

Outcome Goal 2.1 – Increase Compliance with Worker Protection Laws

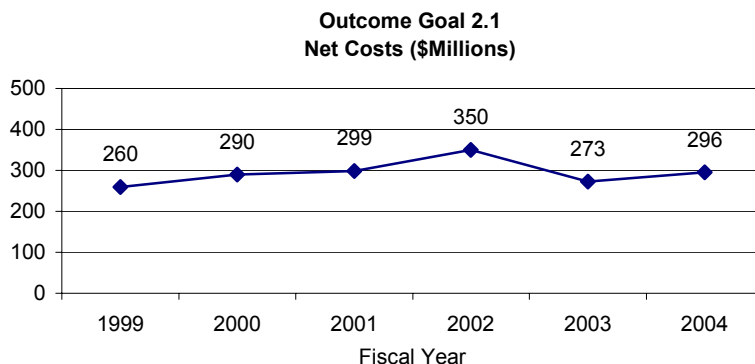
In a global economy, the Employment Standard Administration’s (ESA) primary challenge in building a competitive workforce is to ensure that protections for workers are appropriate for – and keep pace with – the changes occurring in the American workforce. Virtual workplaces, aging workers, more women and minorities in the workforce, immigration, organized labor, the growth of small businesses, and the ongoing shift from a manufacturing to a service economy will all be important factors as U.S. businesses strive to comply with worker protection laws in the future.

Under the Fair Labor Standards Act, the Migrant and Seasonal Agricultural Worker Protection Act, the Family and Medical Leave Act and the Service Contract Act, ESA’s Wage and Hour Division (WHD) administers standards for wages and working conditions: the minimum wage, overtime, youth employment, and field sanitation standards in the agriculture industry. Under the Davis-Bacon Act, WHD determines prevailing wages in the construction industry. The key to ensuring worker protections is to focus on industries and employers with the most persistent and serious violations; to quickly resolve employee complaints; and to ensure accuracy in established wage rates. ESA's Office of Labor-Management Standards (OLMS) ensures union transparency, financial integrity, and democracy by administering and enforcing the Labor-Management Reporting and Disclosure Act (LMRDA). OLMS responsibilities under the Act include compliance assistance; civil and criminal investigations and enforcement; union compliance audits; and reports/public disclosure administration. OLMS’ strategies are aimed at improving timeliness and quality of union reports filed for public disclosure and strengthening LMRDA compliance through union audits and outreach efforts.

Goal (Agency) – Period Goal Statement [Achievement]	Performance Summary
<p style="text-align: center;">2.1A (ESA) – FY 2004</p> <p>Covered American workplaces legally, fairly, and safely employ and compensate their workers. [Substantially Achieved]</p>	<p>The Department reached targets for customer service and for increasing compliance with the Fair Labor Standards Act (FLSA) in the garment manufacturing, long-term health care, and agricultural commodities industries – industries with chronic FLSA violations. DOL did not reach its targets for reduction of FLSA recidivism and for increasing the percent of nursing home workers employed in compliance. The target for timely and accurate prevailing wage determinations was reached.</p>
<p style="text-align: center;">2.1B (ESA) – FY 2004</p> <p>Advance safeguards for union financial integrity and democracy and the transparency of union operations. [Achieved]</p>	<p>The Department reached targets increasing union financial integrity and for increasing union transparency.</p>

Net Cost of Programs

FY 2004 program costs of \$296 million supported ESA's Wage and Hour Division (WHD) and Office of Labor-Management Standards (OLMS) programs. This is an increase of 8% (\$23 million) over FY 2003. The WHD budget increased to cover operating expenses. Approximately 75 percent of WHD's resources are devoted to complaint investigations and resolution. The success of this effort is reflected in the FY 2004 performance results that show ESA decreased the average number of days to conclude a complaint from 108 to 92 days.



Results Summary

DOL achieved one performance goal and substantially achieved the other. WHD decreased the average number of days to conclude a complaint from 108 days to 92 days, greatly improving performance, and also increased compliance in industries with chronic violations in the garment manufacturing, long-term health care, and agricultural commodities industries. A FY 2004 survey found 55 percent of nursing homes in compliance and 90 percent of industry employees paid in compliance with the FLSA. WHD added ten compliance assistance programs to the three previous ones, affecting over 900,000 agricultural employers. Following WHD investigations 335 agricultural housing providers corrected violations, an increase from 256 in FY 2003. WHD did not reach its target for reduction of employer FLSA violation recidivism. The Davis-Bacon Act (DBA) wage determination program reached targets to establish a wage determination processing baseline and to issue 80 percent of all survey-based DBA wage determinations within 60 days.

DOL reached both of its union financial integrity targets. OLMS established a fraud baseline of nine percent of those unions filing reports under LMRDA; and the percentage of union reports meeting standards of acceptability increased in to 92 percent. Better union public disclosure reports resulted from agency compliance assistance efforts and increasing use of electronic reporting formats.

"A new way of doing business, where government goes directly to the people in an effort to better serve and protect." This is how operation COACH (Compliance Outreach to Asian Communities and Hispanics) has been described by northern New Jersey local media. This innovative program has also sparked positive response from community groups. The Wage and Hour Division (WHD) instituted this program in December 2003 to promote awareness of WHD laws and programs in the Asian and Hispanic communities, and to work directly with employers and workers who traditionally have been reluctant to seek WHD's services. Under COACH, WHD investigators have visited over 650 businesses that employ more than 4,540 workers. Seventy-four percent of the businesses reached were either Asian or Hispanic owned. Fifty-nine percent of all the businesses visited indicated that prior to COACH, they had no knowledge of or experience with WHD. Over ninety-five percent offered that they did not know how to reach the local WHD office or even how to access the DOL web page. Much of the operation's success is attributed to a non-adversarial compliance assistance based strategy that emphasizes face-to-face contact and bilingual investigators.

Photo credit: Nancy Vazquez-Gunatilaka, DOL Investigator



Future Challenges

ESA faces many challenges to meeting its goal of achieving compliance with worker protection laws. In FY2005, WHD will continue working within established employer partnerships; seeking new such agreements; and continuing compliance assistance to employers and employees. WHD will also transition to goals and measures that more fully capture compliance in a broad spectrum of low-wage industries; continue its targeted compliance assistance programs; continue self-directed investigations in industries with chronic violations; and reinvestigate employers where future compliance is uncertain.

Performance success in the wage determination program depends on upgrades in information technology. WHD is working to combine the DBA Wage Determination Generation and Automated Survey Distribution Systems into one automated data processing system that should greatly enhance the program's ability to obtain, store and distribute construction wage determinations.

Protect Workers' Wages

Performance Goal 2.1A (ESA) – FY 2004

Covered American workplaces legally, fairly, and safely employ and compensate their workers.

Indicators

Ensuring continued customer service by maintaining the average number of days to conclude a complaint;

Reducing employer recidivism by increasing the percentage of prior violators who achieved and maintained FLSA compliance following a full FLSA investigation;

Increasing compliance in industries with chronic violations; and

Ensuring timely and accurate prevailing wage determinations.

Program Perspective

ESA's Wage and Hour Division (WHD) enforces laws establishing minimum standards for wages and working conditions. These include the minimum wage, overtime and youth employment provisions of the Fair Labor Standards Act; the Migrant and Seasonal Agricultural Worker Protection Act; and the Family and Medical Leave Act. WHD is also responsible for enforcing field sanitation standards in agriculture, and administers wage determination provisions of the Davis-Bacon Act.

The key to ensuring worker protections is to focus on industries and employers with the most persistent and serious violations; to resolve employee complaints expeditiously; and to ensure that established wage rates are accurate. By focusing compliance efforts in low-wage industries like agriculture, health care, and garment manufacturing, WHD seeks to protect those low-wage workers most likely to be paid less than legally required or unsafely housed. By reducing repeat violations, WHD can achieve lasting compliance on behalf of many employees. WHD ensures responsiveness by reducing the time it takes to resolve employee complaints. Timely and accurate prevailing wage determinations encourage efficiency and help ensure government contract workers receive the wages to which they are entitled.

A number of external factors influence WHD's program outcomes. As the supply of vulnerable immigrant workers increases, the potential for violations increases. Compliance levels in many low-wage industries are also heavily influenced by competitive pressures and by subcontracting arrangements in which smaller companies have little opportunity to influence market prices.

Results, Analysis and Future Plans

The goal was substantially achieved. Eight of ten targets were reached. The average number of days to conclude a complaint declined from 108 days to 92 days, reaching the complaint response target. DOL did not reach its target to reduce recidivism of prior violators; compliance for this group fell by two percentage points from the FY 2003 baseline of 73 percent. WHD reached all but one of the targets associated with increasing compliance in industries with chronic violations: garment manufacturing, long-term healthcare, and agricultural commodities. In the health care industry, WHD increased the percent of workers employed in compliance by 1.2 percentage points – just under the 2 percentage point target. Targets and results appear in the table below.

Industry	Action	Target	Performance	Achieved?
Garment	Increase employees "on the payroll" in NYC	1 Percentage Point	6 Percentage Points	Y
Garment	Increase manufacturers' monitoring of their Southern CA shops	2 Percent	2 Percent	Y
Long-term Health Care	Increase nursing home FLSA compliance	5 Percentage Points	15 Percentage Points	Y
Long-term Health Care	Increase employees paid in compliance with FLSA	2 Percentage Points	1.2 Percentage Points	N
Agricultural Commodities	Increase compliance among employers subject to DWHaT	2 Percent	Result are nearly 200 times baseline	Y
Agricultural Commodities	Increase corrected housing violations after intervention	1 Percent	31 Percent	Y

WHD also reached its timely and accurate prevailing wage determinations targets, establishing a baseline of 1491 wage determination data submission forms processed per 1,000 hours, and issuing 86 percent (13 of 15) wage surveys within 60 days, against a target of 80 percent.

WHD improved customer service responsiveness by updating complaint intake procedures, regular review of complaint inventories, streamlining procedures to ensure early contact with complainants, and through good fact development. WHD has established three key effective strategies to increase compliance in industries with a history of chronic FLSA violation: compliance assistance, enforcement and collaborative partnerships. In garment manufacturing, monitoring through unannounced visits, payroll record and timecard reviews, employee interviews have all proven effective. In the long-term care industry, compliance assistance, partnerships and enforcement have been effective in increasing FLSA compliance. Across the board, compliance assistance has been effective – dissemination of industry-specific fact sheets and employee rights cards, face-to-face employer consultations, and entering into compliance partnerships with several major nursing homes. In the agricultural industry, targeted compliance assistance and compliance partnerships have worked especially well. A FY 2004 partnership with the Tennessee Farm Bureau accounts for the greatest increase of employers impacted by a compliance partnership, with just over 500,000 members.

Over the last several years, the DBA wage determination program took steps to improve the accuracy and timeliness of prevailing wage determinations for the construction industry. Following OMB's PART review of the DBA wage determination program, WHD added timeliness and accuracy performance indicators – the two aspects of the DBA wage survey program that significantly impact wage determination performance.

WHD is using a new complaint indicator in FY 2005 and will concentrate on the number of days it takes to resolve *violation* complaints. This will prevent any unintentional emphasis on speed at the cost of finding and correcting violations. To reduce FLSA violation recidivism, WHD will promote long-term compliance among employers through detailed compliance agreements outlining agreed-upon steps for compliance; and reinvestigating cases where future compliance is uncertain. WHD will continue its transition to goals and measures that more fully capture compliance in a broad spectrum of low-wage industries. As a result, there will not be specific indicators for the health care and agriculture industries. However, WHD will continue its targeted compliance assistance programs and enforcement activities to promote housing and transportation compliance.

Performance success in the wage determination program depends on upgrades in information technology. WHD is working to combine the DBA Wage Determination Generation and Automated Survey Distribution Systems into one automated data processing system. This software development will greatly enhance the program's ability to obtain, store and distribute construction wage determinations.

Management Issues

Data used in reporting performance against goals are derived largely from the WHD Investigative Support and Reporting Database (WHISARD). An independent analysis conducted by the University of Tennessee this year found high levels of consistency between WHISARD data and case file information, with 90% or greater consistency on 25 of the 33 data elements. Other performance data sources are Wage Hour's statistically valid investigation-based compliance surveys, which are tabulated and reviewed by independent sources to ensure accuracy and completeness.

WHD has undertaken four program evaluations in FY 2004 focusing on: (1) identifying new compliance measures in low-wage industries; (2) integrating budget and performance information ; (3) conducting a cost/benefit analysis of recommendations to update the Youth Employment Hazardous Occupations rules; and (4) an assessment of WHD compliance assistance efforts. WHD will undertake two new evaluations next year: 1) the development of models to employ common compliance strategies across low-wage industries; and 2) an evaluation of the agency's compliance assistance web information.

In the spring of 2004, the Office of Inspector General issued a final report on WHD's Davis-Bacon Act wage determination program. A summary of the findings is included in Appendix 2 (Study 5). In the spring of 2003, WHD's Davis Bacon wage determination program was assessed through a Program Assessment Rating Tool (PART) review. The assessment found that the program did not demonstrate results. In response, WHD has developed overarching goals to ensure program performance improvements in determining and issuing prevailing wage rates with specific numeric targets. In addition, WHD contracted with an outside company to evaluate the Davis Bacon wage survey process.

Union Financial Integrity and Transparency

Performance Goal 2.1B (ESA) – FY 2004

Advance safeguards for union financial integrity and democracy and the transparency of union operations.

Indicators

Increasing union financial integrity: Baseline information on unions with fraud will be developed and performance targets will be established; and

Increasing union transparency. The percentage of union reports meeting standards of acceptability for public disclosure will increase to 75%.

Program Perspective

OLMS ensures union transparency, financial integrity, and democracy by administering and enforcing the Labor-Management Reporting and Disclosure Act (LMRDA). The Act requires annual publicly available union financial reports; establishes standards for union officer elections; and imposes criminal sanctions for union fund embezzlement. OLMS assists union compliance; conducts civil and criminal investigations, and compliance audits; and administers public disclosure of required reports. Improving the timeliness and quality of union reports filed for public disclosure and strengthening compliance through audits and outreach efforts are key strategies.

Results, Analysis and Future Plans

DOL reached both indicator targets for this performance goal.

Union Financial Integrity

OLMS audited a randomly selected sample of reporting unions to establish a baseline measure of union fraud. The survey established that fraud is indicated in nine percent of unions subject to the LMRDA. An audit finding of a criminal LMRDA violation, predominantly union funds embezzlement, was counted as an indicator of fraud. OLMS will seek to reduce the percentage of unions with fraud to 7.5 percent in FY 2005. Strategies to achieve the goal are union outreach, a visible audit presence, and a strong criminal enforcement program.

Union Transparency

Union reports meeting standards of acceptability increased to 92 percent. This resulted from agency compliance assistance efforts and increasing use of electronic reporting formats, which include error checks and report validation to assist filers in preparing complete and accurate reports. Increased union transparency is critical to promoting union democracy and financial integrity. In FY 2005, OLMS will increase compliance rates to 95 percent by continuing outreach and compliance assistance efforts, and increasing use of electronic forms.



When major revisions of annual reporting requirements for labor unions were announced on October 9, 2003, DOL's Office of Labor-Management Standards (OLMS) took extraordinary steps to make sure union officials would clearly understand the changes. OLMS hosted 155 seminars in 44 states, explaining to more than 5,000 union representatives the changes designed to promote union democracy and financial safeguards for millions of American union members. OLMS also issued 10,000 compliance guides; hosted a seminar in Washington, D.C. for 130 certified public accountants; held 29 special briefings for international unions; set up dedicated sections on its web site where unions can download reporting software and PowerPoint

presentations, and find answers to frequently asked questions (FAQs). OLMS has established an e-mail message service to notify interested subscribers of new FAQs, compliance assistance materials, and other developments. The photo was taken at an OLMS seminar in May for members of the Transport Workers Union (TWU) at The George Meany Center for Labor Studies in Silver Spring, Md.

Photo credit: Jerry Frishman

Management Issues

Performance data comes from two systems. The Case Data System includes comprehensive information about OLMS investigations, audit findings, and subsequent enforcement actions. The labor organization report system (e.LORS) includes timeliness and LMRDA union report sufficiency information.

Maintaining effective union outreach and a visible audit presence will be essential to increasing union financial integrity. Timely, accurate union financial reports are essential to promoting union democracy and financial integrity. Completeness and accuracy of union reports are markedly increasing as a result of compliance assistance efforts and increasing use of the electronic union annual reporting. Timely public disclosure reporting remains a continuing challenge in spite of OLMS' comprehensive program efforts to correct a persistent delinquent report problem. To address this challenge, DOL supports amendment of the LMRDA to authorize civil monetary penalties for late filing.