



December 2020

# FAIR LABOR STANDARDS ACT

## Tracking Additional Complaint Data Could Improve DOL's Enforcement

# GAO Highlights

Highlights of [GAO-21-13](#), a report to congressional requesters

## Why GAO Did This Study

The FLSA sets federal minimum wage and overtime pay requirements for millions of U.S. workers. WHD may investigate worker complaints of FLSA violations or initiate investigations in industries it prioritizes for enforcement. GAO was asked to review WHD compliance actions.

This report examines (1) trends in WHD's FLSA minimum wage and overtime cases, (2) the extent to which WHD's FLSA compliance actions targeted priority industries, and (3) the extent to which WHD's reported efforts and data indicate that WHD applied a consistent process to FLSA complaints.

GAO analyzed WHD data on FLSA cases for fiscal years 2010 through 2019, the last full fiscal year of data available when GAO conducted its analysis. GAO also conducted more in-depth reviews of recent efforts (fiscal years 2014-2019). GAO interviewed officials from WHD's national office, five regional offices, and five of WHD's 54 district offices with the largest share of FLSA cases in their regions. GAO also interviewed external stakeholders, including state agencies and organizations that represent workers and employers.

## What GAO Recommends

GAO recommends DOL's WHD develop a method for systematically aggregating and reviewing data on the reasons complaints are filed with no compliance action or cases are dropped. DOL agreed with GAO's recommendation and stated it would take action to address it.

View [GAO-21-13](#). For more information, contact Cindy Brown Barnes at (202) 512-7215 or [brownbarnesc@gao.gov](mailto:brownbarnesc@gao.gov).

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## FAIR LABOR STANDARDS ACT

### Tracking Additional Complaint Data Could Improve DOL's Enforcement

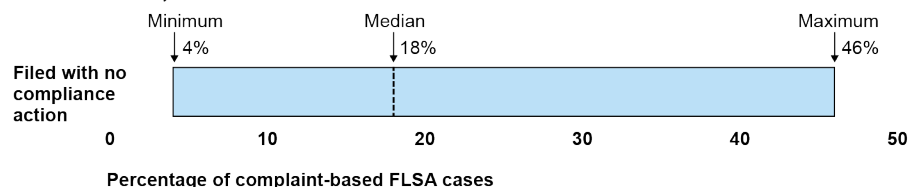
#### What GAO Found

Over the past 10 years, the number of Fair Labor Standards Act (FLSA) minimum wage and overtime cases has generally ranged between 23,000 and 30,000 each year. The compliance actions the Department of Labor's (DOL) Wage and Hour Division (WHD) used to address these cases primarily involved either on-site investigations or conciliations that seek a resolution between the employer and the worker by phone. Back wages due to workers for FLSA minimum wage and overtime violations increased from \$129 million in fiscal year 2010 to \$226 million in fiscal year 2019. Although the number of WHD investigators decreased by 25 percent from 2010 to 2019, WHD maintained its casework by using procedural flexibilities, such as not investigating low-priority complaints and by distributing work across offices to balance workloads.

From fiscal years 2014 through 2019, most of WHD's FLSA compliance actions were targeted at priority industries—those WHD identified as low-wage, high violation industries that employ workers who are unlikely to file wage or overtime complaints, such as food services. In 2011, WHD developed a list of 20 priority industries, and encouraged its regional and district offices to focus on these industries by setting and monitoring performance goals as part of its annual enforcement planning process. The percentage of FLSA compliance actions involving the priority industries increased from 75 to 80 percent from fiscal years 2014 through 2019, according to DOL data.

WHD uses several strategies, including supervisory reviews, to address FLSA complaints consistently, but does not track uniform data needed to ensure that the reasons complaints are filed with no WHD compliance action are applied consistently. WHD may file complaints without completing a compliance action because they are not within WHD's jurisdiction or for other reasons, such as that they are determined to be low-priority. GAO found that WHD filed about 20 percent of FLSA complaints with no compliance action from fiscal years 2014-2019 and the percent varied considerably (from 4 to 46 percent) among district offices (see figure). WHD lacks uniform data on the reasons complaints are filed with no compliance action at intake or the reasons cases are dropped after initial acceptance because there is no data field in WHD's enforcement database that can be used to systematically aggregate that information. Absent this data, WHD is less able to ensure that a consistent process is applied to complaints.

**Percentage of Fair Labor Standards Act Complaints Filed with No Compliance Action by WHD District Offices, Fiscal Years 2014-2019**



Source: GAO analysis of Department of Labor Wage and Hour Investigative Support and Reporting Database. | GAO-21-13

Note: WHD filed about 20 percent of FLSA complaints with no compliance action from fiscal years 2014-2019, and the percent varied considerably among its district offices.

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### Abbreviations

CPS	Current Population Survey
DBRA	Davis-Bacon and Related Acts
DOL	U.S. Department of Labor
FLSA	Fair Labor Standards Act
FMLA	Family and Medical Leave Act
MSPA	Migrant and Seasonal Agricultural Worker Protection Act
PAID	Payroll Audit Independent Determination
SCA	McNamara-O’Hara Service Contract Act
WHD	Wage and Hour Division
WHISARD	Wage and Hour Investigative Support and Reporting Database

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December 9, 2020

The Honorable Robert C. “Bobby” Scott  
Chairman  
Committee on Education and Labor  
House of Representatives

The Honorable Alma Adams  
Chairwoman  
Subcommittee on Workforce Protections  
Committee on Education and Labor  
House of Representatives

The Honorable Mark Takano  
House of Representatives

More than 143 million U.S. workers at over 9.8 million workplaces are covered by the minimum wage and overtime pay provisions of the Fair Labor Standards Act of 1938 (FLSA), as amended, which is administered by the Department of Labor’s (DOL) Wage and Hour Division (WHD).<sup>1</sup> Through its commissioned studies, DOL has found that the workers most vulnerable to wage violations are those in low-wage industries, such as food services, hotels and motels, landscaping, and janitorial services. Workers like these who are paid substandard wages may not be able to meet basic needs for themselves and their families. Therefore, WHD officials report that they prioritize enforcement of FLSA in low-wage industries.

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<sup>1</sup>The FLSA requires workers who are covered by the act and not specifically exempt from its provisions to be paid at least the federal minimum wage (currently \$7.25 per hour) and 1.5 times their regular rate of pay for hours worked over 40 in a workweek. Pub. L. No. 75-718, 52 Stat. 1060 (1938) (codified as amended at 29 U.S.C. § 201 *et seq.*).

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You asked us to assess WHD's FLSA enforcement efforts, including an update to our prior work.<sup>2</sup> This report examines (1) the trends in WHD's FLSA cases,<sup>3</sup> including its overall workload and case resolutions, (2) the extent to which WHD's FLSA compliance actions are targeted towards priority industries, and (3) the extent to which WHD's reported efforts and data indicate that a consistent process was applied when responding to FLSA complaints.<sup>4</sup>

To answer our objectives, we analyzed data from DOL's Wage and Hour Investigative Support and Reporting Database (WHISARD) for fiscal years 2010 through 2019, the most recently completed fiscal year. For our first objective, we analyzed these data from fiscal years 2010 through 2019 to provide an overview of trends in FLSA cases. For our second and third objectives, we conducted more in-depth evaluations of the extent to which WHD's compliance actions were targeted toward priority industries, and the extent to which it followed consistent processes in its response to complaints, by focusing our data analyses on more recent years (e.g., fiscal years 2014 through 2019). We assessed the reliability of the data by (1) reviewing existing information about the data and the system that produced them, including results from prior audits; and (2) collecting information from WHD officials knowledgeable about the data. Based on these reviews, we determined that the data were sufficiently reliable for

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<sup>2</sup>We previously reviewed WHD's efforts to enforce the minimum wage and overtime provisions of the FLSA, and issued reports with recommendations to enhance the agency's strategic enforcement efforts in 2008 and 2009. For more information, see the following reports: GAO, *Fair Labor Standards Act: Better Use of Available Resources and Consistent Reporting Could Improve Compliance*, [GAO-08-962T](#) (Washington, D.C.: July 15, 2008) and GAO, *Department of Labor: Wage and Hour Division Needs Improved Investigative Processes and Ability to Suspend Statute of Limitations to Better Protect Workers Against Wage Theft*, [GAO-09-629](#) (Washington, D.C.: June 23, 2009). From 2009 to 2013, DOL took action to address most, but not all of our recommendations. Details about WHD's responses to these recommendations are available on our website. This report updates these strategic enforcement efforts following the implementation of some of these recommendations.

<sup>3</sup>In this report, FLSA cases refers to cases closed during a fiscal year in which WHD reached a determination on employer compliance with the FLSA, including cases initially registered under a different act (such as the Family and Medical Leave Act). These include cases both with violations and without, as well as all types of compliance actions, such as conciliations and investigations.

<sup>4</sup>This report focuses on WHD's compliance actions to enforce the minimum wage and overtime provisions of the FLSA. Appendix II includes data on WHD's compliance actions completed under other laws enforced by WHD. A review of WHD's enforcement of other FLSA provisions and other laws was beyond the scope of this report. Compliance actions include those initiated by WHD and in response to a complaint.



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our purposes. We also interviewed officials from the WHD national office, the five WHD regional offices, and five of WHD's 54 district offices. We selected the district offices with the most FLSA cases within their respective regions at the time we designed our study. Additionally, we reviewed WHD documents, such as enforcement procedures, operating plans, and documents detailing how industries were selected for targeted enforcement. We also interviewed a non-generalizable selection of external organizations about their experiences working with the selected five district offices. These organizations included state and local agencies that enforce state wage and hour requirements and attorneys who represent workers or employers in wage and hour cases. We assessed WHD's actions against its internal enforcement procedures and standards on internal controls in the federal government related to using quality information.<sup>5</sup> For our investigative work on the third objective to determine whether WHD followed its procedures and used a consistent process when responding to FLSA complaints, we selected and analyzed a non-generalizable random sample of 45 cases from WHISARD with compliance determinations that were closed in fiscal year 2019. Reasons for the closures included that the employer had gone out of business, was not able to be located, or had filed for bankruptcy (15 in each category). For more information on our methodology, see appendix I.

We conducted this performance audit from June 2019 to December 2020 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. We conducted our related investigative work in accordance with investigation standards prescribed by the Council of the Inspectors General on Integrity and Efficiency.

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## Background

The FLSA is the primary federal law that sets minimum wage and overtime pay standards applicable to most workers.<sup>6</sup> The FLSA requires that workers who are covered by the act and not specifically exempt from its provisions be paid at least the federal minimum wage (currently \$7.25

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<sup>5</sup>GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: September 2014).

<sup>6</sup>WHD administers the FLSA with respect to private employers, state and local government employers, and certain federal employers.

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per hour) and 1.5 times their regular rate of pay for hours worked over 40 in a workweek.<sup>7</sup> In addition, many states and localities set and enforce their own wage and hour requirements, which may provide more, but not less, protection than the federal law.

WHD enforces the FLSA through compliance actions, such as investigations, and when it finds violations, it may seek various civil or criminal remedies.<sup>8</sup> In cases where WHD finds violations, enforcement remedies include payment of back wages and liquidated damages to the worker(s), as applicable, and, where appropriate, payment of civil monetary penalties to the government of up to \$2,050 per violation for repeated or willful FLSA violations.<sup>9</sup> WHD may supervise the direct distribution of back wages to workers by the employer, or WHD may collect the back wages from the employer and attempt to locate the workers and distribute the amounts due to them.<sup>10</sup> The FLSA also authorizes individual workers to file private lawsuits to enforce its minimum wage and overtime provisions.

WHD also enforces other federal labor laws, such as the Family and Medical Leave Act, the Migrant and Seasonal Agricultural Worker Protection Act, the McNamara-O'Hara Service Contract Act, Davis-Bacon and related acts, and certain provisions of the Immigration and Nationality Act with regard to temporary employment programs for foreign workers. (For caseload trends for other laws WHD enforces, see appendix II.) Recently, WHD became responsible for enforcing the temporary paid sick

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<sup>7</sup>29 U.S.C. §§ 206, 207. There are a number of exceptions to these requirements. For example, independent contractors are not covered by the FLSA, and certain categories of workers, such as those in bona fide executive, administrative, or professional positions, are exempt from the minimum wage and overtime requirements. WHD has issued regulations implementing the FLSA that further define these exemptions and other requirements of the FLSA. See generally 29 C.F.R. pts. 510-794.

<sup>8</sup>See generally 29 U.S.C. §§ 211(a), 215-217.

<sup>9</sup>Liquidated damages provide workers additional compensation in an amount equal to the back wages due because of minimum wage or overtime violations.

<sup>10</sup>Generally, a 2-year statute of limitations applies to the recovery of back wages from the date of the violation. For willful violations, in which the employer knew its actions were illegal or showed reckless disregard for the requirements of the FLSA, the statute of limitations is 3 years. 29 U.S.C. § 255. DOL's Office of Inspector General reviewed WHD's back-wage distribution process, and made three recommendations that WHD has since implemented. See DOL Office of Inspector General, *Wage and Hour Division Needs to Strengthen Management Controls for Back Wage Distributions*, Report No. 04-15-001-04-420 (March 31, 2015).

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### Impact of COVID-19

The Coronavirus Disease 2019 (COVID-19) has affected the ways in which the Wage and Hour Division (WHD)—within the Department of Labor—communicates with the public and conducts its enforcement. WHD temporarily suspended in-person contact due to the pandemic and directed the public to reach the agency by phone or through an online form; previously, WHD accepted walk-ins, according to WHD officials. WHD officials also noted an increase in calls requesting information about the Families First Coronavirus Response Act (the Act). WHD had completed over 500 outreach events and resolved more than 700 compliance actions related to the Act as of May 2020, according to officials. COVID-19 also affected enforcement practices. Officials we interviewed in March and April 2020 told us that COVID-19 limited WHD offices' ability to complete some aspects of compliance actions, like visits to worksites. In June 2020, in response to Executive Order 13924, which directed agencies to remove certain regulatory and enforcement barriers to economic recovery in light of COVID-19, WHD announced it would no longer routinely seek liquidated damages in cases settled prior to litigation. For additional information on WHD's response to COVID-19, see the Department of Labor Inspector General report *COVID-19: WHD Needs to Closely Monitor the Pandemic Impact on Its Operations*.

Source: Interviews with WHD officials and review of WHD documents. | GAO-21-13

leave and expanded family and medical leave provisions related to COVID-19 enacted by the Families First Coronavirus Response Act (FFCRA).<sup>11</sup>

WHD's enforcement of the FLSA is carried out by WHD investigators and technicians stationed across the country. WHD investigators conduct investigations to determine employers' compliance with applicable laws, while technicians provide front-line support for these efforts, receive and evaluate incoming complaints, and often provide compliance information directly to individuals who contact WHD for assistance. WHD has five regional offices—located in Atlanta, Chicago, Dallas, Philadelphia, and San Francisco—and 54 district offices nationwide.

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## WHD's Enforcement of the FLSA's Minimum Wage and Overtime Pay Requirements

### Compliance Actions

To promote employer compliance with the FLSA, WHD uses various compliance actions, compliance assistance, and partnerships.

WHD's compliance actions range from full investigations that cover all laws under the agency's jurisdiction to conciliations—a remediation process where WHD staff work with employers and workers to resolve

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<sup>11</sup>See Division C (Emergency Family and Medical Leave Expansion Act) and Division E (Emergency Paid Sick Leave Act) of section 2 of the FFCRA, Pub. L. No. 116-127, 134 Stat. 178 (2020), as amended by the CARES Act, Pub. L. No. 116-136, 134 Stat. 281 (2020). WHD issued a temporary rule implementing these provisions in April 2020. See 85 Fed. Reg. 19,326 (April 6, 2020) and 85 Fed. Reg. 20,156 (April 10, 2020), as revised by 85 Fed. Reg. 57,677 (Sept. 16, 2020). These leave provisions expire on December 31, 2020.

limited issues over the phone, such as issues involving a missed paycheck for a single worker (see table 1).

**Table 1: WHD Compliance Actions**

Type	Description
Full investigation	Comprehensive investigations covering all laws under the agency's jurisdiction, including the FLSA. Involves elements like interviewing the employer and workers on-site, touring the establishment, reviewing employer payroll records, and obtaining proof that the employer pays any back wages WHD determines are due.
Limited investigation	Includes the same elements completed as part of full investigations, but narrowed in scope to a specific department, employment practice, time frame, type of worker, individual government contract, law or section of a law under WHD's jurisdiction (which could include the FLSA or a section of the FLSA).
Conciliation	A remediation process where the WHD technician or investigator contacts the employer and worker to help resolve the complaint. Conciliation is intended for limited issues like a single alleged FLSA violation, such as a missed paycheck for a single worker. Unlike full and limited investigations, no original fact-finding is involved. WHD staff discuss the issue with the worker and employer, but do not collect records, for example. In addition, WHD does not supervise payment of any back wages due to the worker.
Office audit	A WHD investigator requests that an employer visit the WHD office and produce specific records. Based upon the initial visit, the investigator determines the next course of action.
Self-audit <sup>a</sup>	Investigator determines that a violation may exist and seeks the employer's agreement to resolve any problems, including the computation and payment of any back wages owed, and requests that the employer report the results to the investigator. There is no WHD fact-finding in a self-audit and the WHD does not supervise the payment of any back wages.

Source: GAO review of Department of Labor Wage and Hour Division enforcement procedures. | GAO-21-13

<sup>a</sup>WHD encourages employers to voluntarily engage in self-audits through its Payroll Audit Independent Determination (PAID) program, which was launched in April 2018.

WHD compliance actions may be taken in response to complaints alleging minimum wage or overtime violations (complaint-based) and on WHD's own initiative (directed). Complaints may come from people familiar with the employer's employment practices, such as workers, or from others with a substantial reason to believe a violation has occurred. In fiscal year 2019, according to WHD data, 64 percent of FLSA cases were initiated in response to complaints and 36 percent were initiated by WHD.<sup>12</sup> WHD found minimum wage and/or overtime pay violations in 80 percent of FLSA cases concluded in fiscal year 2019.

<sup>12</sup>FLSA cases refers to cases closed during a fiscal year in which WHD reached a determination on employer compliance with the FLSA. These include cases both with violations and without, as well as all types of compliance actions, such as conciliations and investigations.

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## Compliance Assistance

WHD provides employers with compliance assistance to help them understand and meet the requirements of the law. Examples of compliance assistance activities include outreach events, providing guidance, and developing materials such as online tools and fact sheets. WHD reported conducting 3,779 outreach events—such as presentations, panel discussions, and meetings with stakeholders—in fiscal year 2019.

## Partnerships

WHD has established both formal and informal partnerships to enlist aid with its enforcement actions and compliance assistance. As of August 2020, WHD had entered into partnership agreements with a range of state and local government agencies—such as labor agencies and attorneys general—in 45 states to facilitate outreach, share information and resources, and conduct joint investigations, according to DOL.<sup>13</sup> WHD has also coordinated with consulates, industry associations, and franchises to provide information to their members about workers' rights and employer responsibilities.

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## WHD's Process for Responding to Complaints

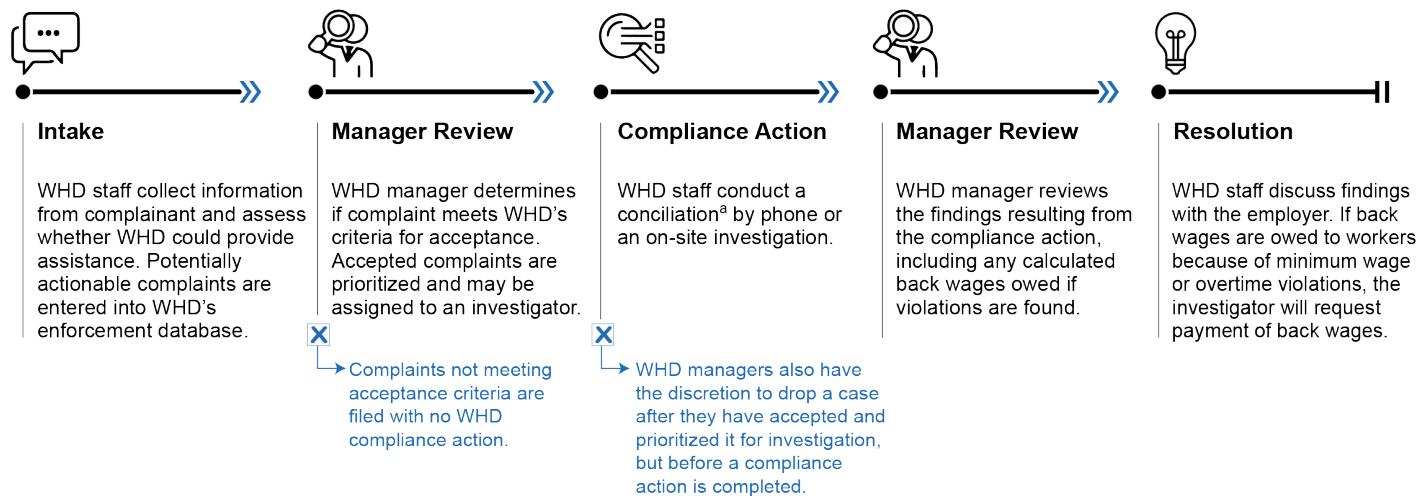
WHD's complaint response process involves several steps (see fig. 1). First, WHD staff are to collect information from the complainant at intake and record the complaint in WHISARD if it is potentially actionable, meaning the information provided indicates that WHD could help the worker resolve the complaint, according to WHD officials. Next, a district office manager is to review the intake information to decide whether it meets WHD's requirements for acceptance, such as if the complaint falls within WHD's jurisdiction, if the employer and worker are covered by FLSA, and if the complaint falls within the statute of limitations. If the complaint does not meet the criteria for acceptance, WHD files the complaint with no further compliance action. Complainants WHD is not able to assist are to receive a letter from WHD informing them of the decision and their right to file a private lawsuit to recover wages they claim they are owed, and WHD may refer them to other organizations for assistance. Accepted complaints are to be prioritized by the manager based on WHD's compliance priorities and available resources, and the manager may assign it to an investigator. Managers also have the discretion to drop a case initiated by a complaint after it was initially accepted even if it meets WHD's requirements. For example, the district office manager may determine that there are no foreseeable opportunities based on WHD resources to assign the complaint for investigation before the statute of limitations expires. After WHD staff have completed the

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<sup>13</sup>In this report, partnership agreements also refers to WHD's other agreements with state and local partners, including memoranda of understanding, common interest agreements, and memoranda of cooperation.

compliance action, the manager is to review the case again, including any findings of violations and recommended penalties, and WHD staff are to request payment of back wages if appropriate.

**Figure 1: Summary of Wage and Hour Division (WHD)’s Complaint Response Process, according to WHD Documents and Interviews with Officials**



Source: GAO review of Department of Labor's Wage and Hour Division documents and interviews with officials. | GAO-21-13

<sup>a</sup>A conciliation is a remediation process in which WHD staff work with employers and workers to resolve limited issues over the phone—such as a missed paycheck for a single worker.

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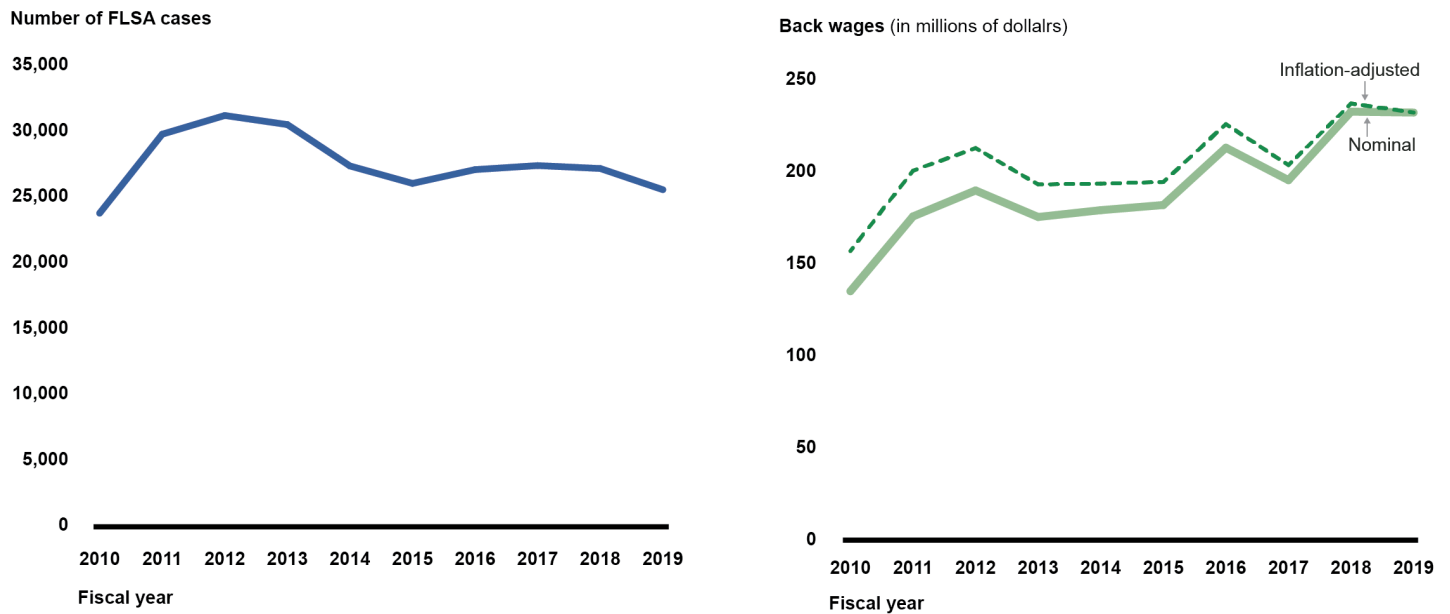
WHD Concluded  
Relatively Consistent  
Numbers of FLSA  
Cases from Fiscal  
Years 2010-2019 by  
Using Procedural  
Flexibilities

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FLSA Cases Remained  
Relatively Consistent from  
Fiscal Years 2010 to 2019  
and Overall Identification  
of Back Wages Increased

Over the past 10 years, WHD has concluded similar numbers of FLSA cases and identified increasing amounts of back wages owed to workers. The overall number of FLSA cases concluded increased by about 8 percent from roughly 22,900 to 24,700 cases in fiscal years 2010 and 2019, respectively. Back wages that WHD assessed after finding FLSA minimum wage and overtime violations increased by about 75 percent in nominal dollars, from \$129 to \$226 million in fiscal years 2010 and 2019, respectively (see fig. 2). Accounting for inflation, the amount of back wages assessed increased by 50 percent from \$151 million to \$226 million in fiscal years 2010 to 2019 (in fiscal year 2019 dollars), respectively.

**Figure 2: Fair Labor Standards Act (FLSA) Cases and Back Wages Assessed by Fiscal Year**



Source: GAO analysis of Department of Labor Wage and Hour Investigative Support and Reporting Database. | GAO-21-13

Note: FLSA cases refers to cases closed during a fiscal year in which WHD reached a determination on employer compliance with the FLSA, including cases initially registered under a different act (such as the Family and Medical Leave Act). These include cases both with violations and without, as well as all types of compliance actions, such as conciliations and investigations. Back wages are calculated only for cases with violations.

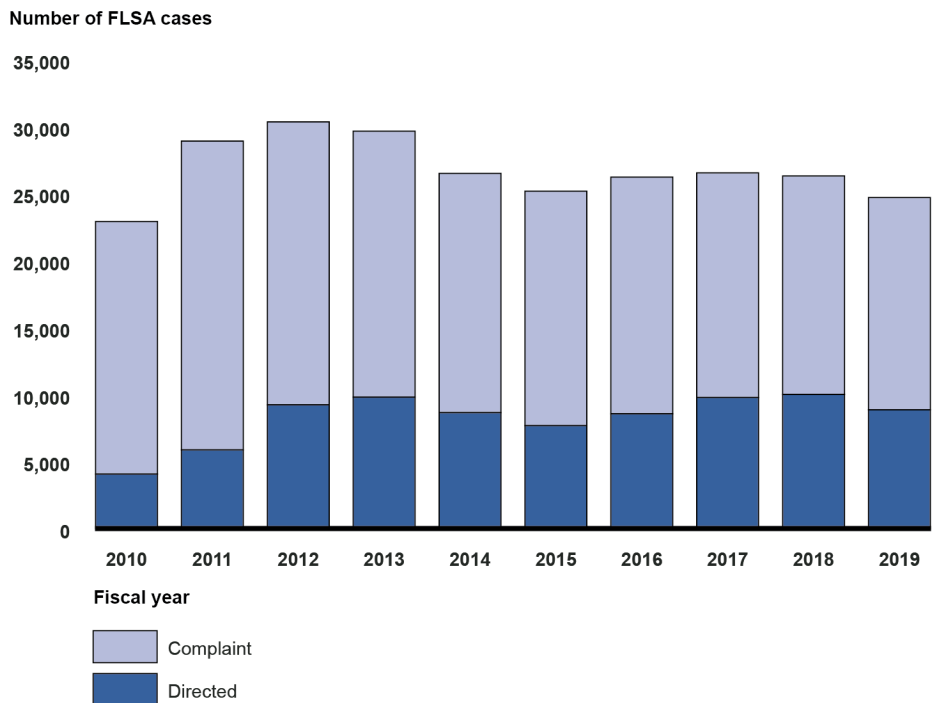
The share of FLSA cases that were directed (i.e., initiated by the agency without a complaint) rather than complaint-based increased between fiscal years 2010 and 2019. In fiscal years 2010 and 2011, about one in five FLSA cases was directed; from fiscal years 2012 through 2019, about one in three was directed (see fig. 3). As part of its strategic enforcement approach, WHD moved away from a primarily complaint-driven process to one that has a more balanced split between investigations in response to worker complaints and investigations initiated by the agency.<sup>14</sup> The Department of Labor’s fiscal year 2018 Annual Performance Report states that directed investigations are as effective as complaint-based investigations at identifying violations, and can have a greater deterrence effect. A WHD-commissioned report suggests that directed investigations

<sup>14</sup>WHD adopted a strategic enforcement approach in response to a study the agency commissioned in 2010. See David Weil, *Improving Workplace Conditions Through Strategic Enforcement*, May 2010.



can have a greater deterrence effect when the results are publicized, which encourages other employers in the industry to comply.<sup>15</sup>

**Figure 3: Source of Fair Labor Standards Act (FLSA) Cases, by Fiscal Year**



Source: GAO analysis of Department of Labor Wage and Hour Investigative Support and Reporting Database. | GAO-21-13

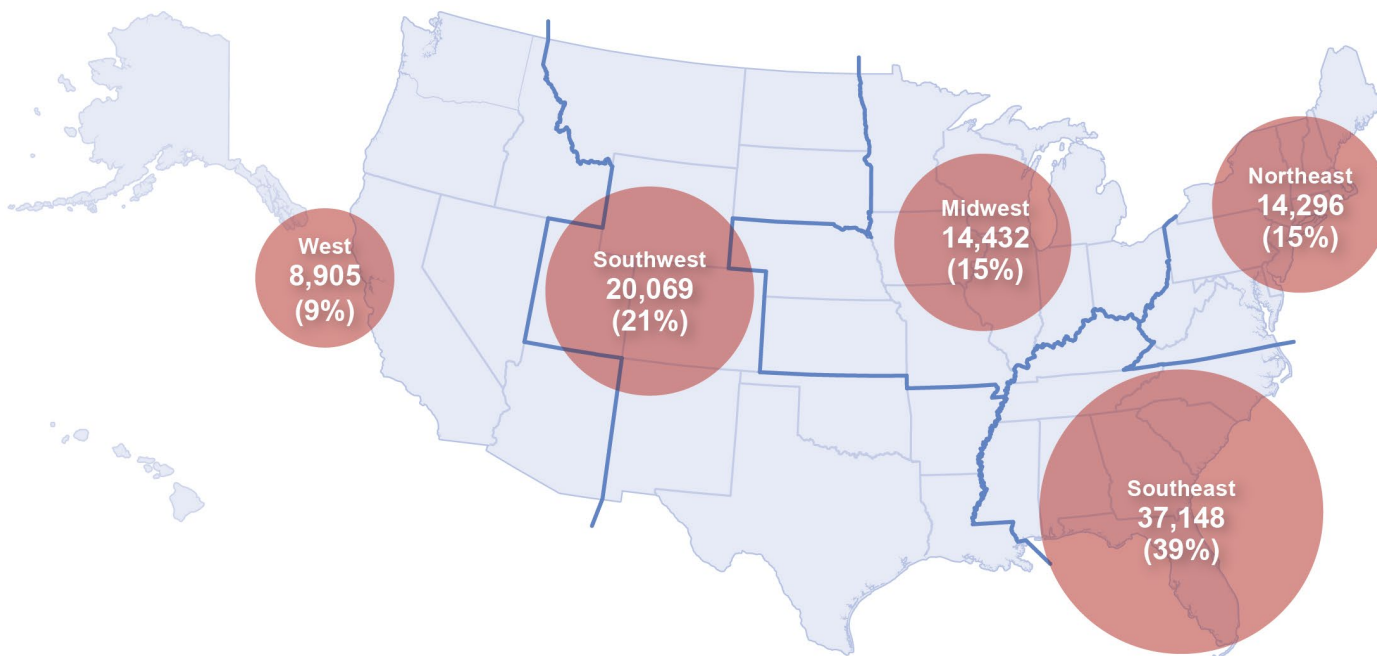
Note: FLSA cases refers to cases closed during a fiscal year in which WHD reached a determination on employer compliance with the FLSA, including cases initially registered under a different act (such as the Family and Medical Leave Act). These include cases both with violations and without, as well as all types of compliance actions, such as conciliations and investigations.

The number of FLSA cases initiated by complaints varied among WHD’s five regions. For example, WHD’s Southeast region conducted the largest number of compliance actions in response to complaints—approximately 37,000 from fiscal year 2014 through 2019, which represented 39 percent of complaint-based cases nationwide that were registered under the FLSA. In contrast, the Western region conducted the fewest—approximately 8,900, representing about 9 percent of such cases (see fig. 4). WHD officials said the volume of complaints that district offices handle depends in part on whether the states in their region set and enforce their

<sup>15</sup>See David Weil, *Improving Workplace Conditions Through Strategic Enforcement*, May 2010.

own state minimum wage laws with minimum wages higher than the federal minimum wage. According to WHD officials, there is no state enforcement for wage and hour violations in several states in the Southeast region, and therefore WHD is the only option for workers who want to file a complaint, which contributes to the large volume of complaints the region receives. Across WHD's five regions, those regions with a greater proportion of states with a minimum wage at or below the federal level had a greater proportion FLSA cases initiated by complaints, according to our analysis of WHISARD data and DOL information about state laws as of July 1, 2020 (see fig. 4).<sup>16</sup>

**Figure 4: Regional Distribution of Complaint-based Fair Labor Standards Act (FLSA) Cases, Fiscal Years 2014-2019**



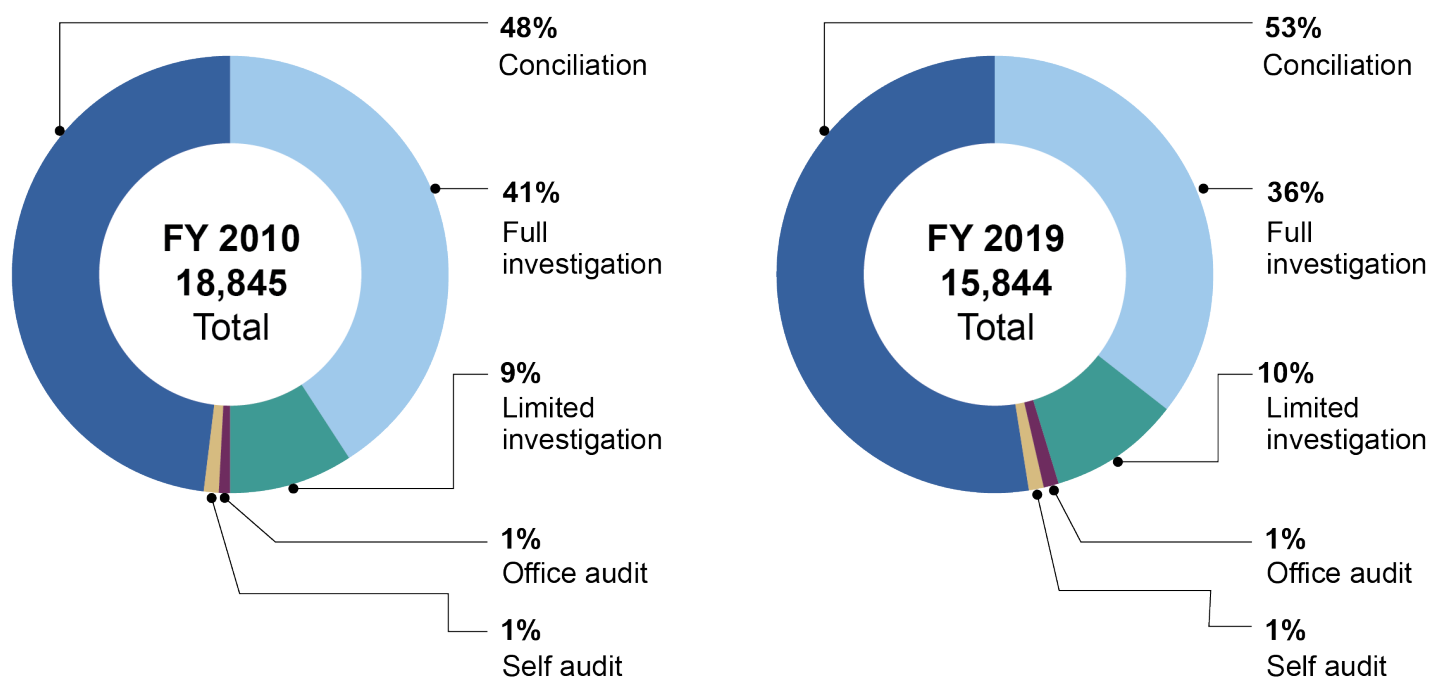
Source: GAO analysis of data from the U.S. Department of Labor's Wage and Hour Division (WHD). | GAO-21-13

Note: FLSA cases refers to cases closed during a fiscal year in which WHD reached a determination on employer compliance with the FLSA, including cases initially registered under a different act (such as the Family and Medical Leave Act). These include cases both with violations and without, as well as all types of compliance actions, such as conciliations and investigations.

<sup>16</sup>According to DOL's website, as of July 1, 2020, some states had a lower minimum wage than the federal level (such as Georgia) and some had no minimum wage (such as Alabama). However, if employers are subject to the FLSA in these states, they are still required to pay the federal minimum wage. See <https://www.dol.gov/agencies/whd/minimum-wage/state> (updated July 1, 2020).

WHD most often used conciliations to address FLSA complaints. In fiscal years 2010 and 2019, roughly half of complaint-based FLSA cases resulted in conciliations, followed by full investigations, limited investigations, self-audits, and office audits, (see fig. 5).

**Figure 5: Compliance Actions Used in Complaint-Based Fair Labor Standards Act (FLSA) Cases, Fiscal Year 2010 and 2019**



Source: GAO analysis of Department of Labor Wage and Hour Investigative Support and Reporting Database. | GAO-21-13

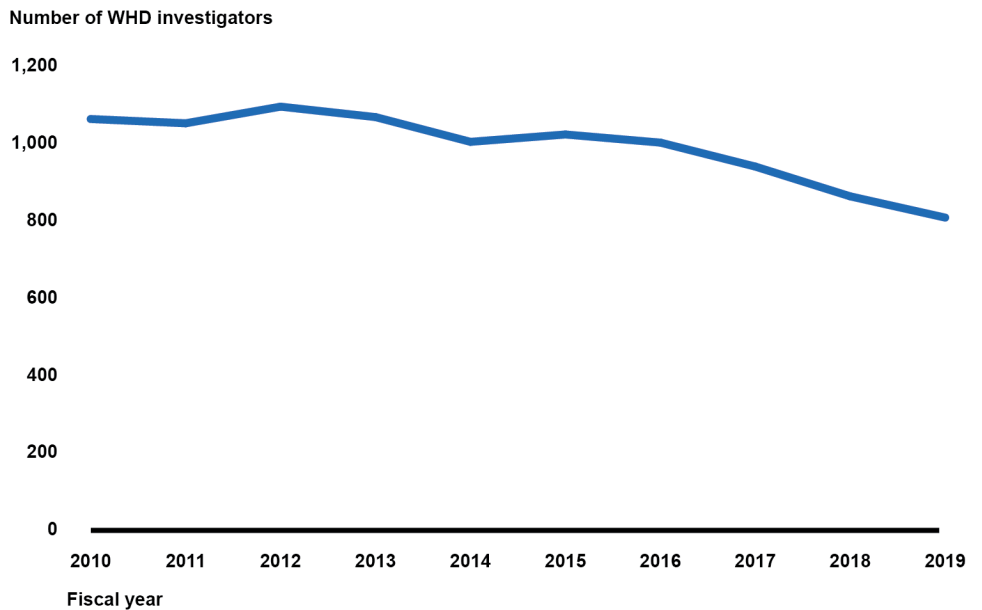
Note: FY = fiscal year. FLSA cases refers to cases closed during a fiscal year in which WHD reached a determination on employer compliance with the FLSA, including cases initially registered under a different act (such as the Family and Medical Leave Act). These include cases both with violations and without, as well as all types of compliance actions, such as conciliations and investigations.

### Following a Staffing Decline, WHD Used Flexibilities in Its Enforcement Procedures to Manage Its Workload

WHD’s staffing levels declined in recent years. According to data provided by WHD, the number of investigators declined from 1,035 to 780 (25 percent) from fiscal years 2010 through 2019 (see fig. 6). Additionally, the number of WHD technicians declined from 121 to 100 (17 percent), from fiscal years 2016 through 2019.<sup>17</sup>

<sup>17</sup>The number of WHD technicians was not available for earlier years.

**Figure 6: Number of Wage and Hour Division Investigators, by Fiscal Year**

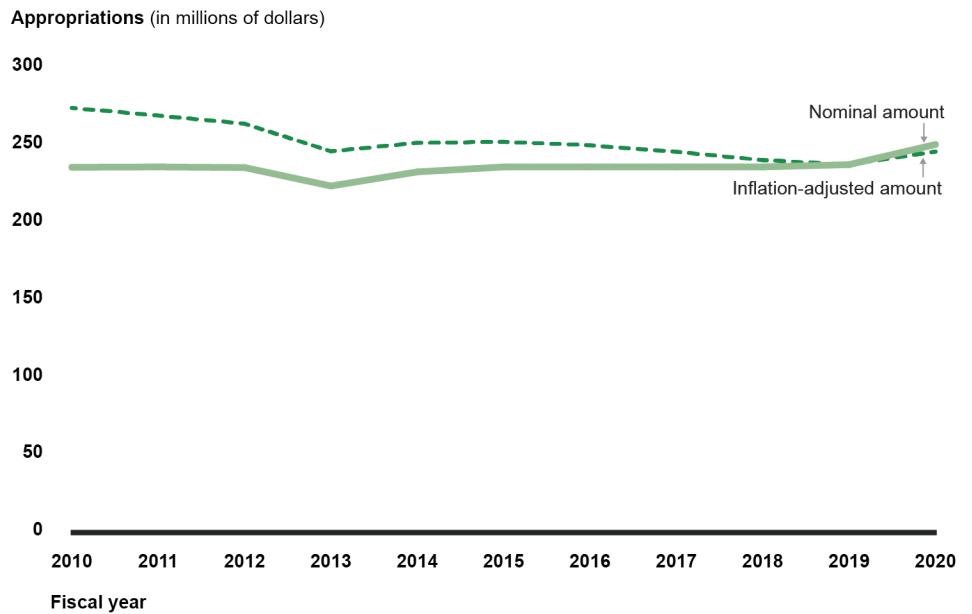


Source: GAO analysis of Department of Labor Wage and Hour Division data. | GAO-21-13

Officials we interviewed attributed these staffing declines to a hiring freeze resulting from level appropriations over time. From fiscal years 2010 through 2019, WHD’s appropriations generally remained between \$227 million and \$229 million per year, according to WHD’s congressional budget justifications (see fig. 7).<sup>18</sup> Appropriations dropped to \$215 million in fiscal year 2013 and \$224 million in fiscal year 2014. WHD’s appropriation was increased to \$242 million for fiscal year 2020, and WHD officials told us they have used this additional funding to hire investigators and technicians. As of June 2020, WHD had hired 92 investigators and 28 technicians in fiscal year 2020 and announced openings for an additional 55 investigators and eight technicians. WHD had 787 investigators and 123 technicians on-board as of September 2020.

<sup>18</sup>WHD’s appropriations history from fiscal years 2010 through 2020 are included in WHD’s congressional budget justifications for fiscal years 2020 and 2021, which are publicly available on DOL’s website. Accounting for inflation, WHD’s appropriations decreased from \$265.6 million in fiscal year 2010 to \$229 million in fiscal year 2019 (in fiscal year 2019 dollars)—a 13.8 percent decrease.

**Figure 7: Wage and Hour Division Appropriations, Fiscal Years 2010-2020**



Source: GAO analysis of WHD's congressional budget justifications. | GAO-21-13

According to WHD officials, WHD has used several flexibilities to manage workloads amid these staffing declines:

- **Focusing on staff efficiency.** Managers closely supervise staff and regularly review performance data to ensure that staff are meeting case timeliness standards, according to officials we interviewed.
- **Using procedural flexibilities.** Managers use flexibilities allowed by WHD's enforcement procedures, such as prioritizing complaints and dropping low-priority cases, according to our interviews with WHD officials from five district offices. According to WHD's enforcement policy, low-priority complaints are considered legitimate FLSA complaints that meet WHD information requirements, but are not in priority industries and do not require immediate action because they do not involve time-sensitive (e.g., a termination) or safety issues (e.g., child labor).<sup>19</sup> Officials we interviewed in all five district offices told us they rarely work on low-priority cases. In these cases, some district office officials told us they would inform the complainant of

<sup>19</sup>Priority industries are those that WHD has determined have a high risk of wage violations and low complaint rates. We discuss the priority industries in greater detail later in this report.

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their private right to sue their employer. Complainants may also seek assistance from state or local agencies, where available.

- **Promoting self-audits.** WHD staff may encourage employers to participate in self-audits through the Payroll Audit Independent Determination (PAID) program, including for low-priority cases. WHD concluded 74 PAID cases between April 1, 2018 and September 15, 2019, and employers identified about \$4 million in back wages due to 7,429 workers in these cases, according to its September 2019 PAID Program Report.<sup>20</sup> WHD officials noted that self-audits helped them better manage their caseloads without using many resources. WHD district officials and attorneys representing employers we interviewed suggested that the relatively small number of PAID self-audits among employers was due to multiple factors, including (1) lack of awareness about PAID or whether they qualify to participate; (2) an unwillingness to “turn themselves in” because of a lack of trust in WHD or concern about liability under state laws; and (3) the existence of alternatives to minimize their risk, such as hiring firms to conduct internal audits.
- **Distributing work.** Regional officials told us they distribute work across their regions to balance workloads. For example, a district office with a relatively low number of complaints may be assigned additional directed investigations to complete. In addition, WHD implemented a new approach to receiving complaints by phone in early 2020 that allows district offices to receive complaints for other offices within their region, then transfer the file to the appropriate office. According to district managers, this approach is intended to improve customer service by increasing the number of calls that are answered by a live person rather than going to voicemail, though it is too early to determine the impact of this change on workloads.
- **Collaborating with partners.** WHD offices collaborate formally and informally with a variety of external partners, including state and local government agencies, business associations, worker organizations, and foreign consulates. Examples of formal collaboration with government partners that officials told us about included referring violations to other offices when appropriate, and jointly conducting staff training, outreach to workers and employers, and investigations. The extent of this collaboration varies; while some state and local officials told us they collaborate regularly and extensively with WHD offices, officials at one state agency said their partnership with WHD is limited in scope.

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<sup>20</sup>See WHD, *Payroll Audit Independent Determination (PAID) Program Report*, September 2019.

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Though the extent of collaboration varied, state and local officials were satisfied overall with the partnerships; officials at four of the five agencies we interviewed described their partnership with WHD as “valuable.” However, officials at one agency said their partnership provides their agency little benefit. WHD officials’ perceptions of partnerships also varied, though they were generally positive. WHD officials in one district office told us the referrals they received from a partner are not very useful, but other offices noted positive outcomes from their partnerships. For example, WHD officials in one district office told us a state partnership promoted employer cooperation in a particular industry because employers were eager to avoid a referral to the state agency that oversees that industry. Another district office’s partnership with agencies that enforce state and local minimum wage requirements is useful because WHD does not have enough investigators to investigate all businesses, according to district office officials.

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## Eighty Percent of FLSA Cases are in Priority Industries and WHD Uses Performance Measures and Procedures to Help Staff Prioritize These Industries

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### Most FLSA Enforcement Focuses on WHD’s Priority Industries

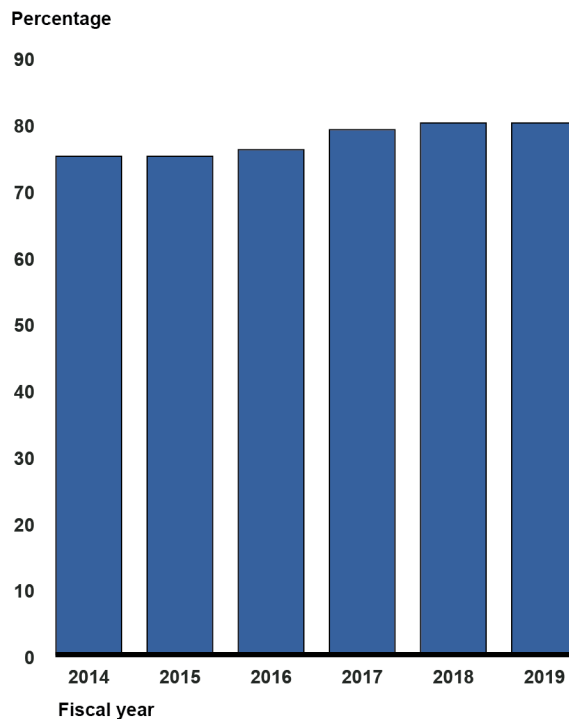
WHD has been increasingly focusing its FLSA cases in priority industries in recent years. The percentage of FLSA cases in WHD’s priority industries—including complaint-based and directed cases—increased from 75 to 80 percent from fiscal years 2014 to 2019, according to DOL data (see fig. 8).<sup>21</sup> WHD’s national office encouraged its regional offices to focus on priority industries by setting and monitoring performance

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<sup>21</sup>WHD’s publicly available data identify the following as low-wage, high-violation industries: food services, retail, construction, health care, hotels and motels, agriculture, child care services, guard services, janitorial services, temporary help, auto repair, amusement, landscaping services, apparel manufacturing, and hair, nail and skin care services.

goals as part of its annual enforcement planning process. For example, for fiscal year 2019, WHD's national office set a performance target at 80 percent for conducting FLSA investigations (excluding conciliations) in priority industries, which they met.

**Figure 8: Percent of Fair Labor Standards Act Cases in Priority Industries, by Fiscal Year**



Source: GAO analysis of Department of Labor Wage and Hour Investigative Support and Reporting Database. | GAO-21-13

Note: These cases include all closed cases in which the Wage and Hour Division made a determination about employer compliance with the Fair Labor Standards Act.

### WHD Uses External and Internal Data and Related Procedures to Prioritize Industries for Investigation and to Inform Decisions for Addressing Complaints

In 2011, WHD used wage data from the Current Population Survey (CPS) and complaint data from its own internal enforcement database (WHISARD) to develop a list of 20 priority industries. These include industries that WHD determined had a high probability of wage violations and a low likelihood that workers employed in these industries would file a complaint, according to WHD officials (see table 2). WHD reviewed the CPS data again in 2013 to see if any industries should be added or removed to their priority industry list based on new information, and decided that no changes were needed, according to WHD officials.



**Table 2: Data the Department of Labor’s Wage and Hour Division Used to Identify Priority Industries**

Data Source	Criteria Used to Identify Priority Industries
U.S. Census Bureau and Bureau of Labor Statistics’ Current Population Survey (CPS)	Incidence and severity of minimum wage and overtime violations <sup>a</sup> <ul style="list-style-type: none"> <li>• Incidence of Fair Labor Standards Act (FLSA) minimum wage and overtime violations (the number and percent of workers who were paid in violation)</li> <li>• Severity of those violations (total amount of back wages owed per worker who were paid in violation)</li> </ul>
Wage and Hour Investigative Support and Reporting Database (WHISARD)	Complaint rates <ul style="list-style-type: none"> <li>• Total number of complaints per industry divided by the estimated number of workers covered by the FLSA in those industries</li> </ul>

Source: Department of Labor’s Wage and Hour Division documentation and interviews with officials. | GAO-21-13

<sup>a</sup>WHD estimated the incidence and severity of violations across industries using CPS data on reported weekly hours and payment (including for overtime), according to WHD officials.

Since 2010, WHD has also been using a more data-driven process to make decisions about where to focus its regional and local enforcement activities, according to WHD officials. WHD uses other data sources—such as the U.S. Census Bureau’s County Business Patterns data—to develop cross-regional and local enforcement initiatives, according to WHD officials. Cross-regional initiatives direct the offices to conduct a certain number of investigations in a particular industry and use multiple types of strategies to promote employer compliance with the FLSA. In addition, as part of WHD’s annual enforcement planning process, regional and district offices have the opportunity to submit proposals with supporting data to the WHD national office to propose local enforcement initiatives that focus on industries outside the national priority industry list.

For fiscal year 2019, there were approved district office initiatives in four WHD regions that targeted industries outside the national priority industry list. For example, one enforcement initiative focused on the recycling industry, which employs hundreds of vulnerable workers in the region and had a history of wage violations. Examples of wage violations cited by WHD included paying workers a flat rate for all hours worked or paying with food in exchange for work. Another enforcement initiative focused on non-emergency medical transportation. Regional office officials told us they found potential violations in this industry, such as drivers who were not paid overtime that they were due and who were not paid for time while they were waiting for clients.

According to WHD officials, WHD enforcement procedures also help ensure that WHD offices prioritize enforcement in industries with a high

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probability of wage violation, and that district office managers give cases in priority industries precedence. The written procedures direct district office managers, who are responsible for assigning investigators, to prioritize FLSA complaints from workers employed in priority industries over complaints that do not. In addition, district office managers must get permission from their regional office to work lower priority cases in industries that are not on the priority list. According to WHD regional office officials we interviewed and the procedures, the regional office may decide to give a district office higher priority cases from another office rather than allow them to work on their lower priority cases.

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**WHD Assesses the Effectiveness of Targeting Priority Industries by Monitoring Data on Violations and by Contracting Evaluations**

WHD assesses the effectiveness of its targeting efforts by monitoring the percent of agency-initiated (directed) investigations that find no violations. WHD has set stricter performance targets over time in an effort to reduce the proportion of cases in which they find no violations, thereby increasing the amount of their work focused on industries with violations. Our analysis of WHD data found that the percentage of FLSA compliance actions with no violations declined from about 21 percent to 18 percent from fiscal years 2014 through 2019. According to DOL's performance accountability reports, WHD met or outperformed its targets for a related performance measure—the percent of no violation, agency-initiated compliance actions (excluding conciliations)—every year from fiscal years 2014 through 2019.

In addition to its own monitoring, DOL contracted with a private research firm through March 2020 to evaluate the effectiveness of WHD compliance strategies. The report is awaiting final WHD approval and is expected to be published within the next few months, according to WHD officials. WHD officials also said the report will include a literature review and description of data sources that could be used to assess the effectiveness of its compliance strategies.

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## WHD Uses Several Strategies to Help Address Complaints Consistently but Lacks Uniform Data on Reasons for Complaints Not Meeting Acceptance Criteria and Dropped Cases

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### Reports Indicate WHD Uses a Consistent Process to Address Complaints across Regions

WHD helps to ensure that its staff apply a consistent process when responding to FLSA complaints through standard training for investigators, a national case review process, advice from regional specialists, and supervisory review of cases. For example:

- **National-level strategies.** WHD's national office provides standard training and resources, along with regular reviews of a sample of cases, to help ensure WHD staff address complaints according to WHD enforcement procedures. Specifically, the national office manages structured training for all new investigators, including detailed information on the requirements of the FLSA, WHD's investigative process model, and the process to integrate that information into casework. The national office also conducts an accountability review process to help improve the uniformity and quality of WHD investigations. For fiscal year 2019, WHD reviewed randomly selected investigations and conciliations and WHISARD data from 11 district offices across the country, evaluated the information against agency guidance and procedures, and provided each office with recommendations for both correction and improvement.<sup>22</sup> For example, WHD reviews the extent to which the selected district offices accurately prioritized complaints, assigned

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<sup>22</sup>WHD found procedural issues related to complaint processing for five of the 11 district offices reviewed in fiscal year 2019 and required the offices to take corrective action. The types of corrective actions required included: ensuring WHD staff contact the complainant every 30 days, reviewing contacts to determine what follow-up is needed to determine the appropriate action, and documenting complainant notifications in the case file.

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them in a timely manner, and appropriately resolved those that were valid.

- **Regional-level strategies.** WHD regional offices use regular meetings with district office management, performance reports, and technical assistance to help ensure FLSA complaints are addressed consistently across the district offices in their region. For example, each regional office provides technical assistance to district office investigators on cases and has regional enforcement coordinators who specialize in laws under WHD's jurisdiction.
- **District-level strategies.** Across district offices, investigators, technicians, and managers are expected to follow uniform written enforcement procedures to address worker complaints. District office managers also oversee the complaint process and their staff's related investigative work through case reviews and regular meetings with investigators. These managers also review complaints at key steps in the process to ensure they are handled according to WHD procedures.

During our interviews, WHD regional office and district office officials provided consistent responses that aligned with WHD's national enforcement procedures for a variety of topics. Specifically, officials from the five district offices we interviewed provided consistent responses on criteria used to screen complaints, decisions made to prioritize complaints, and procedures for addressing complaints within the statute of limitations.

In our non-generalizable randomly selected sample, we used WHD procedures for closing FLSA complaint cases and concurred with the reasons that nearly all of them were closed, including that an employer had gone out of business, was unlocatable, or had filed for bankruptcy. Out of 45 randomly selected FLSA complaint-based cases that were closed in fiscal year 2019 due to an employer being closed, unlocatable, or bankrupt (15 in each category), we found through our investigative work that this was true for all of the closed and unlocatable cases. Our investigative work also found that 13 of the 15 cases that WHD closed for employer bankruptcy had filed for bankruptcy.<sup>23</sup>

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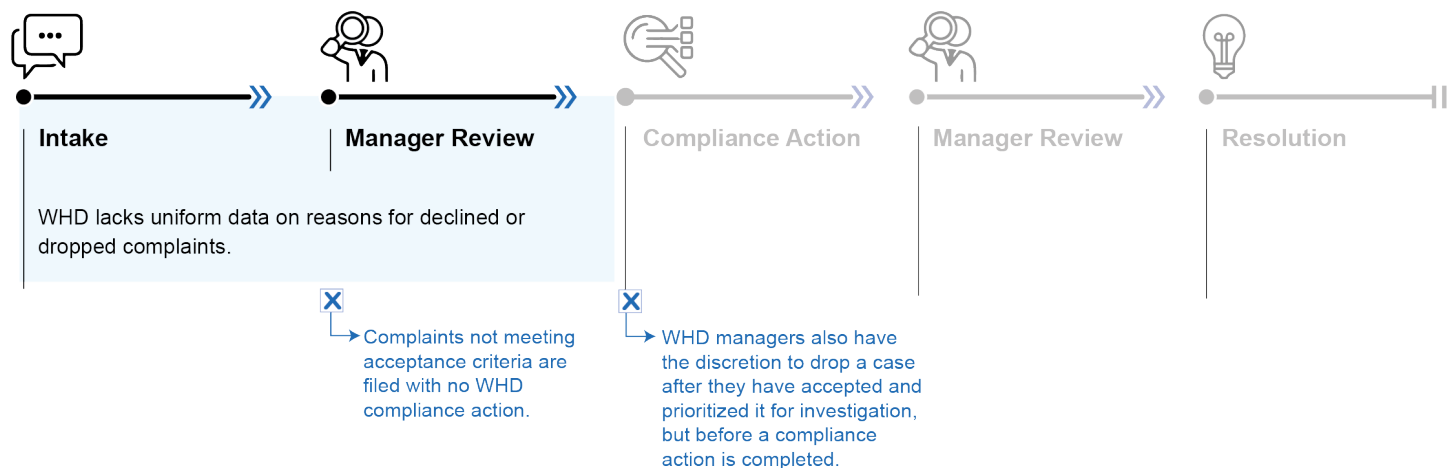
<sup>23</sup>We could not confirm that two companies filed for bankruptcy. The first company was a trucking company that owed about \$2,000 in back wages to resolve one FLSA violation involving five workers. The second company was a restaurant that owed about \$16,000 in back wages to 25 workers for 27 FLSA violations. We have shared this information with WHD and agency officials are aware of these potential discrepancies.

# WHD Lacks Uniform Data on Reasons for Complaints Not Meeting Acceptance Criteria and Dropped Cases and WHD Data Indicate that Some Actions for Responding to Complaints Vary Across Regions

## Intake and Manager Review

As mentioned earlier, WHD uses an intake and managerial review process to determine which complaints the agency will accept and investigate (see fig. 9). During intake, according to officials, a complaint is recorded in WHISARD if it is considered potentially actionable by the agency, meaning the information in the complaint indicates that the employer is likely covered by the laws enforced by WHD and the statute of limitations has not expired, among other things. From there, managers will accept the complaint or decide it does not meet WHD’s acceptance criteria. Also, WHD managers have the discretion to drop a case after they have accepted and ranked its priority. For example, the district office manager may determine that there are not enough WHD resources to investigate the complaint within the statute of limitations. Yet, we found that WHD has no uniform data on the reasons why some complaints do not meet WHD’s acceptance criteria or why cases are dropped.

**Figure 9: Findings on Wage and Hour Division’s Intake Process and Manager Review of Fair Labor Standards Act Complaints**

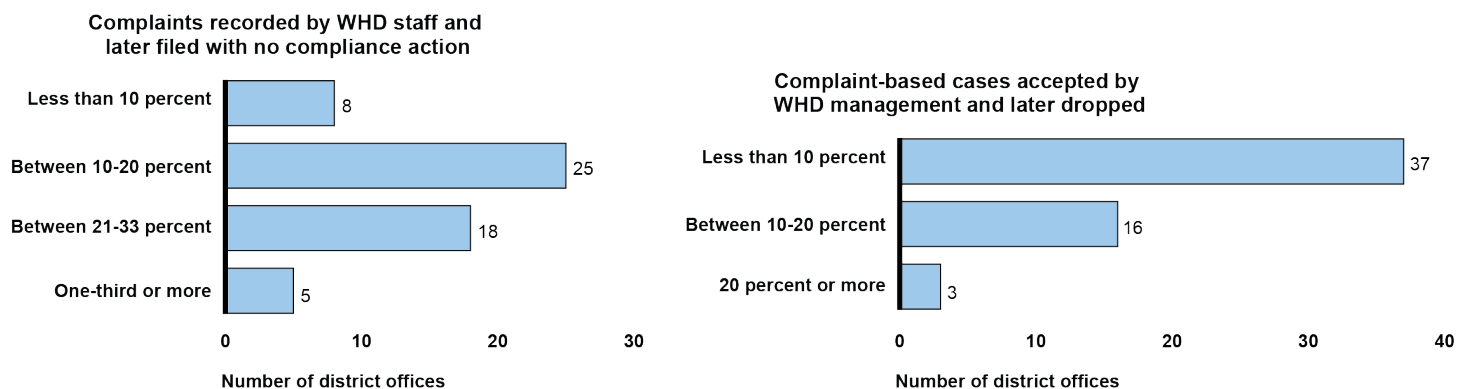


Source: GAO review of Department of Labor’s Wage and Hour Division documents and interviews with officials. | GAO-21-13

We found that approximately one in five FLSA complaints recorded in WHISARD from fiscal years 2014-2019 were filed with no compliance action by WHD. Specifically, WHD did not take any compliance action on 20 percent of FLSA complaints recorded in WHISARD (26,352 of 133,148). During the same time period, about 8 percent of cases accepted by management and assigned a priority level were later dropped and filed with no WHD compliance action (8,067 of 103,859).

Further, the percentage of both complaints filed with no compliance action and dropped cases varied considerably among district offices. For example, the percentage of FLSA complaints filed with no compliance action from fiscal years 2014-2019 varied from 4 percent to 46 percent. Similarly, the percentage of dropped FLSA cases varied by district office from 1 to 27 percent during the same time period (see fig. 10).

**Figure 10: Number of District Offices, by Percentage of Fair Labor Standards Act Complaints Filed with No Compliance Action and Dropped Complaint-Based Cases, Fiscal Years 2014-2019**

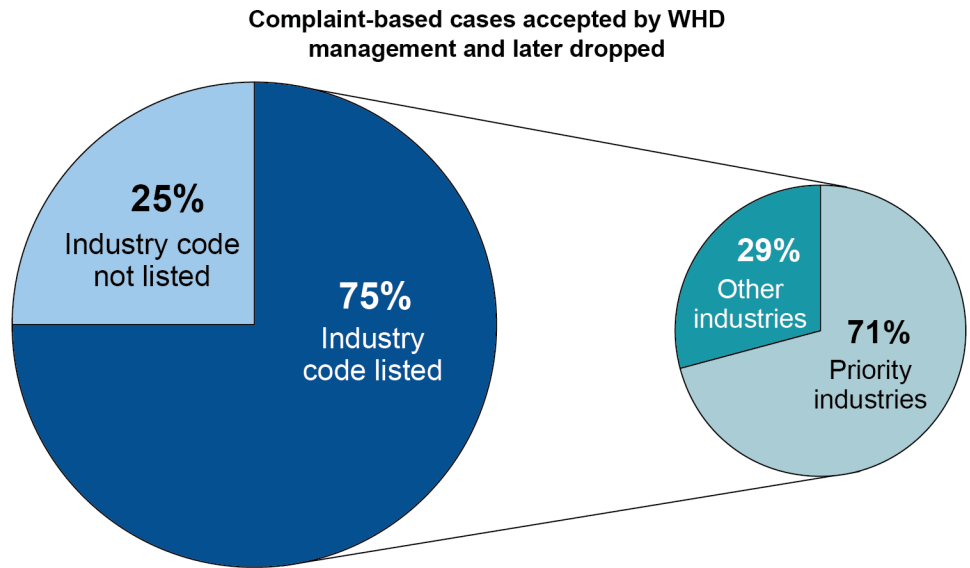


Source: GAO analysis of Department of Labor Wage and Hour Investigative Support and Reporting Database. | GAO-21-13

Our analysis also found that from fiscal years 2014-2019, the majority of dropped FLSA cases with a recorded industry code were in priority industries.<sup>24</sup> Specifically, among the 75 percent of dropped FLSA cases with an industry code, approximately 71 percent of cases were in priority industries (4,245 of 6,011). (See fig. 11).

<sup>24</sup>According to WHD officials, WHISARD industry data for complaints filed with no compliance action should not be used for analysis because it is not validated as part of the intake phase of the complaint process.

**Figure 11: Percentage of Wage and Hour Division’s Dropped Fair Labor Standards Act Complaint-Based Cases, by Industry Code, Fiscal Years 2014-2019**



Source: GAO analysis of Department of Labor Wage and Hour Investigative Support and Reporting Database. | GAO-21-13

For both complaints filed with no compliance action and dropped cases, WHD lacks uniform data on the reasons a compliance action was not initiated or completed because there is no data field in WHD’s enforcement database that can be used to aggregate that information. Currently, WHD staff are directed to enter the reasons for filing a complaint with no compliance action in an open-ended narrative field in WHISARD. However, WHD cannot systematically analyze the reasons complaints are filed with no compliance action due to the narrative format of the information, which can vary across entries. Collecting this information more systematically could help WHD better understand why offices file FLSA complaints without compliance actions and why the rate varies by district office. According to federal internal control standards, management should identify the information requirements needed to achieve the agency’s objectives and use quality information to make informed decisions.<sup>25</sup> Additionally, WHD’s enforcement procedures state that it is essential to the WHD mission that the agency effectively and efficiently handle contacts made by individuals seeking assistance from the agency and that complaints are properly screened. Without more

<sup>25</sup>GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: September 2014).

information on why complaints were filed with no compliance action or cases were dropped, WHD may miss an opportunity to refine its enforcement strategies, particularly in low wage, high violation industries, and determine if district offices are appropriately filing complaints with no compliance action and dropping cases and where staff may be needed to handle the volume of complaints.

## Compliance Action

As mentioned earlier, WHD most often used conciliations to address FLSA complaints (see fig. 12). According to WHD’s enforcement procedures, a conciliation is a compliance action limited to the correction of minor violations involving last paychecks or a single issue affecting one or a few employees, in which WHD staff normally seek resolution between the employer and the complainant by phone. We found that regions varied in their use of conciliations, but overall, WHD staff appeared to be using this compliance action consistent with WHD’s enforcement procedures.

**Figure 12: Use of Wage and Hour Division’s Compliance Actions to Address Fair Labor Standards Act Complaints**

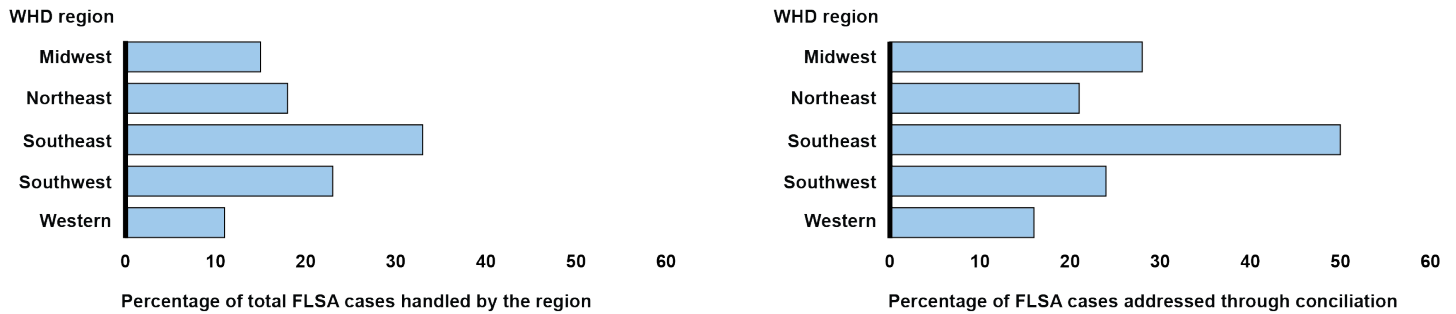


Source: GAO review of Department of Labor’s Wage and Hour Division documents and interviews with officials. | GAO-21-13

Our analysis of WHD data found that the use of conciliations varied by the region’s share of FLSA cases. For example, the Southeast region processed about one-third of FLSA cases from fiscal years 2014-2019 and used conciliation to address 50 percent of those cases, while the Midwest region had about 15 percent of the FLSA cases and used conciliation to address 28 percent of those cases during the same time period (see fig. 13).



**Figure 13: Percent of Total Fair Labor Standards Act (FLSA) Cases and Percent of FLSA Cases Addressed through Conciliation, by WHD Region, Fiscal Years 2014-2019**



Source: GAO analysis of Department of Labor Wage and Hour Investigative Support and Reporting Database. | GAO-21-13

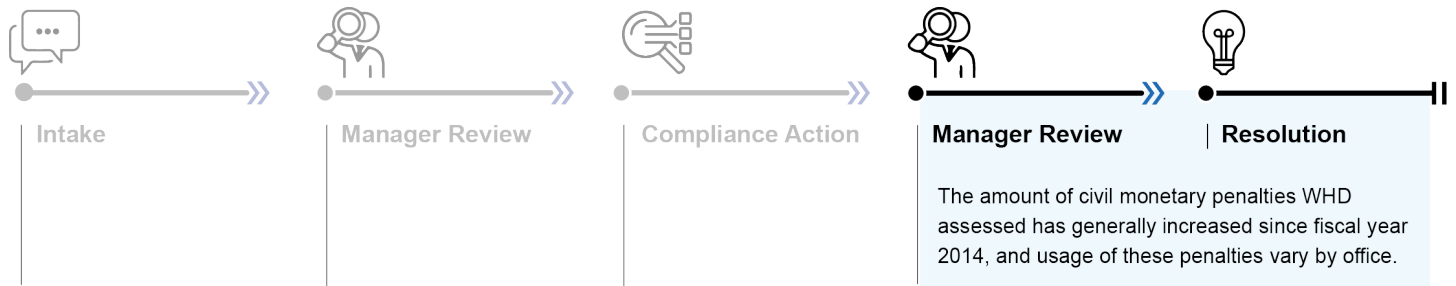
Note: FLSA cases refers to cases closed during a fiscal year in which WHD reached a determination on employer compliance with the FLSA, including cases initially registered under a different act (such as the Family and Medical Leave Act). These include cases both with violations and without, as well as all types of compliance actions, such as conciliations and investigations.

We then examined the number of employees involved in FLSA cases addressed through conciliation from fiscal years 2014-2019 and found that almost all (99 percent) of these cases involved two or fewer employees, which aligns with the WHD enforcement procedures.

**Manager Review and Resolution**

After WHD staff have completed a compliance action, a manager is to review the case again, including any findings of violations and recommended penalties, and WHD staff are to request payment of back wages from the employer, if appropriate (see fig. 14). We found that the amount of civil monetary penalties WHD assessed has generally increased since fiscal year 2014, and WHD has assessed civil monetary penalties in 62 percent of cases with repeat violations in the same time period.

**Figure 14: Findings on Wage and Hour Division’s Manager Review and Resolution Process in Response to Fair Labor Standards Act Complaints**

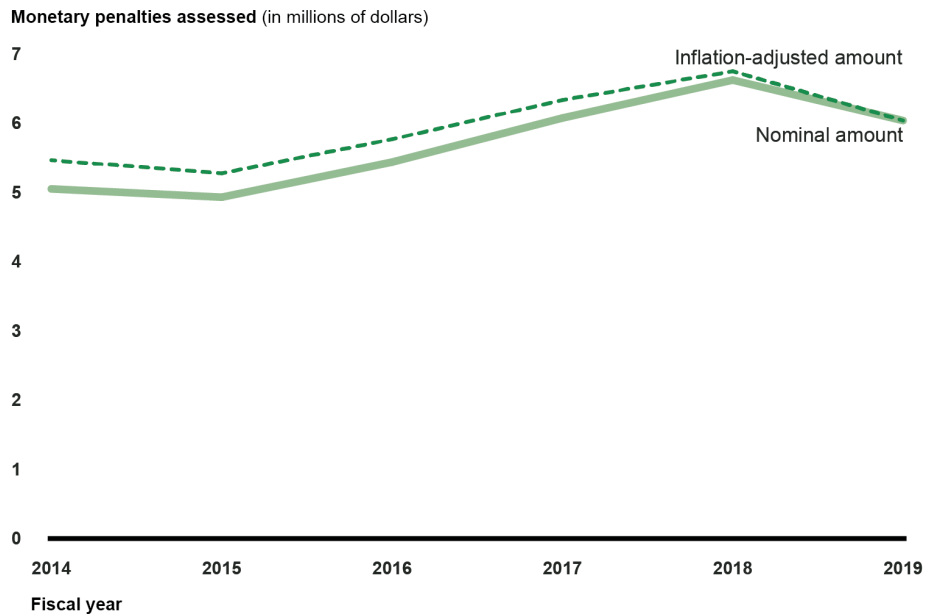


Source: GAO review of Department of Labor’s Wage and Hour Division documents and interviews with officials. | GAO-21-13

Overall, WHD assessed approximately \$34 million in civil monetary penalties for all FLSA cases from fiscal years 2014 through 2019. During this time period, WHISARD data indicate that the total amount of civil monetary penalties assessed in all FLSA cases generally increased from approximately \$5 million for cases concluded in fiscal year 2014 to \$6.5 million in fiscal year 2018, with a slight decrease to \$6 million in fiscal year 2019.<sup>26</sup> (See fig. 15).

<sup>26</sup>Accounting for inflation, the amount of civil monetary penalties generally increased from \$5,380,972 in fiscal year 2014 to \$5,953,338 in fiscal year 2019 (in fiscal year 2019 dollars).

**Figure 15: Civil Monetary Penalties Assessed for All Fair Labor Standards Act Cases, Fiscal Year 2014 - 2019**



Source: GAO analysis of Department of Labor Wage and Hour Division data. | GAO-21-13

Note: FLSA cases refers to cases closed during a fiscal year in which WHD reached a determination on employer compliance with the FLSA, including cases initially registered under a different act (such as the Family and Medical Leave Act). These include cases both with violations and without, as well as all types of compliance actions, such as conciliations and investigations.

We also found that WHD assessed civil monetary penalties in 62 percent of all complaint cases with repeat violations in the same time period. Under the FLSA, employers who willfully or repeatedly violate minimum wage or overtime pay requirements are subject to civil monetary penalties for each violation.<sup>27</sup> According to WHD officials, civil monetary penalties are based on factors such as the size of the employer and the number of employees affected, and the final determination is made on a case-by-case basis. Accordingly, our analysis of WHISARD data indicates that WHD district offices varied from approximately 31 percent to 90 percent in their assessment of civil monetary penalties for employers with repeat violations. For example, in the Northeast Region, one district office assessed civil monetary penalties in about 31 percent of its repeat violation complaint cases, while another district office assessed these penalties in about 90 percent of its repeat violation cases. Additionally, in the Western Region, one district office assessed these penalties in about

<sup>27</sup>29 U.S.C. § 216(e)(2); 29 C.F.R. pt. 578.

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38 percent of its repeat violations complaint cases, while another district office assessed this penalty in 70 percent of its repeat violations cases. According to WHD officials we interviewed, the decision on whether to assess civil monetary penalties depends on the facts of the case and the amount of evidence the investigator was able to collect during the investigation.

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## Conclusions

Millions of workers rely on WHD to help ensure they are paid properly for the hours that they work. In some parts of the country, filing a complaint with WHD is the only option to recoup lost wages other than filing a private lawsuit. WHD has limited resources for addressing worker complaints, requiring agency officials to make strategic decisions about the use of resources. As a result, WHD officials generally record only those complaints they believe the agency can help the workers resolve. Yet, even among these complaints in its enforcement database, WHD filed over 20 percent of the FLSA complaints it received without a compliance action, and dropped many complaints it accepted, including those involving workers in WHD's priority industries. For some district offices, over one-third of recorded FLSA complaints were filed without a compliance action. In addition, WHD dropped about 8 percent of the FLSA complaints it accepted. As a result, WHD took no compliance action in response to many FLSA complaints.

Although there may be legitimate reasons for a complaint to be filed with no compliance action and cases to be dropped, it is unclear why WHD is not taking action on many of the FLSA complaints it receives because its database lacks a field to systematically track the reasons. While there is no evidence to suggest that WHD should have acted upon these complaints, the lack of data limits WHD's ability to quickly determine if complaints are handled consistently and if certain offices need additional resources to handle the volume of complaints they receive. Absent this data, WHD is less capable of directing resources to offices that serve those most in need. Such information could also be used to determine if additional outreach is necessary in some offices because workers may need more guidance to understand the types of complaints WHD can help them resolve. Additional data on the reasons complaints are filed with no compliance action or cases are dropped would further help WHD direct resources to better address these complaints and may result in WHD helping more workers receive the appropriate compensation for their work.

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## Recommendation for Executive Action

The Administrator of DOL's Wage and Hour Division should develop a method for systematically aggregating and reviewing data on the reasons that complaints recorded in its enforcement database have been filed with no compliance action and the reasons cases have been dropped. (Recommendation 1)

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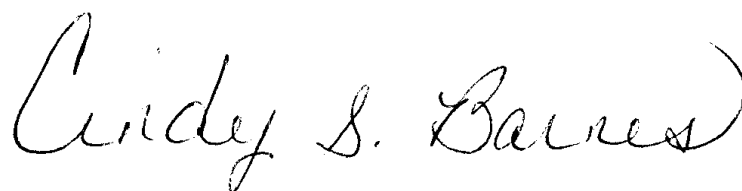
## Agency Comments

We provided a draft of this report to the Department of Labor (DOL) for review and comment. In its comments, reproduced in appendix III, DOL agreed with our recommendation and stated that it would take action to address it. DOL also provided technical comments, which we incorporated as appropriate.

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As agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies to the appropriate congressional committees, the Secretary of the Department of Labor, and other interested parties. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-7215 or [brownbarnesc@gao.gov](mailto:brownbarnesc@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix IV.



Cindy S. Brown Barnes,  
Managing Director, Education, Workforce,  
and Income Security Issues

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# Appendix I: Objectives, Scope, and Methodology

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The focus of this report is on the Department of Labor's (DOL) Wage and Hour Division's (WHD) enforcement of the minimum wage and overtime pay requirements of the Fair Labor Standards Act of 1938, as amended (FLSA). The objectives of this report were to examine (1) the trends in WHD's FLSA cases, including its overall workload and case resolutions, (2) the extent to which WHD's FLSA compliance actions are targeted towards priority industries, and (3) the extent to which WHD's reported efforts and data indicate that a consistent process was applied when responding to FLSA complaints.<sup>1</sup>

To address all of our objectives, we analyzed data from the DOL's Wage and Hour Investigative Support and Reporting Database (WHISARD) for fiscal years 2010 through 2019. We assessed the reliability of the data by (1) reviewing existing information about the data and the system that produced them, including results from prior audits, and (2) collecting information from WHD officials knowledgeable about the data. Based on these reviews, we determined that the data were sufficiently reliable for our purposes.

We used two time frames in this report, depending on the objective. For our first objective, we analyzed overall trends in WHD's FLSA compliance actions from fiscal years 2010 through 2019, the most recently completed year. For our second and third objectives, we focused on fiscal years 2014 through 2019 in order to evaluate WHD's recent strategic enforcement efforts in depth. Our reports from 2008 and 2009 detailing WHD's earlier enforcement efforts, as well as updates on WHD's responses in the following 5 years, are available on our website.<sup>2</sup>

We also interviewed officials from the WHD national office, all five WHD regional offices, and five selected district offices. We selected WHD offices that had the most FLSA cases within their respective regions

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<sup>1</sup>In this report, FLSA cases refers to cases closed during a fiscal year in which WHD reached a determination on employer compliance with the FLSA, including cases initially registered under a different act (such as the Family and Medical Leave Act). These include cases both with violations and without, as well as all types of compliance actions, such as conciliations and investigations.

<sup>2</sup>*Fair Labor Standards Act: Better Use of Available Resources and Consistent Reporting Could Improve Compliance*, [GAO-08-962T](#) (Washington, D.C.: July 15, 2008); *Department of Labor: Wage and Hour Division Needs Improved Investigative Processes and Ability to Suspend Statute of Limitations to Better Protect Workers Against Wage Theft*, [GAO-09-629](#) (Washington, D.C.: June 23, 2009).

between October 2013 and June 2019 when we designed our study (see table 3).

**Table 3: Wage and Hour Division Offices Interviewed**

Region	Regional office	District office
Midwest	Chicago, IL	Columbus, OH
Northeast	Philadelphia, PA	Pittsburgh, PA
Southeast	Atlanta, GA	Tampa, FL
Southwest	Dallas, TX	Dallas, TX
West	San Francisco, CA	Los Angeles, CA

Source: GAO review of Department of Labor Wage and Hour Division documents. | GAO-21-13

## Objective 1

To evaluate trends in FLSA cases for our first objective, we analyzed WHISARD data from fiscal years 2010 through 2019 to determine the following trends: number of cases by act (such as the FLSA), source of cases (complaint-based or directed), the types of compliance actions used, the amount of back wages employers agreed to by act, and investigator hours. We analyzed historical staffing information provided by WHD. We reviewed WHD documentation on its operations and planning, including its operating plans, budget documents, and a report on the Payroll Audit Independent Determination (PAID) program.<sup>3</sup>

We also interviewed relevant external stakeholders to obtain their perspectives on WHD's enforcement of the minimum wage and overtime provisions of the FLSA. The information we gathered from these interviews reflects the experience of the interviewees and is not generalizable. We chose stakeholders located in the same cities or states as the selected district offices. We interviewed representatives from five state or local government agencies that had partnership agreements with WHD and were located in the same cities or states as the selected district offices.<sup>4</sup> We also interviewed three attorneys with experience representing employers in wage and hour cases and two attorneys from

<sup>3</sup>WHD has encouraged employers to voluntarily engage in self-audits through its PAID program, which it launched in April 2018. In a self-audit, the investigator determines that a violation may exist and seeks the employer's agreement to resolve any problems, including the computation and payment of any back wages owed, and requests that the employer report the results to the investigator.

<sup>4</sup>In this report, partnership agreements also refers to WHD's other agreements with state and local partners, including partnership agreements, memoranda of understanding, common interest agreements, or memoranda of cooperation.

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legal services organizations providing free or low-cost services to workers in wage and employment cases.

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## Objective 2

To review the extent to which WHD's compliance actions are targeted towards priority industries, we analyzed WHISARD data from fiscal years 2014 through 2019 to identify the percentage of FLSA cases that focused on WHD's priority industries in recent years. We compared our analysis of WHISARD data with WHD's reported performance on related measures. We also interviewed WHD officials and reviewed supporting documentation, such as WHD enforcement procedures, operating plans, and documents detailing how WHD selected the industries it targets for enforcement.

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## Objective 3

To review the extent to which WHD's reported efforts and data indicate that a consistent process was applied when responding to complaints, we reviewed WHD's enforcement procedures in its Field Operations Handbook and interviewed regional and district office officials. We analyzed WHISARD enforcement data from fiscal years 2014 through 2019 to determine if they indicated consistency across regions and district offices in recent years, including data on acceptance rates, use of conciliation, and use of civil monetary penalties. We also compared WHD data against the policies and procedures documented in its Field Operations Handbook related to use of conciliations and use of civil monetary penalties. For example, we analyzed the extent to which WHD used conciliations in accordance with the criteria in the handbook, such as the number of employees involved. In addition, we reviewed the results of WHD's reviews of 11 district offices from fiscal year 2019. As part of WHD's oversight of its district offices, WHD selected a random sample of cases for each office and compared that information to WHD's procedures and guidance in several areas, such as the consistency of case documentation, process and follow-up actions taken to process back wages and civil monetary penalties, and the quality of the WHISARD data, among others.

For our investigative work, we selected and analyzed a non-generalizable random sample of 45 complaint-based FLSA cases from WHISARD that were closed in fiscal year 2019 due to the employer being closed, unlocatable, or bankrupt (15 in each category) to determine if a consistent process was used and if WHD appeared to be following its procedures.



Using the same databases available to WHD—CLEAR and PACER<sup>5</sup>—we conducted searches to determine if there were inconsistencies between the closure reasons recorded in WHISARD and the information available during the time the case was open. Specifically, we assessed whether the employer still appeared to be active, if contact information for the employer was available, or if we could confirm that bankruptcy had been filed. If there was insufficient information in the CLEAR or PACER reports, public records, or websites to identify inconsistent findings, we considered the findings to be consistent. The findings from our analysis of these 45 cases are not generalizable. However, this analysis provides an example of how consistently WHD applies its process for complaints.

We assessed WHD's actions against its internal procedures documented in the Field Operations Handbook, as well as the Standards for Internal Control in the Federal Government, which state management should use quality information to achieve its objectives.<sup>6</sup>

We conducted this performance audit from June 2019 to December 2020 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. We conducted our related investigative work in accordance with investigation standards prescribed by the Council of the Inspectors General on Integrity and Efficiency.

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<sup>5</sup>The Public Access to Court Electronic Records (PACER) system is a service of the federal judiciary that enables the public to search online for case information from U.S. district, bankruptcy, and appellate courts. CLEAR is online investigation software operated by Thomson Reuters.

<sup>6</sup>GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: September 2014).

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# Appendix II: Trends in Cases with Compliance Determinations, Enforcement Hours, and Back Wages by Act, Fiscal Years 2010-2019

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This appendix contains data on DOL's Wage and Hour Division's (WHD) enforcement activity from fiscal year 2010 through 2019 related to the Fair Labor Standards Act (FLSA) and other major acts under WHD's jurisdiction.<sup>1</sup> The cases reported represent the number of cases concluded in that fiscal year with a WHD determination on employer compliance with that particular act—including cases where WHD found violations of the act and cases with no violations.<sup>2</sup> The cases include all types of compliance actions (including conciliations and investigations) and include compliance actions initiated in response to complaints and those initiated by the agency (directed).

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<sup>1</sup>In this appendix, we refer to the laws WHD enforces using the names and categories that are used in WHD's data. We report data by federal fiscal year, which begins on October 1 and ends on September 30. The fiscal year is designated by the calendar year in which it ends. For example, fiscal year 2019 began on October 1, 2018, and ended on September 30, 2019.

<sup>2</sup>WHD investigations often involve the concurrent enforcement of multiple statutes, according to WHD officials. For example, one investigation may determine employer compliance with the FLSA as well as other statutes, such as the McNamara-O'Hara Service Contract Act (SCA). Because WHD investigators can assess compliance with multiple statutes over the course of an investigation, a case may be included in more than one table in this appendix. However, the enforcement hours and back wage amounts in the tables are specific to each act and non-duplicative.

**Appendix II: Trends in Cases with Compliance Determinations, Enforcement Hours, and Back Wages by Act, Fiscal Years 2010-2019**

**Fair Labor Standards Act (FLSA)**

**Table 4: Fair Labor Standards Act (FLSA)—Concluded Cases with FLSA Compliance Determinations by Source and FLSA Enforcement Hours, Fiscal Years 2010-2019**

<b>Fiscal year</b>	<b>Complaint</b>	<b>Directed</b>	<b>Total concluded cases with FLSA compliance determinations<sup>a</sup></b>	<b>FLSA enforcement hours<sup>b</sup></b>
2010	18,845	4,072	22,917	—
2011	23,056	5,865	28,921	—
2012	21,104	9,239	30,343	—
2013	19,848	9,805	29,653	—
2014	17,859	8,648	26,507	735,251
2015	17,495	7,688	25,183	718,869
2016	17,664	8,566	26,230	775,428
2017	16,752	9,785	26,537	793,096
2018	16,309	10,005	26,314	782,048
2019	15,844	8,860	24,704	717,606

Source: GAO analysis of Department of Labor Wage and Hour Investigative Support and Reporting Database (WHISARD) data. | GAO-21-13

<sup>a</sup>A case is recorded in WHISARD as having a compliance determination for an act once the Wage and Hour Division (WHD) concludes the case and determines whether or not a violation of that act occurred. For example, a case may have a determination that no violation occurred. The source of the case is either directed (initiated by the agency without a complaint) or initiated in response to a complaint.

<sup>b</sup>The number of enforcement hours was not reviewed by GAO for fiscal years 2010-2013.

**Appendix II: Trends in Cases with Compliance Determinations, Enforcement Hours, and Back Wages by Act, Fiscal Years 2010-2019**

**Table 5: Fair Labor Standards Act (FLSA)—Workers Due Back Wages for FLSA Minimum Wage or Overtime Violations and Amount of FLSA Back Wages, Fiscal Years 2010-2019**

Fiscal year	Number of workers due back wages	Total back wages assessed (not inflation adjusted, in dollars)	Total back wages paid to date (not inflation adjusted, in dollars)	Total back wages assessed (inflation adjusted 2019 dollars)	Total back wages paid to Date (inflation adjusted 2019 dollars)
2010	192,736	129,124,579	112,825,260	150,923,378	131,872,409
2011	238,527	169,721,678	155,613,340	194,499,539	178,331,508
2012	264,622	183,867,031	171,670,384	206,793,340	193,075,897
2013	227,103	169,407,034	152,062,121	187,089,416	167,934,074
2014	228,763	173,074,303	167,972,546	187,533,329	182,005,360
2015	205,436	175,859,848	168,337,246	188,374,428	180,316,500
2016	240,377	207,002,206	201,881,148	219,786,179	214,348,857
2017	206,696	189,432,837	183,864,437	197,627,728	191,818,438
2018	223,296	226,627,859	218,240,674	231,035,178	222,484,885
2019	268,310	226,068,160	217,658,774	226,068,160	217,658,774

Source: GAO analysis of Department of Labor Wage and Hour Investigative Support and Reporting Database (WHISARD) data. | GAO-21-13

## Davis-Bacon and Related Acts (DBRA)

**Table 6: Davis-Bacon and Related Acts (DBRA)—Concluded Cases with DBRA Compliance Determinations by Source and DBRA Enforcement Hours, Fiscal Years 2010-2019**

Fiscal year	Complaint	Directed	Total concluded cases with DBRA compliance determinations <sup>a</sup>	DBRA enforcement hours <sup>b</sup>
2010	546	549	1,095	—
2011	1,041	792	1,833	—
2012	1,226	963	2,189	—
2013	999	902	1,901	—
2014	783	836	1,619	97,667
2015	654	804	1,458	83,410
2016	541	757	1,298	86,095
2017	456	690	1,146	79,254
2018	391	599	990	63,770
2019	331	779	1,110	61,510

Source: GAO analysis of Department of Labor Wage and Hour Investigative Support and Reporting Database (WHISARD) data. | GAO-21-13

<sup>a</sup>A case is recorded as having a compliance determination for an act once the Wage and Hour Division (WHD) concludes the case and determines whether or not a violation of that act occurred. For example, a case may have a determination that no violation occurred. The source of the case is either directed (initiated by the agency without a complaint) or initiated in response to a complaint.

**Appendix II: Trends in Cases with Compliance Determinations, Enforcement Hours, and Back Wages by Act, Fiscal Years 2010-2019**

<sup>b</sup>The number of enforcement hours was not reviewed by GAO for fiscal years 2010-2013.

**Table 7: Davis-Bacon and Related Acts (DBRA)—Workers Due Back Wages for DBRA Violations and Amount of DBRA Back Wages, Fiscal Years 2010-2019**

<b>Fiscal year</b>	<b>Number of workers due back wages</b>	<b>Total back wages assessed (not inflation adjusted, in dollars)</b>	<b>Total back wages paid to date (not inflation adjusted, in dollars)</b>	<b>Total back wages assessed (inflation adjusted 2019 dollars)</b>	<b>Total back wages paid to date (inflation adjusted 2019 dollars)</b>
2010	4,423	7,626,901	7,450,205	8,914,474	8,707,947
2011	8,250	17,930,989	17,014,241	20,548,755	19,498,169
2012	11,105	32,339,180	30,786,790	36,371,540	34,625,583
2013	9,829	27,830,182	27,161,020	30,735,044	29,996,035
2014	10,094	32,394,800	32,006,320	35,101,136	34,680,202
2015	8,463	23,704,719	23,421,302	25,391,600	25,088,015
2016	6,929	20,624,092	20,424,079	21,897,788	21,685,423
2017	7,848	29,689,594	29,241,079	30,973,970	30,506,052
2018	5,414	15,390,999	14,245,150	15,690,314	14,522,181
2019	4,211	10,715,187	10,509,066	10,715,187	10,509,066

Source: GAO analysis of Department of Labor Wage and Hour Investigative Support and Reporting Database (WHISARD) data. | GAO-21-13

**Appendix II: Trends in Cases with Compliance Determinations, Enforcement Hours, and Back Wages by Act, Fiscal Years 2010-2019**

**Family and Medical Leave Act (FMLA)**

**Table 8: Family and Medical Leave Act (FMLA)—Concluded Cases with FMLA Compliance Determinations by Source and FMLA Enforcement Hours, Fiscal Years 2010-2019**

Fiscal year	Complaint	Directed	Total concluded cases with FMLA compliance determinations <sup>a</sup>	FMLA enforcement hours <sup>b</sup>
2010	3,759	966	4,725	—
2011	4,801	1,447	6,248	—
2012	4,104	1,797	5,901	—
2013	4,440	2,526	6,966	—
2014	4,847	2,520	7,367	51,994
2015	4,696	2,504	7,200	55,183
2016	4,705	2,675	7,380	50,421
2017	4,268	3,346	7,614	48,885
2018	4,152	3,726	7,878	44,049
2019	3,961	3,224	7,185	48,571

Source: GAO analysis of Department of Labor Wage and Hour Investigative Support and Reporting Database (WHISARD) data. | GAO-21-13

<sup>a</sup>A case is recorded as having a compliance determination for an act once the Wage and Hour Division (WHD) concludes the case and determines whether or not a violation of that act occurred. For example, a case may have a determination that no violation occurred. The source of the case is either directed (initiated by the agency without a complaint) or initiated in response to a complaint.

<sup>b</sup>The number of enforcement hours was not reviewed by GAO for fiscal years 2010-2013.

**Appendix II: Trends in Cases with Compliance Determinations, Enforcement Hours, and Back Wages by Act, Fiscal Years 2010-2019**

**Table 9: Family and Medical Leave Act (FMLA)—Workers Due Back Wages for FMLA Violations and Amount of FMLA Back Wages, Fiscal Years 2010-2019**

Fiscal year	Number of workers due back wages	Total back wages assessed (not inflation adjusted, in dollars)	Total back wages paid to date (not inflation adjusted, in dollars)	Total back wages assessed (inflation adjusted 2019 dollars)	Total back wages paid to date (inflation adjusted 2019 dollars)
2010	127	709,468	659,897	829,240	771,301
2011	187	1,125,377	1,040,099	1,289,672	1,191,945
2012	193	1,364,473	1,228,985	1,534,608	1,382,227
2013	257	1,203,553	1,119,848	1,329,178	1,236,736
2014	300	2,190,626	1,941,397	2,373,636	2,103,585
2015	391	2,053,987	1,992,668	2,200,153	2,134,471
2016	328	1,881,621	1,733,652	1,997,826	1,840,718
2017	258	1,621,129	1,518,847	1,691,260	1,584,552
2018	240	1,827,397	1,488,127	1,862,935	1,517,067
2019	547	1,996,988	1,852,777	1,996,988	1,852,777

Source: GAO analysis of Department of Labor Wage and Hour Investigative Support and Reporting Database (WHISARD) data. | GAO-21-13

## Migrant and Seasonal Agricultural Worker Protection Act (MSPA)

**Table 10: Migrant and Seasonal Agricultural Worker Protection Act (MSPA)—Concluded Cases with MSPA Compliance Determinations by Source and MSPA Enforcement Hours, Fiscal Years 2010-2019**

Fiscal year	Complaint	Directed	Total concluded cases with MSPA compliance determinations <sup>a</sup>	MSPA enforcement hours <sup>b</sup>
2010	97	1,121	1,218	—
2011	133	1,130	1,263	—
2012	144	1,332	1,476	—
2013	115	1,413	1,528	—
2014	134	1,199	1,333	47,982
2015	145	1,106	1,251	43,139
2016	113	1,038	1,151	45,319
2017	99	1,019	1,118	41,439
2018	92	767	859	37,045
2019	76	787	863	26,814

Source: GAO analysis of Department of Labor Wage and Hour Investigative Support and Reporting Database (WHISARD) data. | GAO-21-13

<sup>a</sup>A case is recorded as having a compliance determination for an act once the Wage and Hour Division (WHD) concludes the case and determines whether or not a violation of that act occurred.

**Appendix II: Trends in Cases with Compliance Determinations, Enforcement Hours, and Back Wages by Act, Fiscal Years 2010-2019**

For example, a case may have a determination that no violation occurred. The source of the case is either directed (initiated by the agency without a complaint) or initiated in response to a complaint.

<sup>b</sup>The number of enforcement hours was not reviewed by GAO for fiscal years 2010-2013.

**Table 11: Migrant and Seasonal Agricultural Worker Protection Act (MSPA)—Workers Due Back Wages for MSPA Violations and Amount of MSPA Back Wages, Fiscal Years 2010-2019**

Fiscal year	Number of workers due Back wages	Total back wages assessed (not inflation adjusted, in dollars)	Total back wages paid to date (not inflation adjusted, in dollars)	Total back wages assessed (inflation adjusted 2019 dollars)	Total back wages paid to date (inflation adjusted 2019 dollars)
2010	2,210	435,621	305,243	509,163	356,774
2011	2,602	406,630	338,770	465,995	388,227
2012	3,724	762,878	669,204	858,000	752,646
2013	4,391	637,593	518,226	704,144	572,318
2014	6,213	742,566	732,478	804,602	793,671
2015	3,662	719,898	710,409	771,127	760,963
2016	3,825	685,271	563,969	727,592	598,798
2017	1,512	256,603	196,750	267,704	205,261
2018	3,581	878,187	869,074	895,266	885,975
2019	2,253	1,288,790	1,277,458	1,288,790	1,277,458

Source: GAO analysis of Department of Labor Wage and Hour Investigative Support and Reporting Database (WHISARD) data. | GAO-21-13



**Appendix II: Trends in Cases with Compliance Determinations, Enforcement Hours, and Back Wages by Act, Fiscal Years 2010-2019**

**McNamara-O’Hara  
Service Contract Act  
(SCA)**

**Table 12: McNamara-O’Hara Service Contract Act (SCA)—Concluded Cases with SCA Compliance Determinations by Source and SCA Enforcement Hours, Fiscal Years 2010-2019**

<b>Fiscal year</b>	<b>Complaint</b>	<b>Directed</b>	<b>Total concluded cases with SCA compliance determinations<sup>a</sup></b>	<b>SCA enforcement hours<sup>b</sup></b>
2010	497	126	623	—
2011	704	192	896	—
2012	707	256	963	—
2013	694	324	1,018	—
2014	495	342	837	53,500
2015	501	361	862	62,887
2016	552	330	882	69,432
2017	542	322	864	67,691
2018	526	394	920	71,561
2019	493	403	896	68,675

Source: GAO analysis of Department of Labor Wage and Hour Investigative Support and Reporting Database (WHISARD) data. | GAO-21-13

<sup>a</sup>A case is recorded as having a compliance determination for an act once the Wage and Hour Division (WHD) concludes the case and determines whether or not a violation of that act occurred. For example, a case may have a determination that no violation occurred. The source of the case is either directed (initiated by the agency without a complaint) or initiated in response to a complaint.

<sup>b</sup>The number of enforcement hours was not reviewed by GAO for fiscal years 2010-2013.

**Appendix II: Trends in Cases with Compliance Determinations, Enforcement Hours, and Back Wages by Act, Fiscal Years 2010-2019**

**Table 13: McNamara-O’Hara Service Contract Act (SCA)—Workers Due Back Wages for SCA Violations and Amount of SCA Back Wages, Fiscal Years 2010-2019**

Fiscal year	Number of workers due back wages	Total back wages assessed (not inflation adjusted, in dollars)	Total back wages paid to date (not inflation adjusted, in dollars)	Total back wages assessed (inflation adjusted 2019 dollars)	Total back wages paid to date (inflation adjusted 2019 dollars)
2010	12,382	23,506,710	22,703,173	27,475,111	26,535,921
2011	13,164	21,233,398	20,346,846	24,333,286	23,317,305
2012	15,639	42,375,844	40,405,714	47,659,672	45,443,887
2013	15,521	33,912,167	33,273,259	37,451,854	36,746,258
2014	14,138	19,274,828	18,891,289	20,885,092	20,469,510
2015	14,522	33,307,470	32,724,907	35,677,704	35,053,685
2016	22,468	25,608,861	25,182,248	27,190,404	26,737,445
2017	13,076	32,061,203	31,461,989	33,448,175	32,823,039
2018	17,973	40,669,999	39,543,111	41,460,924	40,312,121
2019	34,812	65,283,408	64,190,905	65,283,408	64,190,905

Source: GAO analysis of Department of Labor Wage and Hour Investigative Support and Reporting Database (WHISARD) data. | GAO-21-13

## Temporary Employment of Foreign Workers Programs<sup>3</sup>

### H-1B Visa Program

**Table 14: H-1B Visa Program—Concluded Cases with H-1B Compliance Determinations by Source and H-1B Enforcement Hours, Fiscal Years 2010-2019**

Fiscal year	Complaint	Directed	Total concluded cases with H-1B compliance determinations <sup>a</sup>	H-1B enforcement hours <sup>b</sup>
2010	213	9	222	—
2011	320	7	327	—
2012	296	6	302	—
2013	199	8	207	—
2014	151	1	152	25,745
2015	212	7	219	29,548
2016	184	3	187	22,590

<sup>3</sup>For tables 14 through 16, “temporary employment of foreign workers programs” includes cases relating to the H-1B, H-2A, and H-2B visa programs under the Immigration and Nationality Act.

**Appendix II: Trends in Cases with Compliance Determinations, Enforcement Hours, and Back Wages by Act, Fiscal Years 2010-2019**

<b>Fiscal year</b>	<b>Complaint</b>	<b>Directed</b>	<b>Total concluded cases with H-1B compliance determinations<sup>a</sup></b>	<b>H-1B enforcement hours<sup>b</sup></b>
2017	214	7	221	30,035
2018	194	4	198	24,563
2019	156	9	165	22,071

Source: GAO analysis of Department of Labor Wage and Hour Investigative Support and Reporting Database (WHISARD) data. | GAO-21-13

<sup>a</sup>A case is recorded as having a compliance determination for an act once the Wage and Hour Division (WHD) concludes the case and determines whether or not a violation of that act occurred. For example, a case may have a determination that no violation occurred. The source of the case is either directed (initiated by the agency without a complaint) or initiated in response to a complaint.

<sup>b</sup>The number of enforcement hours was not reviewed by GAO for fiscal years 2010-2013.

**Table 15: H-1B Visa Program—Workers Due Back Wages for H-1B Violations and Amount of H-1B Back Wages, Fiscal Years 2010-2019**

<b>Fiscal year</b>	<b>Number of workers due back wages</b>	<b>Total back wages assessed (not inflation adjusted, in dollars)</b>	<b>Total back wages paid to date (not inflation adjusted, in dollars)</b>	<b>Total back wages assessed (inflation adjusted 2019 dollars)</b>	<b>Total back wages paid to date (inflation adjusted 2019 dollars)</b>
2010	804	7,055,378	5,691,763	8,246,466	6,652,646
2011	1,000	7,909,149	6,461,217	9,063,815	7,404,498
2012	1,725	12,029,659	9,590,464	13,529,632	10,786,295
2013	1,132	7,681,212	6,523,540	8,482,962	7,204,455
2014	691	7,836,249	6,669,356	8,490,908	7,226,529
2015	462	4,761,871	4,694,172	5,100,736	5,028,220
2016	337	5,287,857	4,958,781	5,614,422	5,265,024
2017	846	9,960,494	9,838,768	10,391,387	10,264,394
2018	513	7,206,571	6,865,913	7,346,720	6,999,437
2019	1,076	7,114,944	6,926,669	7,114,944	6,926,669

Source: GAO analysis of Department of Labor Wage and Hour Investigative Support and Reporting Database (WHISARD) data. | GAO-21-13

**Appendix II: Trends in Cases with Compliance Determinations, Enforcement Hours, and Back Wages by Act, Fiscal Years 2010-2019**

**H-2A Visa Program  
(agricultural)**

**Table 16: H-2A Visa Program (agricultural)—Concluded Cases with H-2A Compliance Determinations by Source and H-2A Enforcement Hours, Fiscal Years 2010-2019**

Fiscal year	Complaint	Directed	Total concluded cases with H-2A compliance determinations <sup>a</sup>	H-2A enforcement hours <sup>b</sup>
2010	35	194	229	—
2011	74	271	345	—
2012	61	324	385	—
2013	56	333	389	—
2014	55	231	286	25,635
2015	64	268	332	27,810
2016	52	320	372	29,173
2017	64	383	447	39,592
2018	65	348	413	40,547
2019	63	481	544	50,944

Source: GAO analysis of Department of Labor Wage and Hour Investigative Support and Reporting Database (WHISARD) data. | GAO-21-13

<sup>a</sup>A case is recorded as having a compliance determination for an act once the Wage and Hour Division (WHD) concludes the case and determines whether or not a violation of that act occurred. For example, a case may have a determination that no violation occurred. The source of the case is either directed (initiated by the agency without a complaint) or initiated in response to a complaint.

<sup>b</sup>The number of enforcement hours was not reviewed by GAO for fiscal years 2010-2013.

**Table 17: H-2A Visa Program (agricultural)—Workers Due Back Wages for H-2A Violations and Amount of H-2A Back Wages, Fiscal Years 2010-2019**

Fiscal year	Number of workers due back wages	Total back wages assessed (not inflation adjusted, in dollars)	Total back wages paid to date (not inflation adjusted, in dollars)	Total back wages assessed (inflation adjusted 2019 dollars)	Total back wages paid to date (inflation adjusted 2019 dollars)
2010	1,004	398,970	331,732	466,324	387,735
2011	1,566	842,170	721,297	965,119	826,600
2012	3,302	1,905,999	1,706,433	2,143,657	1,919,207
2013	4,702	4,941,960	4,203,950	5,457,792	4,642,750
2014	3,711	2,004,396	1,867,551	2,171,847	2,023,571
2015	2,656	1,952,804	1,906,723	2,091,769	2,042,410
2016	3,714	1,676,291	1,635,540	1,779,815	1,736,547
2017	3,773	2,315,314	1,675,744	2,415,475	1,748,237
2018	4,380	2,187,467	2,144,302	2,230,007	2,186,003
2019	5,120	2,430,160	2,355,050	2,430,160	2,355,050

Source: GAO analysis of Department of Labor Wage and Hour Investigative Support and Reporting Database (WHISARD) data. | GAO-21-13

**Appendix II: Trends in Cases with Compliance Determinations, Enforcement Hours, and Back Wages by Act, Fiscal Years 2010-2019**

**H-2B Visa Program  
(nonagricultural)**

**Table 18: H-2B Visa Program (nonagricultural)—Concluded Cases with H-2B Compliance Determinations by Source and H-2B Enforcement Hours, Fiscal Years 2010-2019**

<b>Fiscal year</b>	<b>Complaint</b>	<b>Directed</b>	<b>Total concluded cases with H-2B compliance determinations<sup>a</sup></b>	<b>H-2B enforcement hours<sup>b</sup></b>
2010	31	27	58	—
2011	71	45	116	—
2012	37	76	113	—
2013	37	44	81	—
2014	32	67	99	11,747
2015	28	34	62	8,634
2016	30	35	65	6,945
2017	30	41	71	10,652
2018	53	52	105	17,711
2019	57	89	146	27,331

Source: GAO analysis of Department of Labor Wage and Hour Investigative Support and Reporting Database (WHISARD) data. | GAO-21-13

<sup>a</sup>A case is recorded as having a compliance determination for an act once the Wage and Hour Division (WHD) concludes the case and determines whether or not a violation of that act occurred. For example, a case may have a determination that no violation occurred. The source of the case is either directed (initiated by the agency without a complaint) or initiated in response to a complaint.

<sup>b</sup>The number of enforcement hours was not reviewed by GAO for fiscal years 2010-2013.

**Appendix II: Trends in Cases with Compliance Determinations, Enforcement Hours, and Back Wages by Act, Fiscal Years 2010-2019**

**Table 19: H-2B (nonagricultural)—Visa Program—Workers Due Back Wages for H-2B Violations and Amount of H-2B Back Wages, Fiscal Years 2010-2019**

Fiscal year	Number of workers due back wages	Total back wages assessed (not inflation adjusted, in dollars)	Total back wages paid to date (not inflation adjusted, in dollars)	Total back wages assessed (inflation adjusted 2019 dollars)	Total back wages paid to date (inflation adjusted 2019 dollars)
2010	0	0	0	0	0
2011	3	14,293	14,293	16,380	16,380
2012	203	204,002	183,467	229,439	206,343
2013	336	190,373	180,221	210,243	199,032
2014	262	248,335	248,306	269,082	269,050
2015	547	876,890	873,825	939,292	936,008
2016	291	298,044	295,854	316,451	314,125
2017	392	525,898	519,469	548,648	541,941
2018	710	1,677,344	1,651,712	1,709,964	1,683,834
2019	1,489	2,530,125	2,477,283	2,530,125	2,477,283

Source: GAO analysis of Department of Labor Wage and Hour Investigative Support and Reporting Database (WHISARD) data. | GAO-21-13

Note: We previously reported that while WHD gained authority to investigate H-2B cases in 2009, it needed a couple years to implement an investigation program.<sup>4</sup> Officials told us at the time that the data starting in fiscal year 2011 would better characterize their efforts.

<sup>4</sup>H-2A and H-2B Visa Programs: Increased Protections Needed for Foreign Workers [Reissued on May 30, 2017], [GAO-15-154](#) (Washington, D.C.: Mar. 6, 2015)

# Appendix III: Comments from the Department of Labor

U.S. Department of Labor

Wage and Hour Division  
Washington, DC 20210



November 04, 2020

Ms. Cindy Brown Barnes  
Managing Director,  
Education, Workforce and Income Security Issues  
U.S. Government Accountability Office  
Washington, D.C. 20548

Dear Ms. Brown Barnes,

The U.S. Department of Labor's (Department) Wage and Hour Division (WHD) appreciates the opportunity to respond to the Government Accountability Office (GAO) Draft Report entitled "*Fair Labor Standards Act: Tracking Additional Complaint Data Could Improve DOL's Enforcement.*"

GAO's objectives in conducting this study, as outlined to then Secretary of Labor R. Alexander Acosta on July 2, 2019, were to examine: (1) what have been trends in WHD's compliance activities, including complaints, investigations and resolutions, (2) to what extent does WHD target employers in high risk industries for investigation, and (3) how consistently and adequately is WHD addressing complaints from workers within its strategically targeted industries?

The report contains one recommendation for the Department. WHD plans to take the following actions to address GAO's recommendations.

**Recommendation 1:** *The Administrator of DOL's Wage and Hour Division should develop a method for systematically aggregating and reviewing data on the reasons that complaints recorded in its enforcement database have been declined or dropped.*

WHD agrees with this recommendation. As noted in the report, WHD's procedures are designed to ensure contacts made by individuals seeking assistance from the agency are handled effectively and efficiently. WHD also understands the importance of internal controls for achieving consistency across offices and the critical role of data analytics in prioritizing limited resources. Consistent with these practices and goals, WHD will determine the appropriate method for effectively assessing variations in dropped cases and complaints where WHD took no further action.

Again, thank you again for the opportunity to comment on this report. If you have any questions, please do not hesitate to contact us.

Sincerely,

A handwritten signature in cursive script that reads "Cheryl M. Stanton".

Cheryl M. Stanton  
Administrator

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# Appendix IV: GAO Contact and Staff Acknowledgments

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## GAO Contact

Cindy S. Brown Barnes at (202) 512-7215 or [brownbarnesc@gao.gov](mailto:brownbarnesc@gao.gov)

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## Staff Acknowledgements

In addition to the contact named above, Howard Arp (Director), Thomas Costa (Acting Director), Danielle Giese and Robert Graves (Assistant Directors), Rachel Beers, Daniel Bibeault, MacKenzie Cooper, Sarah Cornetto, Brad Crofford, Charles Culverwell, Carrie Davidson, Swati Deo, Suellen Foth, Maria Gadel, Daniel Goldstein, Cynthia Grant, Jeremy Kamphuis, Kelsey Kreider, Serena Lo, Maria Christina McMullen, Mimi Nguyen, Cathy Roark, Constance Satchell, Joy Solmonson, Almeta Spencer, Sabrina Streagle, and Frances Tirado made key contributions to this report.



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