

Strategic Objective 3.3 – Secure wages and overtime

Analysis and Future Plans

Wage and Hour Division

WHD relies on a balanced set of measures to evaluate the implementation of its strategic enforcement approach to compliance. These measures capture data on productivity, prioritization, and quality. Since FY 2010, WHD has shifted its resources from complaint-based to directed enforcement to promote compliance on behalf of workers in certain industries or program areas. By better integrating the directed and complaint investigations, WHD maximizes limited enforcement resources towards the goal of improving compliance at the industry-level and reaching the greatest number of vulnerable workers. While the FY 2015 result for percent of directed investigations was lower than the FY 2014 result, WHD maintained an overall trend line from the previous three years for this measure. WHD achieved low no violation rates for both directed and complaint investigations and performed better than the targeted levels. The no violation rates are indications of whether WHD is selecting the right employers for investigation. These results show the gap between complaint and directed investigations has narrowed to almost identical levels, which demonstrates that WHD directed investigations are nearly as accurate as a complaint in identifying employers with violations. Also importantly, directed investigations reach workers that are least likely to complain. Moving forward, WHD is continuing to increase its number and percent of directed investigations while maintaining a low no violation rate in both complaint and directed investigations with those no violation targets continuing to merge.

Davis-Bacon wage rates for non-residential construction averaged 46 months in FY 2015. In FY 2015, WHD conducted a top to bottom evaluation of the wage determination process to identify continuing issues and concerns and develop additional process improvements to enhance the accuracy and timeliness of wage rates.

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WHD – Provide that vulnerable workers are employed in compliance and secure sustained and verifiable employer compliance, particularly among the most persistent violators

*Target reached (Y), Improved (I), or Not Reached (N)		FY/PY 2011	FY/PY 2012	FY/PY 2013	FY/PY 2014	FY/PY 2015	FY/PY 2016	FY/PY 2017	What Worked	What Didn't Work	Program Performance Improvement Plan
Number of compliance actions	Target	31,897	34,533	34,231	33,635	30,500	30,500	31,411	WHD continued to prioritize compliance actions, both complaint and directed, in industries with high violations and vulnerable workers.	WHD continued to identify areas where the infrastructure needed further alignment with strategies.	WHD will maintain optimal investigator levels to ensure productivity while advancing strategic enforcement goals through planning, coordination, and evaluation.
	Result	33,293	34,139	33,146	29,483	27,915	--	--			
	Status	Y	I	N	N	N	--	--			
Percent of directed investigations (excludes conciliations)	Target	32%	35%	38%	40%	43%	45%	46%	WHD's enforcement program has evolved from complaint-based to strategic where directed investigations are conducted in priority industries and the complaints are prioritized.	WHD identified various ways the field can be further supported in their efforts to advance strategic initiatives.	WHD is implementing new tools and training to better equip the field with data and guidance
	Result	29%	41%	44%	44%	42%	--	--			
	Status	--	Y	Y	Y	N	--	--			
Percent of directed no violation cases	Target	28%	25%	23%	22%	25%	24%	22%	WHD achieved the lowest no violation rate in recent history with a continued shift towards strategic enforcement in priority industries.	No violation rates provide limited insights on the severity of violations.	WHD is piloting internal measures to evaluate the nature and severity of violations.
	Result	30%	29%	26%	22%	21%	--	--			
	Status	--	I	I	Y	Y	--	--			
Percent of complaint no violation cases	Target	15%	23%	22%	20%	21%	21%	21%	WHD maintained targeted complaint levels through prioritization and leveraged opportunities for strategic enforcement.	WHD continued to balance the goals of strategic directed enforcement and customer service in States with limited enforcement.	See Above
	Result	25%	21%	21%	19%	18%	--	--			
	Status	--	Y	Y	Y	Y	--	--			

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*Target reached (Y), Improved (I), or Not Reached (N)		FY/PY 2011	FY/PY 2012	FY/PY 2013	FY/PY 2014	FY/PY 2015	FY/PY 2016	FY/PY 2017	What Worked	What Didn't Work	Program Performance Improvement Plan
Percent of Directed Investigations in Priority Industries	Target	80%	83%	85%	86%	84%	84%	86%	WHD continues to place high priority and resources in industries with vulnerable workers unlikely to complain.	WHD may have reached the optimum level and is evaluating what other measures are needed to drive continued improvements that can be achieved.	WHD is developing methods and practices to further develop data on priority industries.
	Result	82%	85%	83%	82%	84%	--	--			
	Status	Y	Y	N	N	Y	--	--			
Percent of complaint investigations in priority industries (excludes conciliations)	Target	63%	66%	68%	68%	69%	69%	70%	WHD commits to industries where it expects to find vulnerable workers, which is balanced against doing investigations in each statutory program.	See Above	See Above
	Result	66%	67%	68%	67%	67%	--	--			
	Status	Y	Y	Y	N	N	--	--			
Average age of Davis-Bacon wage rates for non-Residential Construction (in months)	Target	40[p]	36[p]	36[p]	36[p]	--	45[p]	45[p]	WHD has shifted this program to a more data-driven approach to determine where to survey and how to identify where policy changes are needed.	While the measure tracks timeliness in completing surveys, the measure does not adequately reflect survey quality or accuracy.	WHD is identifying areas to enhance the accuracy and timeliness of wage rates. WHD is working on additional improvements to shorten the time to complete surveys and simplify the data submission process
	Result	39	39	42	43	46	--	--			
	Status	--	--	--	--	--	--	--			

Sources: Wage Determination Generation System (WDGS) Wage and Hour Investigative Support and Reporting Database (WHISARD)

Notes: WHD intends to replace the wage survey measure with one or more measures that better reflect the direction of the program. In the interim, WHD continues to report data from the survey measure without setting targets. The measure is not being used to drive performance, therefore, target-setting is not appropriate.

Employment and Training Administration

The Office of Foreign Labor Certification (OFLC) reviews applications from employers seeking to hire and bring foreign workers as immigrants to the U.S. in permanent positions, and non-immigrant workers for temporary professional positions as well as agricultural and non-agricultural seasonal positions. In addition, OFLC processes employer requests for determination of prevailing wages they need to proceed with the employment-based immigration process. The fundamental determinations, which by statute must be made prior to the granting of labor certification,

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concern whether the hiring of a foreign worker will adversely impact the wages and working conditions of U.S. workers, and that no qualified U.S. workers are willing or available to fill a given vacancy. Statutes, regulations, and administrative requirements establish mandatory timeframes within which the OFLC must issue a final determination or take certain actions.

A key and long-standing challenge within the foreign labor certification programs has been balancing program integrity activities with stakeholder needs for timely processing of applications. In FY 2015, this balance was affected by: available staff resources for processing, the merits of the applications submitted, a 17% increase in volume of applications filed, and implementation of new regulations governing the H-2B (temporary non-agricultural) program. Timely processing improved upon the FY 2014 result for the H-2A (temporary agricultural) program to 97.3 percent of complete applications processed within 30 days before the date of need. OFLC also improved average resolution time for PERM applications not selected for integrity review to 191 days. For PERM applications subject to integrity review, average resolution slowed from 452 days in FY 2014 to 520 days in FY 2015. H-1B applications have sustained the timeliness goal of 100% for FY 2015. H-2B processing was largely impacted by the *Perez v. Perez* ruling on March 4th 2015 by the federal district court in the Northern District of Florida that vacated the 2008 H-2B rule. DOL published an H-2B interim Final Rule on April 29th 2015; however, as a result of the court ruling, H-2B processing timeliness decreased to 84.3% for FY 2015. In FY 2016, OFLC will focus appropriated resources on meeting processing times mandated by statute and regulation in the temporary nonimmigrant programs and attempting to slow the increase of backlogged cases in the PERM Program while maintaining program integrity.

ETA – Performance Goal ETA 3.3 – Maintain oversight to provide that employers are compliant with wage and overtime laws with respect to certified foreign laborers.

*Target reached (Y), Improved (I), or Not Reached (N)		FY/PY 2011	FY/PY 2012	FY/PY 2013	FY/PY 2014	FY/PY 2015	FY/PY 2016	FY/PY 2017	What Worked	What Didn't Work	Program Performance Improvement Plan
Average Number of Days to Resolve PERM Applications NOT Subject to Integrity Review	Target	--	--	90	225[r]	200	225	300		Reallocation of resources to address the PERM integrity review backlog resulted in an increase of 26% in the PERM non-integrity review backlog .	Resources will be allocated to non-integrity applications to reduce this backlog by 30% by the end of FY 2016.
	Result	--	--	114	203	195	--	--			
	Status	--	--	--	Y	Y	--	--			
Average Number of Days to Resolve PERM Applications Subject to Integrity Review	Target	--	--	200	450[r]	500	350	225			OFLC will enact an OPM recommendation to increase ANPC production FTE which should sustain integrity review applications at their current level.
	Result	--	--	260	452	439	--	--			
	Status	--	--	--	N	Y	--	--			

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*Target reached (Y), Improved (I), or Not Reached (N)		FY/PY 2011	FY/PY 2012	FY/PY 2013	FY/PY 2014	FY/PY 2015	FY/PY 2016	FY/PY 2017	What Worked	What Didn't Work	Program Performance Improvement Plan
Percent of Employer Applications for H-1B Resolved in 7 Business Days	Target	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%			
	Result	100.0%	100.0%	100.0%	97.1%	100.0%	--	--			
	Status	Y	Y	Y	N	Y	--	--			
Percent of Complete H-2A Employer Applications Resolved within 30 Days Before the Date of Need	Target	--	--	--	80.00%	95.00% [r]	95.00%	95.00%			OFLC increased this target goal by 15 percentage points for FY 2016.
	Result	--	--	--	90.80%	97.30%	--	--			
	Status	--	--	--	Y	Y	--	--			
Percent of H-2B Employer Applications Resolved in 30 Days	Target	--	--	82.00% [r]	90.00%	90.00%	Base	Base		On March 4th 2015, the US District Court in the Northern District of Florida issued a decision and injunction vacating the 2008 H-2B rule in its entirety, thus shutting down H-2B processing.	Continue to monitor the impact of the April 29th 2015 IFR on application adjudication and establish baseline target goal by Q3 FY 2016.
	Result	--	--	85.30%	97.50%	TBD	--	--			
	Status	--	--	Y	Y	--	--	--			

Sources: OFLC PERM Electronic Filing and Case Processing System

Notes: