

GAO'S UNDERCOVER INVESTIGATION: WAGE THEFT OF AMERICA'S VULNERABLE WORKERS

HEARING

BEFORE THE

COMMITTEE ON

EDUCATION AND LABOR

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

HEARING HELD IN WASHINGTON, DC, MARCH 25, 2009

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GAO'S UNDERCOVER INVESTIGATION: WAGE THEFT OF AMERICA'S VULNERABLE WORKERS

Wednesday, March 25, 2009
U.S. House of Representatives
Committee on Education and Labor
Washington, DC

The committee met, pursuant to call, at 10:03 a.m., in room 2175, Rayburn House Office Building, Hon. George Miller [chairman of the committee] presiding.

Present: Representatives Miller, Kildee, Payne, Woolsey, Hinojosa, McCarthy, Tierney, Kucinich, Hare, Courtney, Shea-Porter, Sablan, Titus, McKeon, Petri, Price, and Roe.

Staff present: Aaron Albright, Press Secretary; Tylease Alli, Hearing Clerk; Jordan Barab, Senior Labor Policy Advisor; Chris Brown, Labor Policy Advisor; Jody Calemine, Labor Policy Deputy Director; Nina DeJong, Investigative Associate; Lynn Dondis, Senior Policy Advisor, Subcommittee on Workforce Protections; Carlos Fenwick, Policy Advisor, Subcommittee on Health, Employment, Labor and Pensions; Patrick Findlay, Investigative Counsel; David Hartzler, Systems Administrator; Ryan Holden, Senior Investigator, Oversight; Stephanie Moore, General Counsel; Alex Nock, Deputy Staff Director; Joe Novotny, Chief Clerk; Rachel Racusen, Communications Director; Dray Thorne, Senior Systems Administrator; Michael Zola, Chief Investigative Counsel, Oversight; Mark Zuckerman, Staff Director; Andrew Blasko, Minority Speech Writer and Communications Advisor; Robert Borden, Minority General Counsel; Cameron Coursen, Minority Assistant Communications Director; Ed Gilroy, Minority Director of Workforce Policy; Rob Gregg, Minority Senior Legislative Assistant; Richard Hoar, Minority Professional Staff Member; Alexa Marrero, Minority Communications Director; Jim Paretto, Minority Workforce Policy Counsel; Molly McLaughlin Salmi, Minority Deputy Director of Workforce Policy; and Linda Stevens, Minority Chief Clerk/Assistant to the General Counsel.

Chairman MILLER [presiding]. Good morning. A quorum being present, this oversight hearing on the Committee of Education and Labor, "The GAO Undercover Investigation: Wage Theft of America's Vulnerable Workers," will now come to order.

And pursuant to rule 7(c), any member may submit an opening statement in writing, which will be made part of the permanent record.

And the Chair now recognizes himself for the purposes of making an opening statement, and then I will recognize Mr. McKeon, the senior Republican on the Committee.

The Committee on Education and Labor meets this morning to examine the results of a Government Accountability Office undercover investigation last year into practices of the Wage and Hour Division of the Department of Labor.

In our first hearing on wage theft in July, we learned that millions of workers were robbed of their hard-earned wages every day. GAO testified that the very agency tasked to fight wage theft had failed to effectively investigate and properly track the number of cases involved in our nation's minimum wage, overtime, and child labor laws.

In fact, GAO cited 15 case studies that showed the failure of the agencies to fully investigate and properly address violations of the law. Hundreds of cases were found where the agency did not assign an investigator for more than a year after the initial complaint. Delays effectively deny justice because of the 2-year statute of limitations on wage theft.

As a result of their initial investigation, the GAO concluded that thousands of complaints handled by the Wage and House Division were likely mishandled over the past decade. These failures likely resulted in workers receiving little or no restitution at all from their employers.

In light of these initial findings, the Committee asked the GAO to continue its investigation and dig deeper to see whether highlighted cases were isolated or a symptom of a larger problem throughout the agency.

This morning, the GAO reports back to the Committee on what they learned during their undercover investigation.

From today's testimony, it is clear that there are serious problems with the Wage and Hour Division's ability to effectively enforce the law. The agency has dropped the ball in far too many cases in pursuing employers that cheat their workers out of their hard-earned wages.

Some Wage and Hour employees explicitly discouraged GAO undercover investigators posing as workers from filing the complaints. Other complaints went unanswered. Anonymous tips of children illegally operating dangerous machinery did not get investigated at all.

Not only was this allegation never investigated, but the complaint did not appear in the agency's computers that are used to track cases. Dropping the ball in child labor complaints could be potentially deadly.

I wish this was not an isolated incident. The GAO found time and again complaints were routinely brushed aside, improperly tracked, or inadequately investigated.

I am concerned about the pattern of inaction in properly addressing thousands of cases involving overtime, minimum wage, and child labor violations, because these violations of the law are not trivial.

Those most vulnerable to wage theft are likely bearing the brunt of our nation's economic crisis. Families where a breadwinner has his or her wages stolen still have rent to pay, mouths to feed, chil-

dren to clothe, and medicine to buy. They can't afford to be paid less than what the law says.

Simply put, when a business pockets wages due its workers, it is theft, and it is illegal. Today's testimony will help inform Congress and the new leadership in the Department of Labor on whether additional resources, better training, or improved statutory language are needed.

We owe it to all hard-working Americans to ensure that the Federal Government lives up to its responsibility to guarantee that families are not being cheated out of their wages by unscrupulous employers.

Ultimately, I believe that improving the Wage and Hour Division will come down to strong leadership and a renewed commitment to enforce the law. I believe that that was lacking in the past administration. I believe that the previous Secretary of Labor was essentially absent without leave with regard to the enforcement of the laws on behalf of the safety of workers and the wages of workers.

I am confident that the Obama administration and Secretary Solis are committed to turning this egregious record around and ensuring that all workers are treated fairly by their employers and their government.

And I would like now to yield to Mr. McKeon for his opening statement.

[The statement of Mr. Miller follows:]

**Prepared Statement of Hon. George Miller, Chairman, Committee on
Education and Labor**

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Mr. McKEON. Thank you, Chairman Miller, and good morning. Today's hearing is about work and pay. It is the energy that drives the American dream. Republicans have long believed in the value and dignity of work and the rewards that come from it.

Take welfare reform. Back in the 1990s, Republicans pushed to change a system that for decades gave money to people for not working. Today, welfare recipients earn their benefits by working or training for a new job or taking classes to get the skills they need to join the workforce later.

They are no longer dependent on the government. Instead, government becomes dependent on them as recipients eventually earn a living on their own and pay taxes.

And many years later, I am happy to report that bipartisan welfare reform is still working. From 1996 to 2006, the Heritage Foundation says the number of people receiving welfare dropped by nearly 60 percent.

For these and all American workers, we have a duty to ensure that federal workplace laws are enforced, and that brings us to the subject of today's hearing, wage theft.

Mr. Chairman, I am not sure this is the best language to discuss the whole range of issues that need our attention in this area. The allegations we are examining are not always theft as we know it. The U.S. Department of Labor's Wage and Hour Division is responsible for enforcing a whole host of workplace laws.

For instance, we will hear today about alleged violations of child labor laws. This isn't a question of so-called wage theft, but it is an equally important concern.

Rather than using politically charged language, I think we should ease the rhetoric and focus on the serious issues at hand. And with the seriousness of these issues, I can't help but notice that no one from the Labor Department is testifying today. That is too bad.

Mr. Chairman, I respectfully submit that, in addition to the expert testimony we will hear from the GAO, it would have been helpful to have a representative from the department here with us

today. A Labor Department expert could have brought a different perspective to the problems of so-called wage theft.

We have been told that a lack of political appointees within the administration precludes the Department of Labor from testifying today. I certainly appreciate the fact that the department—indeed, the entire administration—is still in transition. However, that does not explain why career civil servants at the department, many of whom have spent decades enforcing these laws, could not have testified today and offered their thoughts.

At a minimum, one of these long-term officials with responsibility for enforcement of our wage and hour laws might have offered an explanation for dereliction of duty, alleged by the GAO. More importantly, that expert could have offered possible solutions to the problem.

At our urging, I understand that the majority requested that a Department of Labor official testify here today. I am told the department declined.

I am not sure how persistent we were in pressing the department on this point, Mr. Chairman, but personally I don't think we should have taken "no" for an answer. If we are serious about enforcing the law and not just scoring political points, we should insist on bringing the individuals who are responsible for investigating wage and hour violations here to account for their actions.

That said, the GAO has done extensive work in this area. I am sure there are things we can learn from this investigation, and I welcome Mr. Kutz of the GAO—back to the Committee once again.

Thank you, Chairman Miller. I yield back.

[The statement of Mr. McKeon follows:]

Prepared Statement of Hon. Howard P. "Buck" McKeon, Senior Republican Member, Committee on Education and Labor

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Thank you, Chairman Miller. I yield back.

Chairman MILLER. Thank you.

The chair would just respond that it is—as it has been since I have become chair of the Committee, the GAO will testify on its findings and we will ask the Department of Labor, and we will be asking the Department of Labor, the new Department of Labor, what they will be doing and their recommendations to follow up on this, because I think, at the end of the day, we are going to see that the laws are inadequate and fail to protect the very people whose wages are being stolen.

I do not think that wage theft is a too severe term. A conscious decision, as you will see in the record, has been made to deny these people the wages that they are entitled to under the law.

You are stealing—it may only be a dollar an hour or a few dollars an hour, but what you will see is it adds up to very serious money for thousands and millions of workers in this country who do not get the benefit of the wages that they signed up to earn for the work that they, in fact, do.

There are not a lot of allegations that these people didn't do the job. They did the job. They weren't paid at the conclusion of the job on either the legal rate or the agreed rate by their employer. And so we have a long ways to go here yet.

Mr. MCKEON. Mr. Chairman, may I respond?

Chairman MILLER. Sure.

Mr. MCKEON. I agree with you totally. That is why I say that we should have someone here from the Department of Labor because—

Chairman MILLER. With all due respect—

Mr. MCKEON [continuing]. They should be held to account for that.

Chairman MILLER. With all due respect, we had people here from the Department of Labor before, and it was fairly pathetic, in terms of their inability to provide the data. So we will give the new Department a chance to get up and running. We expect them to come and to respond to this and to help us develop a solution to it.

Mr. MCKEON. Again, Mr. Chairman—and this will be my final comment on this—there will be a few people at the top of the Department replaced, but there are many people there that have been there for a number of years that have the responsibility for enforcing these laws. I would like to know why they haven't been.

Chairman MILLER. And I think it is—

Mr. MCKEON. If it is because of their top leadership, then that should be brought out—

Chairman MILLER. I think as we will see, they utterly failed in that obligation.

Dr. PRICE. Mr. Chairman, if I may? May I ask a question of the chairman?

Chairman MILLER. Yes.

Dr. PRICE. And I apologize for being a bit late, but are we going to—is this Committee going to have the Department come in and respond to this report at any point? Is that—

Chairman MILLER. That is my intention. When we start to consider legislation, we will want their response as to what happened here and what we need to do and what we should do going forward.

Dr. PRICE. In hearing format?

Chairman MILLER. I would expect so, yes.

Dr. PRICE. Thank you.

Chairman MILLER. Mr. Kutz, welcome to the Committee. Let me just introduce Mr. Kutz to the Committee once again. He needs no introduction for the members, but certainly for the audience.

Gregory Kutz is currently the managing director of GAO's Forensic Audits and Special Investigations Unit. Mr. Kutz has testified and been responsible for investigative reports about the Federal Government's handling of Hurricane Katrina and Rita, security at airports and borders, and security of radioactive materials, among other important issues.

Mr. Kutz has testified before the Committee several times, including last Congress, when he testified about abuses in the teen residential treatment industry.

Mr. Kutz is accompanied by Jonathan Meyer, who is the assistant director of GAO's Forensic Audits and Special Investigations Unit.

Mr. Kutz, welcome to the Committee, and we look forward to the testimony. You know the rules. We will give you 5 minutes here to try to summarize your report and then open it up for—10 minutes, excuse me, 10 minutes for you to summarize your report and then open it up for questions. Thank you.

STATEMENT OF GREG KUTZ, MANAGING DIRECTOR, U.S. GOVERNMENT ACCOUNTABILITY OFFICE, WASHINGTON, DC; ACCOMPANIED BY JONATHAN MEYER, ASSISTANT DIRECTOR, U.S. GOVERNMENT ACCOUNTABILITY OFFICE, DALLAS, TX

Mr. KUTZ. Mr. Chairman and members of the Committee, thank you for the opportunity to discuss the Department of Labor's investigations of wage and hour complaints.

Last July, I testified before this Committee that 15 cases of wage theft were not adequately investigated. Today's testimony highlights the results of our investigation into whether those 15 cases were isolated or the tip of the iceberg.

My testimony has two parts. First, I will discuss the results of our investigation. And, second, I will discuss our recommendations and conclusions.

First, our covert testing clearly shows that the complaint intake process is fundamentally flawed. Posing as fictitious wage theft victims, we filed 10 common complaints with Labor offices across the country. We also posed as a fictitious employer that had committed the labor law violations.

Examples of our findings include: no response to a message we left that children were working during school hours and operating circular saws and meat grinders; one fictitious employee being told not to file a complaint unless he had another job lined up; investigators accepting employer refusals to pay without question; and cases recorded in the system as paid, even after our bogus employee told the Department that they were not.

We also found that most calls we made during business hours went directly into voicemail and oftentimes were never returned. At the end of my presentation, I will play several clips from the undercover calls we made to Labor offices across the country.

We also investigated cases involving over 1,000 actual wage theft victims. These cases were identified through data-mining, and thus they cannot be projected to all investigations. However, they clearly show that many investigations are not adequate.

For example, one employer agreed that it owed 93 employees \$200,000. However, this employer stalled until the 2-year statute of limitations had expired. This case was closed with no collections.

In another case, an investigator found that 438 employees were owed \$230,000. This case was not assigned for 22 months and, once again, ultimately was closed with no collections.

One allegation was from an employee that worked at a sheriff's office. The investigator closed this case after two phone calls were not returned.

We also found that conciliation cases are oftentimes not recorded in the Department of Labor's systems. Conciliations generally reflect complaints of one or several employees. We found that the head of the southeast region, which has about 57 percent of these types of complaints, instructed offices in that region not to record failed attempts at conciliation.

Thus, it is not surprising that our statistical sample showed that 95 percent of recorded conciliations were adequately investigated. This is a good news-bad news story. The good news is that, when adequate investigations are performed, there are often positive re-

sults. The bad news is that likely thousands of these failed conciliation cases are never recorded in the system.

Non-conciliation cases generally involve a larger number of employees. Our statistical sampling of these cases showed that 81 percent of the time they were adequately investigated. For example, in one case, it was completed in 4 months with \$59,000 collected for 12 convenience store employees. This case involved detailed payroll analysis and complete follow-up to ensure that all of the employees were, in fact, paid.

The flip side to this is that 19 percent of the larger cases are not adequately investigated. This leaves thousands of victims vulnerable to wage theft with no help from the Federal Government.

Moving on to my second point, based on our overall work, we have concluded that the complaint intake and investigation processes are not effective. We plan to issue a report with several recommendations to Labor to improve their human capital, processes, and the use of technology.

For example, we were surprised to find that investigators had no special technology or tools to do their work. If Labor's mission in this area is to properly investigate wage theft allegations, then they need specialized tools to research and identify individuals and businesses. My unit would be far less effective in serving the Congress without the critical research tools that we use every day.

In addition, throughout our work, we found many symptoms of human capital problems. We will be recommending for Labor to take a look at matters such as hiring, training, and whether sufficient staff are on board to achieve the mission.

In conclusion, our work shows that the 15 cases I described for you last year were, in fact, the tip of the iceberg. I am concerned that thousands of victims of wage theft become frustrated with the complaint intake process and never actually file complaints with Labor.

Thousands of others who file complaints find themselves victims of unscrupulous employers who know how to beat the system.

I am also concerned that, with the current economic crisis, that wage theft is increasing. Congress and the new administration have an opportunity to make changes that would better protect our nation's most vulnerable workers.

Mr. Chairman, as I mentioned, I would like to now play some clips from the undercover calls we made that will give you and the members of this Committee an inside look at what real victims of wage theft can face when dealing with the Federal Government.

[Begin audio clip.]

VOICE. Okay, well, you will have to pay him at least the minimum wage for all the hours that he worked.

VOICE. Well, you know, like I said, all of our contracts have dried up. We really don't have anything coming in, so—

VOICE. Okay, so you are not in a position where you can pay him?

VOICE. No.

VOICE. Okay, well, then I will let him know that he has his private right to action to pursue the funds.

[End audio clip.]

[Begin audio clip].

VOICE. Once the employer tells me that they are not going to pay and that they can't, my ability to, you know, force payment has ended.

VOICE. So you really have no power to do any—all you did was just call her and ask her to pay me. I mean, she is just—

VOICE. And, well, the thing is that—I explained the law to her. She knows that she needs to pay you. It is just that she is saying she doesn't have the money to. I can't wring blood from a stone.

I am bound by the laws that I am able to enforce, the money that Congress gives us and all of that lovely stuff. If you are having a problem with what our office is capable of achieving based on the laws that were written, then you need to write your congressman. Okay, do you know who your congressmen are? I mean, we can use all the help we can get.

[End audio clip.]

[Begin audio clip.]

VOICE. You are sure you don't want to just have a nice conversation with him yourself?

VOICE. No, no, I don't want to, because he gets very loud and angry.

VOICE. Okay, well, here is another avenue that you can pursue. Okay, do you have another job lined up?

VOICE. No.

VOICE. Okay. You might want to do that before you file a complaint with us, because I can't guarantee that he is not going to fire you.

[End audio clip.]

[Begin audio clip.]

VOICE. Yeah, they have to have a certain ADV amount for us to have enterprise coverage, and we don't have it.

VOICE. What does that mean? I don't understand.

VOICE. What the gross sales is for that year.

VOICE. How do you get that?

VOICE. We report off of the IRS statements.

VOICE. Oh. So you check with IRS and IRS says that he reports less than that?

VOICE. Yes.

[End audio clip.]

[Begin audio clip.]

VOICE. We have a backlog right now of about like 8 months, 8 to 10 months.

VOICE. Okay.

VOICE. And we are not even going to be starting an investigation until 8 to 10 months.

[End audio clip.]

[Begin audio clip.]

VOICE. Please leave a message and the officer of the day will return your call as soon as possible.

VOICE. I have seen a place—I think it is called CP&D Meat Packaging or something like that in Modesto, California. I have seen kids working there; I believe they are under age. They seem to be working all day, probably during school. They are working on some heavy type of equipment like, I guess you call them circular saws and the ones—the machine that makes like hamburger meat.

[End audio clip.]
Mr. KUTZ. Mr. Chairman, that ends our statement. Mr. Meyer and I look forward to your questions.
[The joint statement of Mr. Kutz and Mr. Meyer follows:]

United States Government Accountability Office

GAO

Testimony
Before the Committee on Education and
Labor, House of Representatives

For Release on Delivery
Expected at 10:00 a.m. EST
Wednesday, March 25, 2009

DEPARTMENT OF LABOR

**Wage and Hour Division's
Complaint Intake and
Investigative Processes
Leave Low Wage Workers
Vulnerable to Wage Theft**

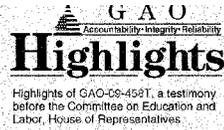
Statement of Gregory D. Kutz, Managing Director
Forensic Audits and Special Investigations

Jonathan T. Meyer, Assistant Director
Forensic Audits and Special Investigations



DEPARTMENT OF LABOR

Wage and Hour Division's Complaint Intake and Investigative Processes Leave Low Wage Worker Vulnerable to Wage Theft



Highlights of GAO-09-458T, a testimony before the Committee on Education and Labor, House of Representatives.

Why GAO Did This Study

The mission of the Department of Labor's Wage and Hour Division (WHD) includes enforcing provisions of the Fair Labor Standards Act, which is designed to ensure that millions of workers are paid the federal minimum wage and overtime. Conducting investigations based on worker complaints is WHD's priority. According to WHD, investigations range from comprehensive investigations to conciliations, which consist primarily of phone calls to a complainant's employer.

In July 2008, GAO testified on 15 case studies where WHD failed to investigate complaints. This testimony highlights the findings of a follow-up investigation performed at the Committee's request. Specifically, GAO was asked to (1) test WHD's complaint intake process in an undercover capacity, (2) provide additional case study examples of inadequate WHD responses to complaints, and (3) assess the effectiveness of WHD's complaint intake process, conciliations, and other investigative tools.

To test WHD's complaint intake process, GAO posed as complainants and employers in 10 different scenarios. To provide case study examples and assess effectiveness of investigations, GAO used data mining and statistical sampling of closed case data for fiscal year 2007. GAO plans to issue a follow-up report with recommendations concerning resource needs and the recording of complaints. GAO also confirmed key findings with WHD officials.

To view the full product, including the scope and methodology, click on GAO-09-458T. For more information, contact Gregory D. Kutz at (202) 512-6722 or kutzg@gao.gov.

What GAO Found

GAO found that WHD frequently responded inadequately to complaints leaving low wage workers vulnerable to wage theft. Posing as fictitious complainants, GAO filed 10 common complaints with WHD district office across the country. The undercover tests revealed sluggish response to poor complaint intake process, and failed conciliation attempts, among problems. In one case, a WHD investigator lied about investigative work performed and did not investigate GAO's fictitious complaint. At the end of the undercover tests, GAO was still waiting for WHD to begin investigate three cases—a delay of nearly 5, 4, and 2 months, respectively. The table below provides additional examples of inadequate WHD responses to 7 fictitious complaints.

Employee/ location	Complaint	Result
Receptionist/ Virginia	Employee was not paid minimum wage.	<ul style="list-style-type: none"> GAO's fictitious employer agreed that she had failed to pay minimum wage but refused to pay back wages due. WHD investigator accepted the refusal without question and informed the fictitious employee of his right to file a lawsuit. When the fictitious employee asked why WHD could not offer help, the investigator told the employee to contact his Congress to request more resources for WHD.
Meat Packer/ California	Children using heavy machinery.	<ul style="list-style-type: none"> WHD claims that among complaints, child labor complaints top priority, but 4 months after GAO left an anonymous child complaint, WHD had not conducted any investigative work. Complaint was never recorded in WHD's database.
House Painter/ Texas	Employee did not receive last paycheck.	<ul style="list-style-type: none"> GAO's fictitious employer told the WHD investigator he worked but failed to fax proof of payment to WHD as requested; he never confirmed payment and closed the case as "agreed to pay." After 3 weeks, GAO's fictitious employee called back and noted that he hadn't been paid. The WHD investigator contacted the employer and, when asked, stated "there is no penalty" for pay. The fictitious employer refused to pay, and WHD informed the fictitious employee of his right to take private action. Complaint was recorded as "agreed to pay" in WHD's database.

Source: GAO.

Similar to the 10 fictitious scenarios, GAO identified 20 cases affecting 1,160 real employees whose employers were inadequately investigated. For example, GAO found cases where it took over a year for WHD to respond to a complaint, cases closed based on unverified information provided by the employer, and cases dropped when the employer did not return phone calls.

GAO's overall assessment of the WHD complaint intake, conciliation, and investigation processes found an ineffective system that discourages wage theft complaints. With respect to conciliations, GAO found that WHD did not fully investigate these types of complaints or compel employers to pay. In addition, a WHD policy instructed many offices not to record unsuccessful conciliations in its database, making WHD appear better at resolving conciliations than it actually is. WHD's investigations were frequently delayed by months or years, but once complaints were recorded in WHD's database and assigned as a case to an investigator, they were often adequately investigated.

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to discuss findings related to our investigation of the Department of Labor's (Labor) Wage and Hour Division (WHD) processes for investigating and resolving wage theft complaints. In a hearing held in July 2008 before this committee, we testified that WHD had inadequately responded to complaints from low wage workers who alleged that employers failed to pay the federal minimum wage and required overtime¹. Specifically, we found cases where WIID inappropriately rejected complaints based on incorrect information provided by employers, failed to make adequate attempts to locate employers, did not thoroughly investigate and resolve complaints, and delayed the initiation of investigations for over a year. We also reported that WHD's investigation database contained thousands of cases with characteristics similar to cases identified in our testimony. At the request of this committee, subsequent to the hearing, we performed additional audit and investigative work to determine the magnitude of these issues. This testimony reflects findings from the work we have performed since July 2008. We plan to issue a report containing recommendations to Labor to improve their complaint intake and investigation processes.

As we previously reported, over 100 million workers are covered under labor laws enforced by WHD, including the Fair Labor Standards Act (FLSA), the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), the Family and Medical Leave Act (FMLA), the Davis Bacon and Related Acts (DBRA), and other federal labor laws. By law, WIID investigators and technicians² enforce labor laws governing issues such as minimum wage, overtime pay, child labor, and family medical leave. WHD uses a number of strategies including investigations and partnerships with external groups – such as states, foreign consulates, and employee and employer associations. However, conducting investigations based on complaints is WIID's first priority.

¹ GAO, *Department of Labor: Case Studies from Ongoing Work Show Examples in Which Wage and Hour Division Did Not Adequately Pursue Labor Violations*, GAO-08-357F, (Washington, D.C.: July 15, 2008).

² In general, technicians focus primarily on conciliations but may also work on self-audits and limited investigations in some offices. Investigators work on non-conciliations, including full and limited investigations and self-audits, but may also work on conciliations in some offices. Unlike law enforcement officers, WHD investigators do not have arrest authority. In this report, we use the term investigator to refer to both investigators and technicians.

WHD investigators can take actions ranging from making phone calls to the complainant's employer (known as conciliations) to taking other, more resource-intensive actions such as interviewing the employer and related witnesses, reviewing employer payroll records, and requesting copies of self-audits² conducted by the employer. In this report, we refer to these more in-depth investigations collectively as non-conciliations.

Conciliations are generally limited to a single, minor violation, such as a missed paycheck, or an issue affecting a single worker. A conciliation is used to resolve a complaint quickly and with minimal resources on the part of WHD. Investigative work for conciliations is generally limited to a telephone conversation in which the WHD investigator explains the specific complaint against the employer, describes applicable laws, and requests that the employer comply with the law and pay any back wages due. WHD staff generally do not visit the employer's establishment or verify information provided by the employer. When WHD determines that violations have occurred and computes back wages owed to workers, it can assess back wages to be paid to the employees and can impose civil money penalties against employers with repeated or willful violations. If an employer signs an agreement to pay back wages and/or civil money penalties but reneges on their commitment, WHD can refer the case to the Department of Treasury for debt collection or to Labor's Office of the Solicitor for litigation. If the employer has not agreed to pay, WHD can only refer the case to the Solicitor for litigation. According to the Solicitor's office, it considers various factors including the merits of the case, number of employees affected, difficulties of proof and whether the employer is in current compliance, when deciding whether to litigate a case.

Today's testimony summarizes the results of our forensic audit and investigative work reviewing investigations conducted by WHD. As requested, this testimony will highlight our findings related to (1) undercover testing of WHD's complaint intake and conciliation processes, (2) additional case study examples of inadequate WHD responses to complaints, and (3) the effectiveness of WHD's complaint intake process, conciliations, and other investigative tools.

² In a self-audit, WHD determines which violations may exist and allows the employer under investigation to conduct its own review of records and calculate the back wages due to employees.

To test the effectiveness of WHD's complaint intake process and conciliations, undercover GAO investigators posed both as complainants and employers. Using 10 fictitious scenarios including minimum wage, last paycheck, and overtime violations, investigators called WHD offices in Alabama, California, Florida, Maryland, and Texas posing as complainants. These field offices handled 13 percent of all cases investigated by WHD in fiscal year 2007. When WHD investigators attempted to follow up on the complaints, different undercover investigators posed as the employers and followed a variety of scripted scenarios to test how WHD investigators would respond. Complaints and employer responses to the WIID investigations were based on actual situations we encountered in our work. For more information, see <http://www.gao.gov/media/video/gao-09-458t>.

To identify case studies of inadequate investigations conducted in response to actual employees' allegations of wage theft, we obtained Labor's Wage and Hour Investigative Support and Reporting Database (WHISARD) and data-mined for closed cases in which it took WHD more than one year to complete an investigation, an employer could not be located, or the case was dropped when an employer refused to pay. We analyzed WHD's WHISARD database and determined it was sufficiently reliable for purposes of our audit and investigative work. We also obtained and analyzed WHD case files, interviewed WHD officials, and reviewed publicly available data to gather additional information about these cases.

To determine the effectiveness of WHD's complaint intake process, conciliations, and other investigative tools, we used the results of our undercover tests, case studies, interviews and walk-throughs of the processes with management, and two statistical samples. We selected a random statistical sample of 115 cases from 10,855 conciliations and 115 cases from 21,468 non-conciliations recorded by WHD in WHISARD that were concluded between October 1, 2006 and September 30, 2007. We obtained and reviewed WHD's case files for the selected cases and performed tests to determine whether the investigations conducted were adequate. Inadequate cases were those in which WHD did not initiate an investigation within 6 months, did not complete investigative work within one year, did not contact the employer, did not correctly determine coverage under federal law, did not review employer records, did not assess back wages when violations were identified, or did not refer cases to Labor's Office of the Solicitor, when appropriate. We subsequently determined through our interviews that the population of conciliations sampled was substantially incomplete. Therefore, we were only able to

project sample results to conciliations that WHD chose to enter into their database rather than the entire population of conciliations.

We conducted our forensic audit and related investigations from July 2008 through March 2009. We conducted our audit work 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 investigative work in accordance with the standards prescribed by the President's Council on Integrity and Efficiency.

Undercover Tests Reveal Inadequate Investigations and Poor Complaint Intake Process

The results of our undercover tests illustrate flaws in WHD's responses to wage theft complaints, including delays in investigating complaints, complaints not recorded in the WHD database, failure to use all available enforcement tools because of a lack of resources, failure to follow up on employers who agreed to pay, and a poor complaint intake process. For example, WHD failed to investigate a child labor complaint alleging that underage children were operating hazardous machinery and working during school hours. In another case, a WHD investigator lied to our undercover investigator about confirming the fictitious businesses' sales volume with the Internal Revenue Service (IRS), and did not investigate our complaint any further. WHD successfully investigated 1 of our 10 fictitious cases, correctly identifying and investigating a business that had multiple complaints filed against it by our fictitious complainants. Five of our 10 complaints were not recorded in WHD's database and 2 of 10 were recorded as successfully paid when in fact the fictitious complainants reported to WHD they had not been paid. To hear selected audio clips of these undercover calls, go to <http://www.gao.gov/media/video/gao-09-458/>. Table 1 provides a summary of the 10 complaints that we filed or attempted to file with WHD.

Table 1: Results of Undercover Testing

Complainant	Location	Complaint	Result
1 Dry Cleaners Clerk	Birmingham, AL	Employee did not receive last paycheck.	<p>Fictitious employer refused to pay and WHD did not record the failed conciliation in the database.</p> <ul style="list-style-type: none"> WHD attempted to conciliate the case, but never recorded the work done in the database. WHD did not inform the employee of the result of the conciliation.
2 Meat Packer	Modesto, CA	Underage children working during school hours on heavy machinery.	<p>WHD failed to investigate a complaint alleging that children were working too many hours under hazardous conditions.</p> <ul style="list-style-type: none"> WHD claims that child labor complaints are its top priority, but 4 months after we left an anonymous child labor complaint, WHD had not conducted any investigative work. Complaint was never recorded in the database.
3 Siding Installer	Montebello, CA	Two separate complaints filed by employees who did not receive their last paycheck.	<p>WHD successfully identified our fictitious employer with repeat violations and attempted to make a site visit to the fictitious employer when he failed to return phone calls.</p> <ul style="list-style-type: none"> WHD accepted two complaints about the same business. One investigator working on the first complaint took 5 weeks to contact the fictitious employer but another investigator working on the second complaint contacted the fictitious employer immediately. When our fictitious employer refused to pay in both cases, WHD correctly determined that the problem affected multiple employees and opened an investigation. Investigator made multiple attempts to contact the fictitious employer after he stopped returning phone calls, including making a site visit to the bogus address. The case was appropriately closed when the fictitious employer could not be located.
4 Laundromat Clerk	Monterey Park, CA	Employee was a Spanish-speaking, illegal immigrant paid less than minimum wage for over a year.	<p>WHD delayed investigating the complaint and inaccurately recorded that the fictitious employee received back wages.</p> <ul style="list-style-type: none"> Two weeks after we first contacted WHD, a Spanish-speaking investigator called our fictitious employee. 5 weeks after the complaint was faxed to WHD, an investigator contacted our fictitious employer, who eventually agreed to pay. The fictitious employee called WHD to report that she hadn't been paid, but the complaint was recorded as "agreed to pay" in WHD's database.

Complainant	Location	Complaint	Result
5 Convenience Store Clerk	Miami, FL	Employee did not receive last paycheck.	<p>WHD did not return phone calls and failed to record our complaint in their database.</p> <ul style="list-style-type: none"> WHD failed to return seven messages from our fictitious employee attempting to file a complaint. In two cases during regular business hours, calls were routed to a voicemail message stating that the office was closed. Complaint was never recorded in the database.
6 Dishwasher	Miami, FL	Employee did not receive overtime for an average of 4 hours per week for 19 weeks.	<p>The WHD office's large backlog prevented it from investigating our case in a timely manner.</p> <ul style="list-style-type: none"> Investigator told our fictitious employee that it would take "8 to 10 months" to begin investigating his complaint. WHD failed to return four calls over 4 consecutive months from our fictitious employee attempting to determine the status of his complaint. Complaint was never recorded in the database.
7 Janitor	Frederick, MD	Employee was not paid minimum wage.	<p>WHD failed to record initial complaint and never returned calls from our fictitious employer.</p> <ul style="list-style-type: none"> WHD investigator accepted the complaint but did not attempt to contact our fictitious employer to initiate a conciliation. Between September 24, 2008 and January 12, 2009, WHD failed to return four calls from our fictitious employee attempting to determine the status of his complaint. When the fictitious employee reached the same investigator, she had no record of his initial call and suggested the employee look for another job before filing a complaint against his employer. Investigator finally accepted the complaint and left a message for the fictitious employer, but did not return his two subsequent calls. Complaint was never recorded in the database.

Complainant	Location	Complaint	Result
8 House Painter	Dallas, TX	Employee did not receive last paycheck.	<p>WHD inaccurately recorded that our fictitious employee received back wages.</p> <ul style="list-style-type: none"> Our fictitious employer told the WHD investigator he would pay, but failed to fax proof of payment to WHD as requested. WHD investigator never followed up to confirm payment and closed the case as "agreed to pay." After 3 weeks, our fictitious employee called back and reported that he hadn't been paid. The WHD investigator contacted our fictitious employer and, when asked, stated "there is no penalty" for failure to pay. After our fictitious employer refused to pay, WHD informed our fictitious employee of his right to take private action. Complaint was still recorded as "agreed to pay" in WHD's database despite WHD's knowledge that the fictitious employer had failed to pay the back wages.
9 Lawn Mower	Dallas, TX	Employee was not paid minimum wage.	<p>Investigator lied to our fictitious employee about investigative work performed and did not investigate the complaint.</p> <ul style="list-style-type: none"> Investigator told the fictitious employee that WHD had no jurisdiction because the gross revenues of the fictitious employer did not meet the minimum standard for coverage, even though the fictitious employee stated that his boss had told him the company's gross revenues were three times greater than the minimum standard. Investigator claimed that he had obtained information on the fictitious employer's revenue from an IRS database. However, our fictitious employer had never filed taxes, WHD officials told us they do not have access to IRS databases, and the case file shows that no contact was made with the IRS. We referred information related to this case to Labor's Office of the Inspector General for further investigation.

Complainant	Location	Complaint	Result
10 Receptionist	Clifton, VA	Employee was not paid minimum wage.	<p>WHD readily accepted our fictitious employer's refusal to pay and stated they could not assist the fictitious employee further.</p> <ul style="list-style-type: none"> • WHD investigator accepted this complaint and promptly called our fictitious employer. • Our fictitious employer agreed that she had failed to pay the minimum wage but refused to pay back wages due. • WHD investigator accepted the refusal without question and informed our fictitious employee of his right to file a lawsuit. • When our fictitious employee asked why WHD could not offer more help, the WHD investigator said she was "bound by the laws I'm able to enforce, the money the Congress gives us" and told our fictitious employee to contact his Congressman to request more resources for WHD.

Source: GAO.

We identified numerous problems with the WHD response to our undercover wage theft complaints. Key areas where WHD failed to take appropriate action include delays in investigating complaints, complaints not recorded in the WHD database, failure to use available enforcement tools, failure to follow up on employers who agreed to pay, and a poor complaint intake process.

Delays Investigating Complaints. WHD took more than a month to begin investigating five of our fictitious complaints, including three that were never investigated. In one case, the fictitious complainant spoke to an investigator who said she would contact the employer. During the next 4 months, the complainant left four messages asking about the status of his case. When he reached the investigator, she had taken no action on the complaint, did not recall speaking with him and had not entered the complaint in the WHD database.

Complaints Not Recorded in Database. Five of our complaints were never recorded in WHD's database. These complaints were filed with four different field offices and included three complaints in which WHD performed no investigative work and two complaints in which WHD failed to record the investigative work performed. For example, we left a message at one WHD office alleging that underage children were working at a meat packing plant during school hours and operating heavy machinery, such as meat grinders and circular saws. With respect to complaints, WHD policy states that those involving hazardous conditions

and child labor are its top priority, but a review of WHD records at the end of our work showed that the case was not investigated or entered into WHD's database. In another case, an investigator spoke to the fictitious employer, who refused to pay the complainant the back wages due. The investigator closed the conciliation without entering the case information or outcome into WHD's database. This is consistent with the WHD Southeast regional policy of not recording the investigative work performed on unsuccessful conciliations. The effect of not recording unsuccessful conciliations is to make the conciliation success rate for the regional office appear better than it actually is. The number of complaints that are not entered into WHD's database is unknown, but this problem is potentially significant since 5 out of our 10 bogus complaints were not recorded in the database.

Failure to Use All Enforcement Tools. According to WHD staff, WHD lacks the resources to use all enforcement tools in conciliations where the employer refuses to pay. According to WHD policy, when an employer refuses to pay, the investigator may recommend to WHD management that the case be elevated to a full investigation. However, only one of our three fictitious employers who refused to pay was placed under investigation. In one case, our fictitious employer refused to pay and the investigator accepted this refusal without question, informing the complainant that he could file a private lawsuit to recover the \$262 due to him. When the complainant asked why WHD couldn't provide him more assistance, the investigator replied, "I've done what I can do, I've asked her to pay you and she can't...I can't wring blood from a stone," and then suggested the complainant contact his Congressman to ask for more resources for WHD to do their work. According to WHD policy and interviews with staff, WHD doesn't have the resources to conduct an investigation of every complaint and prefers to investigate complaints affecting large numbers of employees or resulting in large dollar amounts of back wages. One district director told us that conciliations result from "a mistake" on the part of the employer and he does not like his investigators spending time on them. However, when WHD cannot obtain back wages in a conciliation and decides not to pursue an investigation, the employee's only recourse is to file private litigation. Low wage workers may be unable to afford attorney's fees or may be unwilling to argue their own case in small claims court, leaving them with no other options to obtain their back wages.

Failure to Follow Up on Employers Who Agree to Pay. In 2 of our cases, the fictitious employer agreed to pay the back wages due and WHD recorded the conciliation as successful, even when the complainant notified the investigator that he had not been paid. In both cases, the

investigator told the employer he was required to submit proof of payment, but only one of the investigators followed up when the employer failed to provide the required proof. The complainant in both cases later contacted the investigator to report he had not been paid. The investigator attempted to negotiate with both fictitious employers, but did not update the case entry in WHD's database to indicate that the complainant never received back wages, making it appear as though both cases were successfully resolved. These two cases cast doubt on whether complainants whose conciliations are marked "agreed to pay" in the WHD database actually received their back wages.

Poor Complaint Intake Process. We found that WHD's complaint intake process is time-consuming and confusing, potentially discouraging complainants from filing a complaint. Of the 115 phone calls we made directly to WHD field offices, 87 (76 percent) went directly to voicemail. While some offices have a policy of screening complainant calls using voicemail, other offices have staff who answer the phone, but may not be able to respond to all incoming calls. In one case, WHD failed to respond to seven messages from our fictitious complainant, including four messages left in a single week. In other cases, WHD delayed over 2 weeks in responding to phone calls or failed to return phone calls from one of our fictitious employers. At least two WHD offices have no voice mailbox for the office's main phone number, preventing complainants from leaving a message when the office is closed or investigators are unavailable to take calls. One of our complainants received conflicting information about how to file a complaint from two investigators in the same office, and one investigator provided misinformation about the statute of limitations in minimum wage cases. At one office, investigators told our fictitious employee that they only accept complaints in writing by mail or fax, a requirement that delays the start of a case and is potentially discouraging to complainants. In addition, an investigator lied about contacting IRS to determine the annual sales for our fictitious employer, and then told our complainant that his employer was not covered by the FLSA. FLSA applies to employees of enterprises that have at least \$500,000 in annual sales or

business'. Our complainant in this case told the investigator that his employer had sales of \$1.5 million in 2007, but the investigator claimed that he had obtained information about the business from an IRS database showing that the fictitious business did not meet the gross revenue threshold for coverage under federal law. Our fictitious business had not filed tax returns and WHD officials told us that their investigators do not have access to IRS databases. A review of the case file also shows that no information from the IRS was reviewed by the investigator. Information related to this case was referred to Labor's Office of the Inspector General for further investigation.

WHD successfully investigated a business that had multiple complaints filed against it by our fictitious complainants. WHD identified two separate conciliations ongoing against the same fictitious business, both originating from complaints filed by our fictitious complainants. These conciliations were combined into an investigation, the correct procedure for handling complaints affecting multiple employees. The investigator continued the investigation after the fictitious employer claimed that the business had filed for bankruptcy and attempted to visit the business when the employer stopped returning phone calls. The investigator did not use public records to verify that the employer had filed for bankruptcy, but otherwise made reasonable efforts to locate and investigate the business.

Case Studies Show That WHD Inadequately Investigated Complaints

Similar to our 10 fictitious scenarios, we identified 20 cases affecting at least 1,160 workers whose employers were inadequately investigated by WHD. We performed data mining on the WHISARD database to identify 20 inadequate cases closed during fiscal year 2007. For several of these cases, WHD (1) did not respond to a complainant for over a year, (2) did not verify information provided by the employer, (3) did not fully investigate businesses with repeat violations, and (4) dropped cases because the employer did not return telephone calls. Ten of these case studies are

¹ The protections of the Fair Labor Standards Act apply to employees engaged in interstate commerce or in the production of goods for interstate commerce. The act also applies to all employees of an enterprise that has at least \$500,000 in annual sales or business and has employees engaged in interstate commerce or in the production of goods for interstate commerce, or that has employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for interstate commerce by any person. 29 U.S.C. § 203. Even though an enterprise may have separate locations, it is considered a single enterprise for the \$500,000 coverage determination if related activities are performed through unified operation or common control by any person or persons for a common business purpose.

presented in appendix II. Table 2 provides a summary of 10 case studies closed by WHD between October 1, 2006 and September 31, 2007.

Table 2: Case Studies of Inadequate WHD Investigations

Case	Type of business/complainant occupation	Type of alleged violation(s)	Employer location	WHD actions, conclusions, and additional details
1	Garment Manufacturer/Carment Workers	Minimum Wage and Overtime (FLSA)	Whittier, CA	<ul style="list-style-type: none"> Two former employees alleged that the firm was not paying minimum wage and overtime to employees. One WHD investigator visited establishment and took surveillance photographs but did not speak with the employer. Almost 2 months later, another WHD investigator visited the establishment and found that the employer had vacated the premises. A realty broker informed WHD that he believed the employer had closed, not relocated, causing WHD to close the case. Using public data, we confirmed that the employer was still active as of January 2009 and made contact with an employee of the firm who told us that the employer had moved from the location WHD visited.
2	Fuel Tank /Mechanic	Overtime (FLSA)	Fort Lauderdale, FL	<ul style="list-style-type: none"> Complainant alleged he was due over \$525 in overtime back wages, but commented to WHD that he thought his employer was filing for bankruptcy. WHD dropped the case stating that the employer declared bankruptcy. The employee was informed of his right to file a private lawsuit to recover back wages. WHD received a fax from this employer after the case had been concluded stating that the employee had been paid \$245 in per diem, however the documentation did not support that the overtime back wages were paid; no further investigative action was taken. Bankruptcy court records show that the employer had not filed for bankruptcy and we confirmed that the employer was still in business in December 2009.
3	Restaurant/ Waitress	Minimum Wage (FLSA)	Hollywood, FL	<ul style="list-style-type: none"> Employee alleged she was owed minimum wage for 145 hours of work. Employer stated that wages were due by the previous owner, but did provide proof to substantiate or return subsequent telephone calls. WHD dropped the case and advised the employee of her right to file private litigation.

Case	Type of business/ complainant occupation	Type of alleged violation(s)	Employer location	WHD actions, conclusions, and additional details
4	County Sheriff's Office /Corrections Officer	Minimum Wage (FLSA)	Key West, FL	<ul style="list-style-type: none"> WHD attempted to contact the employer two times over a period of 2 days to discuss allegations. Case was dropped when no one from the employer, which was a Sheriff's office, returned WHD's telephone calls. WHD informed the complainant that private litigation could be filed in order to recover back wages.
5	Construction Contractor /Day Laborer	Minimum Wage and Overtime(FLSA)	Miami, FL	<ul style="list-style-type: none"> Employer denied knowing employee and stated that the employee worked for a subcontractor, but refused to provide name of the company. WHD closed the case, recorded that the employer was in compliance with labor laws, and informed the individual who filed the complaint on behalf of the employee of his right to file a civil lawsuit. Employee filed a civil suit, during which the employer agreed he owed back wages. The court ruled that the employee was due \$1,500, the same amount cited in the original complaint to WHD.
6	Construction/ Anonymous	Child Labor/ Minimum Wage (FLSA)	Baltimore, MD	<ul style="list-style-type: none"> The complainant alleged that the company employed 15 year old children, failed to pay its employees minimum wage, and did not properly report income to the Internal Revenue Service. The employer alleged that the company did not meet the income requirement to be covered under federal labor law, but did not provide documentary evidence. The employer failed to return WHD's telephone calls or attend the site of the initial conference. WHD concluded this case with no further investigative action.

Case	Type of business/ complainant occupation	Type of alleged violation(s)	Employer location	WHD actions, conclusions, and additional details
7	Lawn Care Service/ Laborer	Minimum Wage and Overtime (FLSA)	Lakeview, MI	<ul style="list-style-type: none"> WHD attempted to set up a meeting with the company, but it was postponed so the owner could go deer hunting. Subsequent calls from WHD were not answered. Almost 8 months later, WHD conducted an announced site visit and closed the case, citing that the employer appeared to be out of business because no employees were on site during the visit and phone calls were unanswered. Public records show that the employer later signed and submitted an annual statement 2 months after the case was closed and we successfully contacted the employer in November 2008, who confirmed they were located at the same address visited by WHD.
8	Boarding School / Teen Counselor	Overtime (FLSA)	Thompson Falls, MT	<ul style="list-style-type: none"> Investigator assigned to case over 9 months after complaint was received. Complaint handled as a self audit, allowing the employer to review its own records for the alleged violations. WHD determined that the employer had begun paying correct overtime based on the employer's verbal statements; no updated records were reviewed. The employer found that it owed over \$200,000 to 93 employees, but delayed until the statute of limitations had almost expired before offering to pay a total of only \$1,000 in back wages. WHD did not accept this amount, closed the case, and informed the complainant of the outcome.

Case	Type of business/ complainant occupation	Type of alleged violation(s)	Employer location	WHD actions, conclusions, and additional details
9	Ambulance Service Company / Paramedic	Overtime (FLSA)	Pawhuska, OK	<ul style="list-style-type: none"> Employer refused to comply with the law throughout WHD's investigation and took months to produce payroll records. WHD determined that over \$96,000 in back wages was due to 21 employees and stated in the case file that this estimate was "probably low." The employer generally agreed with WHD's findings and agreed to pay back wages, but then later refused to respond to WHD or change payroll practices. Over one year after the employer's agreement to pay, WHD decided not to pursue litigation in part, because the case was considered "significantly old." Employees were notified of their right to file private litigation in order to recover back wages.
10	Restaurant/ Waitress	Child Labor/Minimum Wage/Overtime (FLSA)	Lawrenceburg, TN	<ul style="list-style-type: none"> Case assigned to an investigator over 22 months after the complaint was received. WHD determined that the restaurant and related enterprises owed approximately \$230,000 to 436 employees for minimum wage and overtime violations, and for depositing a percentage of employee tips into a business account. Employer agreed to pay back wages for minimum wage and overtime violations, but did not agree to pay back the collected tips. WHD did not accept partial back wage offer and closed the case with no collection of back wages.

Source: GAO analysis.

- Case Study 1: Two garment factory workers filed complaints alleging that their former employer did not pay minimum wage and overtime to its workers. In early August 2006, an employee of the company informed WHD that the company was forcing employees to sign a document stating that they had been paid in compliance with the law before they could receive their paychecks. One of the complainants also confirmed to the WHD investigator that the employer was distributing this document. The next day, an investigator traveled to the establishment to conduct surveillance. The investigator took pictures of the establishment and did not speak with anyone from the company. No additional investigative work was done on this case until almost 2 months later when another investigator visited the establishment and found that the company had vacated the premises. A realty broker at the site informed the investigator

that he did not believe the firm had relocated. As a result, WIID closed the investigation. Using publicly available information, we found that the business was active as of January 2009 and located at a different address approximately 3 miles away from its old location. We contacted the factory and spoke with an employee, who told us that the business had moved from the address WHD visited.

- Case Study 4: In July 2007, WHD received a complaint from a former corrections officer who alleged that a county Sheriff's office did not pay \$766 in minimum wage. The WIID investigator assigned to work on this case made two calls to the Sheriff's office over a period of 2 days. Two days after the second call, WHD dropped this case because no one from the employer had returned the calls. WHD did not make additional efforts to contact the employer or validate the allegations. WHD informed the complainant that private litigation could be filed in order to recover back wages. We successfully contacted the Sheriff's office in November 2008.
- Case Study 5: In May 2007, a non-profit community worker center contacted WHD on behalf of a day laborer alleging that his employer owed him \$1,500 for the previous three pay periods. WHD contacted the employer, who stated that the complainant was actually an employee of a subcontractor, but refused to provide the name of the subcontractor. WHD closed the case without verifying the employer's statements and informed the community worker center of the employee's right to file private litigation. WHD's case file indicates that no violations were found and the employer was in compliance with applicable labor laws. According to the Executive Director of the worker center, approximately 2 weeks later, WIID contacted him and claimed that the employer in the complaint had agreed to pay the back wages. When the employer did not pay, the complainant sued the employer in small claims court. During the course of the lawsuit the employer admitted that he owed the employee back wages. The court ruled that the employer owed the employee \$1,500 for unpaid wages, the same amount in the original complaint to WHD.
- Case Study 8: In November 2005, WHD's Salt Lake City District Office received a complaint alleging that a boarding school in Montana was not paying its employees proper overtime. Over 9 months after the complaint was received, the case was assigned to an investigator and conducted as an over the phone self-audit⁵. According to the investigator assigned to the case, WIID was unable to conduct a full investigation because the boarding school was located over 600 miles from Salt Lake City and WHD did not have the resources to conduct an on-site investigation. The employer's self-audit found that 93 employees were due over \$200,000 in

⁵ Self-audits allow the employers under investigation to conduct their own review of records and calculate the back wages due to employees.

overtime back wages for hours worked between September 2004 and June 2005. WHD determined that the firm began paying overtime correctly in June 2006 based on statements made by the employer, but did not verify the statements through document review. After the employer's attorney initially indicated that they would agree to pay the over \$200,000 in back wages, WHD was unable to make contact with the business for over 5 months. WHD records indicate that the investigator believed that the firm was trying to find a loop hole to avoid paying back wages. In June 2007, one week before the 2-year statute of limitations on the entire back wage amount was to expire, the employer agreed to pay \$1,000 out of the \$10,800 that had not yet expired. The investigator refused to accept the \$1,000 saying that it would have been "like settling the case." WHD recorded the back wages computed as over \$10,800 rather than \$200,000, greatly understating the true amount owed to employees. WHD noted in the case file that the firm refused to pay the more than \$10,800 in back wages, but did not recommend assessing penalties because they felt the firm was not a repeat offender and there were no child labor violations. No further investigative action was taken and the complainant was informed of the outcome of the case.

- Case Study 10: In June 2003 and early 2005, WHD received complaints against two restaurants owned by the same enterprise. One complaint alleged that employees were working "off the clock" and servers were being forced to give 2.25 percent of their tips to the employer. The other complaint alleged off the clock work, illegal deductions, and minimum wage violations. This case was not assigned to an investigator until May 2005, over 22 months after the 2003 complaint was received. The WHD investigator assigned to this case stated that the delay in the case assignment was because of a backlog at the Nashville District Office that has since been resolved. WHD conducted a full investigation and found that 438 employees were due approximately \$230,000 in back wages for minimum wage and overtime violations and the required tip pool. Although tip pools are not illegal, WHD determined that the employer's tip pool was illegal because the company deposited the money into its business account. Further, the firm violated child labor laws by allowing a minor under 16 years old to work more than 3 hours on school days. The employer disagreed that the tip pool was illegal and stated that a previous WHD investigator had told him that it was acceptable. The employer agreed to pay back wages due for the minimum wage and overtime violations, but not the wages that were collected for the tip pool. WHD informed the employer that partial back wages would not be accepted and this case was closed.

Information on 10 additional case studies can be found in appendix II.

WHD's Complaint Intake Process, Conciliations, and Other Investigative Tools Do Not Provide Assurance of a Timely and Thorough Response to Wage Theft Complaints

WHD's complaint intake processes, conciliations, and other investigative tools are ineffective and often prevent WHD from responding to wage theft complaints in a timely and thorough manner, leaving thousands of low wage workers vulnerable to wage theft. Specifically, we found that WHD often fails to record complaints in its database and its poor complaint-intake process potentially discourages employees from filing complaints. For example, 5 of our 10 undercover wage theft complaints submitted to WHD were never recorded in the database, including a complaint alleging that underage children were operating hazardous machinery during school hours. WHD's conciliation process is ineffective because in many cases, if the employer does not immediately agree to pay, WHD does not investigate complaints further or compel payment. In addition, WHD's poor record-keeping makes WHD appear better at resolving conciliations than it actually is. For example, WHD's southeast region, which handled 57 percent of conciliations recorded by the agency in fiscal year 2007, has a policy of not recording unsuccessful conciliations in the WHD database. Finally, we found WHD's processes for handling investigations and other non-conciliations were frequently ineffective because of significant delays. Once complaints were recorded in WHD's database and assigned as a case to an investigator, they were often adequately investigated.

WHD's Complaint-Intake Process Is Ineffective

WHD's complaint intake process is seriously flawed, with both customer service and record-keeping issues. With respect to customer service, wage theft victims may file complaints with WHD in writing, over the phone, or in person. However, our undercover tests showed that wage theft victims can be discouraged to the extent that WHD never even accepts their complaints. We found that in their efforts to screen complaints some WHD staff actually deter callers from filing a complaint by encouraging employees to resolve the issue themselves, directing most calls to voicemail, not returning phone calls to both employees and employers, accepting only written complaints at some offices, and providing conflicting or misleading information about how to file a complaint. For example, the pre-recorded voice message at one office gives callers information on the laws WHD enforces, but when the message ends there are 23 seconds of silence before the call is directed to the voice message system that allows callers to file complaints, creating the impression that the phone call has been disconnected. WHD requires an investigator to speak with the employee before an investigation can be initiated, but a real low wage worker may not have the time to make multiple phone calls to WHD just to file a complaint and may give up when call after call is directed to voicemail and not returned. It is impossible to know how many

complainants attempt to file a complaint but are discouraged by WHD's complaint intake process and eventually give up.

Regarding WHD's record-keeping failures, we found that WHD does not have a consistent process for documenting and tracking complaints. This has resulted in situations where WHD investigators lose track of the complaints they have received. According to WHD policies, investigators should enter complaints into WHD's database and either handle them immediately as conciliations or refer them to management for possible investigation. However, several of our undercover complaints were not recorded in the database, even after the employee had spoken to an investigator or filed a written complaint. This is particularly troubling in the case of our child labor complaint, because it raises the possibility that WHD is not recording or investigating complaints concerning the well-being and safety of the most vulnerable employees. Employees may believe that WHD is investigating their case, when in fact the information they provided over the phone or even in writing was never recorded. Since there is no record of these cases in WHD's database, it is impossible to know how many complaints are reported but never investigated.

WHD's Conciliation Process Is Ineffective

According to several WHD District Directors, in conciliations where the employer refuses to pay, their offices lack the resources to investigate further or compel payment, contributing to the failures we identified in our undercover tests, case studies, and statistical sample. When an employer refuses to pay, investigators may recommend that the case be elevated to a full investigation, but several WHD District Directors and field staff told us WHD lacks the resources to conduct an investigation of every complaint and focuses resources on investigating complaints affecting large numbers of employees or resulting in large dollar amounts of back wage collections. Conducting a full investigation allows WHD to identify other violations or other affected employees, attempt to negotiate back wage payment with the employer and, if the employer continues to refuse, refer the case to the Solicitor's Office for litigation. However, in some conciliations, the employer is able to avoid paying back wages simply by refusing. While WHD informs complainants of their right to file a lawsuit against their employers to recover back wages, it is unlikely that most low wage workers have the means to hire an attorney, leaving them with little recourse to obtain their back wages.

WHD's conciliation policy also limits the actions staff may take to resolve these cases. For example, WHD staff told us that complaints handled as conciliations must be completed in under 15 days from the time the

complaint is assigned to an investigator, and at least one office allows investigators only 10 days to resolve conciliations, which may not allow time for additional follow-up work to be performed. WHD staff in one field office told us they are limited to three unanswered telephone calls to the employer before they are required to drop the case and advise the complainant of his right to file a lawsuit to recover back wages. Staff in several field offices told us that they are not permitted to make site visits to employers for conciliations. WHD investigators are allowed to drop conciliations when the employer denies the allegations and WHD policy does not require that investigators review employer records in conciliations. In one case study, the employee stated that he thought the business was going bankrupt. WHD dropped the case stating that the employer declared bankruptcy and informed the employee of his right to file a private lawsuit to recover back wages. Bankruptcy court records show that the employer had not filed for bankruptcy, and we confirmed that the employer was still in business in December 2008. One WHD investigator told us that it is not necessary to verify bankruptcy records because conciliations are dropped when the employer refuses to pay, regardless of the reason for the refusal.

Our undercover tests and interviews with field staff also identified serious record-keeping flaws in which make WHD appear better at resolving conciliations than it actually is. For example, WHD's southeast region, which handled 57 percent of conciliations recorded by WHD in fiscal year 2007, has a policy of not recording investigative work performed on unsuccessful conciliations in the database. WHD staff told us that if employers do not agree to pay back wages, cannot be located, or do not answer the telephone, the conciliation work performed will not be recorded in the database⁶, making it appear as though these offices are able to resolve nearly all conciliations successfully. Inflated conciliation success rates are problematic for WHD management, which uses this information to determine the effectiveness of WHD's investigative efforts.

Our undercover tests and interviews with WHD staff also raise questions about the reliability of conciliation information recorded in WHD's database. As illustrated by our undercover tests, when an employer

⁶ In some offices with this policy, the complaint that the conciliation was based on would be recorded in WHD's database. However, the complaint would appear as though it had never been investigated, because the investigative work and the outcome of the conciliation would not be recorded in the database. Other offices do not enter the complaint into the database.

initially agrees to pay in a conciliation but reneges on his promise, WHD investigators did not change the outcome of the closed case in WHISARD to show that the employee did not receive back wages. While some investigators wait for proof of payment before closing the conciliation, others told us that they close conciliations as soon as the employer agrees to pay. Even if the employee later tells the investigator that he has not been paid, investigators told us they do not change the outcome of a closed case in the WHD database. WHD publicly reports on the total back wages collected and the number of employees receiving back wages, but these statistics are overstated because an unknown number of conciliations recorded as successfully resolved in the WHD database did not actually result in the complainant receiving the back wages due.

These poor record-keeping practices represent a significant limitation of the population we used to select our statistical sample because the number of conciliations actually performed by WHD cannot be determined and conciliations recorded as successfully resolved may not have resulted in back wages for the employees. As a result, the percentage of inadequate conciliations is likely higher than the failure rate estimated in our sample. We found that 5.2 percent of conciliations in our sample were inadequately conciliated because WHD failed to verify the employer's claim that no violation occurred, closed the case after the employer did not return phone calls, or closed the case after the employer refused to pay back wages. However, we found that many of the conciliations recorded in WHD's database were adequately investigated. One example of a successful conciliation involved a complaint alleging that a firm was not paying minimum wage. The complaint was assigned to an investigator the same day it was filed in September 2007. The WHD investigator contacted the owner, who admitted the violation and agreed to pay back wages of \$1,500. The case was concluded the same day when the investigator obtained a copy of the complainant's check from the employer and spoke to the complainant, confirming that he was able to cash the check and had received his back wages.

⁷ Because we followed a probability procedure based on random selections, our sample is only one of a large number of samples that we might have drawn. Since each sample could have provided different estimates, we express our confidence in the precision of our particular sample's results as a 95 percent confidence interval (e.g., plus or minus 5 percentage points). This is the interval that would contain the actual population value for 95 percent of the samples we could have drawn. The 95 percent confidence interval surrounding our sample of inadequate investigations ranges from 208 to 1,395 failures in the population.

WHD's Investigation and Other Non-conciliation Processes Were Often Ineffective, but Complaints Investigated Quickly Were Usually Resolved Successfully

We found WHD's process for handling investigations and other non-conciliations was frequently ineffective because of significant delays. However, once complaints were recorded in WHD's database and assigned as a case to an investigator, they were often successfully investigated. Almost 19 percent⁴ of non-conciliations in our sample were inadequately investigated, including cases that were not initiated until more than 6 months after the complaint was received, cases closed after an employer refused to pay, and cases that took over one year to complete. In addition, seven cases failed two of our tests.

Table 4: Number of Failures by Test for Sample of Non-conciliations

Reason why non-conciliation was inadequate	Percent Point Estimate	95% Confidence Interval
Cases not initiated within 6 months of complaint	5.2	[1.9, 11.1]
Case closed due to employer's refusal to pay	6.2	[2.5, 12.3]
Cases with violations found that were not referred to Labor's Office of the Solicitor for litigation	4.6	[1.5, 10.5]
Cases taking more than one year to complete	6.6	[2.8, 12.7]
Cases where WHD failed to review employer records	3.1	[.75, 8.1]
Estimate of inadequate Non-Conciliations	18.8	[12.1, 27.1]

Source: GAO.

Six of the cases in our sample failed because they were not initiated until over 6 months after the complaint was received. According to WHD officials, non-conciliations should be initiated within 6 months of the date the complaint is filed. Timely completion of investigations by WHD is important because the statute of limitations for recovery of wages under the FLSA is 2 years from the date of the employer's failure to pay the

⁴ Because we followed a probability procedure based on random selections, our sample is only one of a large number of samples that we might have drawn. Since each sample could have provided different estimates, we express our confidence in the precision of our particular sample's results as a 95 percent confidence interval (e.g., plus or minus 5 percentage points). This is the interval that would contain the actual population value for 95 percent of the samples we could have drawn. The 95 percent confidence interval surrounding our sample of inadequate investigations ranges from 2,395 to 5,827 failures in the population.

correct wages.” Specifically, this means that every day that WHD delays an investigation, the complainant’s risk of becoming ineligible to collect back wages increases. In one of our sample cases, WHD sent a letter to a complainant 6 months after his overtime complaint was filed stating that, because of a backlog, no action had been taken on his behalf. The letter requested that the complainant inform WHD within 2 business days of whether he intended to take private action. The case file shows no indication that the complainant responded to WHD. One month later, WHD assigned the complaint to an investigator and sent the complainant another letter stating that if he did not respond within 9 business days, the case would be closed. WHD closed the case on the same day the letter was sent.

Our case studies discussed above and in appendix II also include examples of complaints not investigated for over a year, cases closed based on unverified information provided by the employer, businesses with repeat violations that were not fully investigated, and cases dropped because the employer did not return telephone calls. For example, in one case study, WHD found that 21 employees were due at least \$66,000 in back wages for overtime violations. Throughout the investigation, the employer was uncooperative and resisted providing payroll records to WHD. At the end of the investigation, the firm agreed with WHD’s findings and promised to pay back wages, but then stopped responding to WHD. The employees were never paid back wages and over a year later, the Solicitor’s Office decided not to pursue litigation or any other action in part because the case was considered “significantly old.”

The failures we identified resulted, in part, from the large backlog of cases in several WHD offices, investigators’ failure to compel cooperation from employers, and a lack of certain tools that would facilitate verification of employer statements. In several district offices, a large backlog prevents investigators from initiating cases within 6 months. One office we visited has a backlog of 7 to 8 months, while another office has a backlog of 13 months. Additionally, our analysis of WHD’s database shows that one district office did not initiate an investigation of 12 percent of complaints

⁵ The statute of limitations for recovery of wages under FLSA and the Davis Bacon Act is 2 years from the employer’s failure to pay the correct wages. 29 U.S.C. § 225. For willful violations, in which the employer knew its actions were illegal or acted recklessly in determining the legality of its actions, the statute of limitations is 3 years. Federal courts have enforced the statute of limitations even if Labor is investigating a complaint. *Shandelman v. Schuman*, 92 F. Supp. 331 (E.D.Pa. 1950).

until over one year after the complaint was received, including a child labor complaint affecting over 50 minors. Because the statute of limitations to collect back wages under FLSA is 2 years, WHD is placing complainants at risk of collecting only a fraction of the back wages they would have been able to collect at the time of the complaint. WHD also failed to compel records and other information from employers. While WHD Regional Administrators are legally able to issue subpoenas, WHD has not extended this ability to individual investigators, who therefore depend on employers to provide records and other documentation voluntarily. In cases where public records are available to verify employer statements, WHD investigators do not have certain tools that would facilitate access to these documents. For example, we used a publicly-available online database, Public Access to Court Electronic Records (PACER), to determine that an employer who claimed to have filed for bankruptcy had not actually done so. However, there is no evidence in the case file that the WHD investigator performed this check. WHD officials told us that its investigators do not receive training on how to use public document searches and do not have access to databases containing this information such as PACER.

We found that, once complaints were recorded in WHD's database and assigned as a case to an investigator in a timely manner, they were often successfully investigated. As discussed above, WHD does not record all complaints in its database and discourages employees from filing complaints, some of which may be significant labor violations suitable for investigation. In addition, many cases are delayed months before WHD initiates an investigation. However, our sample identified many cases that were adequately investigated once they were assigned to an investigator. Specifically, 81.2 percent of the non-conciliations in our sample were adequately investigated. One example of a successful investigation involved a complaint alleging that a firm was not paying proper overtime was assigned to an investigator the same day it was filed in April 2007. The WHD investigator reviewed payroll records to determine that the firm owed the complainant back wages. The case was concluded within 3 months when the investigator obtained a copy of the complainant's cashed check, proving that he had been paid his gross back wages of \$184.

Conclusions

This investigation clearly shows that the Department of Labor has left thousands of actual victims of wage theft who sought federal government assistance with nowhere to turn. Our work has shown that when WHD adequately investigates and follows through on cases they are often successful; however, far too often many of America's most vulnerable

workers find themselves dealing with an agency concerned about resource limitations, with ineffective processes, and without certain tools necessary to perform timely and effective investigations of wage theft complaints. Unfortunately, far too often the result is unscrupulous employers taking advantage of our country's low wage workers.

Mr. Chairman and Members of the Committee, this concludes our statement. We would be pleased to answer any questions that you or other members of the committee may have at this time.

Contacts and Acknowledgments

For further information about this testimony, please contact Gregory D. Kutz at (202) 512-6722 or kutzg@gao.gov or Jonathan Meyer at (214) 777-5766 or meyerj@gao.gov. Individuals making key contributions to this testimony included Erika Axelson, Christopher Backley, Carl Barden, Shafee Carnegie, Randall Cole, Merton Hill, Jennifer Huffman, Barbara Lewis, Jeffery McDermott, Andrew McIntosh, Sandra Moore, Andrew O'Connell, Gloria Proa, Robert Rodgers, Ramon Rodriguez, Sidney Schwartz, Kira Self, and Daniel Silva. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this testimony.

Appendix I: Scope and Methodology

To review the effectiveness of WHD's complaint intake and conciliation processes, GAO investigators attempted to file 11 complaints about 10 fictitious businesses to WHD district offices in Baltimore, Maryland; Birmingham, Alabama; Dallas, Texas; Miami, Florida; San Jose, California; and West Covina, California. These field offices handle 13 percent of all cases investigated by WHD. The complaints we filed with WHD included minimum wage, last paycheck, overtime, and child labor violations. GAO investigators obtained undercover addresses and phone numbers to pose as both complainants and employers in these scenarios.

As part of our overall assessment of the effectiveness of investigations conducted by WHD, we obtained and analyzed WHD's Wage and Hour Investigative Support and Reporting Database (WHISARD), which contained 32,323 cases concluded between October 1, 2006 and September 30, 2007. We analyzed WHD's WHISARD database and determined it was sufficiently reliable for purposes of our audit and investigative work. We analyzed a random probability sample of 115 conciliations and 115 non-conciliations to contribute to our overall assessment of whether WHD's processes for investigating complaints are effective. Because we followed a probability procedure based on random selections, our samples are only one of a large number of samples that we might have drawn. Since each sample could have provided different estimates, we express our confidence in the precision of the particular sample's results as a 95 percent confidence interval (e.g., plus or minus 5 percentage points). This is the interval that would contain the actual population value for 95 percent of the samples we could have drawn.

To determine whether an investigation was inadequate, we reviewed case files and confirmed details of selected cases with the investigator or technician assigned to the case. In our sample tests, conciliations were determined to be inadequate if WHD did not successfully initiate investigative work within 3 months or did not complete investigative work within 6 months. Non-conciliations were determined to be inadequate if WHD did not successfully initiate investigative work within 6 months, did not complete investigative work within 1 year or did not refer cases in which the employer refused to pay to Labor's Office of the Solicitor. Both conciliations and non-conciliations were determined to be inadequate if WHD did not contact the employer, did not correctly determine coverage under federal law, did not review employer records, or did not compute and assess back wages when appropriate.

We gathered additional information about WHD policies and procedures by reviewing training materials and the WHD Field Operations Handbook,

conducting walk-throughs of investigative processes with management and interviewing WHD officials. We gathered information about district office policies and individual cases by conducting site visits at the Miami and Tampa, Florida district offices, and conducting telephone interviews with technicians, investigators and district directors in 23 field offices and headquarters officials in Washington, D.C. We also spoke with Labor's Office of the Solicitor in Dallas, Texas and Washington, D.C. To identify macro-level data on WHD complaints, we analyzed data for cases closed between October 1, 2006 and September 30, 2007 by region, district office and case outcome.

To identify case studies of inadequate WHD responses to complaints, we data-mined WHISARD to identify closed cases in which a significant delay occurred in responding to a complaint (cases taking more than 6 months to initiate or 1 year to complete), an employer could not be located, or the case was dropped when an employer refused to pay. We obtained and analyzed WHD case files, interviewed WHD officials, and reviewed publicly available data from online databases and the Department of Treasury's Financial Crimes Enforcement Network to gather additional information about these cases. We also interviewed complainants who contacted GAO directly or were referred to us by labor advocacy groups to gather information about WHD's investigation of their complaints.

Appendix II: Additional Case Studies of Inadequate WHD Investigations

Table 5 provides a summary of ten additional case studies of inadequate Wage and Hour Division (WHD) investigations. These case studies include instances where WHD dropped cases after (1) employers refused to cooperate with an investigation, (2) WHD identified a violation but failed to force employers to pay employees their owed wages, and (3) an employer alleged it was bankrupt when in fact the employer was not.

Table 5: Additional Case Studies of Inadequate WHD Investigations

Case	Type of business/employee occupation	Type of alleged violation	Employer location	WHD actions, conclusions, and additional details
11	Employment Agency/ Carpenter	Minimum Wage (FLSA)	Hollywood, FL	<ul style="list-style-type: none"> Complainant alleged he was not paid minimum wage. WHD attempted to contact the employer to substantiate the claim, but the employer did not return WHD's calls. Case was closed and the employee was informed of his right to file private litigation. We were able to make contact with the employer in February 2009.
12	Telemarketing / Telemarketer	Minimum Wage (FLSA)	Wellington, FL	<ul style="list-style-type: none"> Employer would not make a commitment to WHD to pay \$937 in back wages. WHD closed the case and recorded that the employer was in compliance with labor laws.
13	Plumbing/ Plumber	Minimum Wage (FLSA)	Alpharetta, GA	<ul style="list-style-type: none"> Employer admitted owing wages but refused to pay because the employee had been involved in a vehicular accident in a company vehicle. WHD requested that employer comply with labor laws in the future, but employer refused. The WHD investigator stated that the case was closed and the employee was informed of his right to file a private lawsuit.
14	Drywall Sub-Contractor/ N/A ¹	Failure to Overtime (FLSA)	Biloxi, MS	<ul style="list-style-type: none"> Employer admitted to WHD that employees were not paid overtime and he did not know how much they were paid per hour. One employee told the investigator that the employees had been threatened and another source informed the investigator that the employer had threatened employees with a machete so they would lie during WHD interviews, but the investigator still determined that the employer's violations did not appear to

¹ This case was a directed investigation into the business based on a tip received from a competitor, not the complaint of a single worker.

Case	Type of business/employee occupation	Type of alleged violation	Employer location	WHD actions, conclusions, and additional details
				<ul style="list-style-type: none"> • Employer told WHD he did not keep payroll records, but his attorney later said he had reviewed employer payroll records. • Through information from the employer's pay register, WHD determined that over \$150,000 was due to 191 employees, but the employer's attorney stated that the firm would be put out of business if the back wages were paid. • WHD agreed to reduce back wages as an administrative settlement to resolve the case and the employer agreed to pay \$78,228.
15	Trucking/ Truck Drivers	Minimum Wage (FLSA)	Doniphan, NE	<ul style="list-style-type: none"> • WHD received 4 complaints against a trucking company over a 7 month period. • The first three conciliations found that the employee's allegations were substantiated and the employer agreed to pay back wages. • WHD treated each complaint as a conciliation, cases generally set up when a single employee is affected, even after violations were found in the first three cases.
16	Sewing Contractor/ Worker	Minimum Wage (FLSA)	Passaic, NJ	<ul style="list-style-type: none"> • Complainant alleged 10 employees were due back wages for 3 to 7 weeks of work. • Employer failed to provide WHD payroll records for any of its employees. • WHD found that the complainant was owed over \$800 in back wages, but did not calculate back wages for any other employees. • During the limited investigation, the employer stated it had filed for Chapter 7 bankruptcy three days earlier and was no longer in business. • WHD closed the case and the complainant was notified of his right to file private litigation. • Our review of bankruptcy court documents showed no record of the employer filing for Chapter 7 bankruptcy.
17	Construction/Anonymous Complaint	Overtime (FLSA)	Brooklyn, NY	<ul style="list-style-type: none"> • A 2006 complainant alleged that the firm did not pay its employees overtime. • The employer had annual sales of over \$2 million in 2005. • WHD visited the employer's address and found a residence, but did not speak with anyone. • Complainant provided construction site locations, but WHD did not visit these addresses until almost 6 months after the complaint was recorded by WHD.

Case	Type of business/employee occupation	Type of alleged violation	Employer location	WHD actions, conclusions, and additional details
18	Security Service/ Security Guard	Overtime (FLSA)	Del City, OK	<ul style="list-style-type: none"> WHD's case file states that the employer's accountant did not want WHD to visit the work site and hung up on the investigator. WHD investigator closed the case because he was not able to gather information. WHD was unable to determine coverage under federal law on three previous self-audits of this company. In the fourth case, it was determined that the employer failed to pay over \$47,000 in overtime due to 98 employees. The employer agreed to pay the unpaid wages, but did not submit back wage payment evidence to WHD. The back wages due were submitted for debt collection, however the case file contains no information on whether any wages were subsequently collected.
19	Gas Station/ Manager	Overtime (FLSA)	Ooltewah, TN	<ul style="list-style-type: none"> Employee contacted WHD alleging that the employer did not pay overtime. Employee was notified that WHD had a very large backlog and was provided contact information for three attorney referral services. No investigative actions were conducted until over five months later, when WHD contacted the complainant. The complainant stated that a new owner had purchased the business approximately two weeks earlier. WHD did not calculate the back wages due to the complainant, recorded that the employer was out of business, and recommended that the case be closed with no further action.
20	Foundation Repair/ Foreman	Overtime (FLSA)	Houston, TX	<ul style="list-style-type: none"> Investigation took nearly 2 years to complete. WHD believed that overtime violations and employees working off the clock were systemic practices at over 20 of the firm's locations. The employer disagreed with WHD and insisted that he had not violated labor laws. WHD estimated that the enterprise owed over \$6 million in back wages; according to the investigator assigned to this case, a precise amount could not be computed because the employer refused to provide required payroll documentation. WHD rejected the employer's offer to pay \$50,000 in back wages, but later attempted to

Case	Type of business/employee occupation	Type of alleged violation	Employer location	WHD actions, conclusions, and additional details
				<p>settle with the employer by reducing back wages. No settlement was reached.</p> <ul style="list-style-type: none"> • WHD had found the same violations approximately 20 months prior to this investigation, but the employer would not agree to pay back wages or comply with labor laws at that time. • WHD determined that the employer had a good faith defense for continuing the same pay practices because he had not been provided a formal letter stating the outcome of the previous investigation. • WHD did not refer this case for litigation because of the erosion of the 2-year statute of limitations and did not recommend that the employer pay penalties for its violations. • WHD determined that the firm had come into compliance at all locations nationwide based solely on the employer's verbal statements, no supporting documentation was reviewed. • WHD sent letters to the affected employees informing them that the employer had refused to pay and notifying them of their right to file private litigation.

Source: GAO analysis.



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Chairman MILLER. Thank you very much.

When you look at the 10 cases and the other cases, I mean, you really see an array of just failures and, in some cases, construction of misinformation and misleading and wrong information to the individuals.

I mean, you have these incredible delays, which are obviously—the delay is very—it appears to turn out to be costly to the employee, because the statute of limitations has already started running. So if the Department uses up 5, 6, 7, 8 months before they even investigate or they just drag the investigation along, the employee all of a sudden loses their right to go to court.

Is that correct?

Mr. KUTZ. That is correct, yes.

Chairman MILLER. So then you have other situations where they just—they don't record the complaints at all, so the Department is never on the hook for whether they have successfully completed the investigation and gotten money for the person or resolved the case. That is not part of the database.

Mr. KUTZ. Yes, 5 of the 10 cases that we did the undercover calls were not recorded in the Labor Department's system.

Chairman MILLER. And you also have—we heard on the tapes here where you have employees basically just saying, "We asked the employer to pay you. They said they are not going to pay. We are done."

Mr. KUTZ. Correct. That is something we have seen frequently, not just this time, but the 15 cases from last year, also.

Chairman MILLER. You know, it is really quite stunning. But then, on top of that, I think it was the last tape that we heard, you heard an employee—the employee of the Wage and Hour Division basically make up a scenario that never occurred, about going to the IRS and not having the wage—so you have an employee openly lying, constructing a lie to the person whose wages have been illegally taken, been stolen from them.

This government employee is lying to them about why they will not pursue the investigation, because they went to a non-existent database on a non-existent case and came back and said, "We can't help you." Is that correct?

Mr. KUTZ. That is correct. And we have referred that individual to the inspector general of the Department of Labor for potential administrative—

Chairman MILLER. So there is some level of malfeasance here. When you start lying to the public about the law that some action can be taken, you referred that to where?

Mr. KUTZ. The Department of Labor inspector general.

Chairman MILLER. The inspector general of the Department of Labor?

Mr. KUTZ. Correct. And the Department of Labor was concerned. We talked to the Department of Labor, people in charge of this division. They were very concerned about employees lying to citizens who call into the hotline.

Chairman MILLER. I would hope that they would be, when we have got to at least start with some base of obligation here, in terms of doing the job on behalf of the public.

Well, I am encouraged that you have made that referral. Hopefully, that will help other employees think about what their obligation is.

But even the act of simply saying, "We asked the employer. The employer told us no," and that that is the end of the case, the employees could do that themselves, and they probably already have been told no by the employers.

So, I mean, what they are looking for is additional resources and help when they come to the government, are they not?

Mr. KUTZ. Yes. I mean, when I was talking about symptoms of human capital problems, the discouraging of people from filing complaints would seem to be a symptom that there are either not

enough people to answer the phones, not enough people to follow up investigations, or something along those lines.

And, certainly, they are making decisions that the small conciliation cases I mentioned, which are one or several employees, are low priority, and that makes sense, compared to the bigger cases, but they have got to—they have to be honest with people and say, “We just don’t have time to get to you.”

And, again, you did see the one case there where they said, “We have got an 8-to 10-month backlog. We won’t get to your case for 8 to 10 months.” And as you said, the clock ticks on those cases, so that doesn’t necessarily help the employee.

Chairman MILLER. You know, you have—I guess there is a problem here. You know, in one of the cases, not in your undercover case, but in the other one—I think it is number two—you know, it is \$800 in back wages. That is a small case, perhaps, for the Department of Labor. To a worker and to a family, that week or that 2-week pay period, whatever it is, that is a significant chunk of money.

And that is important to them. And to just be told that the answer is no, that is a loss of \$800 to that individual. I mean, that is——

Mr. KUTZ. Yes, I mean, that is——

Chairman MILLER. I don’t know what the threshold is. Did you find any formal threshold at which point you did not proceed, the Department of Wage and Hour did not proceed to recover wages?

Mr. KUTZ. We have asked that question at two levels. Number one, from an investigation standpoint, is there a threshold where you will actually do an investigation? And it is unclear what that is.

And number two is, when you have a legitimate case, we have seen cases with tens or hundreds of thousands of dollars. Sometimes they are litigated by the solicitor’s office; sometimes they are not.

I mean, certainly their criteria is large, we believe, but why some large or semi-large and other semi-large aren’t, why some are and some aren’t, we are not completely clear, and it is not documented exactly what that criteria would be.

So it is two levels. I mean, sometimes they are not actually supporting the investigators by taking it over the goal line and going to court with the unscrupulous employers in those cases.

Chairman MILLER. You know, you have cases—you have \$66,000 for 21 employees, where basically—I think it is case number nine, the ambulance company. The Wage and Hour Division essentially walked away from that case. They just said, well, it has taken too long.

You know, \$47,000 in overtime to 98 employees, again, they cited some evidence as a reason for not having the employer pay. The evidence turned out to be essentially fictitious. It did not exist.

A hundred and fifty thousands dollars due 191 employees, the employer said that he would have to file bankruptcy. They took that as acceptable, did nothing more on behalf of that person. Well, I guess they negotiated it down——

Mr. KUTZ. At that point——

Chairman MILLER [continuing]. But the person never filed bankruptcy.

Mr. KUTZ. Right. They compromised on that.

Chairman MILLER. They compromised on that. You have 241 employees that were owed nearly \$2 million in overtime, and Wage and Hour rejected the employee's offer to pay \$50,000 in back wages and then eventually sent letters saying, "This employer is not going to pay. You are on your own."

Mr. MEYER. Correct.

Mr. KUTZ. Correct. Yes.

Chairman MILLER. So, again, we don't know that—here you have \$2 million, and you have an \$800 theft of a paycheck. There is apparently no threshold within the Department.

Mr. KUTZ. No, only they define that conciliations are small and non-conciliations are large. But even within those, they are pursued with different levels of enforcement and aggressiveness with respect to calls, site visits, or whatever other types of things.

And as you mentioned, the bankruptcy thing is interesting. There are several cases where they closed the case because they said the company was bankrupt. We checked our databases: They are not bankrupt.

I mean, and it gets into those tools I mentioned. Do they have the right tools to do investigations? There are tools out there where you could check things like bankruptcy fairly readily.

Chairman MILLER. But they just don't go through that forensic process?

Mr. KUTZ. I don't believe they have—I don't believe they have the tools in that particular to use. That is what I understand. Is that correct?

Mr. MEYER. That is correct. They don't have access to public court records. That is just not part of their processes.

Chairman MILLER. Did you see any change from when you testified in Congress to the end of the year? I mean, did you—when you were doing this investigation, did you see any change from your initial determinations? Was there any response to the initial GAO report?

Mr. MEYER. I can speak to that. Initially, from our testimony last year, there was some level of disbelief. But in our closing conferences on this report and the—especially the statistical sample testing, the Wage and Hour officials in Washington have seen the problems that are there and really seem concerned about what we found and are looking to find ways to improve.

Mr. KUTZ. Well, Mr. Chairman, I would say, too, that we now know that there are many cases that are properly investigated and collected. And so the real issue is: Why are 81 percent of the big cases done effectively and 19 percent not?

The good news is, 81 percent there is an effective investigation, but 19 percent represents tens or hundreds of thousands of people over time. That is pretty significant. And so why there are those differences like that, that to me is too high of a rate of unsuccessful investigations.

Chairman MILLER. Just one last question, and then I will turn to my colleagues. Is there a regional difference? Is it a regional explanation? Is it—

Mr. MEYER. I would say that, in certain regions of the country, whether there is a strong state labor enforcement state officials that enforce labor laws makes a difference in how effective the Wage and Hour Division is because of the assistance they receive from the state.

Chairman MILLER. So if the state is running a strong operation, it is more likely you will have stronger enforcement at the federal level?

Mr. MEYER. I think it allows the resources at the Wage and Hour Division to handle some of the bigger cases, some of the more problematic instances, instead of a lot of these smaller individual cases for one person.

Chairman MILLER. I see. Thank you very much.

Thank you, Mr. Kutz.

Mr. MCKEON. Thank you, Mr. Chairman.

I am still in a little bit of a quandary of what we are doing here. We can beat up on the Department of Labor, but we don't have them to really hear—I mean, there is—what you are talking about, the 19 percent, it sounds to me it is pretty indefensible, but I would like to see somebody here and to hear what they have to say about it.

When I was in school, 80 percent was a B. The 19 percent probably should get an F. But why this is happening, I would really like to know.

Can you tell me, Mr. Kutz, how many people work at the Department of Labor?

Mr. KUTZ. No, I don't know. We know within Wage and Hour there are over 700 investigators and a little over 1,000 staff. We focused on the Wage and Hour Division. I am not familiar with the whole Department of Labor.

Mr. MCKEON. Seven hundred investigators and 1,000 staff. So 1,700 people work in the Wage and Hour—

Mr. KUTZ. No, that is total. The total is 1,000. There are several hundred technicians and other administrative—that is 700—some investigators.

Mr. MCKEON. A thousand people?

Mr. KUTZ. Roughly.

Mr. MCKEON. To investigate how many complaints, would you estimate, in a year?

Mr. KUTZ. Well, in the system in 2007, there were a little over 30,000 recorded. But as I mentioned, a lot of cases never get recorded in the system, so it is probably 30,000 plus several thousand more, at least. Let's say 40,000.

Mr. MCKEON. So at least 30,000?

Mr. KUTZ. At least 30,000, yes.

Mr. MCKEON. And we have got 1,000 people to investigate 30,000 and they are doing a good job on 81 percent of them and a lousy job on 19 percent of them.

Mr. KUTZ. Of the bigger cases, correct.

Mr. MCKEON. You know, maybe we are just holding this hearing to beat up on the Bush administration. I don't know. But out of—

Chairman MILLER. If I were one of the 20 percent, I think you would want to know what happened to my wages.

Mr. MCKEON. No question. That is why I would like to see somebody from Department of Labor that we could zero in on. I didn't disturb you, Mr. Chairman. I appreciate it. Thank you.

Mr. KUTZ, you have testified as to the failures of frontline rank-and-file federal employees at the Department of Labor in handling and processing wage and hour complaints. There is nothing in your testimony to suggest that these shortcomings were the result of any directive by any political appointee of the prior administration, is there?

Mr. KUTZ. Nothing that we saw of that, no.

Mr. MCKEON. You are not suggesting that these career federal employees were told by Washington to mishandle or delay processing complaints, are you?

Mr. KUTZ. We have no evidence of that, no.

Mr. MCKEON. Again, that is why I wonder why we are going through this.

You have testified at length about your findings at this most recent analysis of case handling. By way of comparison, do you have any similar analysis of enforcement under prior administrations?

Mr. KUTZ. I believe the other GAO report went back into the 1990s and showed declining numbers of investigators of about 20 percent, but I don't know if we have got any program reviews in the 1990s that I am aware of.

Mr. MCKEON. Possibly if we increased the number of investigators, you say this started decreasing back in the 1990s?

Mr. KUTZ. It started decreasing from 1997 to 2007. It reduced by about 25 percent the number of investigators in this division. So over a 10-year period, it went down by 20 percent to 25 percent.

Mr. MCKEON. That may be one of the solutions that we could attack to help the other 20 percent or 19 percent.

Has your study revealed any evidence to suggest that frontline, rank-and-file government workers were handling cases differently during the Clinton administration?

Mr. KUTZ. We don't know that, can't comment on that.

Mr. MCKEON. Or the Bush administration before that or the Reagan administration before that?

Mr. KUTZ. No, no. We just know for the last 2 or 3 years. That is the timeframe we have looked at.

Mr. MCKEON. Okay, so I—Mr. Chairman, I think that this is a really important issue. If we have 19 percent of people who have serious complaints—it sounds to me like we do—we ought to really bring the Department of Labor in here, ask them why this is happening, ask them if they think that, by adding additional people into the Wage and Hour investigation process would help solve this, then we should do something about changing the budgetary requests or the budgetary requirements or something within the Department.

You know, I don't think we disagree that people should be paid for their work. You know, I think we are all in agreement on that. If this is just a political witch hunt to try to blame the Bush administration, that is one thing. If it is to really solve the problem, then we should have people here from the Department, we should get to the bottom of it.

I personally think, aside from hearing—you know, I mean, this is pretty bad stuff, what you have shown here—that if we have people at the Department, career people that are giving these kind of responses to people that are making serious requests, that should be handled.

And it sounds like you are not blaming it on the administration giving false direction. They are telling them to do certain things a certain way. Of the 15 people that you called, were you able to nail down to like a couple of employees that were making the same mistakes over and over or giving these kind of—

Mr. KUTZ. In the Baltimore office, there was one individual that answered the phone several times. There is usually one or two people answering the phone, and so we did six different offices.

I will tell you the office that we did work: Baltimore, Birmingham, Dallas, Miami, San Jose, and West Covina, California. Those were the six offices we called.

So you typically would get the same person if you made multiple calls to an office. But Baltimore—

Mr. MCKEON. Then—

Mr. KUTZ [continuing]. Several of the ones you heard on the audio earlier were the same person in Baltimore, some of the more egregious cases.

Mr. MCKEON. Then I think we could seriously nail down some of this stuff and fix it. And that is what we should be doing.

Mr. KUTZ. And we agree, too. The Department of Labor asked us for the information so they know who those employees are and they can do training, counseling, administrative actions, whatever the case may be. So we will share with them that information.

Mr. MCKEON. And maybe they have made progress in that we don't know about. And that is why, again, we should have somebody here from the Department to find out.

I think we understand that most of these are career appointees—I mean, not appointees. They are career people that have applied for jobs, that have taken jobs, that are doing the jobs, and maybe out of the 1,000 people, maybe 990 are doing a good job or maybe 900 are doing a good job or maybe 10 are doing a terrible job or 100 are doing a terrible job.

But at some point, we should get serious about really fixing the problem instead of trying to point political blame. That is my point in this whole thing, Mr. Chairman.

Chairman MILLER. Thank you. The chair will recognize himself.

You want to keep talking about political blame. Let's just understand something: I became chairman of this Committee 2 years ago. I don't remember any oversight on this problem prior to my becoming chair.

We asked a question of GAO because this issue has been raised. It was raised many, many years throughout the construction trades, throughout all kinds of occupations. We could get no responses.

We asked GAO. They investigated the time and period. They couldn't go back and investigate what—you know, we weren't there, they weren't there, and this is what we found.

When we saw the first report, we said, "You know, this is a serious problem. Would you go in-depth and find out, was your first

report, you know, an anomaly or is there something systematically wrong with this? Is this a systemic problem?"

They have come back now with this report that says it is much more widespread, and it is about 20 percent—19 percent, 20 percent of the cases. It is serious. It is costing people a lot of money. They are not following through. We will then take the next step.

So, you know, it falls on whatever watch you want. This isn't about the politics of that. I became chairman, and I asked this question, because I have—you know, the issues of people being paid off the books, people being denied overtime, this is not new.

It may be new to you and to this Congress because there was no concern expressed about this over the last many years. And so here it is, and we will have the Department of Labor in. We expect them to partner with us to work out the solutions to this problem and get these people the wages that they are due.

Many of these people will never see their wages because there was a lack of oversight, there wasn't due diligence on this issue. We would hope that people now and the Department, recognizing the problem they have there, will change. And I think it will under the new secretary and new people. Why would you carry on in this inherited problem?

But the purpose of here is to get the change on behalf of working people that every day are losing wages that are entitled to them. So we will go through this process, and everybody will be included, and everybody will have a chance to participate.

Mr. MCKEON. Mr. Chairman, may I respond?

Chairman MILLER. Sure.

Mr. MCKEON. You became chairman a little over 2 years ago. I was chairman a little less than a year. At the time, we were very, very busy, as you remember, finishing up conference on the pension bill, passing the mining safety law—

Chairman MILLER. No, I am not saying you weren't doing your job.

Mr. MCKEON. I understand.

Chairman MILLER. I am just saying, but, you know, you asked a question of GAO and they come back to you. But you know what? You don't have to use your staff. God bless the fact that we have got GAO. They went off and did the work. They came back with the results. We were fairly busy, too, if I remember. So—

Mr. MCKEON. Yes, we are all—

Chairman MILLER. You know, this is just a question of whether or not this is a priority.

Mr. MCKEON. We are all real busy here.

Chairman MILLER. This happens to be a priority for me—

Mr. MCKEON. What I would—

Chairman MILLER [continuing]. I hope for the Committee, and I hope for the Department of Labor.

Mr. MCKEON. Now may I respond?

Chairman MILLER. Sure.

Mr. MCKEON. And I will respond, and I will not interrupt you when you respond.

Chairman MILLER. Just having a conversation.

Mr. MCKEON. That is great. What I would like to say is, I am totally in agreement with you that this should be fixed.

Chairman MILLER. I knew we would get there. Excuse me. I am sorry.

Mr. MCKEON. We get along well personally. I will try to maintain the decorum of not interrupting you again.

Chairman MILLER. And I am going to try really hard, too.

Mr. MCKEON. That would be great, Mr. Chairman. Now, I think we are in agreement that there is a problem with this 19 percent. I think we are in agreement of how we should fix it. I am not concerned about blaming you because you have just been chairman for 2 years, and I was just chairman for a year.

I think the important thing is, they have not been able to tell us that this didn't happen under FDR, you know, or under Truman. What we—the important thing is that it is 19 percent of people that need to be helped. And there is a way to address that. And I think that it is important that we do that and it is incumbent upon us to do that.

And I will work with you to make sure that that happens. I just want to make sure that we are not trying to play a game of political blame, that we are really trying to help the 19 percent. And I think that there is a way to do it. We are going to have to get the Department in here and in a non-finger-pointing way go after those employees that are not doing their job.

They are hired. They are paid. And then, once we find out that all 1,000 of them are doing their job adequately, if they still can't get to the 19 percent, then they should hire more people, and they should be adequately trained, and they should understand the importance of their job is to uphold and carry out the law so that people are paid for an honest day's wages for an honest day's work.

Thank you, Mr. Chairman.

Chairman MILLER. Thank you, Mr. McKeon.

Mr. Kildee?

Mr. KILDEE. Thank you, Mr. Chairman.

Mr. Kutz, you said that the complaint input system is fundamentally flawed. Does it need restructuring or just adherence to the present rules and regulations?

Mr. KUTZ. I think it is a combination of improved customer service. You heard the audio here and the way that people were treated sometimes. I think it is a matter of tone and the way you treat people with respect.

And it is also a matter of competence, with making sure that all the cases are recorded in the system. I mentioned cases aren't recorded in the system. So, for example, if you have a repeat employer that is making all kinds of—having all kinds of issues and you don't record cases in the system, how can you go back and make sure, when a new complaint comes in, that that employer hasn't done several other wage theft or other types of violations?

And so it is a combination of customer service, competence, and enforcement at that front intake process. And to me, if you don't do a good job at the front of the process, you don't even get to the 19 percent necessarily, because some people will probably walk away and not even file a complaint.

Mr. KILDEE. Is there someone within the Department or agency within the Department, not GAO, but that is in charge of quality control?

Mr. MEYER. I think there are individuals in Washington that try to do studies and monitor that situation, but, again, because complaints aren't recorded into the system at all, it is difficult to go back and check to see if a good job was done if there is no record of that call ever coming in.

Mr. KILDEE. I know very often if you call a company or an agency, sometimes you will hear, "Your call may be recorded for quality control." That is commonly done in the private sector.

Mr. KUTZ. The IRS does that, too.

Mr. KILDEE. IRS does that.

Mr. KUTZ. I have listened to the call centers in the IRS, and other federal agencies, I believe, do that to monitor the quality of the responses people make. And sometimes the calls are not known. You are actually monitoring someone; they don't know you are monitoring them, where you are listening for Q.C. purposes.

Mr. KILDEE. I always admit, I have kind of mixed feelings on that third-party listening, but at least they are concerned about—the purpose is for quality control. And I don't see a real concern for quality control.

Every investigator should be impartial. This person calling in, the person is in a sense a judge and a solver of this. But many of them seem to be on the side of the employer or have just worn out in the job and don't care. They come to work in the morning, and they go home and don't feel like kind of, "I have done some justice today."

You know, if I were talking to one of them, I would say, you know, the laborer is worthy of his hirer. And each one of those investigators—how often and how regularly—or are they at all—is their investigative prowess evaluated?

Mr. KUTZ. I am not aware of any internal reviews necessarily, other internal reviews.

Mr. MEYER. I think that each investigator has internal metrics based on back wages that they collect, the time it takes them to enforce a case. But as far as success rates and how effective they are, that is not part of the metrics, as far as we know.

Mr. KILDEE. So a person could get into a position where they could just show up?

Mr. KUTZ. Yes, I mean. I would caution the Committee, too, to say just throwing money at this issue is not necessarily going to solve the problem. You could have more people, but if they are the wrong people without the right tools, you might end up with the same result.

So you have got to look at this from a bigger perspective that you need improved people, processes and systems that will then—are you hiring the right people? Are you training them correctly? Is there proper quality control over the work that they do, et cetera?

So I would just caution, just throwing FTEs at this and, you know, repeating some of the same things that are being done now isn't necessarily going to get you a better result.

Mr. MEYER. And I would add that I have interviewed multiple investigators in the field. And most, if not—I would say many of them and pretty much most of them are dedicated and concerned about this issue. So I don't—I think it does get more to your case of what you said, where they are worn out. There are a lot of cases

they are having to respond to as rapidly as possible, and there is just a lot of work to be done.

Mr. KUTZ. Well, and that is why technology is important, too. I mean, you can leverage your resources better if you have at your fingertips the ability to determine whether a company is bankrupt or not, where that company is located, what their revenues are. They don't have those tools right now, from what we can see.

And so if I were to do investigations for the Congress without those tools, I couldn't do the job. I couldn't be up here talking to this Committee and the other committees we work for with the kinds of investigative findings we have. You have got to have good technology to be an effective enforcement and investigative unit.

Mr. KILDEE. Now, as far as quality control, we have much smaller operations. I have 18 people working for me, so it is much easier to evaluate. But I—every week at our staff meetings, I say, “When someone calls us with a problem, we should not take that as a burden, but as an opportunity.”

And now that might be self-serving for me, because every 2 years I actually get an accounting on my stewardship, right? But if I find people on my staff who look upon a call as a burden rather than an opportunity, then I don't want them on my staff.

And if we could transfer some of that over to the Department of Labor, that could be very helpful.

Mr. KUTZ. Well, I think that is a great point. I mean, the culture of—is this a customer of you or someone who you are going to treat with—you know, we have a hotline. We get people that call in all the time. No matter if they are crazy, we get people that call and say, “I am a paranoid schizophrenic. You know, I have had some sort of an experience.” But we treat them all the same.

We don't record them all as cases, because some of them have issues that have nothing to do with GAO or anything that we are able to help them with, but we still treat them all the same, no matter what. And I think that is an important piece of a culture here that needs to be addressed.

Mr. KILDEE. Thank you, Mr. Kutz.

Thank you very much, Mr. Chairman.

Chairman MILLER. Thank you.

Mr. Price?

Dr. PRICE. Thank you, Mr. Chairman.

Some of the—well, I will just comment that all of us believe that workers ought to be paid honest wage for an honest day's work. Some of the information that you presented, the one that was most disturbing was this meatpacker in Modesto, California, accusing child labor laws being violated and young people, young children missing school and working on dangerous machines.

That was fictitious, correct?

Mr. KUTZ. Correct.

Dr. PRICE. So it wasn't true that that was happening?

Mr. KUTZ. No. But—

Dr. PRICE. The fact that the investigator didn't follow up on it or the DOL employee didn't follow up on it is the point, right?

Mr. KUTZ. Yes.

Dr. PRICE. We don't want people across this nation going away from this hearing thinking that children are working at a

meatpacking plant in Modesto, California, without anybody following up on it.

Mr. KUTZ. That is correct.

Dr. PRICE. Okay.

Mr. KUTZ. It was one of our undercover agents.

Dr. PRICE. I want to just correct the record. Charlie Norwood, who was a member of this Committee and longstanding member of this Committee, and passed a couple of years ago, in fact, did a similar oversight with the use of GAO at the Department of Labor's offices, workers' compensation offices, programs and the like, similar issues of incompetency we raised at that time.

And you would acknowledge that previous work has, in fact, been done, would you not?

Mr. KUTZ. Yes. And I am not familiar with—I am not sure how far back that goes. The latest report of GAO, aside from the two investigative reports we did, was a GAO report issued at your hearing last year in July.

Dr. PRICE. A couple of your comments that you made, you said that this is just the tip of the iceberg, that the complaint intake process—investigation process wasn't adequate. Do you have any reason to believe that this type of activity by career civil service employees at the Department of Labor is any different than at any other Department?

Mr. KUTZ. No, not necessarily. I mean, we see—

Dr. PRICE. So it could be the same at other Departments?

Mr. KUTZ. Yes.

Dr. PRICE. And this—your investigation focused on career rank-and-file employees within the Department of Labor, correct?

Mr. KUTZ. It focused on the 32,000 complaints that were recorded by Wage and Hour for fiscal 2007, and it was primarily related to that, in addition to the undercover calls we made, which are real-time calls over the last several—

Dr. PRICE. And the folks who respond to those complaints are career rank-and-file employees of the Department of Labor?

Mr. KUTZ. That is correct. Yes.

Dr. PRICE. Do you know if any of those folks are members of a union?

Mr. MEYER. That wasn't a part of our discussion.

Dr. PRICE. You wouldn't—they may or may not be.

Mr. KUTZ. We are not aware of that.

Mr. MEYER. Right.

Dr. PRICE. We have heard some comments from some folks on the Committee here that these employees were "lying," seemed that they were "worn-out" or didn't care. Do you know if these would be the same level of employees that would be charged with handling, for example, a national health care program?

Mr. KUTZ. Don't know.

Dr. PRICE. No way to know that?

Mr. KUTZ. No.

Dr. PRICE. So it is possible that folks who are advocating for something like a national health care program that these would be the same level of employees that would be answering the phone for complaints in that area as well, is that correct?

Mr. MEYER. The level of employees answering the phone ranges from, I think, a GS-5 all the way up to GS-12 investigator.

Dr. PRICE. Could be the same? Could be the same?

Mr. MEYER. It is a—

Dr. PRICE. So the prospect—it is curious that some of the calls that—or some of the recordings that you made or played for us, one of the employees gave the information to the individual calling that they had a private right of action. They could take their employer to court. That was accurate information, correct?

Mr. KUTZ. Yes, correct. They are oftentimes—when there is a backlog or we say, “We can’t get to your case,” you can file a private lawsuit.

Dr. PRICE. When I call the Federal Government sometimes, I get that, too. “You ought to go somewhere else. You ought to look to somebody else. You ought to try some other avenue.”

So it is wholly likely that folks who would be wanting to set up a nationalized pension plan, 401(k) plan run by the Federal Government that the employees who would be responsible for investigating or answering challenges to a plan like that would be the same level of employee as these folks, is that correct?

Mr. KUTZ. If they are between what Mr. Meyer said, GS-5 and-12, it is possible. It is just something we don’t have any direct knowledge of.

Dr. PRICE. So the prospect for allowing the Federal Government to be more intrusive in other areas of our lives—health care and financial security for one’s family—might be under the control of folks just like the people, the 19 percent that have, as some others have said, were just worn-out? Is that accurate?

Mr. MEYER. It is possible.

Mr. KUTZ. It is possible.

Dr. PRICE. It is possible?

Mr. MEYER. Sure, it is possible.

Dr. PRICE. Well, as a physician member of Congress, it concerns me greatly that there are members of the House of Representatives who are clearly convinced this is exactly where we need to go, to have the Federal Government running our entire health care system.

And consequently, it is instructive to look to other areas that the government controls, I believe, for increasing education of both members of the House of Representatives, Congress, and the American people as to what that might look like.

Thank you. I yield back.

Chairman MILLER. Mrs. McCarthy?

Mrs. MCCARTHY. Thank you, Mr. Chairman. And thank you again for holding this hearing.

Mr. Kutz, if I remember correctly, July of 2008, we had a hearing almost on the same subject. Is that not true?

Mr. KUTZ. That is correct.

Mrs. MCCARTHY. And at that hearing, didn’t we have representation from the Department of Labor?

Mr. KUTZ. Yes.

Mrs. MCCARTHY. And if I remember correctly, one of the statements that was put from the assistant secretary, Alexander—I am going to pronounce his name wrong—Passantino touted his divi-

sion's effectiveness by citing WHD's own performance statistics and rejected everything that you said.

He also was asked if the Department of Labor was effectively enforcing our wage and hour laws, and he responded with an unqualified, "Yes." And I guess I want to—with the videos that we saw or the voice messages that we saw, those were random calls that you made. Were they to the same person all the time?

Mr. KUTZ. They were to six offices, the ones I mentioned earlier, across the country.

Mrs. MCCARTHY. Across the country?

Mr. KUTZ. Baltimore, Miami, Dallas, California, yes.

Mrs. MCCARTHY. Correct. You have done an awful lot of these investigations. With that being said, with the investigation that you made and the telephone calls that your Department made and the tapes that you heard, would you say this was probably a fairly large amount of people giving answers that were quite not true?

Mr. KUTZ. It is highly likely there are many others doing the same thing. You know, the one thing that we can do for committees like yours is give you an inside look at what a real person faces when they approach the government, because if we had gone to their offices and said, "Hey, we are GAO. We want to talk to you about how you handle phone calls," I don't expect we have got any of those examples provided to us from the Department of Labor.

So this gives you a real picture of what it looks like if you are a victim of wage theft or some other violation of FLSA.

Mrs. MCCARTHY. And, by the way, I do the same thing. I call my office to see how they answer the phone.

Mr. KUTZ. It is a good process.

Mrs. MCCARTHY. That is just something—because they are representing me. Well, let's go on. As we go forward with this—and I am sure we are going to have another hearing on this—what do you think needs to be done to ensure all complaints are at least documented at the Department of Labor?

Mr. KUTZ. Well, we believe they should be documented. I mean, if something is—they get a lot of calls probably that aren't real cases, somewhat like our hotline. They might call about something that has nothing to do with a labor law violation. Those shouldn't be given case numbers.

But everything that comes into the system, like our 10 calls, should be given a case number. And even if they are not going to work it, they should keep it in the system, because what if that employer comes back again and has committed another wage law violation? Then you give off a trend of information.

If you don't report the information in the system, you can't do linking of cases. So with our hotline—our FraudNet, we call it—we give case numbers to everything. And we go back, and I can determine where there were other Wage and Hour Division things or Medicaid, Medicare, whatever the case may be. We can go back and research by person, company, theme, et cetera, to determine what has happened in the past.

And the first thing we do about a complaint coming in, have they been here before?

Mrs. MCCARTHY. Just to follow up on that, my office, my district office, and my Washington office, anyone that calls for help, we

open up a case file for them, and it goes into our computer so that we can have a running issue on what we are doing, what they are doing, and how it ends up in the case before it is closed.

So I think that we are all trained that way, to basically make sure that we are tracking our constituents. And each member has over 600,000 people that we represent.

What do you think, as we go forward, does Labor need to do to assist the situation and make sure that enough proper trained people are in place to adequately investigate allegations of wage theft?

Mr. KUTZ. Well, they need to take a top-to-bottom look at this. It is not necessarily, do they need more people? Which they maybe do need more people. But it is better trained people, possibly. Are they hiring—what are the criteria of the people they are hiring? That is something we didn't look at as part of this, but that is a valid question. I mean, do you have the right kinds of people?

Because if you have investigators that are willing to take a "no" answer and just say, "Okay, we are done," I have investigators that work for me. Not a one of them would accept that as an answer. I mean, they would at least follow up with a second question or a—do something besides just say, "Okay, thank you," and then they call the victim, the potential victim here, and say, "We are sorry. We can't help you. They said no."

I mean, that is not really an investigation. I am not sure what you would call that. It is just a thing. It is a phone call we made.

And so you heard our frustrated victim on the undercover call saying, "Is that all you do, just make a phone call?" And I think a lot of times, with the smaller cases, that is all that they do.

Mrs. MCCARTHY. Last question. One of the other things that we do in our office—and I am going to ask if you think it is worthwhile to look into that for the Department of Labor, also—we retrain. Even if someone that has been with me for 13 years, every couple of years, we go through a whole retraining program, because new techniques are always coming up, new ways of handling things that were always coming up.

I was just wondering if that would be something that would be important to do for the Department of Labor?

Mr. KUTZ. Yes. Do they do something like that?

Mr. MEYER. Yes, there are annual updates that investigators go through. I think a focus, though, needs to be shifted in some cases from compliance assistance and, you know, trying to go out there and walk the thin—the middle line between the complaint and the employer—to enforcement of laws. It is an emphasis on enforcing the laws on the books, needs to be re-emphasized with investigators every year to make sure they feel that their job is important and to get it done.

Mrs. MCCARTHY. I yield back the balance of my time. Thank you.

Chairman MILLER. Thank you.

Mr. ROE?

Dr. ROE. Thank you, Mr. Chairman.

Just a couple of questions. Could you sort of put this in context about how many cases—you may have said this before I came in to the room, but I was at another committee hearing—but how many do they handle a person? Like you said, if you just answer the phone and say, "No," that is hardly a case.

But just a—I know from my experience and what I have done in a lifetime, I know how much I can do in a day’s work. How many cases—are these people just overwhelmed with the number of cases or what?

Mr. KUTZ. There are 32,000 cases that were recorded in the system for 2007. And as I mentioned, a lot of cases don’t get recorded in the system, so we know it is more. We don’t know how many more. And they had 700 to 800 investigators for 2007, and they had—I think they have roughly about that amount. So that gives you an idea of the different volumes you are talking about.

And cases are very different. A case can be one person or it can be thousands of people. So there is a wide range of what a case is. So not all cases are equal. Some cases could take thousands of hours to investigate; some could take a couple of hours.

Dr. ROE. Well, and to follow up on that, I guess, and to follow up on some of the other—the questions that we asked was that—is there any way to measure what kind of job they are doing? I mean, are there any kind of standards that they are doing, any oversight that they are doing?

I know some of your testimony said they weren’t being very effective. But is there a way to measure that? We have that in most of our offices. We have standards, job evaluations, and so forth.

Mr. MEYER. We measured these cases just based on the allegation that was filed and whether an adequate job was done of responding to that allegation and investigating it.

In last year’s testimony, the other witness from GAO provided statements that Wage and Hour has continually shifted their goals and shifted their metrics they use to measure compliance so there wasn’t a consistent way to evaluate them over the years.

But for our investigation, it was purely based on the case we were looking at and whether it was adequately responded to.

Mr. KUTZ. But some information they have that is useful, I think. They say they collected about \$220 million in 2007. Now, again, we know based on our work they probably collected less than that, because a lot of stuff in the system doesn’t ever get collected, but let’s say they collected about \$200 million. That is useful to know. Their budget is about \$200 million. Is that a good ratio? I don’t know.

They helped 341,000 employees. Again, we probably think it is less than that, because we know some people they say that they helped, they weren’t helped, but there are also tens of thousands, maybe hundreds of thousands they didn’t help.

So there is some useful information like that that—and the thing we don’t know, again, getting back to asking you—if they are asking you for more resources, what evidence do they have to show you what they will do with those resources and what return on investment that would be? See, if I was there, I would say, “Well, I want to show—if you give me an extra dollar, how much more can I collect for wage theft or other types of cases I can work to help victims here?”

Dr. ROE. I agree.

Thanks very much, Mr. Chairman. I yield back my time.

Chairman MILLER. Thank you.

Mr. Courtney?

Mr. COURTNEY. Thank you, Mr. Chairman.

And thank you for holding this hearing, which is a completely logical follow on to last July's hearing where this issue was first identified and GAO testified, of course, at that hearing.

And, also, for the record, for the benefit of people who are watching this hearing, I think it is important to know that Secretary Solis submitted a statement indicating that the Department is now hiring an additional 250 Wage and Hour Division case workers, which was the result of the 2009 spending bill, which some of us in this room supported and others did not, but clearly there is now, with the new administration, movement towards strengthening the workforce there.

And additionally, there are another 100 workers that are being brought on as a result of the stimulus bill, the American Recovery and Reinvestment Act, which the president, again, signed into law just recently. So there is good news, at least in terms of the strengthening of the case workers, which has been identified by some here today as potentially the problem.

The other one issue which we had discussed last July, a pattern that emerged from your investigation was that the prior—well, the Wage and Hour Division case workers that were interacting with complainants, were being told, “Well, go get a lawyer,” as sort of the way to close out the file.

And, again, I just want to ask you a simple question. I mean, in fact, the mission of the Department of Labor is to provide free advocacy for workers who have been denied their wages and, in fact, not to force or direct them to private representation through lawyers, isn't that correct?

Mr. KUTZ. That is an important point, yes. And that gets back to the issue of resources. And is the mission to serve only those we have the resources to? Or is it to serve all the people that come in?

Is the mission to serve greater than 10 numbers of people or, you know, greater than 7? That is an important issue, because it appears the reality is they are picking and choosing who they are able to serve.

Mr. COURTNEY. And there clearly was an irony in last July, which was pointed out, which—because the morning of the hearing in the New York Times, the administration actually put out a statement saying that, you know, their goal was to, you know, stop trial lawyers from enriching themselves from this, and, in fact, the opposite was occurring, which is that people were being steered towards private counsel as a way of getting a remedy.

And, again, I think certainly this Committee wants to go the direction of the original mission of the Department of Labor, which was to, again, as an administrative agency, provide people with help without having to incur the expense and difficulty of retaining private counsel.

Mr. KUTZ. Well, and the reality is, if you are one person making \$6 or \$7 an hour, how many attorney's fees hours can you afford?

Mr. COURTNEY. And I guess the other question is that there is also a time issue. Now, again, I think throughout some of the notes you talked about the fact that—I mean, there is a statute of limitations for bringing a claim, is that correct?

Mr. KUTZ. Correct, 2 years from the time of the violation, yes.

Mr. COURTNEY. So if you filed a complaint, you are waiting, you are waiting, and then the case is closed out by saying, "Go get a lawyer," I mean, the fact is, is that you are—that scenario makes it even worse for people.

Mr. KUTZ. Right. Sometimes the clock runs out, and employers know that, and some of the egregious ones stalled, and eventually the case went away with no collections.

Mr. COURTNEY. And, lastly, just looking at the locations of where some of these cases were—took place, I mean, I am seeing, you know, from the West Coast to the East Coast and in between. I mean, the fact is, is that this seems to be a much more widespread problem than one field office from, again, just the report that you have submitted here. I mean, is that a safe conclusion to make?

Mr. KUTZ. I think we have done enough work to say that, yes, this is a national issue. We can't say every single office has the same problems, but there are many, many offices that have these types of problems, yes.

Mr. COURTNEY. Great.

Thank you, Mr. Chairman.

Chairman MILLER. Thank you.

Mr. Sablan?

Mr. SABLAN. Thank you, Mr. Chairman. And thank you for your leadership on this very important issue.

Thank you, Mr. Kutz and Mr. Meyer.

I am trying to learn something here. In your undercover testing, how did you arrive at the types of jobs to use to determine? This was very thorough, and I am trying to—

Mr. KUTZ. Yes—

Mr. SABLAN [continuing]. Was there a certain, you know, scientific testing you—or process you did? I am trying to determine if these are—if the lack of attention given to these cases are because they are for certain types of jobs or a—those making so much money per hour, or if they are, you know, minimum-wage-earners or—where is the lack of attention? Is it just endemic throughout the system for—

Mr. KUTZ. The undercover calls we made were what we thought were common complaints we had seen in the database. And the one was the child labor one. I will just give you the other—some examples. We did dry cleaners, convenience store, dishwasher, janitor, painter, lawn mower service. Those are pretty typical of what we have seen in the database of legitimate complaints coming in.

So we tried to recreate what would be a legitimate complaint and legitimate scenarios out there.

Mr. SABLAN. And this was done throughout the nation?

Mr. KUTZ. Yes. Again, six offices, Baltimore, Birmingham, Dallas, Miami, San Jose, and West Covina, California. Those were the six offices we made those 10 calls to.

Mr. SABLAN. Thank you, Mr. Chairman.

Chairman MILLER. Thank you.

Ms. Titus? Congresswoman Titus?

Ms. TITUS. Thank you, Mr. Chairman.

Gentlemen, you were asked if you have any evidence that the employees of the division had deliberately been told to mishandle cases. And, of course, the answer is no. But I have often found that

lack of resources and capricious enforcement are generally the result and reflection of administrative priorities.

So let me ask you that same question just a little bit differently. Do you have any evidence that the professionals in the Department, who should know what is needed to be effective, requested the resources or the tools that you say that they need?

I mean, those tools seem to me to be pretty obvious. You are talking about training in customer service, recording of cases, access to information on bankruptcy. Is there any evidence that they were trying to do the best job that they could to serve these workers, help them get their wages?

Mr. MEYER. I think speaking specifically to the information technology, when we raised the issue initially in our first audit and then in this follow-up audit, it seemed to be a new idea to the management in Washington, at the headquarters level, for Wage and Hour that it didn't—it wasn't something they had explored in the past. So I don't know if—I don't know if they considered it before this point.

Ms. TITUS. And that is just shameful, it seems to me, a real derelict of duty, I think, because I believe it should be critical to use all the tools possible to help people get their wages. And that is why I am so pleased to have your report and that the chairman is making this a priority.

Just one other kind of more technical question, too. You mentioned that, in states where you have strong enforcement of labor laws, you have a better result at the national level. I know in Nevada we have had some serious problems. Are there any things that we can do legislatively or as we look at the operations of this division and that relationship with states to improve the situation, so that even if you have a weak link at the state level, we can make it work better?

Mr. MEYER. I think when Wage and Hour reassesses their staffing and the allocation of resources, it should be important for them to consider states with, let's say minimum wages that are higher than the federal minimum wage. That makes a big difference on if the Federal Government should take a case or if the state should take a case.

So that needs to be an important part of their consideration, because more resources are likely going to be needed in states where there is no state agency that can assist complainants.

Ms. TITUS. Okay.

Thank you, Mr. Chairman.

Chairman MILLER. Thank you.

Mr. Hare?

Mr. HARE. Thank you, Mr. Chairman.

I am not here today to finger-point and look backwards too much, but I think it really is important to point out to people that are watching this, the former Secretary of Labor, I saw her two times. I am in my second term. Once was in the back of a car with her husband at a parade running for re-election, Mitch McConnell, and the other was when President Obama was sworn in.

I have not seen her at this Committee. But she sent the acting administrator, Alexander Passantino, I believe, who just basically said that you guys didn't know what you were talking about.

Also, which I—by the way, I couldn't disagree with him more. I think you clearly do.

Also, you have a Department of Labor that significantly cut funding for the Wage and Hour Divisions. And I am not suggesting that we throw people into a position and that you are going to solve this entire thing by having more people, but I do know that, when you cut the funding for the Wage and Hour Division, problems are going to occur.

And, you know, I just find this, especially when you are talking about people's salary, an honest—as mentioned, you know, an honest day pay for an honest day's work, I find it almost unbelievable that people would do that and would treat people like that.

And then, just lastly, before I have a question, you know, we are going to have comprehensive national health care. And for the people watching this hearing today, I can assure you that for those 47 million Americans that don't have it, I don't think they are going to have to worry about who is answering the phone. I think they are going to have something at least that they can go to the hospital and get taken care of.

My question to you, your investigation revealed an ineffective Wage and Hour Division that discouraged wage theft complaints. But in the situation when complaints were recorded and assigned as a case to an investigator, they were often adequately investigated.

To me, this indicates that many of the problems at the Wage and Hour could be fixed by the dedication of more resources and a labor secretary with the will to address wage theft complaints.

What are your thoughts on community partnerships, in other words, with—you know, partnering up so that more people can be served and in a timely fashion and with respect?

And, by the way, I just want to say, I apologize for getting here late. I didn't hear the complaints. But after listening to you testify, I can imagine just how egregious they were for people. Whether they were fictitious or not, the fact of the matter is, the person on the other end of the line didn't know that.

So I am wondering what you think about community partnerships, knowing the shortage of the staff and some other things, and maybe working with some nonprofits?

Mr. KUTZ. I think that makes sense as part of an overall strategy for how they are going to address it, along with the states, as Mr. Meyer mentioned. If we have effective enforcement of states, it frees up the federal offices across the country to maybe take on bigger cases and not worry as much about the smaller cases.

So partnership and leveraging resources—and I agree with you that just throwing money at this isn't necessarily the answer. Part of the money needs to go to technology. Part of this needs to be better processes, maybe even a better phone system for handling the complaints that is much more customer-friendly.

So it is a bigger picture, I think, than just putting more people on this. But community partnerships and working with states and others, it makes perfect sense to me.

Mr. HARE. Do you think that the problems at the Wage and Hour are causing wage theft victims to not file complaints? In other words, when they hear that people are being treated like this or

they get treated like—do people just start saying, “It is not going to do me any good to make the phone calls, so I am not even going to give them a call”?

Mr. KUTZ. Yes, I mean, actually, those 10 cases, we made 115 calls, and 76 times it went directly to voicemail. And frequently we never got a call back. We had to call month after month to try to get them to call us back.

So I think some people would give up eventually. So I really believe that what you said is true, that some people are not filing complaints because of that. And I mentioned that in my opening statement, also.

Mr. HARE. And that would be—I mean, that is really a tragedy they are not filing a complaint because they just think it isn’t going to matter.

Mr. KUTZ. Right. And they don’t—they are making, like I said, \$6, \$7, \$9, \$10 an hour, and getting an attorney is going to be a challenge.

Mr. HARE. Let me just ask you this. I am almost out of time here. What are the one or two things that we can do, that this Committee, this Congress can do to make sure that ordinary people when they call in have at least a fighting chance to be able to get the wages that they feel they have been denied and that they have coming, so that they have, you know, as I said, for ordinary people, bureaucracy is tough enough as it is.

So what can we do as a committee and a Congress, do you think, to help these people out? Because the bottom line is, we can fingerprint all we want to, but it is helping the ordinary people out.

Mr. KUTZ. I think one of the things legislatively we saw was that the 2-year statute of limitations sometimes when cases are ongoing end up running out because either they start late on the investigations at the Department or the employer stalls. Looking at specific targeted ways to possibly look at legislation in that area we are going to probably put in our recommendation and a matter for the Congress to consider.

We don’t make policy, but we offer to you to consider policy. I think that is a situation where you could consider policy.

The other thing I would say is, again, not walking away from this—and as Chairman Miller said—consistent oversight of this until you are satisfied that the systems, processes and controls in place are good and we could even go back for the Committee at some point in time and do similar tests to what we did this time and see if they do better.

Mr. HARE. Thank you very much.

I yield back, Mr. Chairman.

Chairman MILLER. Thank you.

Congresswoman Woolsey?

Ms. WOOLSEY. Thank you, Mr. Chairman.

Last session, my subcommittee, the Subcommittee on Workforce Protections, held a hearing on the lack of enforcement by the Wage and Hour Division of child labor laws. There was evidence to the contrary, but the former acting administrator, Passantino, testified at the hearing that child labor complaints were the division’s top priority. And he said that more than once.

So in that regard, what did your investigation find? And what recommendations do you have for improvements in that area of child labor and including farm-worker children?

Mr. KUTZ. With respect to child labor, you know, one of our undercover calls was a child labor call, because we knew that was a priority of the Labor Department. And their policy, I believe, or practice, at least, is that even if it is an anonymous tip, that they are supposed to open a case and look into it.

So we planted an undercover call with them that kids were working during school hours, operating circular saws, meat grinders at this meat plant. And when we went back to look in the system, it wasn't anywhere. It wasn't recorded in the system. They hadn't done anything with it.

And so they were concerned about that, too, because they don't—they agree with your statement that that is a top priority. But the reality was, in that case, they didn't do anything.

We had seen a case like that last year, too, that was a child labor law complaint. So we don't have a lot of experience, because not a lot of the actual recorded items in the system are child labor complaints, but in several cases now we have seen that maybe it is not such a priority if they are not actually following up.

Ms. WOOLSEY. And if there was a scattering of instances like this, you have to know there are many, many more, right? I mean—

Mr. KUTZ. Certainly. I expect there are several others.

Ms. WOOLSEY. That was—yes.

Mr. KUTZ. I mean, you have to believe that.

Ms. WOOLSEY. Well, then what is the deal? I mean, it comes from the top. So now with a new administration and a new Secretary of Labor, and then there will be new deputies and new heads of Departments, and with a new attitude, is that going to be enough to change this? Or is it really that the short-staffed, under-trained, lack of motivation, I don't—lack of tools? I mean—

Mr. KUTZ. I think it is—

Ms. WOOLSEY [continuing]. You can't make somebody do the job they are supposed to do if they don't have the tools to do them.

Mr. KUTZ. I don't think you can point at one thing. I think, if you just focus on throwing staff at it, it is not going to solve the problem. That is one element possibly here.

But as you mentioned, culture is one thing. The right people, enough of them. Are they properly trained? Do you have good processes in place?

An example of that is, you know, if you accept the neighbor saying, "Well, the company is bankrupt," and then you walk back to the office, you close the case, and say, "Yes, they are bankrupt," well, we had cases like that.

Ms. WOOLSEY. Right.

Mr. KUTZ. And then we went back and looked in the system, and the company is not bankrupt. They just moved or they actually didn't have trucks there that day or something like that.

I mean, that is a matter of just bad processes. You should have a process that you are going to validate—if you are going to say in the system that someone is bankrupt, you should validate that

with independent evidence that that, in fact, is true before you drop the case.

Ms. WOOLSEY. So are there training programs that you, in your survey, were there employee training programs that would help the employee know how to research whether a person was bankrupt or not? Or do we just assume that person is supposed to know these things?

Mr. MEYER. Based on the investigators and technicians we talked to, their training in that area relates to looking it up on public searches, if a local court keeps their records online or if there are some Google search results that will find a business.

It doesn't get to the level of sophistication that we have with public court records, federal court records, LexisNexis, some real robust technology. And I would also say, for child labor complaints, one way to make sure that they are dealt with is to force people to record the complaint when it comes in, because then there is at least a record that it is there.

And I think it would be very hard for management at the Department of Labor to ignore those cases. And I think they really genuinely are concerned about them. But if it never makes it into the system and it is not on their database, no one knows about it.

Ms. WOOLSEY. How about farm-labor kids? Was there anything in your survey, your report about them?

Mr. MEYER. Our statistical sampling didn't randomly pull up any farm labor, Migrant and Seasonal Worker Protection Act cases. However, through interviews in the field, we did see that a number of offices at the Department of Labor take time out of their year to specifically investigate MSPA cases.

So it is an emphasis at Department of Labor how effective it is. Unfortunately, it just wasn't pulled up in the random sample, so it wasn't a large enough percentage for us to look at.

Ms. WOOLSEY. Well, Mr. Chairman, I would believe, with Hilda Solis as the new Secretary of Labor, that farm kids are going to have a lot more emphasis than they have in the past, and children in general.

Thank you very, very much.

Chairman MILLER. Thank you. It is the intent of the chair that this Committee hearing will end at noon, but we will have a second round, if members want to participate.

One of the things that concerns me in this construct is the person who may be most financially vulnerable to lost wages, in terms of major disruptions in their life—they could lose a car payment, they could lose a house payment, they could lose their rent, they could be evicted—they are the person that really has the least—has no margins for error.

So you lose \$800 in a paycheck, whether that is, again, over a week or 2 weeks, whatever period of time that paycheck has come in for, you lose that \$800, you don't have margins. Turning to an attorney isn't really an option for an \$800 case. And yet those are the cases that are quickly reconciled, either yes, no, maybe, thank you very much.

So they get the least resources focused on them, and yet they are the most vulnerable. There is something wrong in that system. I understand why you would do it, because if somebody is with-

holding—failed to pay a couple of million dollars or hundreds of thousands of dollars, that seems more important, unless you happen to be that person that lost the \$800 paycheck.

So it seems to me you have an obligation to do a very thorough investigation, maybe not terribly time consuming, but a very thorough investigation at the outset for that individual. Does that make any sense? I mean, the system seems to be tilted a little bit away from the average worker in the occupations that you cited.

Mr. KUTZ. Yes, the system is tilted away. And it gets back to, what is the mission? Is the Department willing to spend \$3,000 to collect \$800 for an employee? And that isn't just—you can't just look at it as a cost basis, too. You look at future compliance and things like that. So just working to make sure that these employers know that they will go after some of those smaller cases can also help future compliance.

But the reality now is they are kind of picking and choosing, it appears, because of issues with resources and technology and whatever the case may be.

Mr. MEYER. I would also add that, for conciliation specifically, right now Wage and Hour's policy is to make one or several phone calls. And if it doesn't result in collections, they drop the case at that point.

And most of the time, those are actually effective. The ones that we looked at in the database, most of the time a normal employer will comply once they have been told they have broken the law in some area.

But the ones that don't should be raised to the level of a full investigation and followed up on. So you can have a rapid response and a more thorough response in those limited cases.

Chairman MILLER. And, Mr. Meyer, I assume you are saying that, given your—that maybe some of these people aren't the best trained in how to be the most effective on the phone or what resources they should bring in advance to that phone call. Maybe a little bit of work before the phone call and you speak with more authority, possibly.

Mr. MEYER. True. There is very little work done before that first phone call—

Mr. KUTZ. Well, not only that. I mean, you did hear some of those. They simply said, "Are you willing to pay?" The answer was no. "Okay." I mean—

Chairman MILLER. So the employer steals \$800 out of my paycheck, whether it is overtime or regular pay, and the likelihood maybe is that nothing will happen. That employee steals \$800 out of petty cash in that company, and that employee is going to jail. In all likelihood, that employee is going to jail.

So you steal it out of their paycheck, you go past jail. You are free. You steal it out of petty cash, you are going to go to jail.

I mean, somehow there has to be an initial investigation that understands what took place here. This isn't—you know, in many of these—this isn't a bookkeeping error. This is a conscious decision not to obey the law.

Mr. Meyer, you talked about—they have to understand they are there to enforce the law, the minimum wage law, the overtime laws, you know, the hours worked, all of those things.

So a conscious decision in many of these instances is simply made not to pay these individuals. A conscious decision to rob that business and you have two different—you have two different outcomes.

Mr. KUTZ. Right. If you have a situation now where employers know probably that, worst-case scenario, they may get investigated and, if so, they might have to pay what they owed in the first place, I mean, so you have that kind of a system out there—

Chairman MILLER. There is no penalty.

Mr. KUTZ. There is no penalty.

Chairman MILLER. You steal from the employee, there is no penalty. You steal from the employer, you go to jail.

Mr. KUTZ. You are not going to get criminal, sure. There is no criminal. And so worst case, you pay what you owe, and sometimes you compromise it down to something less than you owe. So it is a system with minimal teeth to it at this point.

Chairman MILLER. And there are 30,000 complaints in this system in 2007?

Mr. KUTZ. Correct.

Chairman MILLER. We heard when you were here in July from Wage and Hour that they suggested that they resolve 93 percent of their cases, where employers agreed to pay. Does that mean they got 93 percent of the wages that were wrongfully taken returned?

Mr. KUTZ. No. No.

Chairman MILLER. What does that mean?

Mr. KUTZ. Well, that is what is recorded in the system. As I mentioned for our undercover calls, in several cases, the employer initially agreed to pay. And several weeks later, our fictitious employee called back and said, “By the way, investigator, they never paid me.” We went back into the system several months later, and all those cases showed that the case was actually paid.

So they are recording as paid if the employer says, “I paid,” but they don’t go back to follow up or, even if someone calls and says they never were paid, they don’t go back and change the records.

Another important thing is—

Chairman MILLER. So not only now is the employer stealing from his employees, he is now lying to the government?

Mr. KUTZ. Correct.

Chairman MILLER. To the enforcement agency?

Mr. KUTZ. And we are recording it as a successful case, even though he didn’t pay.

Chairman MILLER. Right. Yes, I would say we have a cultural problem here, if that is success. I don’t think that is success for anybody on this Committee.

Mr. KUTZ. The other thing I wanted to mention on that, too, there is another case that we saw, too, that is very interesting. The actual amount owed was \$150,000, but the amount assessed ultimately was \$78,000, so it was compromised. What they recorded in the system was assessed \$78,000, paid \$78,000.

So in that case, it appeared that 100 percent was paid. The reality is, 50 percent was paid, because they owed \$150,000. So you always have to get behind these numbers like 93 percent and say, is there something more to the story than 93 percent?

So you have several factors. I am not saying they are not collecting hundreds of millions. They probably are. But that number is probably overstated based on a number of cases we have seen.

Chairman MILLER. You know, you touched upon also the issue that about money and workload and the rest of that. It is kind of interesting that, as I look at the chart here, I think this is from CBO—the money went down 4 percent—a little—4.2 percent from 2001 to 2008, but the full-time employees went down 21 percent, 21 percent, 22 percent, 23 percent.

So, I mean, it wasn't—apparently, you know, it wasn't money. They just decided they were going to—I don't know if these people went somewhere else or whether they were discharged or what have you, but the numbers in the Department—in the Wage and Hour Division, the employees went down continuously over this time 21 percent, but the money to the appropriated dollars didn't go down.

Mr. KUTZ. Right. The number of investigators has gone down from 1997 to 2007 by 20 percent to 25 percent, in that range.

Chairman MILLER. Right.

Mr. KUTZ. Correct.

Chairman MILLER. Let me ask you—one of my colleagues raised the issue of the statute of limitations. This clearly works absolutely against from—at least my conclusion is, from looking at these cases, if the Department is not efficient, they are working on my time if I have a statute of limitations running against me and my ability to recover.

Is there—have you thought about what the alternative would be for starting the statute or—

Mr. KUTZ. Well, we believe that—we were going to put a proposal into our report that has recommendations for a matter for Congress and to consider whether or not the statute should be extended. I am not sure what the right wording necessarily or how you would write the bill.

In certain cases where there is a legitimate claim, Wage and Hour is investigating it, but the clock stops ticking, and that would be something that would help not only the Wage and Hour Division, but the victims who we see oftentimes get nothing—

Chairman MILLER. You would hold that during the investigation?

Mr. KUTZ. Yes, yes, I think that is the right term. I—yes.

Chairman MILLER. Yes, okay. And so then, if they did a good job—maybe I get my money back—

Mr. KUTZ. Yes.

Chairman MILLER. If they didn't or they refused to or whatever the case was, I still have my right, if they used up 6 months of the time, I still have my full 2 years to proceed against the employer and have time to do that?

Mr. KUTZ. Or at least more time, because let's say it takes you a year to get to the first point. You would at least have an extra year. It depends on how you write the bill or how you would write that legislation, but, yes, you would have time to see if Wage and Hour could resolve it. And if they can't, you would still have at least a period to file your own lawsuit.

Chairman MILLER. When you look at other agencies, are there agencies that have better models in terms of measuring outcomes

and user-friendly, customer-friendly systems in intake and initial investigations that the Department of Labor should be looking at?

Mr. KUTZ. Well, I thought the interesting idea—and I don't remember which member it was that mentioned the monitoring of the calls to determine whether people—how people are handling the actual people—that is an interesting idea. I have seen—at IRS, I have observed how they do it.

And I think in that case they know that they are doing it, or at least randomly doing it, but it keeps people on their toes and it makes people know that we are measuring this as one of the considerations in your job rating and the pay for performance you are going to get or whatever raises you might get.

So that was an interesting idea, I thought, that could be used on the complaint intake process.

Chairman MILLER. That would also let you know whether or not that case was entered into the system so that you would have follow-up or you would have data about that employer or that industry or the rest of it, would help you develop reliable data if that phone call was matched to a decision.

Mr. KUTZ. Yes, you have to hold the Department of Labor accountable to make sure that all legitimate cases are entered into the system, because otherwise Congress doesn't have a very good idea of what kind of work is not getting done.

It would be nice for you to know that there were 6,000 cases, or whatever the number is, that they just didn't have time to get to.

Chairman MILLER. You have—

Mr. KUTZ. That would be an important metric.

Chairman MILLER. You have mentioned the IRS. Do you know of other agencies that have done that or—

Mr. KUTZ. With respect to metrics or other processes?

Chairman MILLER. Monitoring calls or—

Mr. KUTZ. I would have to think about that. We could certainly think about that and get back to you no that.

Chairman MILLER. Thank you.

Mr. Roe?

Dr. ROE. Thank you, Mr. Chairman.

Obviously, when you see an investigation like this, it is embarrassing, when you see a performance that is this poor. My bet is, there are a lot of people that are doing good work, too. And I suspect—

Mr. KUTZ. We agree.

Dr. ROE [continuing]. That there are a lot of good people who go to work every day and try to do their job correctly. And it would look to me like—and I have been in the private world my entire career, except for the last 90 days, and it would look to me like that it would be easy to ferret out or, with the proper supervision, who these essentially bad actors are that are not doing their job well.

And, you know, this is just not acceptable to have a citizen of the United States call in to one of our Departments and be essentially just blown off. And, I mean, it doesn't look to me like a terribly difficult problem to fix.

And like you said, whether it is—throwing more money at it may not be. It may just be having some requirements, some oversight.

And I think having these random calls that are fictitious come in is a good idea. That is a way to find out if it—and it may be just a few people that you are—I don't know whether you got to the same investigator each time or not, but that would be a pretty easy thing, I think, to hone in, I bet.

Mr. KUTZ. Well, what you are getting to, too, is the possibility of agencies testing themselves. You know, we have tested, for example, airport security by the TSA using—trying to get improvised explosive devices through the checkpoints on the aircraft. They test themselves, also. I mean, this is a case where you could have a unit set up in quality control that makes various calls just to see how they are handled.

I think some of the members here have said even they call their own telephone system to see how their employees are handling potential constituents.

Dr. ROE. You know, I think it would be—obviously, you all—we all know the story of the one mailman who is dumping the mail in the garbage truck so he doesn't have to deliver the mail, and it may not be a deep problem, but it is a problem. And it needs to be solved.

And I think there needs to be a mechanism to do that and report back to this Committee.

I yield back my time, Mr. Chairman.

Chairman MILLER. Thank you.

Mr. Kildee?

Mr. KILDEE. Thank you, Mr. Chairman.

Thank you, gentlemen, for all you have done. I am the one who mentioned the monitoring of calls, and that is—I ask this question in conjunction with that, but other things.

What needs to be done to ensure that all complaints are at least documented at Wage and Hour Division, both technological things and personnel things? What can assure us that they are at least documented?

Mr. KUTZ. Well, sorry I didn't give you credit for that. I had lost track of who actually made the comment, but it was a good idea nonetheless.

I would say that they need to make sure that they have written policies and training, that it is a requirement that when a legitimate case comes in the door, not a case that has nothing to do with any violations, cases that are within their jurisdiction, things that whether they investigate or not, they need to know about, the policy should be to record it in the system.

Policy guidance was sent out in the southeast region that conciliations or the smaller cases are not to be recorded in the system if they are failed. That needs to be changed. Those cases need to go in the system so there is a record that that—even if you didn't investigate it, that that employer committed a potential labor law violation so, if they do another one, you can go back and research in the system, say, "Hey, they have been here before. Maybe this should become a bigger case now, because we have had three or four complaints come in."

So it needs to be a requirement, a policy, and it needs to be training.

Mr. KILDEE. Thank you, Mr. Chairman.

Chairman MILLER. Mr. Payne?

Mr. PAYNE. Thank you very much.

Since I missed most of the—all of the testimony, I will pass this time. Very rare for me, but I will do that at this time.

Chairman MILLER. [OFF MIKE]

Mr. PAYNE. All right. Thank you. Next time I will have twice as much time.

Chairman MILLER. You have credits this time.

Mr. PAYNE. All right. Thank you. Thank you very much.

Chairman MILLER. Mr. Hinojosa?

Mr. HINOJOSA. Thank you, Mr. Chairman, for having this hearing. I apologize that I was not able to be here at the beginning of this session, but I have a great deal of interest in the subject that was being discussed here today.

I would like to ask you about conciliation. What is the percentage of conciliations you estimate are never reported?

Mr. KUTZ. There is no way to know. But in the southeast region, as I mentioned, which gets 50 percent of the—57 percent of the recorded conciliations, the policy has been, if it is not successful, you don't record it in the system. So it certainly is hundreds, potentially thousands. We just—since they are not recorded, there is no way to know.

Mr. HINOJOSA. What remedies would you suggest to improve the timeliness of processing complaints?

Mr. KUTZ. Processing of conciliations or—

Mr. HINOJOSA. No, just complaints that are brought to you. What do you suggest so that it will be more timely at—there is a response?

Mr. KUTZ. Well, that is a big issue. And many of the regions around the country have known backlogs that are 8 months, 10 months, 12 months, whatever the case may be.

Those are region-specific issues in some cases. In some cases, they are national issues. So I think, on a region-by-region basis, they have to assess whether they have sufficient staffing on board.

And they have standards for how quickly they intend to get to cases and investigate cases. They need to make sure they have sufficient staffing, technology and training so that they can meet those. And right now, many regions—and Mr. Meyer could probably add comments on some of the regions that had the most significant problems—many regions don't meet those standards.

Mr. MEYER. Right. I would say, looking at the different offices we interviewed with, some have adequate resources and are responding—you know, a caseload for an investigator might be three or four cases, whereas in a different part of the country someone has 8 to 10 cases on their desk and, when they get the case, it has already been 6, 8, sometimes 12 months since the complaint was originally filed.

So there needs to be a review of where the resources are in the Department of Labor, where they need to be shifted to, and then, after that review has been done, decide if there are more resources that need to be allocated.

Mr. HINOJOSA. I know that you all have worked very hard. And based on the calls you made, what are some of the key areas that

need to be addressed, in your view, to better serve low-wage workers, hourly workers who are calling with allegations of wage theft?

Mr. KUTZ. Well, I mean, first of all, calls need to be returned. And a lot of calls were not returned. We went to voicemail, and they didn't call us back, so at a minimum you should at least call people back.

We mentioned recording cases in the system, following up to make sure that, if an employer agreed to pay, that they actually pay, and if the employer reneged on an agreement to pay, you go back into the system and you correct the system to say that employer refused to pay and they did not pay.

It is a matter of customer service and the quality of the investigations that are done, but I think one of the big things you need to consider is making sure that people are handled with dignity, respect, and timely responses with respect to their allegations.

And if they can't get to their allegations for several months, they have to be told that upfront. And in some cases, they are. And as Mr. Meyer mentioned, some offices, they are very prompt getting to people, because they appear to have enough staff in place. Other ones are so overwhelmed, I think those are the ones that they are not even calling back people in some cases.

Mr. HINOJOSA. Knowing that it takes maybe months to address all the complaints, what types of problems did you identify that could be causing victims to get discouraged and not want to call again or notify WHD of their complaint?

Mr. KUTZ. Well, if someone tells you that, if you file a complaint your employer might fire you, that would discourage me from probably filing a complaint. So, you know, just some of the phone calls we played or people lying—I mean, you know, that was just one case. But it was discouraging that someone would actually lie to us and say they checked with the IRS, and they found that our fake company was below \$500,000 in revenues.

So be truthful with people, be straight with them, and handle them with dignity and respect, is the way we would suggest that they handle it.

Mr. HINOJOSA. And being that my time is almost running out, give us a recommendation for improvement. What do you believe the mission should be of WHD?

Mr. KUTZ. I think it should be a combination of—encouraging volunteer compliance. The vast majority of companies in this country are going to want to do the right thing. And you handle them differently than the minority, which is going to either want to violate the law or be on the fence and, especially in tough times like this, maybe say, “Hey, I can stay in business 2 more months if I don't—if I stiff a few employees,” kind of a thing.

And so you have got to handle the enforcement side aggressively, which I think helps enforce or actually encourage future compliance, but the vast majority of companies that are trying to comply, as Mr. Meyer said, if you call them up, tell them that they have violated the law, they owe money, they actually pay.

Mr. HINOJOSA. Thank you.

Thank you, Mr. Chairman.

Chairman MILLER. Thank you.

Mr. Hare?

Mr. HARE. Thank you, Mr. Chairman.

Just trying to wrap my mind around what the chairman said about, if somebody steals \$800 from the company, they are going to jail; somebody steals it from the employee, you know, you are lucky if anybody does anything about it.

This question may have been asked and answered, and I apologize if it has, but I am trying to get from your perspective, for the people who do the kinds of things that they are not supposed to do—they hang up or they return—you know, what is the recommendation to be able to weed these employees out so that they don't continue to do what they have been doing, which is either not talking to these people, hanging up on them, giving them false information, et cetera?

So from your perspective, what does Wage and Hour need to do to identify these people and then to get people in there that are actually going to be able to get the job done so that ordinary people can get that \$800?

Mr. KUTZ. Well, the 10 we did that were played at the beginning of the hearing, management has asked for the names of those people and the information we have. And we will share that with them. The individual that lied we have referred to the Office of Inspector General.

With respect to the other things we have talked about here, such as the—Mr. Kildee talked about the potential monitoring of this, et cetera. Those are ideas where you could do enhanced quality control procedures to weed out the employees that don't perform, that don't treat people well on the phone, who don't make phone calls back, or who do poor investigations.

So having a better quality control system in place, performance management system, and then, again, hiring and training people, are we—what kind of people—we didn't look at that. But what kind of people are they hiring? What kind of training are they giving them? What backgrounds are they?

You know, when we hire law enforcement people, for example, as our criminal investigators with former executive branch experience. Those are people that have actually worked out there in the law enforcement field. They have served warrants. They have arrested. They have done undercover work before.

So we bring in people with very specific qualifications. Or our auditors and analysts, we look for very specific qualifications. I don't know exactly what their hiring is, but it is important to target the right people.

Mr. HARE. Thank you.

Thank you, Mr. Chairman.

Chairman MILLER. Thank you.

Thank you very much for your testimony this morning and for your investigation. And if you will thank your co-workers who participated in this, I would appreciate that. And thank you for all of the work that your office does on behalf of the taxpayers in this country and the committees of Congress. We appreciate it.

And we would like to be able to continue to use you as an intellectual resource here, as we think about what changes make sense and not, and go forward on this problem. Thank you.

With that, the Committee stands adjourned.

Take 21 days, 14 days for submit statements—all the usual unanimous consent requests are granted to the minority for today. [Whereupon, at 11:48 a.m., the Committee was adjourned.]

