

Outcome Goal 2.1 – Increase Compliance with Worker Protection Laws

The Employment Standard Administration’s (ESA) primary challenge is to ensure that protections for workers keep pace with the changes occurring in the American workforce, such as virtual workplaces, demographic shifts, immigration, organized labor, the growth of small businesses, and the shift from manufacturing to services. Under the Fair Labor Standards Act (FLSA), the Migrant and Seasonal Agricultural Worker Protection Act, the Family and Medical Leave Act, the Davis-Bacon Act (DBA) and the Service Contract Act, ESA’s Wage and Hour Division (WHD) administers standards for wages and working conditions such as the minimum wage and overtime; child labor protections; field sanitation standards in the agriculture industry; and prevailing wage requirements on government contracts. 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) and Statement	Performance Summary	FY 2005 Costs (millions)
05-2.1A (ESA) American workplaces legally employ and compensate workers.	Goal achieved. All five targets reached.	\$214
05-2.1B (ESA) Ensure union financial integrity, democracy and transparency.	Goal substantially achieved. One target reached, one substantially reached.	63

Results Summary

WHD decreased the average number of days to conclude a violation complaint and increased compliance of FLSA prior violators. The DBA wage determination program improved wage determination processing efficiency but experienced a slip from the FY 2004 level of performance with respect to survey-based determinations. DOL did, however, reach its target of issuing 81 percent of survey-based determinations within 60 days. OLMS established a baseline efficiency of union dollars protected per staff day and the percentage of union reports meeting standards of acceptability increased to 94 percent. Better union public disclosure reports resulted from agency compliance assistance efforts and increasing use of electronic reporting formats.

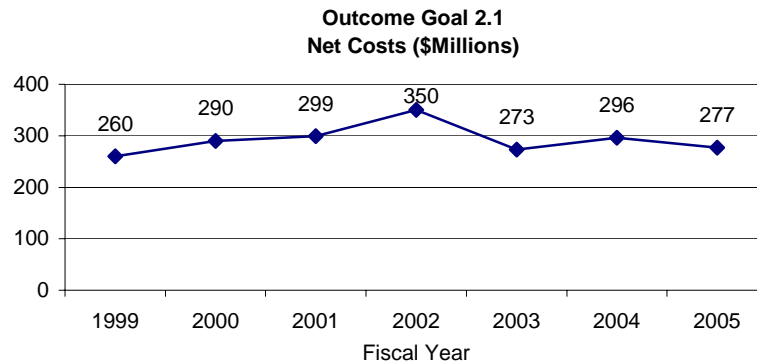
The Wage and Hour Division’s PIECE Plan initiative in Kansas City (Protecting Immigrant Employees with Compliance and Education) provides immigrant workers who work as day laborers with information about their rights under Federal labor standards laws. A key component of this low-wage initiative is active community participation. One such organization is the Westside Community Action Network (CAN), a community policing and neighborhood organization that provides a drop-in center for day laborers. Each month, an investigator from the Wage and Hour Kansas City district office visits the Westside CAN to provide day laborers with basic information on wage and hour protections. Between 20 to 40 day laborers at each visit learn how to maintain records of the hours they work and how much they were paid. The workers also learn how to identify their employer so that appropriate remedies can be pursued when employers fail to pay. This initiative has resulted in over 30 investigations of construction companies, restaurants, and other low-wage industries. Back wages of over \$250,000 have been collected for 200 low-wage workers.



Photo Credit: DOL ESA

Net Cost of Programs

FY 2005 program costs of \$277 million supported ESA's WHD and OLMS programs. As indicated by the chart, net costs for these programs have been stable for the last few years. The drop from FY 2002 to FY 2003 occurred because the Employee Benefits Security Administration's performance goal was moved to Outcome Goal 2.2.



Future Challenges

For Wage and Hour programs, the global economy ensures rapid change in ways that make enforcement more difficult. Effective targeting of investigative resources requires close monitoring of growth patterns. Increased immigration means greater potential for violations because that population is most vulnerable. Finally, competitive pressures limit employers' ability to cover the costs of compliance because they have little influence on market prices. OLMS' continuing concern is securing timely filed reports for unions' public disclosure. To address this challenge, DOL supports amendment to the LMRDA to authorize civil monetary penalties for late filing.

Protect Workers' Wages

Performance Goal 05-2.1A (ESA) – FY 2005

American workplaces legally employ and compensate workers.

Indicators, Targets and Results	FY 2004 Result	FY 2005 Target	FY 2005 Result	Target Reached*
Average number of days to conclude a violation complaint.	189	187	178	Y
Percent of prior violators who achieved and maintained FLSA compliance following a full FLSA investigation.	71%	72%	72%	Y
Percent of low-wage workers across identified low-wage industries paid and employed in compliance with FLSA and MSPA. (Garment manufacturing)	N/A	Establish baseline	So. CA 54% NYC 76%	Y
Number of wage determination data submission forms processed per 1000 hours	1491	1506	1667	Y
Percent of survey-based DBA wage determinations issued within 60 days of receipt of the underlying survey data.	87%	81%	84%	Y
FY 2005 Costs				\$214 Million
*Indicator target reached (Y), substantially reached (S) or not reached (N)				Goal Achieved

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, 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 the government contracts prevailing wage statutes, and administering the wage determination provisions of the Davis-Bacon Act and the McNamara-O'Hara Service Contract Act.

WHD's allocation of resources and performance indicators reflect the keys to ensuring worker protections – focusing on industries and employers with the most persistent and serious violations; resolving employee complaints expeditiously and effectively; and ensuring that established wage rates are accurate. By directing resources to compliance efforts in low-wage industries, such as agriculture, construction and garment manufacturing, WHD seeks to protect those low-wage workers most likely to be paid less than legally required or to be employed in unsafe, illegal situations. WHD's efforts in this regard have led to demonstrated successes over the years with increasing compliance rates in industries like health care, garment manufacturing and quick service restaurants. 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 and ensuring that the resolution of violations promotes future compliance. 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 and demand for 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.

Analysis and Future Plans

WHD established a FY 2005 target to reduce the number of days to resolve a violation complaint and was successful in meeting that target. WHD will continue to follow streamlined procedures to ensure early contact with complainants and development of case facts to promote timely resolution of investigations.

In FY 2005, WHD completed its third statistically valid investigation-based compliance survey of prior FLSA violators finding 72 percent of prior violators in compliance. The results improve on the FY 2004 measure of 71 percent. WHD is seeing the impact of recently employed strategies such as investigation accountability standards, strategic use of penalties, and effective publicity.

WHD's traditional measurements of compliance in low-wage industries have been in garment manufacturing, health care and agriculture. In FY 2005, WHD saw the percent of New York City garment workers employed in compliance increase from 62 to 76 percent. In Southern California, the percent of garment workers employed in compliance fell from 63 to 54 percent. The balance of three strategies – compliance assistance; partnerships and collaborative efforts; and enforcement promote long-term compliance in these low-wage industries.

In FY 2006, WHD will undertake its first investigation-based compliance survey in a broad cross section of low-wage industries. The survey will provide WHD with a baseline measure of the percent of low-wage workers employed in compliance with the FLSA. Future performance targets and measures of improvements in the percent of low-wage employees employed in compliance will be determined from the survey results. The results will lead to strategies for addressing “off-the-clock” violations and will enhance WHD's Overtime Security Enforcement Task Force efforts. WHD continues to work on upgrades in information technology to see performance success in the wage determination program.

Management Issues

Data used to report performance against goals are derived largely from the WHD Investigative Support and Reporting Database (WHISARD). A FY2004 independent analysis by the University of Tennessee found 90 percent or greater consistency between WHISARD data and case file information on 25 of 33 data elements used for performance reporting. Another source of performance data is Wage Hour's statistically valid and independently reviewed investigation-based compliance surveys. Wage determination measures are derived from Automated Survey Data and Wage Determination Generation Systems, manually and through the www.dol.gov Web site.

WHD is monitoring legislative proposals that would expand the use of compensatory time to the private sector and create a new temporary worker program. If successful, both will impact WHD's employee complaint and low-wage compliance goals.

WHD completed three program evaluations in FY 2005 focusing on the agency's budget and performance integration and its compliance assistance efforts. The first, *Findings from Employers Pocket Guide on Youth Employment: YouthRules! Telephone Survey*, conducted by the private research firm Westat (Study 15 in Appendix 2), found that while the publication was deemed useful by readers, it was not relevant to many of the employers in the census, as they do not employ young workers. In response, DOL is encouraging WHD field offices to target employers with young workers. A second evaluation, *The Fair Labor Standards Act: Executive, Administrative, and Professional Exemptions Seminar Evaluation*, also conducted by Westat (Study 16 in Appendix 2), found the seminar to be both informative and prompted attendees to perform additional research on overtime security laws. *Budget and Performance Integration Model Evaluation*, conducted by the private research firm ICF Consulting (Study 17 in Appendix 2), found that WHD is well on its way to successfully integrating budget and performance. The evaluation also recommended that the integration will improve upon further use of spreadsheet technology and all currently available data. WHD continues to evaluate performance measures in low-wage industries, focusing on developing models for common compliance strategies across low-wage industries. A second evaluation of the agency's compliance assistance web information is ongoing.

In 2003 a Program Assessment Rating Tool assessment of WHD's Davis Bacon wage determination program found it did not demonstrate results and recommended that WHD launch an external review; convene a work group to develop indicators and targets; modify the wage survey or outreach strategies; and work with stakeholders to identify appropriate regulatory, administrative, or statutory reforms. In response, WHD developed goals and specific numeric targets to ensure program performance improvements and contracted with a contractor to evaluate the Davis-Bacon wage determination process.

Union Financial Integrity and Transparency

Performance Goal 05-2.1B (ESA) – FY 2005

Ensure union financial integrity, democracy, and transparency

Indicators, Targets and Results	FY 2004 Result	FY 2005 Target	FY 2005 Result	Target Reached*
Union dollars protected per staff day	N/A	baseline	\$136,617	Y
Percent of union reports meeting OLMS standards of acceptability for public disclosure	92%	95%	94%	S
FY 2005 Costs				\$63 Million

*Indicator target reached (Y), substantially reached (S) or not reached (N)

Goal Substantially Achieved

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 public disclosure reporting by unions and others; establishes standards for union officer elections; and imposes criminal sanctions for embezzlement of union funds. To implement the LMRDA protections, OLMS conducts criminal and civil investigations, audits unions, and administers the Act's reporting and public disclosure program.

Union transparency underpins the union democracy and financial integrity objectives of the LMRDA and is a critical component of the OLMS program. Therefore, a primary performance objective is to secure complete and accurate union financial reports for public disclosure. Approximately 25 percent of OLMS resources support the agency's Internet public disclosure system and a wide range of compliance assistance, liaison, enforcement, and regulatory activities to increase union transparency and LMRDA reporting compliance.

Enforcement of LMRDA union financial integrity protections is another critical OLMS responsibility. A primary performance objective is to reduce union fraud. Union audits and embezzlement investigations are key strategies aligned with that effort. OLMS dedicates more than 50 percent of appropriated resources annually to support a program of audits and criminal investigations to protect the millions of dollars in dues paid by labor union members. OLMS seeks efficiency and program impact in using audit resources to protect union financial integrity. Therefore, the goal to increase union receipts protected relative to staff resources expended on audits supplements the broader union financial integrity goal to reduce union fraud.

Analysis and Future Plans

Union Financial Integrity

OLMS met its target to establish an efficiency measure baseline. Union audits are an essential tool in discovering criminal, as well as civil, violations of the LMRDA, and OLMS is dedicating resources to support the conduct of an effective audit program. At the same time, OLMS seeks efficiency in the use of union audit resources. In FY 2005, OLMS established a baseline measurement of union receipts protected per staff day dedicated to union audits: \$136,617. In the future, OLMS will seek to increase the union receipts protected per staff day to ensure effective use of resources and program impact. OLMS also seeks to reduce the percentage of unions with indicators of fraud to 7.5 percent in FY 2006. A visible union audit presence and a strong criminal enforcement program are principal strategies in reducing union fraud. An audit study to re-measure the union fraud level is planned for FY 2006. For the study, an audit finding of a criminal LMRDA violation, predominantly union funds embezzlement, will count as an indicator of fraud.

Union Transparency

OLMS substantially reached its union transparency target. Union transparency is critical to promoting union democracy and financial integrity. Union reports meeting standards of acceptability increased to 94 percent in FY 2005. This resulted from the agency's continuing compliance assistance efforts and its increasing use of electronic reporting formats, which include error checks and report validation to help filers prepare complete and accurate

reports. In FY 2006, OLMS will seek to increase the compliance rate to 96 percent by continuing outreach and compliance assistance efforts. Increased use of electronic reporting formats is expected to continue.



OLMS routinely responds to telephone and written inquiries from union officers, employees, and members as well as the general public about the rights of unionized American workers. But OLMS also makes staff members available for in-person discussions. On May 17, 2005, the United Food and Commercial Workers Union (UFCW) Local 555 sponsored an informational meeting in Tigard, Oregon about compliance assistance. The program included presentations and discussions about OLMS and the LMRDA, union officer elections, financial recordkeeping, and locating compliance assistance publications on the OLMS Web site. Twenty-eight members from 13 local unions attended the sessions. The session demonstrated ESA's commitment to a dynamic compliance assistance program. OLMS will continue its outreach to help ensure basic standards of democracy and fiscal responsibility within American labor organizations. In this photo, UFCW member Sandy (left) discusses a compliance assistance handout with OLMS representative Daphne.

Photo Credit: DOL ESA

Management Issues

Performance information for this goal is derived from two agency data systems. The Case Data System includes comprehensive information about OLMS investigations, audits, findings, and subsequent enforcement actions. The labor organization report system (e.LORS) includes information about the timeliness and sufficiency of union reports filed under the LMRDA.

To report performance against DOL's union financial integrity goal, OLMS measures indicators of union fraud. A baseline study in FY 2004 indicated a 9 percent incidence of fraud in unions. Although the level of fraud was not re-measured in FY 2005, annual performance targets are in place and measurement is again planned for FY 2006-2009. Maintaining effective union outreach, a visible audit presence, and a strong criminal enforcement program are essential to increasing union financial integrity. Timely, accurate union financial reports are also essential. The completeness and accuracy of union reports are markedly increasing as a result of compliance assistance efforts and the increasing use of electronic report formats. Additionally, beginning in September 2005 the largest reporting unions will begin to submit the required LMRDA annual financial report on the recently revised LM-2 report form. The new LM-2 form will significantly increase union transparency and promote union financial integrity and democracy. In spite of comprehensive program efforts, securing timely filed reports for public disclosure remains a continuing challenge. To address this challenge, DOL supports amending the LMRDA to authorize civil monetary penalties for late LMRDA filing.