials have considered low wage workers to be most vulnerable to FLSA violations. In 2007, about 54 million workers were among this population.⁷ Furthermore, WHD officials, researchers, and employee advocates have expressed concerns that

³The 95 percent confidence interval is within +/- 5.05 percent of this estimate.

⁴Certain kinds of employees are not covered by various aspects of the FLSA. For example, certain executive, administrative, or professional employees and outside sales employees are among those that are exempt from FLSA's minimum wage and maximum hour requirements. Section 13 of the FLSA provides more detailed information about exempt employees. 29 U.S.C. § 213(a).

⁵FLSA provides the Secretary of Labor with the authority to determine which jobs and equipment are too hazardous for children under the age of 18 or detrimental to their health or well-being.

⁶We have defined the activities WHD conducts as part of its enforcement strategy as "enforcement actions" to distinguish them from its partnership and outreach activities.

⁷This 95 percent confidence interval is within +/- 1.96 percent of this estimate.

foreign born workers, although generally protected by FLSA to the same extent as other workers, may be less likely than others to complain because they may be unaware of federal laws or fear deportation if they are undocumented. About 19 percent of low wage workers, as defined by researchers in studies commissioned by WHD, were foreign born in 2007.⁸

When WHD finds violations during enforcement actions, it computes and attempts to collect back wages owed to workers and, where permitted by law, imposes penalties and other remedies.⁹ Other remedies pertaining to FLSA include the hot goods provision, which allows WHD to seize goods created in violation of FLSA, and liquidated damages, which permit workers to receive additional damages as a result of minimum wage or overtime violations. If employers refuse to pay the back wages and/or penalties assessed, WHD officials, with the assistance of attorneys from Labor's Office of the Solicitor, may pursue the cases in the courts.

WHD's partnerships are formal written agreements with external groups—including states, foreign consulates, and employee and employer associations—designed to improve compliance.¹⁰ Its outreach activities include informational materials and seminars for employers and workers designed to improve public awareness of the provisions of FLSA. WHD holds seminars, provides training to employer associations, and distributes materials on FLSA provisions to employers and workers. In addition, as part of its outreach activities, WHD provides technical assistance to employers through its local offices, national hotline, and Web site.

WHD, like other federal agencies, is required by the Government Performance and Results Act of 1993 (GPRA) to establish a framework to help align its activities with the agency's mission and goals. It is also required to develop long-term goals as well as establish performance measures to use in assessing the success of its efforts. Furthermore, to

⁸This 95 percent confidence interval is within +/- 1.96 percent of this estimate.

⁹Penalties are fines that WHD may impose when employers violate child labor provisions or are found to have willfully or repeatedly violated the minimum wage or overtime provisions of FLSA. They are known as "civil money penalties."

¹⁰Many states have labor laws that offer similar protections to those in FLSA, but state laws vary in the issues they address and the extent to which they are enforced. In general, if both federal and state law apply, the more stringent (i.e. the one more protective for the worker) takes precedence.

promote agency accountability, it is required to issue annual performance reports on its progress in meeting these goals.

The Number of Enforcement Actions Has Decreased, although Enforcement Remained WHD's Major Compliance Activity

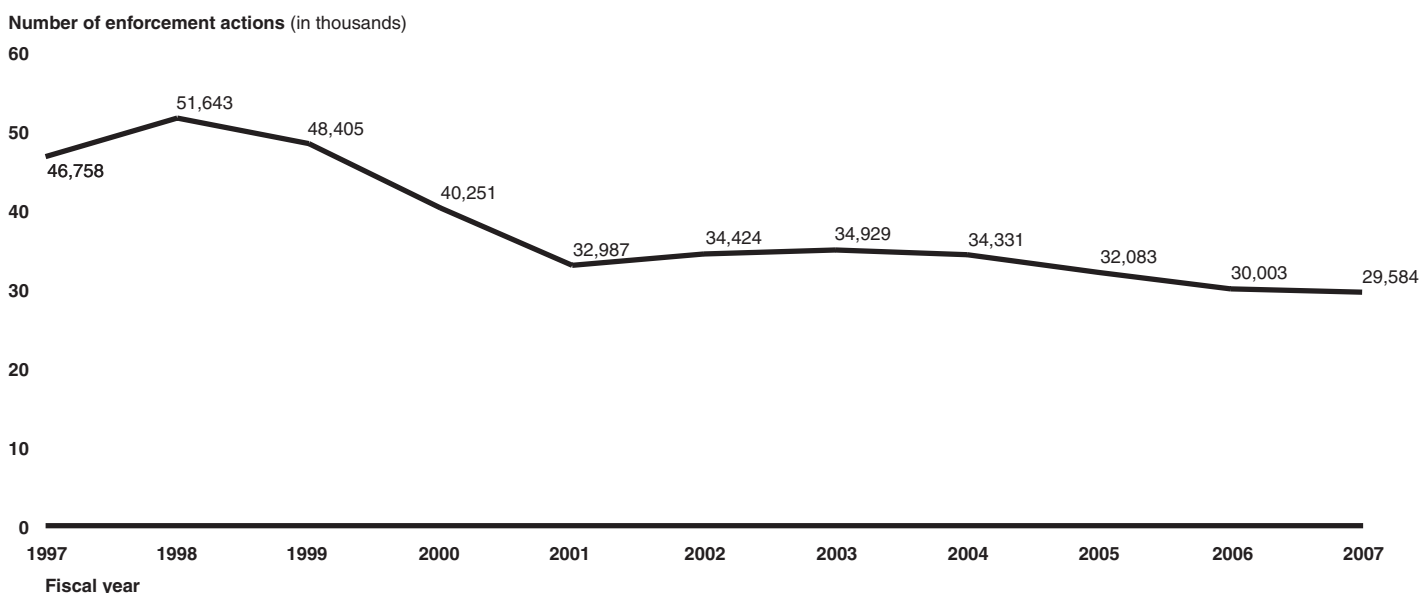
From 1997 to 2007, the number of WHD's enforcement actions decreased by more than a third, from approximately 47,000 actions in 1997 to just under 30,000 in 2007. According to WHD, although enforcement actions have comprised the majority of its compliance activities, the total number of actions decreased over this period because of three factors: the increased use of more time-consuming comprehensive investigations, a decrease in the number of investigators, and improved screening of complaints to eliminate those that may not result in violations. Most of these enforcement actions conducted from 1997 to 2007 were initiated by complaints from workers. The remaining enforcement actions, which were initiated by WHD, decreased 45 percent over the period, from approximately 13,000 in 1997 to approximately 7,000 in 2007. WHD's partnerships and outreach activities constituted about 19 percent of its total staff time.

Total Number of Enforcement Actions Has Decreased

From 1997 to 2007, the total number of FLSA enforcement actions WHD conducted decreased, and lengthy, comprehensive investigations made up an increasingly larger share of this total. Of WHD's total resources, the majority was spent ensuring compliance with FLSA, which covers more workers than the other laws under WHD's jurisdiction.¹¹ Based on available data from 2000 to 2007, the majority of staff time spent on FLSA compliance activities—81 percent—was spent on enforcement. However, the total number of enforcement actions, including investigations and conciliations, declined from approximately 47,000 in 1997 to just under 30,000 in 2007, as shown in figure 1.

¹¹In addition to the FLSA, WHD also enforces the Migrant and Seasonal Agricultural Worker Protection Act, the Family and Medical Leave Act, the Davis Bacon Act, and other federal labor laws.

Figure 1: Total Number of FLSA Enforcement Actions, 1997 to 2007

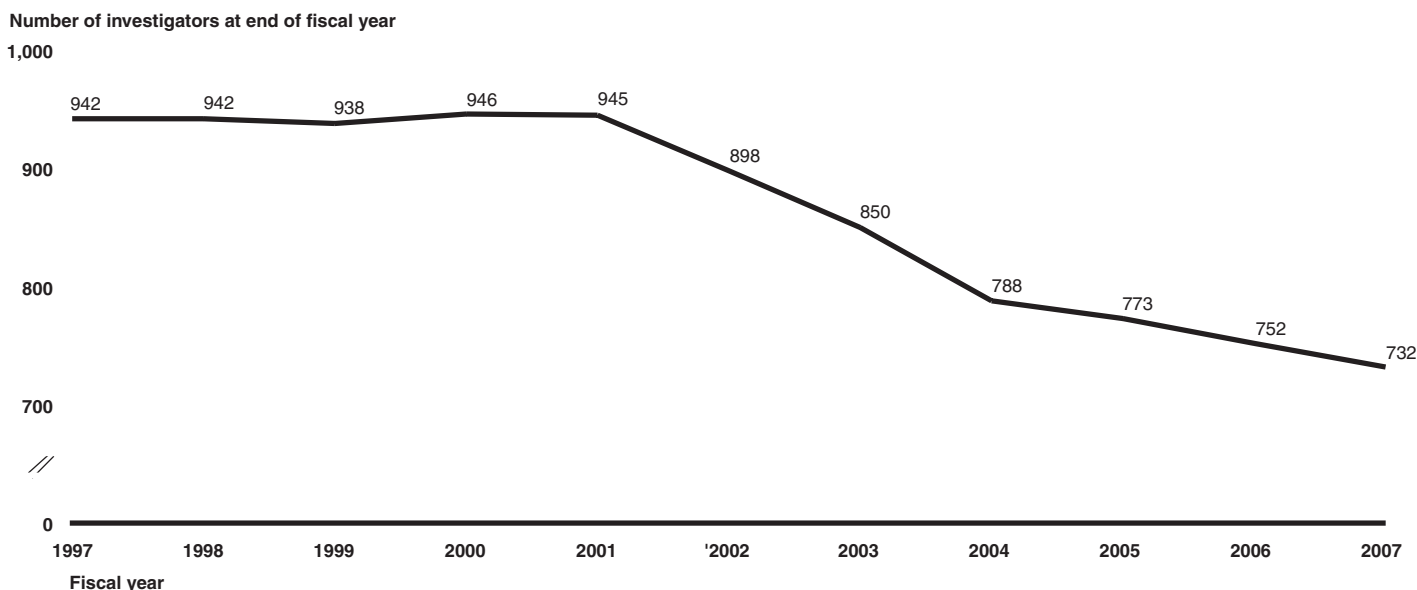


Source: GAO analysis of WHD data.

In addition, WHD attributed the decrease in the number of enforcement actions to three factors. First, the proportion of comprehensive investigations, which require more staff time than other types of enforcement actions, increased over this period—from 39 percent of all enforcement actions in 2000 to 51 percent in 2007.¹² Agency officials said that WHD emphasized comprehensive investigations in an effort to increase future compliance because they provide an opportunity for WHD to educate employers about the laws under its jurisdiction. Second, officials cited the decrease in the agency’s investigative staff—and the loss of experienced investigators in particular—as reasons for this trend. As shown in figure 2, the number of investigators decreased over this period by more than 20 percent, from 942 in 1997 to 732 in 2007. Finally, a senior WHD official told us that the agency now screens out complaints that are not likely to result in FLSA violations more effectively than it did previously.

¹²Although reliable data on the number of enforcement actions WHD conducted from 1997 to 2007 were available, data on the types of enforcement actions WHD conducted prior to 2000 were not reliable and therefore are not included in this statement.

Figure 2: Number of WHD Investigators, 1997 to 2007



Source: GAO analysis of WHD data.

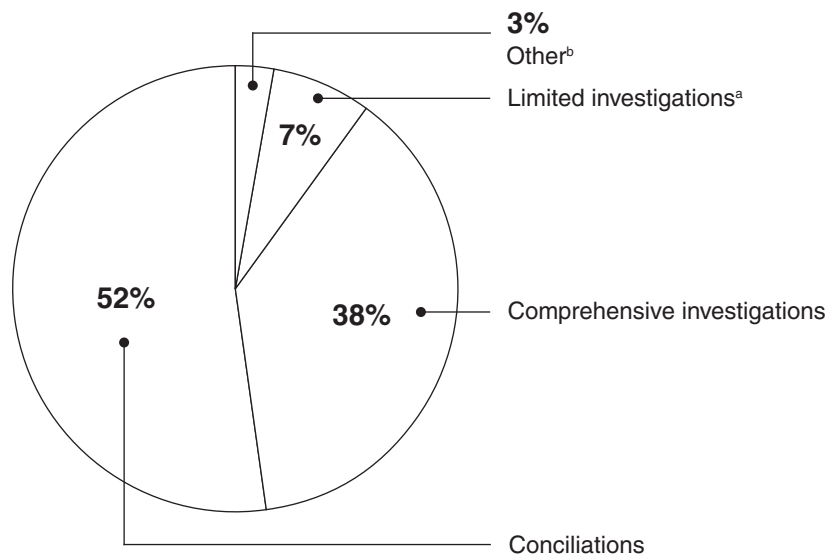
WHD Responds to Most Complaints with Conciliations

The majority (72 percent) of WHD's enforcement actions were initiated in response to complaints from workers. From 2000 to 2007, more than half of these enforcement actions—approximately 52 percent—were conciliations, which WHD conducted over the phone.¹³ Conciliations were also the quickest type of enforcement action—taking 2½ hours, on average, compared to nearly 35 hours, on average, for other types of enforcement actions. However, conciliations are generally limited to a complaint about a single violation involving only one worker. Although this enforcement action allows initial complaints to be quickly closed, a WHD-commissioned study found conciliations to be associated with an increased probability of detecting violations in subsequent investigations of a specific employer. Further information on complaints handled via conciliations can be found in a companion GAO testimony being released

¹³ Although data on the source of WHD's enforcement actions (i.e., whether the actions were initiated by complaints from workers or by WHD) were available for the entire period from 1997 to 2007, as noted previously, reliable data on the types of enforcement actions conducted by WHD was not available prior to 2000.

today for this hearing.¹⁴ Nearly all of the remaining enforcement actions initiated by complaints from workers were comprehensive investigations (38 percent) or limited investigations (7 percent). See figure 3 for the types of enforcement actions WHD conducted in response to complaints from 2000 through 2007.

Figure 3: Enforcement Actions Used to Respond to Complaints, 2000 to 2007



Source: GAO analysis of WHD data.

^aLimited investigations have a narrower scope than comprehensive investigations. For example, a limited investigation could focus on a particular employee or employees, a department at the employer's worksite, an employment practice, a particular time frame, one law under WHD's jurisdiction, or one section of FLSA.

^bOther enforcement actions include self-audits, in which employers conduct fact finding and resolve problems under WHD's supervision, and office audits, in which employers visit WHD and provide the records requested.

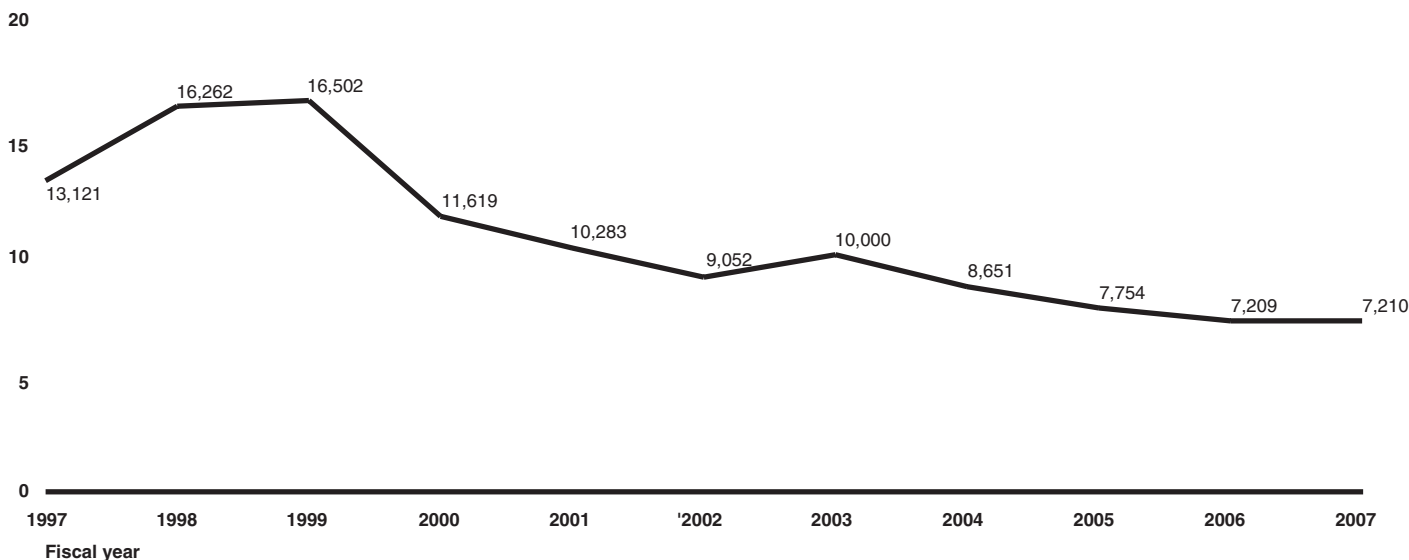
¹⁴GAO. *Department of Labor: Cases Studies from Ongoing Work Show Examples in Which Wage and Hour Division Did Not Adequately Pursue Labor Violations*, [GAO-08-973T](#). (Washington, D.C.: July 15, 2008).

WHD-Initiated Actions Have Decreased and Have Targeted the Same Industries

From 1997 to 2007, the number of WHD-initiated enforcement actions declined by 45 percent, as shown in figure 4. As a proportion of all enforcement actions, those initiated by WHD decreased slightly over the period, from 28 percent of all actions in 1997 to 24 percent in 2007.

Figure 4: WHD-initiated Enforcement Actions, 1997 to 2007

Number of enforcement actions (in thousands)



Source: GAO analysis of WHD data.

From 2000 to 2007, in planning and conducting WHD-initiated enforcement actions, the agency primarily targeted four industry groups: agriculture, accommodation and food services, manufacturing, and health care and social services.¹⁵ These four industries generally coincide with those for which WHD had strategic initiatives for increasing compliance for several years: agriculture, restaurants, garment manufacturing, and health care. The agency conducted the largest proportion of WHD-initiated enforcement actions—22 percent—in the accommodation and food services industry. However, at the same time, WHD increased its focus on the agriculture industry from 7 percent of WHD-initiated enforcement actions in 2000 to 20 percent in 2007. The majority of enforcement actions in the agriculture industry—82 percent—were initiated by WHD, while

¹⁵Reliable data regarding industrial classification were not reliable prior to 2000 and are not included in our statement.

actions in all other industries were usually initiated as a result of complaints.

The number of enforcement actions and the proportion of WHD-initiated enforcement actions varied among WHD's five regions. For example, WHD's Southeastern region conducted the largest number of enforcement actions—approximately 128,000 from 1997 to 2007. In contrast, the Western region conducted the fewest—approximately 44,000. In addition, because the Western region had a smaller workload of enforcement actions initiated by complaints, nearly half of its enforcement actions conducted from 1997 to 2007 were initiated by WHD, compared to only 14 percent for the Southeastern region. Agency officials said that when states have no minimum wage or overtime standards, or weak enforcement of such laws, WHD regions in which those states are located have heavier complaint workloads. Across WHD's five regions, regions with a greater proportion of states with a minimum wage below the federal level¹⁶ also had a greater proportion of enforcement actions that were initiated by complaints.

Total Amount of Back Wages Assessed by WHD Have Increased, but the Use of Penalties is Limited

In the majority of its enforcement actions—approximately 75 percent from 2000 to 2007—WHD found employers in violation of FLSA, and most of these violations were of the overtime provisions of FLSA. In 2007, for example, nearly 85 percent of the FLSA violations WHD found were related to overtime, while 14 percent were minimum wage violations, and 2 percent were violations of FLSA's child labor provisions.¹⁷ When violations were found, employers agreed to pay some amount of the back wages owed to their workers approximately 90 percent of the time.¹⁸ In addition, the total amount of back wages employers agreed to pay increased by 41 percent, from approximately \$164 million in 2000 to about \$230 million in 2007—the highest amount for this period.¹⁹ Furthermore,

¹⁶This includes states with no state minimum wage.

¹⁷Due to rounding, these percentages do not add up to 100. In addition, less than 3 percent of FLSA violations found were violations of, for example, recordkeeping regulations or regulations requiring the display of informational posters. These violations are not attributable to the overtime, minimum wage, or child labor provisions of FLSA, and are not associated with the payment of back wages or penalties, and are therefore not included in our calculations.

¹⁸We did not include data on back wages assessed by WHD prior to 2000 because they were not reliable.

¹⁹The amounts shown are in current dollars.

the average amount of back wages per enforcement action nearly doubled, increasing from approximately \$5,400 per enforcement action in 2000 to \$10,500 in 2007. In those cases in which employers agreed to pay, most (about 94 percent) resulted in employers agreeing to pay the full amount they owed to workers. However, in 6 percent of the cases, employers agreed to pay less than the amount they owed—an average of 24 cents for each dollar owed. In addition, WHD could not provide us with data on the amount of back wages assessed that were collected because WHD does not track this information in their WHISARD database.

In addition to assessing back wages from employers found to be in violation of FLSA, WHD may also assess penalties for repeated or willful violations, or for child labor violations, but the agency made limited use of these penalties from 2000 to 2007.²⁰ WHD assessed penalties for 6 percent of the enforcement actions conducted during this period in which it found FLSA violations.²¹ This percentage increased to a peak of almost 9 percent in 2001, before falling steadily to under 5 percent in 2006.

Partnerships and Outreach Activities Represent a Small Proportion of WHD's Workload

Partnerships and outreach represent a small proportion of WHD's compliance activities, constituting about 19 percent of all WHD staff time from 2000 to 2007.²² From 1999 to 2007, the agency established 78 formal partnerships, 67 of which were still in place as of March 2008.²³ Its earlier partnerships were largely with state governments, while more recent partnerships were primarily with employer groups. Other partnerships

²⁰ A repeat violation is a violation in which the employer previously violated the minimum wage or overtime requirements of FLSA, provided the employer was previously notified by WHD that it had allegedly violated the law, or if a court or other tribunal found a previous violation, unless that finding was appealed or set aside. A willful violation is one in which the employer knew its conduct was prohibited by FLSA or showed reckless disregard for the requirements of FLSA. In determining whether a violation is willful, WHD takes into account all of the facts and circumstances surrounding the violation.

²¹ FLSA limits the assessment of penalties to investigations in which willful, repeat, or child labor violations are found.

²² According to WHD officials and agency data, the large majority of partnership agreements entailed outreach activities. Joint enforcement actions were mentioned in a small proportion of partnership agreement documents, though WHD officials and a WHD partner reported that the agency was not fully participating in these joint enforcement efforts. Therefore, time spent on partnerships was almost completely accounted for in outreach event time, and our analysis groups the two strategies together.

²³ Partnership agreement documents were not available for partnerships formed prior to 1999.

included worker associations, foreign consulates, and other agencies within the federal government. Overall, there was limited growth in the number of partnerships that WHD established, with a peak of 15 in 2004.

According to its partnership agreements, WHD sought to utilize partnerships in several ways to improve FLSA compliance. The most common partnership activity was education, which was specified in 94 percent of partnership agreements. Education encompasses a number of activities, including WHD attendance at seminars and training sessions regarding wage and hour laws and the distribution of pamphlets and other educational materials to workers and employers. The second most common partnership activity was complaint referrals. More than half of the partnership agreement documents contained language that encouraged or provided guidelines for partners to refer relevant complaints to WHD and, in the case of other governmental partners such as state labor agencies, for WHD to refer cases to them.

Other partnership activities included

- monitoring agreements, which provided guidelines for employers to use in monitoring themselves or their contractors for potential FLSA violations and reporting violations to WHD;
- sharing of enforcement information, mainly used in partnerships with other federal or state enforcement agencies; and
- bilingual assistance, which included the distribution of educational materials in foreign languages and assistance with translation of wage and hour regulations.

From 2000 to 2007, WHD conducted approximately 13,600 FLSA-related outreach activities such as seminars, exhibits, media appearances, and mailings.²⁴ During this period, the percentage of staff time spent on outreach events decreased, from approximately 22 percent in 2000 to 13 percent in 2007. From 2003 to 2007, the largest proportion of outreach events targeted employers, although more diverse audiences have been included in recent years. Over this period, employers were the intended

²⁴ Although the recording of data regarding outreach activities was not mandatory prior to 2003, WHD officials said that the entry of time spent on outreach as well as a record of the event was required in order for staff to be paid, so we have included those data for 2000 through 2007. All other outreach data reported include only events from 2003 to 2007.

audience for 46 percent of the outreach events WHD conducted. In contrast, workers were the intended audience for 14 percent of events. However, over this period, WHD began to target more diverse groups of non employer groups, including schools, governmental agencies, and community-based organizations.

WHD Does Not Effectively Use Available Information and Tools in Planning and Conducting Its Compliance Activities

In planning and conducting its compliance activities, WHD does not effectively use available information and tools. First, WHD does not use information, such as data on the number of complaints each office receives or the backlog of complaints for each office, or other information, such as input from external groups. This information could help the agency manage its workload and allocate its staff resources accordingly. Second, in targeting employers for investigation, WHD focused on employers in the same industries from 1997 to 2007, despite findings from its commissioned studies intended to help it focus on low wage industries in which FLSA violations are likely to occur. Finally, the agency may not sufficiently leverage existing tools such as hotlines and partnerships to improve compliance with FLSA.

WHD Does Not Use Available Information to Inform Its Planning Efforts

In planning its FLSA compliance activities, WHD does not use the following information to focus its work:

Information on complaints received from workers. WHD does not use key information regarding the complaints it receives from workers that could help the agency manage its workload. First, WHD does not have a consistent process for documenting the receipt of, or actions taken in response to, complaints. According to guidance on GPRA planning, understanding customers' needs, such the demand for WHD's services in response to complaints, is important to help ensure that an agency aligns its activities, processes, and resources to support its mission and help it achieve its goals.²⁵ Although WHD's *Field Operations Handbook* provides guidelines for recording complaints, and there is a complaint intake screen in the agency's WHISARD database, the handbook also states that, even if a complaint indicates probable violations, it may be rejected by district office managers based on factors such as the office's workload or available travel funds. Therefore, WHD staff usually enter a complaint into

²⁵GAO. *Executive Guide: Effectively Implementing the Government Performance and Results Act*, GAO/GGD-96-118 (Washington, D.C.: June 1996).

the database only when it is likely to result in finding of violations. In addition, although one office we visited maintained separate logs of all complaints received, WHD does not require all complaints, including the actions taken, to be recorded. As a result, WHD does not have a complete picture of all of the complaints it receives and the agency cannot be held accountable for the actions it takes in response to complaints.

Backlogs of complaints. Although the number of complaints each office receives greatly affects its workload and ability to initiate investigations, WHD does not have a consistent process for tracking information on complaint backlogs across its offices. For data to be useful to GPRA planning and an agency's decision making, they must be complete, accurate, and consistent. WHD officials told us that the agency's offices vary in how they track their backlogs of complaints. However, headquarters officials said that they do not track the regional or district offices' backlogs, nor do they know how they are measured. Therefore, WHD cannot consider these backlogs in its planning efforts, including its allocation of staff resources to its regional and district offices.

Input from external groups such as employer and worker advocacy organizations with an interest in WHD's activities. In the past, WHD held meetings with external stakeholders—organizations with an interest in the agency's activities—at a national level, but more recently, the agency has relied on second-hand information from its district offices to identify the concerns of these groups. GAO has reported that it is important to involve external stakeholders in the planning process, such as developing goals and performance measures.²⁶ Agencies that have involved these external groups report that this cooperation has allowed them to more effectively use their resources. According to agency headquarters officials, prior to 2000, WHD held meetings at a national level with external organizations such as industry groups, advocates, unions, and state officials. Around 2000, WHD began relying instead on its district office staff to gather input on external stakeholders' concerns and provide this information at WHD's annual planning meetings. However, these planning meetings are not held until after the agency's national and regional priorities are set, thereby limiting external stakeholder input in the early phases of the process. In addition, WHD headquarters officials said its district offices report input from external stakeholders as part of

²⁶GAO, *Managing for Results: Strengthening Regulatory Agencies' Performance Management Practices*, GAO/GGD-00-10 (Washington, D.C.: Oct. 28, 1999).

annual performance reports submitted to the regional offices. However, we found little evidence of stakeholder recommendations in WHD's planning and reporting documents.

State labor regulations and levels of enforcement. In planning the allocation of staff to its regional offices, WHD does not consider information on state labor laws or the extent to which these laws are enforced for the states covered by the district offices in each region. According to GPRA guidance, understanding the external environment in which its offices operate should be a key part of WHD's strategic planning process.²⁷ Because WHD offices in states with weaker labor laws or enforcement may receive more complaints, these factors may directly affect the workload of WHD's district offices. For example, according to WHD officials, because the state of Georgia does not conduct investigations of overtime or minimum wage violations, the Atlanta WHD district office has a heavy workload of complaints regarding these issues. Officials told us that WHD headquarters does not consider state laws or enforcement in making allocations of investigators to its regions, and that each region has been allocated approximately five investigators each year for the past few years.

WHD Did Not Change How It Targets Its WHD-Initiated Investigations, despite Information from Its Studies of Low Wage Industries

From 1997 to 2007, in targeting employers for investigation, WHD focused on employers in the same industries despite obtaining information from its commissioned studies on low wage industries in which FLSA violations are likely to occur. During its annual planning process, the agency develops national and local initiatives that focus on selected industries in which it will conduct investigations. Individual employers within these industries are often selected for these WHD-initiated investigations in one of two ways. WHD either obtains a statistical sample of employers or selects them using the judgment of its staff—for example, by looking through a telephone directory of local businesses.

Over this period, WHD considered low wage workers to be most vulnerable to FLSA violations, but it did not clearly define who these workers were or identify the industries in which they were concentrated until 2004. Instead, according to WHD officials, the agency relied primarily on its historical enforcement data—the majority of which consisted of

²⁷GAO. *Executive Guide: Effectively Implementing the Government Performance and Results Act*, [GAO/GGD-96-118](#) (Washington, D.C.: June 1996).

actions initiated by complaints—and observations from regional and district officials to focus its compliance activities. WHD centered its work on nine industries, and based many of its performance indicators on garment manufacturing, nursing homes, and agriculture. However, district officials told us that it was difficult to contribute to all of these national goals because few of WHD’s offices are located in areas that have a substantial number of employers in the garment manufacturing industry to investigate.

To ensure that all of its offices could contribute to its national goals, and that industries in which workers are less likely to complain were included in its plans, WHD changed its focus to include more low wage industries. In 2002, the agency commissioned a series of studies to define the population of low wage workers, and to determine in which industries these workers were most likely to experience minimum wage and overtime violations. Researchers used data from the Bureau of Labor Statistics to estimate how common and severe minimum wage and overtime violations were throughout all industries. They found that 33 industries had a high potential for violations of the minimum wage and overtime provisions of FLSA, including 9 that ranked highest nationally for violation potential.²⁸ However, since the completion of the studies in 2004, WHD has not used this information to substantially refocus its efforts or target its investigations. The proportion of WHD-initiated investigations targeting these top 9 industries has risen by approximately 2 percent since 2004. Therefore, the investigations initiated by WHD may not have addressed the needs of low wage workers most vulnerable to FLSA violations.

Local WHD officials also told us that despite the results of these studies, the focus of their investigations has not substantially changed. For example, the agriculture industry, which is not on the national list of 33 priority industries, was the focus of 16 percent of WHD-initiated investigations from 2005 to 2007. In addition, WHD headquarters officials told us that the agency cannot regularly measure its progress in improving compliance in the 33 industries because it does not have the resources needed to conduct the investigations it uses to evaluate whether

²⁸The top nine industries identified as those with the highest potential for minimum wage and overtime violations were construction; eating and drinking places; certain health services, such as medical laboratories and home health care; grocery stores; hospitals; elementary and secondary schools; certain business services, such as photo finishing; child day care services; and hotels and motels.

compliance has improved. Finally, most district-level WHD officials told us they were not aware of the specifics of these commissioned studies. For example, at one WHD district office, the managers told us brief presentations on some of the studies were provided at management meetings, but copies of the full studies were not provided, and investigators we spoke with at this office said they were not aware of the studies and therefore could not incorporate the results of these studies into planning their work.

WHD Does Not Sufficiently Leverage Existing Tools to Increase Compliance

WHD does not sufficiently leverage its existing tools to increase compliance. These include the following:

Use of penalties for willful and repeat violations. WHD does not know the extent to which it has leveraged its statutory penalty authority because it does not track how often willful or repeat violations are found. WHD can assess penalties when employers willfully or repeatedly violate FLSA but WHD does not track how often it finds repeated or willful violations or when penalties are not assessed for such violations. In addition, a study commissioned by WHD showed that, when employers are assessed penalties, they are more likely to comply in the future and other employers in the same region—regardless of industry—are also more likely to comply. Although the agency has occasionally addressed the use of penalties in its performance plans—for example, by including a measure for increasing the use of penalties and other remedies in its 2007 plan—WHD managers did not emphasize the importance of these tools by including them in the agency’s performance reports, which are used by external groups to hold the agency accountable. Furthermore, there was no quantifiable goal associated with the measure in the 2007 plan, and officials told us that it was intended only as a reminder to staff that penalties were one tool they could use to encourage compliance.

Collection of back wages and penalties. WHD began collecting more data on its enforcement actions in 2000 with the introduction of its WHISARD database. However, the agency does not use information on whether back wages and penalties assessed are collected to determine whether it is fulfilling its mission of ensuring that workers receive the wages they are owed or verify that employers are being penalized for violating FLSA, respectively. WHD headquarters officials in charge of strategic planning told us they do not know whether back wages or penalties are collected from employers, although this information is tracked in its financial accounting systems. They also could not provide

information on how long it takes the agency to collect back wages or penalties.

Hotlines and office telephone lines. WHD is not fully utilizing its hotlines or its regular office telephone lines to reach potential complainants. WHD has set up some hotlines through partnerships, but these hotlines are not always effective. For example, one partnership set up a hotline targeted toward Latino workers and hosted by the Mexican Consulate. One member of the partnership said that she tested the hotline repeatedly over 6-month period but the phone was never answered. When we made test calls to this hotline asking about wage-related issues, staff either did not refer us to WHD or other government agencies or did not return our calls. Phone systems also vary among WHD's offices, and only some have the capacity to take messages outside of office hours, when workers with complaints may be more likely to call. For example, at one district office, we were told that they did not have an answering machine on which callers could leave messages after hours because they had no one to return these calls during the day. In addition, state officials and advocates said that some local WHD offices are not always available by phone to help callers with detailed questions. At one district office we visited, investigators said that calls went straight to a voice mail system, where callers were instructed to leave a message and wait for a return call from WHD staff.

Partnerships. Although partnerships can help WHD leverage resources and reach potential complainants, some of WHD's partners, including state labor agency officials, told us that WHD does not always provide adequate support to its partnerships. First, some state officials said that WHD does not notify them of the status of complaints or of actions taken. For example, one state official told us about a case in which an employer violated state and federal labor laws, but WHD settled with the employer without consulting state officials. The state officials said they were unhappy with the settlement, mainly because it resulted in the employer paying less in back wages. Second, WHD has not allowed its investigators to take part in some joint investigations with state labor agencies or send investigators to events intended to help educate the worker community. Third, several of WHD's partners told us that the agency has not provided adequate financial support for outreach events, leaving the funding to nonprofit organizations. For example, WHD officials in Houston told us that, although one of its partnership's billboards advertising a hotline for Latino workers needed to be replaced, the office was unable to provide any funding to replace them because WHD headquarters had not approved the funds. In California, WHD officials told us they do not support

expanding the agency's Employment, Education, and Outreach (EMPLEO) partnership—which received an award from Harvard University's Kennedy School of Government for successful innovation—to other areas of the state or hold certain outreach events because these efforts would generate more referrals than the agency could handle.

The Extent to Which WHD's Activities Have Improved FLSA Compliance Is Unknown

The extent to which WHD's activities have improved FLSA compliance is unknown, because WHD frequently changes both how it measures and how it reports on its performance. When agencies provide trend data in their performance reports, decision makers can compare current and past progress in meeting long-term goals. While WHD's long-term goals and strategies have generally remained the same since 1997, WHD often changes how it measures its progress, keeping about 90 percent of its measures for 2 years or less. According to WHD officials, the agency decided to discontinue some of its measures either because they had been met or because WHD realized they were not appropriate. In addition, while WHD specified a number of performance measures each year in its planning documents, it included less than one-third of them in its annual performance reports. Moreover, although WHD established a total of 131 performance measures throughout the period from 1997 to 2007, it reported on 6 of them for more than 1 year. This lack of consistent information on WHD's progress in meeting its goals makes it difficult to assess how well WHD's efforts are improving compliance with FLSA.

Since the first time Labor was required to report on its performance in 1999, WHD has included similar performance goals and strategies related to its FLSA compliance activities in its annual performance reports. For 1999 to 2006, WHD had the general outcome goal of increasing compliance with worker protection laws and, by 2002, also had a more program-specific goal of ensuring that American workplaces legally, fairly, and safely employed and compensated their workers. For 2007, the agency reported on the program-specific goal of ensuring workers received the wages due. Also, from 1999 to 2007, the agency reported on how it used its three types of compliance activities—enforcement, outreach, and partnerships—to reach its goals.

While its goals and strategies did not change, WHD often changed how it measured its progress. From 1997 to 2007, WHD included 131 FLSA-related performance measures in its plans but kept about 90 percent of these for 2 years or less. A majority of these measures—67 percent—were reported for only 1 year. Furthermore, for most of the period from 1997 to 2007, WHD had strategic initiatives for improving compliance in its targeted

industries—agriculture, garment, and health care—as well as a strategic initiative designed to measure and reduce recidivism by re-investigating employers it had previously investigated and found in violation of FLSA. However, the agency also frequently changed how it measured progress in both of these areas. For example, although WHD had 10 performance measures for improving compliance in agriculture from 1997 to 2007, it kept only 1 of them for more than a year. These frequent changes to its performance measures have affected the ability of agency officials and outside observers to understand WHD’s progress and for agency officials to make decisions for future strategic planning. In a recently issued study WHD commissioned to obtain recommendations for future performance measures for reducing recidivism, researchers found that they could not assess the agency’s progress to date because of the frequent changes in its measures.

According to WHD officials, the agency discontinued some of its performance measures because they had been met or were not appropriate. Specifically, WHD officials stated that during their annual planning process, they make ongoing refinements to their performance measures. Throughout the years, the agency has decided to discontinue measures for several reasons, including (1) the agency data it used to assess its progress in meeting the measure were not reliable; (2) agency staff did not understand how the measures related to their work; (3) staff did not believe the agency could influence the measure through its work; (4) the issue the measure was attempting to address was no longer relevant; and (5) the agency had met the targets for the measure repeatedly. For example, although growers typically rotate their crops annually, WHD’s performance measures for the agriculture industry focused on compliance among growers of specific crops, such as lettuce and tomatoes. After 4 years of using various performance measures based on crops, WHD realized that because growers often change crops, this approach was not measuring compliance for the same group of growers over time and discontinued using these measures.

In addition to frequently changing its performance measures, WHD does not report on many of the measures. While WHD specified a number of performance measures each year in its planning documents, it included less than one-third of them in its annual performance reports. Of the 131 FLSA-related performance measures, WHD reported on 40 of them (29 percent) in its annual performance reports. WHD officials attributed this lack of reporting to departmental space limitations in annual reports.

Moreover, although WHD reported on 40 of its performance measures from 1999 to 2007, it reported on only 6 of them for more than 1 year. The agency met 30 of its goals (75 percent) for the measures on which it reported, and meeting the goals was among the reasons WHD officials cited for discontinuing the use of some measures. However, nearly half of the measures WHD met were designed to establish baselines for understanding the current state of compliance or an agency process; they were not meant to measure agency progress. Overall, the lack of consistent reporting further complicates the ability of those within and outside the agency to assess how well WHD's efforts have improved compliance with FLSA.

Conclusions

While WHD is responsible for protecting some of the basic rights of U.S. workers by enforcing FLSA, it does not know how effectively it is doing so. As with all government agencies, WHD must determine how to strategically manage its limited resources to help ensure the most efficient and effective outcomes. Although WHD has been challenged by reductions in its investigative staff, it has not used all available information to promote compliance, such as the studies in which it has invested that could inform how it targets employers for WHD-initiated investigations. In addition, it has not fully leveraged available tools, such as hotlines, office phone lines, and partnerships, that could extend its reach or tracked penalties and collection of back wages to know their impact on compliance. Furthermore, by not consistently measuring and reporting its progress in meeting the unchanging goal of ensuring FLSA compliance, the agency is unable to account for its progress more than a decade after GPRA implementation.

Recommendations for Executive Action

To more effectively plan and conduct its compliance activities, we recommend that the Secretary of Labor direct the Administrator of WHD to

- enter all complaints and actions taken in response to complaints in its WHISARD database, and use this information as part of its resource allocation process;
- establish a process to help ensure that input from external stakeholders, such as employer associations and worker advocacy groups, is obtained and incorporated as appropriate into its planning process;

-
- incorporate information from its commissioned studies in its strategic planning process to improve targeting of employers for investigation; and
 - identify ways to leverage its existing tools by improving services provided through hotlines, office phone lines, and partnerships, and improving its tracking of whether penalties are assessed when repeat or willful violations are found and whether back wages and penalties assessed are collected.

To provide better accountability in meeting its goal of improving employer compliance, we recommend that the Secretary of Labor direct the Administrator of WHD to establish, consistently maintain, and report on its performance measures for FLSA.

Agency Comments

We held a meeting with WHD officials on June 20, 2008, in which we discussed our findings and recommendations in detail. At that meeting, they provided comments on our recommendation regarding obtaining input from external stakeholders. We adjusted the recommendation to indicate that they consider stakeholder input only as appropriate. They also indicated that their priorities do not currently include entering information on all complaints received from workers. However, their database would allow them to enter this information. In addition, we provided a copy of our draft statement to WHD, but the agency declined to comment on it prior to the hearing.

Mr. Chairman, this completes my prepared statement. I would be pleased to respond to any questions you or other members of the Committee may have.

GAO Contacts

For further information, please contact Anne-Marie Lasowski at (202) 512-7215. Individuals making key contributions to this testimony include Revae Moran, Danielle Giese, Amy Sweet, Miles Ingram, Susan Aschoff, Sheila McCoy, John G. Smale, Jr., Jerome Sandau, and Olivia Lopez.

Attachment I: Scope and Methodology

To identify the trends in WHD's FLSA investigations and other compliance activities from fiscal year 1997 to 2007, we obtained and analyzed data from WHD's Wage and Hour Investigator Support and Reporting Database (WHISARD). The data included information on WHD's enforcement actions, back wages, penalties, partnerships, and outreach activities. All data we reported were assessed for reliability and determined to be sufficiently reliable for the purposes of this statement. In addition, we gathered quantitative and qualitative information from agency officials on factors that may have influenced these trends, including staff resources. To assess the effectiveness of WHD's planning and implementation of compliance activities and whether these activities led to improvements in FLSA compliance, we analyzed WHD's annual performance plans and reports in light of GAO's work and guidance on strategic planning and performance management for regulatory agencies. In addition, we examined performance assessments conducted by outside experts at WHD's request.

Finally, for all of these research objectives, we interviewed WHD officials at the national and regional level and external organizations representing employers and employees affected by WHD's compliance activities and visited WHD and state offices in California, Georgia, New Hampshire, Texas, and Wisconsin. We selected these states using several criteria that would provide a mix of characteristics, including the concentration of hourly workers earning at or below the federal minimum wage in each state; the number of formal agreements between WHD and state or local organizations; and geographic diversity. We also made test calls to WHD's local and national hotlines. In addition, we reviewed all relevant laws and regulations. We conducted this performance audit from August 2007 through July 2008 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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