

# Outcome Goal 2.1

## Increase Compliance with Worker Protection Laws

**M**igrant workers, such as this one tending a vineyard in California, are served by ESA's Wage and Hour Division, which administers and enforces the Migrant and Seasonal Agricultural Worker Protection Act. The Act establishes minimum standards for wages and working conditions that apply to this type of worker.



Photo Credit: US DOL

### Overview

The Department of Labor administers and enforces a number of Federal laws to protect workers. These mandates and their implementing regulations cover over 10 million employers and 130 million workers in various workplace activities. The Fair Labor Standards Act (FLSA), which establishes minimum wage, overtime and youth employment protections, addresses many new and difficult challenges facing the American workforce in the competitive global economy. The Labor-Management Reporting and Disclosure Act (LMRDA) advances workplace protections through union democracy and financial integrity standards and required reporting by unions and others for public disclosure.

### Serving The Public

In furthering the economic security and welfare of workers and families, the Department seeks compliance with worker protection laws through compliance assistance, education, partnerships and, where appropriate, through enforcement action. The Department involves all segments of business and industry—contractors, manufacturers, retailers, business associations, consumers, worker advocacy groups, financial and health care communities and unions—in advancing the economic well-being of the Nation's workers. The DOL organization dedicated to achieving this goal is the Employment Standards Administration (ESA). This agency has developed programs that assist businesses and other organizations subject to ESA's regulations to comply with their provisions through public education, outreach, and partnerships as opposed to limiting their efforts to traditional enforcement techniques that detect violations after workers have suffered harm.

ESA's Wage and Hour Division (WHD) and Office of Labor Management Standards (OLMS) devote significant resources to increasing public access to vital information that enables individuals and practitioners to better understand and monitor their rights and responsibilities under the law.

Each year, ESA distributes thousands of publications and pamphlets that provide basic information about voluntary compliance, and staff conduct dozens of educational meetings, conferences, and seminars as part of the WHD outreach effort. Because many young workers are employed in low-wage occupations and industries, ESA's expanding Youth Rules! Website provides a gateway to information on youth employment issues for young workers, their parents, educators and employers.

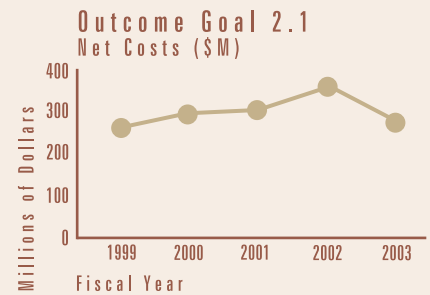
In support of the enforcement of laws designed to guarantee an honest day's pay for an honest day's work, ESA engages in strategic partnerships with employer associations, multi-establishment employers, commercial consumers, the States, and intermediaries – non-governmental agencies and organizations such as faith-based groups, unions, and other social service organizations with direct contact with workers, especially low-wage workers and those facing language barriers.

ESA conducts compliance assistance seminars and maintains liaison with union officials to promote education and voluntary compliance with the LMRDA. Publications informing union officers and members about rights and responsibilities under the law are widely available through ESA headquarters, at field offices located throughout the nation and

through the ESA-OLMS Internet site. ESA strives to make effective use of the Internet in serving the American workforce. Since FY 2002, ESA has maintained an Internet-based public disclosure service that provides ready access to a searchable database of information reported under the LMRDA.

### Program Costs

FY 2003 program costs of \$273 million supported ESA's Wage and Hour Division (WHD) and Office of Labor-Management Standards (OLMS) programs. This is an increase of \$5 million over FY 2002. The WHD budget increased slightly to cover operating expenses for the year. Approximately 75 percent of WHD's time is devoted to complaint investigations and resolution. The success of this effort is reflected in the FY 2003 performance results that show ESA decreased the average number of days to conclude a complaint from 129 days to 108 days.



The additional costs for ESA also reflect, in part, an OLMS program enhancement to increase the number of compliance audits conducted through two investigative audit programs: the Compliance Audit Program and the International Union Compliance Audit Program. Over time, the resources dedicated to the compliance audit programs are expected to yield an increase in the number of criminal investigations conducted. Increased audits and compliance assistance significantly enhance the impact of the Department in its mission to protect union financial integrity and enforce the LMRDA reporting provisions.

The decline in the graph is accounted for by approximately \$95 million associated with the Employee Benefits Security Administration's performance goal that was part of this outcome goal in FY 2002 but was included in Outcome Goal 2.2 in FY 2003.

### DOL Challenges for the Future

The primary challenge for ESA's worker protection agencies in building a competitive workforce for a global economy is to ensure that the protections are appropriate for and keep pace with the changes occurring in the American workforce. Virtual workplaces, aging workers, increased numbers of 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 seek to comply with worker protection laws in the future.

ESA is working to improve the effectiveness of its compliance assistance program and enforcement interventions to ensure that employers subject to investigation understand and comply in the future. Increasing reliance on immigrant and minority workforces, intense external competitive pressures and high turnover rates remain prevalent today, and the current compliance levels reflect the impact of these external factors.

Recidivism data will assist in the development of more effective compliance assistance programs and materials, and will provide the opportunity for targeted enforcement interventions against serious and repeat violators.

## Protect Workers' Wages

### Performance Goal 2.1A (Employment Standards Administration) – FY 2003

*Covered American Workplaces Legally, Fairly, and Safely Employ and Compensate their Workers*

#### Indicators

Improving customer service by decreasing the average number of days to conclude a complaint.

Reducing employer recidivism.

Increasing compliance in industries with chronic violations, i.e. garment manufacturing, long term health care and agriculture.

#### Results

The goal was substantially achieved. The three performance indicators contain a total of 13 targets, 12 of which were reached.

#### Program Description

ESA's Wage and Hour Division (WHD) administers and enforces a number of federal statutes that establish minimum standards for wages and working conditions, including the Fair Labor Standards Act (FLSA), the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), the Family and Medical Leave Act (FMLA), certain provisions under the Immigration and Nationality Act, and various government contract laws. Indicator results, strategies, and future plans follow.

**1. Improve customer service by decreasing the average number of days to conclude a complaint. In FY 2003, decrease by 2 percent over the FY 2002 baseline.**

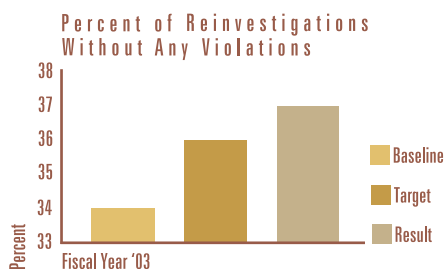
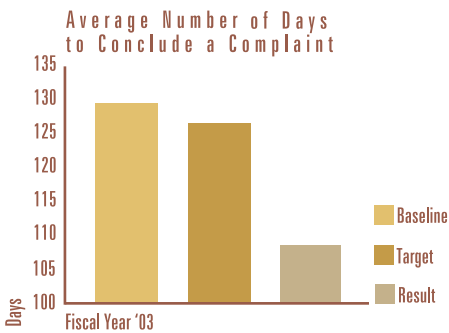
#### Results

The target was reached. In FY 2003, ESA decreased the average number of days to conclude a complaint from 129 days to 108 days.

#### Strategies

Established complaint intake procedures are used to ensure proper screening of complaints and to review complaint inventories. ESA is streamlining procedures to ensure early contact with complainants, development of case facts, identification of the appropriate investigative tool, and identification of potential litigation cases.

**2. Reduce employer recidivism. In FY 2003, increase the percent of reinvestigations without any violations by 2 percentage points; and decrease the percent of reinvestigations with identical violations by 2 percentage points.**



#### Results

Both targets were reached. In FY 2003, ESA increased the percent of reinvestigations without any violations from 34 percent to 37 percent. Also, ESA decreased reinvestigations with identical violations from 19 percent to 17 percent.

#### Strategies

ESA is focusing on employers with continuing identical violations and implementing a comprehensive education program, including technology-based compliance assistance. In addition, ESA is providing compliance assistance on all applicable statutes during an investigation; securing agreements for future compliance and obtaining commitments for corporate-wide compliance by multi-establishment employers through formal and informal agreements; assessing penalties; pursuing litigation and prosecution; and publicizing the consequences of non-compliant behavior as may be appropriate for willful and repeat violators.

#### Future Plans

ESA is modifying its indicator in FY 2004 to one statute – the law with the most general application:

- Increase percent of prior violators who achieve and maintain substantial Fair Labor Standards Act (FLSA) compliance following a full FLSA investigation.

### **3. Increase compliance in industries with chronic violations including garment manufacturing, the long-term health care industry, and agriculture commodities.**

In FY 2003, ESA set a number of indicator targets on an industry-by-industry basis because they are directly related to overall industry compliance. Industry-specific analysis follows.

#### *Garment Manufacturing*

Targets for all five indicators were reached:

#### **a.i. Establish a baseline of the percent of employees in southern California paid “on the payroll”.**

##### Results

A baseline of 91% of employees in southern California paid “on the payroll” was established. The 2000 investigation-based compliance survey in southern California found that those shops paying employees “on the payroll” were more likely to be in compliance; none of the shops paying employees “off the payroll” were in compliance.

##### Strategies

DOL is meeting with organizations and businesses to discuss the impact on minimum wage and overtime compliance when workers are paid “off the payroll”. ESA is making visits to contractors to provide compliance assistance and is working with manufacturers who monitor their contractors.

#### **a.ii. Increase by 2 percent the number of manufacturers that monitor their contractor shops for compliance in southern California (including conducting unannounced visits and payroll reviews).**

#### Results

ESA increased by 2 percent, from 700 to 715, the number of manufacturers that monitor their contractor shops. In the FY 2000 survey in southern California, DOL found that the level of compliance for contractor shops was 44% compared to 11% for shops not monitored. Compliance increased with unannounced visits and payroll reviews.

#### Strategies

Monitoring contractor shops improves compliance with labor laws. ESA is visiting manufacturers to obtain an agreement to implement or improve an effective monitoring program. ESA is also conducting monitoring training sessions and offering to review the attendees' first monitoring report. DOL signed an agreement with the Korean American Manufacturers' Association (KAMA) for a program under which KAMA members will closely monitor the garment contractors who produce their goods to help ensure compliance.

- a.iii. Increase by 5 percent the number of new contractors in New York City participating in the “Compliance Assistance Program for New Contractors”.**
- a.iv. Increase by 2 percent the number of manufacturers in New York City that monitor their shops for compliance.**
- a.v. Establish a baseline of the percent of employees in New York City paid “on the payroll”.**

#### Results

ESA-WHD increased the number of New York City new contractors participating in the program from 69 to 73. Of the 73 contractors, 24 were randomly selected for investigation after the payroll review and 19 (79 percent) were found in compliance – an increase from last year when 43 percent were found in compliance.

ESA-WHD increased from 150 to 158 the number of manufacturers in New York City that monitor their shops for compliance. A baseline of 33 percent of employees in New York City paid “on the payroll” was established.

#### Strategies

DOL and New York State Department of Labor jointly identified all newly registered contractors, educated them about the FLSA requirements and invited them to submit a sample of their payroll records for review. A small number were randomly selected for investigation. Other strategies are similar to indicators above relating to southern California.

#### Future Plans

In FY 2004, DOL will be continuing its work on the following short-term objectives:

- Increase by 1 percent the percent of employees paid “on the payroll” in New York City and southern California.

- Increase by 2 percent the number of manufacturers that monitor their contractor shops in southern California (including conducting unannounced visits and payroll reviews).

#### *Long-term health care*

One of the two targets was reached.

- b.i. Increase by 2 percent the percent of employees in the residential living (group home) segment of health care industry paid in compliance with the overtime requirements of the Fair Labor Standards Act.**
- b.ii. Increase by 1 percent the percent of nursing home complaint cases concluded in 180 days.**

#### Results

DOL did not reach the first target. The percent of all residential living employees in overtime violation cases who were paid in compliance with the overtime provisions declined from the baseline of 83 percent to 77 percent. The differences in the percent of employees in compliance between fiscal year 2002 and 2003 may be in large part due to the differences in the average size of residential living facilities with overtime violations. In fiscal year 2002, the average size of residential living facilities with overtime violations on average had 77 employees as compared to 47 employees in 2003. In fiscal year 2003, the smaller establishments tended to have overtime violations. As a result, the percent of employees that were subject to an overtime violation in the smaller facilities tended to be higher. In fiscal year 2004, ESA will be conducting a statistically valid investigation-based survey of the health care industry that will provide a better measurement of the number of employees paid in compliance with the overtime provisions.

WHD did reach the second target by increasing the percent of nursing home complaint cases concluded within 180 days from 42 percent to 48 percent.

#### Strategies

DOL conducted compliance assistance in geographic areas where violations appear more common and worked with State licensing agencies to disseminate compliance materials to newly licensed residential care facilities. ESA developed and piloted a consultation program for small and new residential group homes and conducted reinvestigations of prior violators.

ESA conducted full investigations of overtime, minimum wage and child labor complaints in the nursing home industry with focus on obtaining long-term sustained compliance. ESA is coordinating nursing home complaint cases to look for multiple complaints against the same corporation. Those corporations will be approached to participate in a compliance agreement program.

#### Future Plans

In FY 2004, ESA will be conducting an investigation-based compliance survey in the long-term health care industry. The targets are:

- Increase by 5 percent the percent of nursing homes in compliance with the FLSA.

In September 2002, the Department filed seven lawsuits against the owners of 11 Chicago-area Chinese style buffet restaurants to recover back wages due under the Fair Labor Standards Act. The investigations which resulted in the court actions found that over 100 workers – mostly Asian and Hispanic – employed as busboys and kitchen help worked as many as 66 hours in a week and were not paid overtime compensation. In some instances, employees were paid less than the minimum wage of \$5.15 per hour. In February 2003, the Department settled the lawsuits resulting in the restoration of over \$665,000 to the workers. In addition to requiring the payment of back wages and future compliance, the judgments also included a provision prohibiting retaliation to help protect the workers from dismissal or coercion to return their wages to the employer.

- Increase by 2 percent the percent of nursing home employees employed or paid in compliance with the FLSA.

*Agricultural commodities*

All three targets were reached.

**c.i. Increase compliance among agricultural employers subject to the Disclosure, Wages, Housing and Transportation (DWHaT) provisions of the Migrant and Seasonal Agricultural Workers Protection Act (MSPA) through targeted compliance assistance programs (to be measured in FY 2004).**

**c.ii. Increase by 2 percent the number of agricultural housing providers who corrected violations following an investigation.**

**c.iii. Increase by 1 percent the number of agricultural housing providers who corrected violations following a first investigation.**

Results

Compliance increases stemming from targeted compliance assistance programs will be measured in 2004. WHD increased from 167 to 256 the number of agricultural housing providers who corrected violations following an investigation and increased from 97 to 133 the number of providers who corrected violations following a first investigation.

Strategies

DOL is providing compliance assistance to farm labor contractors, growers and associations through mailings, outreach events, the Internet and other means. DOL has entered into several compliance partnership agreements with major agricultural associations that provide outreach activities such as seminars and the dissemination of compliance assistance materials.

ESA is increasing the number of investigations of housing providers, obtaining agreements to remedy violations and verifying that corrective action was taken. Employers with serious housing violations are encouraged to enter compliance partnership agreements.

Future Plans

In FY 2004, ESA will continue to focus on targeted compliance assistance programs that improve compliance with the MSPA housing provisions. The targets are:

- Increase by two percent compliance among agricultural employers subject to the DWHaT provisions of MSPA through targeted compliance assistance programs.
- Increase by 1 percent the number of agricultural housing providers who corrected violations following an investigation.

Management Issues

*Data:* Data used for measurement of the goal is derived from the Wage and Hour Investigative Support and Reporting Database (WHISARD). An independent analysis conducted by the University of Tennessee evaluated the completeness and accuracy of the data in

WHISARD. This study of 109 randomly selected cases in WHISARD focused on 27 data elements that were considered because of their importance in the GPRA process and report preparation. Results indicated an extremely high level of data integrity.

*Management Challenges:* Several complex factors influence ESA's ability to meet goals and improve results, including external social and economic pressures beyond the program's control. Understanding these challenges is crucial to the program's ability to realistically establish performance objectives and implement effective strategies. Workforce demographics that show a high concentration of immigrant populations who are fearful of government intervention require alternative compliance assistance avenues to inform workers of their rights and the remedies available to them. Young workers, who are eager for work experience, often unknowingly contribute to violations. ESA must ensure that youth, their parents and educators are aware of youth employment laws.

Internally, recruitment of personnel, particularly in high-cost cities and those with non-English language skills has become more difficult. These factors, coupled with the high number of retirement eligible staff, affect the program's ability to effectively balance resources devoted to resolving complaints in low-wage industries.

*Internal Program Evaluations and Audits:* During FY 2003, ESA had a contract with Mathematica Policy Research, Inc. to design a statistically reliable model to determine and measure "seriousness" of non-compliant behavior within industries. The contractor developed three main criteria to help select performance measures—specifically, whether the measure 1) captures the incidence of violations, 2) characterizes the severity of violations, and 3) is able to measure regulatory efficacy. The contractor also developed seven potential "seriousness" performance measures, which should serve a valuable role in assessing future performance. In FY 2004, DOL will expand this contract work.

#### Goal Assessment and Future Plans

ESA's past emphasis on three nationally targeted low-wage industries with chronic violations has seen some success, and it is timely and essential to expand this emphasis.

Beginning in FY 2004, ESA will broaden current compliance goals to include a wide range of industries that employ low-wage workers and will also be:

- Establishing a baseline of the percent of low-wage workers across various identified low-wage industries paid in violation of the FLSA.



## Union Transparency

Performance Goal 2.1B (Employment Standards Administration) – FY 2003

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

### Indicators

Improving timely filing of union annual financial reports that contain information sufficient for public disclosure. In FY 2003:

- The timely filing of union annual financial reports by unions with annual receipts over \$200,000 will increase to 85 percent.
- A baseline for the percentage of filed reports determined to be sufficient for public disclosure will be established in FY 2003.

Extending Labor-Management Reporting and Disclosure Act (LMRDA) protections for union financial integrity to a greater number of labor organizations through more effective use of investigative resources. In FY 2003 the percentage of investigative resources applied to criminal investigations that result in convictions is increased to 53 percent.

### Results

The goal was not achieved. The Department met two of the three performance targets for this goal. Sixty four percent of unions with receipts greater than \$200,000 filed the annual financial report on time (vs. target of 85 percent). ESA succeeded in establishing a baseline for the percentage of union reports meeting standards for public disclosure availability: 73 percent. ESA reached the target to make more effective use of resources applied to criminal investigations, as 63 percent of investigative resources applied to criminal cases were expended on cases that resulted in convictions.

### Program Description

ESA's Office of Labor-Management Standards (OLMS) ensures union transparency, financial integrity, and democracy by administering and enforcing the LMRDA. The Act requires reporting by unions and others for the purpose of public disclosure; establishes standards for union officer elections; and provides union financial integrity protections, including criminal sanctions for union funds embezzlement. In carrying out its responsibilities under the LMRDA, OLMS performs four types of activities: compliance assistance; civil and criminal investigations and enforcement actions; union compliance audits; and reports/public disclosure administration.

### Analysis of Results

Timely and accurate reporting by unions is critical to LMRDA's objectives for union transparency, financial integrity, and democracy. While the timely filing rate of 64 percent falls significantly short of the 85 percent target, FY 2003 was the first year in which ESA used more stringent guidelines for determining timeliness. In FY 2002, the 85 percent mark was achieved. However, in FY 2003, ESA established more stringent guidelines, allowing no more than three days beyond the statutory due date as a benchmark for timely filing. In FY 2002 a 14-day grace period had been allowed. ESA imposed the stricter standard for timeliness to achieve better results and will continue to focus efforts to achieve that end.

The sufficiency as well as the timeliness of union reports filed for public disclosure is important to support a competitive American workforce. Therefore, ESA has established a performance goal to improve the sufficiency of the reports. Performance targets for FY 2004 and beyond will be established to build on the baseline sufficiency level of 73 percent.

Union financial integrity is also essential to a competitive workforce. To ensure effective use of resources applied to criminal investigations, ESA established the goal to increase the percentage of resources applied to criminal investigations that result in convictions. As that percentage increases, greater direct benefit is provided to the American workforce through enforcement of union financial integrity protections, as demonstrated by FY 2003 results.

#### Strategies

ESA employs a variety of partnership, compliance assistance, and enforcement strategies to achieve timely and accurate reporting by unions. These strategies include reminding unions delinquent in the prior year to file their reports on time, conducting compliance assistance, and establishing liaison with international unions to promote timely report filing by their affiliates. ESA emphasizes expanded use of electronic reporting formats to ensure reporting completeness and accuracy.

Compliance assistance and liaison with union officials, union audits, criminal investigations, and enforcement comprise a balanced strategy to advance union financial integrity protections. The Department will continue to seek greater efficiency in extending financial integrity protections to more labor organizations.

#### Management Issues

*Data:* Performance information for this goal is derived from two established agency data systems. The labor organization report system (e.LORS) database includes information about the timeliness and sufficiency of union reports filed under the LMRDA. The Case Data System includes comprehensive information about resources expended on investigations, audits, and other program activities, as well as enforcement actions resulting from those activities.

*Management Challenges:* Union transparency through LMRDA reporting is critical to ensuring union democracy and financial integrity. Securing timely filed reports for public disclosure is a continuing challenge in spite of ESA's efforts through comprehensive compliance assistance, liaison, and its systematic delinquency contact program. The Department's position is that an amendment to the LMRDA to include authority to assess civil monetary penalties for late filing of LMRDA reports would be an effective tool to address this problem.

#### Goal Assessment and Future Plans

Although timely LMRDA reporting will remain an important objective of the Department, a new performance goal will focus on the sufficiency of reports made available for public disclosure. Beginning in FY 2004, ESA will measure the effectiveness of the LMRDA union financial integrity program. Greater emphasis on union compliance audits is planned to assist in supporting that goal.