

U.S. Department of Labor

Office of Inspector General—Office of Audit

EMPLOYMENT STANDARDS ADMINISTRATION



AUDIT OF THE WAGE AND HOUR DIVISION, NEW ORLEANS DISTRICT OFFICE'S PROCESSING OF WORKERS' COMPLAINTS RECEIVED IN THE AFTERMATH OF HURRICANE KATRINA

Date: March 31, 2008
Report Number: 04-08-002-04-420

**U.S. Department of Labor
Office of Inspector General
Office of Audit**

BRIEFLY...

Highlights of Report Number: 04-08-002-04-420, *New Orleans District Office's Processing of Worker Complaints Received in the Aftermath of Hurricane Katrina*, to the Assistant Secretary for Employment and Standards, dated March 31, 2008.

WHY READ THE REPORT

On August 29, 2005, Hurricane Katrina hit the Gulf Coast, causing more than \$100 million in damage. The following day, the levees protecting the City of New Orleans were breached and water poured in, flooding approximately 80 percent of the city. Officials ordered all persons to evacuate the city. After conditions improved, a mass influx of contractors and workers came to New Orleans for cleanup and reconstruction operations. This created a heightened need to ensure that labor laws were not being violated.

WHY OIG DID THE AUDIT

In response to a Congressional request, we conducted a performance audit of the Employment Standards Administration, Wage and Hour Division, New Orleans District Office's processing of worker complaints received in the aftermath of Hurricane Katrina. Our audit objectives were to determine whether the New Orleans Office (1) was adequately staffed after Hurricane Katrina; (2) used intake procedures that impeded workers' ability to file complaints; (3) adequately communicated with complainants; and (4) performed outreach to gather and investigate complaints made by migrant workers. Our audit covered the period July 1, 2005 through September 30, 2007.

READ THE FULL REPORT

To view the report, including the scope, methodology, and full agency response, go to:

<http://www.oig.dol.gov/public/reports/oa/2008/04-08-002-04-420.pdf>

March 2008

WHAT OIG FOUND

Wage and Hour adequately staffed the New Orleans office to serve the needs of the New Orleans workforce after Hurricane Katrina. We also found that:

- Wage and Hour lacks an emergency plan that specifically addresses how to serve the workforce in a similar disaster.
- The New Orleans Office did not maintain a record of all the inquiries it received and the decisions made on those inquiries. As a result, for inquiries on which it did not open an investigation, the New Orleans Office was unable to demonstrate the correctness of its decisions.
- The New Orleans Office did not adequately communicate with some complainants.
- The New Orleans Office's community outreach efforts did not produce a large number of complaints or investigations; however, the office initiated more directed investigations (402) in FY 2007, compared with 58 in FY 2005).

WHAT OIG RECOMMENDED

OIG recommended that the Assistant Secretary for Employment Standards ensure that:

- the Wage and Hour Continuity of Operations Plan (COOP) specifically addresses how Wage and Hour will serve a workforce in the event of a similar disaster;
- Wage and Hour district offices maintain a record of all inquiries received; and
- Wage and Hour investigators comply with the policy on regular communication with complainants.

The Assistant Secretary for Employment Standards agreed to improve the agency's COOP, did not agree to maintain a record of all inquiries received, and acknowledged violations regarding non-communication with complainants.

Table of Contents

EXECUTIVE SUMMARY 3

ASSISTANT INSPECTOR GENERAL’S REPORT 7

Was the New Orleans Office adequately staffed, including Spanish and Portuguese-speaking investigators, to serve the needs of the New Orleans workforce after Hurricane Katrina? 8

Did the New Orleans Office's intake procedures impede workers' ability to file complaints?..... 12

Did the New Orleans Office adequately communicate with complainants? 15

How did the New Orleans Office perform outreach and establish relationships within the community in order to gather and investigate complaints made by migrant workers? 17

EXHIBIT 21

A. Schedule of Rotationally Assigned Investigators by Week 23

APPENDICES 25

A. Background 27

B. Objectives, Scope, Methodology, and Criteria..... 31

C. Acronyms and Abbreviations..... 35

D. Agency Response 37

PAGE HAS BEEN INTENTIONALLY LEFT BLANK

Executive Summary

On August 29, 2005, Hurricane Katrina made landfall along the Gulf Coast of the United States. The following day, the levees that protected the City of New Orleans were breached and an estimated 80 percent of the city was flooded, causing widespread damage. Local and out-of-state contractors, and people in search of work from all over the country, quickly moved into areas damaged by the hurricane to begin cleanup and reconstruction operations. This mass influx of contractors and workers created a great need for federal oversight to ensure that workers were paid for all hours worked, were paid at least the federal minimum wage, and received overtime pay for all hours worked over 40 per week.

At the request of the Chairman of the Subcommittee on Domestic Policy, House Committee on Oversight and Government Reform, we conducted a performance audit of the Employment Standards Administration/Wage and Hour Division (Wage and Hour) New Orleans District Office's (New Orleans Office) processing of worker complaints received in the aftermath of Hurricane Katrina. Our audit covered the New Orleans Office's operations from July 1, 2005, through September 30, 2007, and we designed our audit tests to answer the following questions related to the New Orleans Office's response to Hurricane Katrina:

1. Was the New Orleans Office adequately staffed, including Spanish and Portuguese-speaking investigators, to serve the needs of the New Orleans workforce after Hurricane Katrina?
2. Did the New Orleans Office's intake procedures impede workers' ability to file complaints?
3. Did the New Orleans Office adequately communicate with complainants?
4. How did the New Orleans Office perform outreach and establish relationships within the community in order to gather and investigate complaints made by migrant workers?

Results

1. By detailing additional investigators to the New Orleans Office for short-term, rotational assignments, including Spanish and Portuguese-speaking investigators, Wage and Hour adequately staffed the New Orleans Office to serve the needs of the New Orleans workforce after Hurricane Katrina. However, we found that Wage and Hour lacks an emergency plan that satisfactorily addresses how it would serve the New Orleans' workforce (or any other

metropolitan area in the Southwest Region) should a situation similar to that of Katrina occur again.

2. We could not determine whether the New Orleans Office's intake procedures impeded workers' ability to file complaints, because the New Orleans Office did not maintain a record of all workers' inquiries received. Specifically, the New Orleans Office could not demonstrate that inquiries were correctly determined not to represent a violation or to be outside of Wage and Hour's jurisdiction. For violations determined to be outside of Wage and Hour's jurisdiction, the New Orleans Office could not show that it made the appropriate referrals or advised workers of their rights of individual action under Section 16(b) of the FLSA.
3. The New Orleans Office did not adequately communicate with some of its complainants, as required by internal procedures contained in the Wage and Hour Field Operations Handbook (FOH). In 11 of the 30 cases reviewed, we found significant periods (two or more months) where the file did not support that the investigator had communicated with the complainant.
4. The New Orleans Office performed community outreach and attempted to establish relationships within the community to assist the office in gathering and investigating worker complaints; however, its efforts produced few complaints or investigations. The decline in the number of complaints allowed the New Orleans Office to do more directed investigations (402 in FY 2007, compared with 58 in FY 2005).

Recommendations

We recommend that the Assistant Secretary for Employment Standards:

1. Ensure that the Wage and Hour Continuity of Operations Plan (COOP) specifically addresses how Wage and Hour will serve a workforce such as that which migrated to New Orleans after Hurricane Katrina in the event of a disaster that forces Wage and Hour employees to evacuate an affected area.
2. Direct Wage and Hour district offices to maintain a record of all inquiries received. The record should include the date of the inquiry, the name (if provided or anonymous) of the individual making the inquiry, the nature of the inquiry, and the disposition of the inquiry.
3. Ensure that Wage and Hour investigators comply with Wage and Hour's policy of maintaining regular communication with complainants and document those communications in the case file.

Agency Response

The Assistant Secretary for Employment Standards (ESA) agreed that the Wage and Hour COOP may be improved and stated that Wage and Hour will examine the COOP to ensure it adequately addresses the issue raised in this report. ESA stated that adopting our recommendation to require Wage and Hour district offices to maintain a record of all inquiries would create needless impediments and unnecessary privacy issues for those who seek to contact Wage and Hour. ESA further stated that keeping a record of all inquiries would prove detrimental to Wage and Hour's ability to provide assistance to employees who may be reluctant to complain. ESA acknowledged that adequate communication with complainants was not always maintained due to having multiple investigators assigned to a single investigation and the use of short-term detailed staff. ESA also noted that, regardless of expectations about what the volume of complaints should have been, the New Orleans District Office initiated a greater number of directed investigations in the period following the hurricane than it had in previous years.

See Appendix D for ESA's complete response to our draft report.

OIG Conclusion

We acknowledge the concerns expressed by Wage and Hour related to the need to assure reluctant workers that their privacy will be protected should they file a complaint. We would not expect Wage and Hour to require unwilling individuals to provide their names or other information of a personal nature. Individuals wishing to remain anonymous could be recorded as such. Additionally, we would not expect Wage and Hour to record all inquiries received by the agency, but only those made by workers whose intent was to file a complaint. Our findings and conclusions remain unchanged.

PAGE HAS BEEN INTENTIONALLY LEFT BLANK

U.S. Department of Labor

Office of Inspector General
Washington, DC 20210



March 31, 2008

Assistant Inspector General's Report

Ms. Victoria A. Lipnic
Assistant Secretary for Employment Standards
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

We conducted a performance audit of the New Orleans Office of Wage and Hour's processing of worker complaints received in the aftermath of Hurricane Katrina. The audit was initiated as a result of a congressional request from the Chairman of the Subcommittee on Domestic Policy, House Committee on Oversight and Government Reform.

The audit covered the period July 1, 2005, through September 30, 2007. Our audit objectives were to determine the following:

1. Was the New Orleans Office adequately staffed, including Spanish and Portuguese-speaking investigators, to serve the needs of the New Orleans workforce after Hurricane Katrina?
2. Did the New Orleans Office's intake procedures impede workers' ability to file complaints?
3. Did the New Orleans Office adequately communicate with complainants?
4. How did the New Orleans Office perform outreach and establish relationships within the community in order to gather and investigate complaints made by migrant workers?

We concluded that Wage and Hour adequately staffed the New Orleans Office to serve the needs of the New Orleans workforce after Hurricane Katrina by detailing additional investigators for short-term, rotational assignments, including Spanish and Portuguese-speaking investigators. However, Wage and Hour lacks an emergency plan that satisfactorily addresses how it would serve the New Orleans' workforce (or any other

metropolitan area in the Southwest Region) should a situation similar to that of Katrina occur again. Additionally, because the Wage and Hour does not maintain a record of all workers' inquiries received, we could not determine whether the New Orleans Office's intake procedures impeded workers' ability to file complaints. We also found that the New Orleans Office did not adequately communicate with some of its complainants. Finally, although the New Orleans Office performed community outreach and attempted to establish relationships within the community to assist the office in gathering and investigating worker complaints, its efforts produced few complaints or investigations. We noted the decline in the number of complaints allowed the New Orleans Office to do more directed investigations.

We conducted our audit 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 objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Our audit objectives, scope, methodology and criteria are detailed in Appendix B.

FINDINGS AND RESULTS

1. Was the New Orleans Office adequately staffed, including Spanish and Portuguese-speaking investigators, to serve the needs of the New Orleans workforce after Hurricane Katrina?

By detailing additional investigators to the New Orleans Office for short-term, rotational assignments, including Spanish and Portuguese-speaking investigators, Wage and Hour adequately staffed the New Orleans Office to serve the needs of the New Orleans workforce after Hurricane Katrina. However, we found that Wage and Hour lacks an emergency plan that satisfactorily addresses how it would serve the New Orleans' workforce (or any other metropolitan area in the Southwest Region) should a situation similar to that of Katrina occur again.

Hurricane-related flooding began on August 30, 2005, causing widespread damage throughout much of the New Orleans area, including damage to the building housing the New Orleans Office. Additionally, according to statements made by the New Orleans Office Director during a congressional hearing, at least half of the New Orleans Office staff suffered damage to their homes. As a result, the New Orleans Office staff were forced to work in a variety of locations, including Houston and Dallas, Texas; Baton Rouge and Monroe, Louisiana; Grand Rapids, Michigan; and Jacksonville, Florida.

According to the Wage and Hour Investigative Support and Reporting Database (WHISARD), only 12 complaints were made during the first three months after Hurricane Katrina (September, October and November of 2005) that involved employers who were within the 13 parishes served by evacuated staff. Of those complaints, 10 were conciliations and 2 were limited investigations.¹ All were concluded within 2 months of the complaint date.

The New Orleans Office staff did not return to the New Orleans area until November 2005, when temporary space was secured at the Clearview Mall in Metairie, Louisiana. At the end of November 2005, Wage and Hour began detailing investigators from other locations on short-term rotational assignments to New Orleans. In all, 29 investigators, including 18 (62 percent) who were Spanish and/or Portuguese-speaking, were detailed to New Orleans for one or more short-term rotational assignments between November 2005 and September 2007.

Table 1

Weekly Average Number of Investigators Serving Temporary Assignments in the New Orleans Office		
	Total Assigned Investigators	Spanish-speaking Assigned Investigators
FY 2006 (1 st 6 Months)	0.9	0.9
FY 2006 (2 nd 6 Months)	2.5	2.0
FY 2007 (1 st 6 Months)	3.6	1.6
FY 2007 (2 nd 6 Months)	1.8	0.6

As Table 1 illustrates, Wage and Hour's use of rotational assignments increased the number of investigators, Spanish-speaking or otherwise, working in the New Orleans area. (See Exhibit A for greater detail.) Recognizing that a long-term solution was needed, the New Orleans Office hired four investigators and one team leader during FY 2007. Three of the five new hires were Spanish-speaking.

The New Orleans Office did not have any permanent Portuguese-speaking investigators; however, Wage and Hour detailed an investigator from the Puerto Rico District Office who speaks both Spanish and Portuguese for three rotational assignments to the New Orleans Office during calendar year 2006. These assignments lasted between 2 and 4 weeks each.

¹ A conciliation is a technique which provides fast service and is generally handled by telephone. A limited investigation is limited to a particular employee or employees, a particular department or employment practice and particular time frame.

We reviewed one case involving 9 Portuguese-speaking complainants that was provided to us by the Southern Poverty Law Center to support its concerns regarding how complaints were handled. The referral letter to Wage and Hour was dated April 6, 2006, and the case was assigned to an investigator on April 25, 2006. The Portuguese-speaking investigator conducted the investigation, and due largely to the investigator's efforts, back wage payments totaling \$12,010 were made to 43 workers. By utilizing Portuguese-speaking investigators from other Wage and Hour offices when needed, the New Orleans Office was able to address its intermittent need for a Portuguese-speaking investigator.

We obtained and analyzed data from the WHISARD regarding both complaint-initiated investigations and directed investigations (investigations initiated by Wage and Hour). We found that the New Orleans area office's performance subsequent to Hurricane Katrina had improved when compared to its FY 2005 performance. As Table 2 below illustrates, in FY 2005 it took more than twice as long to assign complaint cases to investigators after case initiation and much longer to conclude² complaint investigations.

Table 2

Volume and Efficiency of Handling Complaint Cases New Orleans Area Only³			
	Cases Initiated	Days to Assign	Days to Conclude
FY 2005	188	56	163
FY 2006 (1 st 6 Months)	45	5	38
FY 2006 (2 nd 6 Months)	66	25	62
FY 2007	79	24	N/A

In order to determine whether the New Orleans Office had a sufficient number of Spanish and Portuguese-speaking investigators, we asked the Southwest Regional Administrator to select the District Office in the Southwest Region that was the most demographically similar to that of New Orleans. The Regional Administrator selected the Little Rock, Arkansas office. The Census Bureau's American Community Survey

² We compared all complaint cases initiated during a given period by counting the number of days from complaint initiation to complaint conclusion. We did not include any cases in our analysis that had not yet been concluded, and for this reason we did not include an average number of days to conclude cases that were initiated in FY 2007. The data we analyzed showed that 32 of 79 cases initiated in FY 2007 had yet to be concluded by the end of our audit period, which would cause an average for FY 2007 to be meaningless.

³ We identified cases served by the New Orleans area office by comparing the employers' addresses with the parishes that were served by the New Orleans area office.

(ACS) for 2006 estimated that Little Rock had a Hispanic population of 4.7 percent. The ACS survey for the City of New Orleans estimated a Hispanic population of 4.1 percent for 2006. Studies and news articles suggest the percentage for the City of New Orleans underestimates the true number of Hispanic individuals who were in New Orleans after Hurricane Katrina, but we were unable to find any reliable estimates for what the percentage may have been.

Table 3 below shows the number of investigators versus Spanish-speaking investigators assigned to the New Orleans and Little Rock offices for each year from FY 2004 through FY 2007. Neither office had any Portuguese-speaking investigators.

Table 3

Comparison of Wage and Hour Investigators New Orleans area office to Little Rock area office								
Office	2004		2005		2006		2007	
	Total	Spanish-Speaking	Total	Spanish-Speaking	Total	Spanish-Speaking	Total	Spanish-Speaking
New Orleans	6	2	5	2	5	2	8	4
Little Rock	4	1	3	1	5	2	4	2

As Table 3 illustrates, the number of permanent Spanish-speaking investigators in the New Orleans area office equaled or surpassed in number and percentage those assigned to Little Rock area office. During FY 2006, Spanish-speaking investigators from other Wage and Hour offices served rotational assignments in the New Orleans Office, supplementing the number of permanent Spanish-speaking investigators. In FY 2007, the New Orleans Office hired two new Spanish-speaking investigators and one Spanish-speaking team leader, doubling the number of Spanish-speaking investigators who were assigned to the New Orleans area office.

We also met or spoke with several worker advocacy groups to discuss the need for Spanish-speaking investigators in the New Orleans Office. The groups generally criticized Wage and Hour's initial response to the hurricanes and the New Orleans Office's lack of Spanish-speaking investigators. However, they could not provide us with any specific examples of workers who did not receive due process from the New Orleans Office because of a language barrier.

- **Wage and Hour Continuity of Operations Plan (COOP)**

Wage and Hour did not have an emergency plan that addressed the needs of the New Orleans workforce in the immediate aftermath of the catastrophic damage caused by Hurricane Katrina. Yet, despite the experience with the New Orleans flooding, Wage and Hour's COOP for the Southwest Region, which includes the New Orleans Office,

still does not adequately address how Wage and Hour would serve the New Orleans' (or any other metropolitan area in the Southwest Region) workforce should a situation similar to that of Katrina occur again.

The COOP contains a detailed plan for where Wage and Hour employees are to report in the case of an emergency, including contact information for all Wage and Hour employees in each district office. The COOP also provides plans for cross-training of employees and ensuring that they have the means to work from alternate worksites or to telework from their homes. However, it does not include a specific plan describing how a workforce in an affected area, especially one whose demographics are suddenly altered, will be served if employees of the local district office are forced to work from alternative worksites outside the local area.

Recommendation 1

We recommend that the Assistant Secretary for Employment Standards ensure that the Wage and Hour COOP specifically addresses how Wage and Hour will serve a workforce such as that which migrated to New Orleans after Hurricane Katrina in the event of a disaster that forces Wage and Hour employees to evacuate an affected area.

Agency Response

The Assistant Secretary for Employment Standards stated that she agreed with our suggestion that Wage and Hour's COOP may be improved by adding processes to continue operations if the agency experiences a disaster on the scale of the 2005 Gulf Coast hurricanes. She stated that Wage and Hour will examine its COOP to ensure that it adequately addresses the issue raised in our report.

See Appendix D for ESA's complete response to our draft report.

OIG Conclusion

The Assistant Secretary generally agreed with our recommendation, but her response provided no completion milestone. As a result, the recommendation remains unresolved pending an estimated completion date.

2. Did the New Orleans Office's intake procedures impede workers' ability to file complaints?

We could not determine whether the New Orleans Office's intake procedures impeded workers' ability to file complaints, because the New Orleans Office did not maintain a record of all workers' inquiries received. Specifically, the New Orleans Office could not

demonstrate that inquiries were correctly determined unlikely to represent a violation or to be outside of Wage and Hour's jurisdiction. Furthermore, for violations determined to be outside of Wage and Hour's jurisdiction, the New Orleans Office could not show that it made the appropriate referrals or advised workers of their rights of individual action under Section 16(b) of the FLSA.

To determine whether the New Orleans Office's intake procedures impeded workers' ability to file complaints, we reviewed Wage and Hour's intake procedures as detailed in its FOH, interviewed New Orleans Office staff to determine if they were complying with FOH intake procedures, and reviewed training provided to staff responsible for intake.

Consistent with Wage and Hour policy and our interviews with New Orleans Office personnel, inquiries to the New Orleans Office typically are first received by Wage and Hour assistants or technicians, who perform the initial review. The assistants or technicians assessed whether Wage and Hour had jurisdiction in the matter and whether or not it appeared likely that a law Wage and Hour enforces had been violated. During this process, the assistant or technician may discover that more information is needed from the complainant before a determination can be made. The assistants or technicians may consult with the District Director or Assistant District Director during this initial determination phase. Once a preliminary determination has been made by the assistants or technicians, the alleged violation is forwarded to the District Director or Assistant District Director for review. The District Director or Assistant District Director then reviews the inquiry and the recommendations of the assistant or technician. If it is determined that there is likely no violation, the assistant or technician informs the complainant why no action will be taken. In the case where it is determined that the alleged violation is outside of Wage and Hour's jurisdiction, the assistant or technician refers the complainant to an entity that might be able to provide assistance. If a decision is made by the District Director or Assistant District Director that further investigative action is to be taken, the alleged violation is given a case number and the case is put in inventory for assignment to an investigator.

Assignment of cases is made using a priority basis. Cases receive priority assignment if the complaint involves one of the following: minors who are engaged in a hazardous occupation; the health or safety of migrant workers or other employees; select violations of the Family and Medical Leave Act; tolling of the statute; violations on government contracts nearing completion; or cases that involve widespread violations affecting a large number of employees of multi-unit national enterprises.

For inquiries from or on behalf of workers for which Wage and Hour does not open an investigation, its policy and procedures in the FOH provide that allegations of violations that relate to laws outside of Wage and Hours' jurisdiction shall be referred to the proper authority. Complainants who allege violations outside the statute of limitations or otherwise not appropriate for

investigation are advised of their right to private action under Section 16(b) of the Fair Labor Standards Act.⁴

The New Orleans Office did not maintain a record of all inquiries received and the decisions made on those inquiries; therefore, it cannot demonstrate that all inquiries were handled in accordance with the FOH. Specifically, the New Orleans Office could not demonstrate that inquiries were correctly determined unlikely to represent a violation or to be outside of Wage and Hour's jurisdiction. Furthermore, for violations determined to be outside of Wage and Hour's jurisdiction, the New Orleans Office could not show that it made the appropriate referrals or advised workers of their rights of individual action under Section 16(b) of the FLSA.

Recommendation 2

We recommend that the Assistant Secretary for Employment Standards direct Wage and Hour district offices to maintain a record of all inquiries received. The record should include the date of the inquiry, the name of the individual making the inquiry, the nature of the inquiry (unless the complainant wishes to remain anonymous), and the disposition of the inquiry.

Agency Response

The Assistant Secretary for Employment Standards stated that adopting our recommendation to require Wage and Hour district offices to maintain a record of all inquiries would create needless impediments and unnecessary privacy issues for those who seek to contact Wage and Hour. ESA further stated that keeping a record of all inquiries would prove detrimental to Wage and Hour's ability to provide assistance to employees who may be reluctant to complain, because they are fearful of providing their name to a government authority, and uncertain that their concerns have merit.

See Appendix D for ESA's complete response to our draft report.

OIG Conclusion

We acknowledge the concerns expressed by Wage and Hour related to the need to assure reluctant workers that their privacy will be protected should they file a complaint. We would not expect Wage and Hour to require unwilling individuals to provide their names or other information of a personal nature. Individuals wishing to remain anonymous could be recorded as such. Additionally, we would not expect Wage and Hour to record all inquiries received by the agency, but only those made by workers

⁴ Section 16(b) rights refer to that subsection under the Fair Labor Standards Act. Significantly, this subsection provides the right to bring an action by or on behalf of an employee against an employer who violates provisions of the act.

whose intent was to file a complaint. Our finding and recommendation remains unchanged.

3. Did the New Orleans Office adequately communicate with complainants?

The New Orleans Office did not adequately communicate with some of its complainants. In 11 of the 30 cases we reviewed, we found that the assigned investigator(s) did not communicate with the complainant for one or more significant periods (two or more months). The lapses in communication that we identified averaged about 5 months. Additionally, as a matter of policy, the New Orleans Office does not routinely contact other employees affected by a complaint at a particular worksite or business.

Wage and Hour policy requires that investigators maintain contact with complainants during investigations. According to FOH procedures, investigators should regularly communicate with complainants during the course of investigations to keep them informed about the status of the case. In lengthy investigations, the Investigator should contact the complainant at least once every 30 days..

We selected a judgmental sample of 30 cases from the universe of complaint cases that the New Orleans Office initiated subsequent to Hurricane Katrina. The 30 cases included investigations from three parishes in the New Orleans area (Orleans, St. Bernard, and Jefferson Parishes). We selected a variety of investigations that were initiated over the course of the two years after Hurricane Katrina. Most of the cases we selected were active for at least six months, thus necessitating the need for more communication.

The New Orleans Office did not communicate with the complainant for one or more significant periods (two or more months) in 11 of the 30 investigations we tested. The lapses in communication that we identified averaged about 5 months.

The New Orleans Office's lapses in communicating with complainants throughout the course of an investigation resulted from the assigned investigator not complying with the FOH and the District Director, or the Assistant District Director not adequately reviewing the cases to ensure that the required communication had been made or documented. Lack of communication with complainants could make them less likely to be involved in their case. It also increases the likelihood that contact information will not be up-to-date, making it more difficult to locate the worker should back wages be awarded.

In addition to the lapses in communications with complainants, Wage and Hour policy prohibits investigators from communicating the existence of a complaint to other employees who may have been similarly affected. As explained in Wage and Hour Fact Sheet #44 (Visits to Employers)⁵, complaints are confidential;

⁵ The Fact Sheet provides general information about the laws enforced by the Wage and Hour Division.

therefore, the name of the worker and nature of the complaint are not disclosed. Wage and Hour also does not disclose the reason for an investigation. The FOH directs Wage and Hour investigators to take no action that would reveal the existence of a complaint or disclose the identity of a complainant.

While the confidentiality of complainants' identities needs to be protected, Wage and Hour's policy of not revealing the existence of a complaint or maintaining routine contact with other employees may increase the likelihood that Wage and Hour will not obtain current contact information for those employees, should back wages be awarded.

Recommendation 3

We recommend that the Assistant Secretary for Employment Standards ensure that Wage and Hour investigators comply with Wage and Hour's policy of maintaining regular communication with complainants and document those communications in the case file.

Agency Response

The Assistant Secretary for Employment Standards acknowledged that there were instances in which the FOH guidance related to communications with complainants was not precisely followed. She stated that, in several cases, the failure to follow procedures was directly related to the unique circumstance of having multiple investigators assigned to a single investigation, due to the use of short-term detailed staff. The Assistant Secretary further stated that Wage and Hour will reaffirm its procedures for regular communication with complainants and the subsequent documentation of such communications.

See Appendix D for ESA's complete response to our draft report.

OIG Conclusion

The Assistant Secretary generally agreed with our recommendation, but her response provided no completion milestone. As a result, the recommendation remains unresolved pending an estimated completion date.

4. How did the New Orleans Office perform outreach and establish relationships within the community in order to gather and investigate complaints made by migrant workers?

The New Orleans Office performed community outreach and attempted to establish relationships within the community to assist the office in gathering and investigating worker complaints through the following activities:

- Presentation on Entitlement to Hispanics working to Rebuild New Orleans
- Community Call-in Radio Show to Advise Hispanic Workers (3 Sessions)
- Panel Discussion with Loyola Law Clinic on "Worker Protection Laws"
- Panel Discussion for Convening on Workers Rights in the Gulf Coast
- Mobile Mexican Consult Exhibit Booth
- Job Fair for Hispanic Worker Exhibit Booth
- Seminar for Prime Contracts engaged in Rebuilding New Orleans

In the WHISARD, New Orleans Office employees charged 222 hours to outreach activities during the period September 2005 through August 2007. The hours charged in the WHISARD do not include time spent by staff making weekly visits to outreach centers. Wage and Hour tracked those efforts as technical assistance.

While these outreach efforts did not produce a large number of complaints or investigations, the New Orleans Office did initiate more directed investigations of prime contractors and subcontractors who received government contracts from the Army Corps of Engineers and FEMA.

The number of directed investigations conducted by the New Orleans Office increased from 58 in FY 2005 to 402 in FY 2007. The results of the increased use of directed investigations by the New Orleans Office are shown in Table 4:

Table 4

Comparison of Directed Investigations New Orleans District Office FY 2005 Through FY 2007					
	Total Investigations	Total Directed Investigations	Percentage of Directed Investigations	Number of Employees Due Back Wages from Directed Investigations	Back Wages Due Workers as a Result of Directed Investigations
FY 2005	567	58	10%	818	\$ 732,912
FY 2006	543	176	32%	2,656	1,696,375
FY 2007	687	402	59%	8,343	8,990,683
TOTAL				11,817	\$11,418,970

In addition to its directed investigations, the New Orleans Office received referrals of complaints from worker advocacy groups. In March 2006, the Loyola Law Clinic referred a complaint to the New Orleans Office involving four Spanish-speaking workers. The resulting investigation cited the employer for failure to pay prevailing wage rates and overtime (totaling \$39,342) to 151 employees. Back wages and overtime were paid to 42 of the 151 employees; however, 109 employees could not be located. Monies due to the 109 employees is being held in a trust fund account until such time as the employees claim the back wages or overtime due to them.⁶

Another advocacy group, the Southern Poverty Law Center, provided OIG with five complaints that were submitted to Wage and Hour on behalf of Spanish and Portuguese-speaking workers. The Southern Poverty Law Center accused Wage and Hour of not enforcing Federal labor laws by (1) failing to interview each complainant properly in their native language and (2) failing to communicate with complainants regarding the process and potential settlement. We reviewed the New Orleans Office's responses to the complaints referred by the Southern Poverty Law Center files and found the following information:

⁶ The Wage and Hour Regional Office becomes the fiduciary of funds held for workers who cannot be located using their last known address. The Internal Revenue Service is another avenue used to help notify workers of back wages due to them.

Table 5

Results of Complaints Referred by the Southern Poverty Law Center			
Employer	Number of Employees Due Back Wages or Overtime	Total Back Wages or Overtime Paid to Employees	Case Status
Case No. 1442559	43	\$12,010	Concluded 3/21/2007
Case No. 1440318	38	\$50,312	Concluded 1/30/2007
Case No. 1469341	120	\$0	Wage and Hour's investigation found the employer owed workers \$125,530 in back wages or overtime. The case was referred to the Solicitor's Office on 5/18/2007 for litigation of repeated violations by the employer. ⁷

The New Orleans Office was unable to locate two complaints that the Southern Poverty Law Center claimed to have filed. According to the District Director, these complaints would have been submitted at a time when the New Orleans Office was temporarily operating in the Clearview Mall and may have been misplaced as a result of having to share a facsimile machine with another agency. The District Director further stated that complaints that were not received by the New Orleans Office can be re-submitted for Wage and Hour investigation. As of November 2007, these complaints had not been resubmitted.⁸

We are making no recommendations related to this finding.

Elliot P. Lewis

Elliot P. Lewis

⁷ Case filed with the District Court 9/27/2007. No agreement has been reached between the employer's counsel and the Solicitor's Office. DOL has the burden of proof involving FLSA violations and back wages due to workers.

⁸ OIG notified the Southern Poverty Law Center of the two complaints that were not found in the WHISARD system. In addition, SPLC was informed it could resubmit the complaints to the New Orleans Office for review.

PAGE HAS BEEN INTENTIONALLY LEFT BLANK

Exhibit

PAGE HAS BEEN INTENTIONALLY LEFT BLANK

Exhibit A

**Schedule of Rotationally Assigned Investigators by Week
Total Investigators and Spanish-Speaking**

First Half of Fiscal Year 2006			Second Half of Fiscal Year 2006		
Week Ending	Total Investigators	Spanish-Speaking Investigators	Week Ending	Total Investigators	Spanish-Speaking Investigators
			04/07/2006	0	0
			04/14/2006	0	0
			04/21/2006	2	2
			04/28/2006	2	2
			05/05/2006	1	1
			05/12/2006	1	1
			05/19/2006	2	2
			05/26/2006	2	2
			06/02/2006	2	2
			06/09/2006	2	2
			06/16/2006	2	2
			06/23/2006	2	2
			06/30/2006	0	0
			07/07/2006	0	0
			07/14/2006	1	1
			07/21/2006	2	1
			07/28/2006	3	2
			08/04/2006	3	2
			08/11/2006	3	2
			08/18/2006	3	2
			08/25/2006	3	2
			09/01/2006	4	3
			09/08/2006	6	5
			09/15/2006	6	5
			09/22/2006	6	5
			09/29/2006	6	5
12/02/2005	2	2	Average	2.5	2.0
12/09/2005	0	0			
12/16/2005	0	0			
12/23/2005	0	0			
12/30/2005	0	0			
01/06/2006	0	0			
01/13/2006	0	0			
01/20/2006	0	0			
01/27/2006	1	1			
02/03/2006	0	0			
02/10/2006	2	2			
02/17/2006	2	2			
02/24/2006	0	0			
03/03/2006	0	0			
03/10/2006	3	3			
03/17/2006	3	3			
03/24/2006	2	2			
03/31/2006	2	2			
Average	0.9	0.9			

**Schedule of Rotationally Assigned Investigators by Week
Total Investigators and Spanish-Speaking**

First Half of Fiscal Year 2007			Second Half of Fiscal Year 2007		
Week Ending	Total Investigators	Spanish-Speaking Investigators	Week Ending	Total Investigators	Spanish-Speaking Investigators
10/06/2006	3	2	04/06/2007	2	1
10/13/2006	4	2	04/13/2007	2	1
10/20/2006	7	3	04/20/2007	2	1
10/27/2006	5	2	04/27/2007	2	1
11/03/2006	5	2	05/04/2007	2	1
11/10/2006	5	2	05/11/2007	2	1
11/17/2006	5	2	05/18/2007	2	1
11/24/2006	4	1	05/25/2007	2	1
12/01/2006	5	3	06/01/2007	1	0
12/08/2006	5	3	06/08/2007	1	0
12/15/2006	4	1	06/15/2007	1	0
12/22/2006	4	1	06/22/2007	5	4
12/29/2006	2	1	06/29/2007	5	4
01/05/2007	2	1	07/06/2007	1	0
01/12/2007	2	1	07/13/2007	1	0
01/19/2007	3	1	07/20/2007	1	0
01/26/2007	2	1	07/27/2007	1	0
02/02/2007	2	1	08/03/2007	1	0
02/09/2007	2	1	08/10/2007	1	0
02/16/2007	2	1	08/17/2007	1	0
02/23/2007	2	1	08/24/2007	4	0
03/02/2007	2	1	08/31/2007	4	0
03/09/2007	2	1	09/07/2007	1	0
03/16/2007	6	3	09/14/2007	1	0
03/23/2007	6	3	09/21/2007	1	0
03/30/2007	2	1	09/28/2007	1	0
Average	3.6	1.6	Average	1.8	0.6

Appendices

PAGE HAS BEEN INTENTIONALLY LEFT BLANK

Appendix A

BACKGROUND

Hurricane Katrina

On August 29, 2005, Hurricane Katrina came ashore along the Louisiana, Mississippi and Alabama coasts, causing more than \$100 million in damage. Initially, it appeared that the City of New Orleans had been spared the worst of the storm, but on August 30, 2005, the levees protecting the city were breached and water poured in, flooding approximately 80 percent of the city. On September 6, 2005, Mayor Ray Nagin ordered public safety officials to compel the evacuation of all persons who remained in the city whether they wanted to leave or not.

After conditions in the New Orleans area improved, local and out-of-state contractors, and people in search of work from all over the country, quickly moved into areas damaged by the hurricane to begin cleanup and reconstruction operations. This mass influx of contractors and workers created a great need for federal oversight to ensure that workers were paid for all hours worked, were paid at least the federal minimum wage, and received overtime pay for all hours worked over 40 per week.

Prior to Hurricane Katrina, the New Orleans Office was located in a building at 701 Loyola Avenue in downtown New Orleans. According to the New Orleans District Director, the building housing the New Orleans Office was flooded and many of the systems that were necessary for occupancy of the building were severely damaged. Along with most residents of the city, the New Orleans Office employees evacuated New Orleans and found themselves working at a number of different locations, including Houston and Dallas, Texas; Baton Rouge and Monroe, Louisiana; Grand Rapids, Michigan; and Jacksonville, Florida. The District Director worked out of the Houston District Office until October 2005. After this time, the District Director moved to Baton Rouge and continued to direct the operations of the New Orleans Office until temporary space was found in November of 2005, in the Clearview Mall in Metairie, Louisiana, a suburb of New Orleans. According to the District Director, the New Orleans Office staff returned to New Orleans between November 2005 and December 2005. In late November 2005, the first Spanish-speaking employees began rotational assignments to New Orleans. In July 2006, the New Orleans Office staff returned to downtown, New Orleans, opening an office in the F. Edward Herbert Building.

Hearing Before the Subcommittee on Domestic Policy

The Subcommittee on Domestic Policy, House Committee on Oversight and Government Reform, held hearings on the adequacy of labor law enforcement in New Orleans after Hurricanes Katrina and Rita. The first hearing was held on Tuesday,

June 26, 2007, and it sought to examine the adequacy of labor law enforcement by Wage and Hour. After the hearing, the Subcommittee's Chairman, Congressman Dennis J. Kucinich, requested that the OIG conduct a performance audit of Wage and Hour's New Orleans Office. On Monday, October 29, 2007, a congressional field hearing was in New Orleans, where the New Orleans Office District Director testified before the subcommittee.

The Wage and Hour Division and the New Orleans District Office

Wage and Hour was created with enactment of the Fair Labor Standards Act (FLSA) of 1938. Wage and Hour's mission is to promote and achieve compliance with labor standards to protect and enhance the welfare of the nation's workforce. As such, Wage and Hour is responsible for the administration and enforcement of a wide range of labor laws, including but not limited to the FLSA, the Davis Bacon Act, the Walsh Healey Public Contracts Act, the Employee Polygraph and Protection Act, The Family and Medical Leave Act, the Consumer Credit Protection Act, the McNamara-O'Hara Service Contract Act, and the Immigration and Nationality Act.

The New Orleans Office is located within the Southwest Region of Wage and Hour. It covers the state of Louisiana and maintains area offices in New Orleans, Baton Rouge, Lafayette, Monroe, and Shreveport.

The New Orleans Office Complaint and Investigation Process

The New Orleans Office typically receives complaints by mail, phone, fax, or walk-in. Complaints are not automatically registered in the Wage and Hour Investigative Support and Reporting Database (WHISARD). It is only when information is received that indicates that a violation is likely to have occurred under one of the statutes enforced by Wage and Hour that a complaint is registered.

Typically, complaints are first received by Wage and Hour assistants or technicians who perform the initial review. The assistants or technicians assess whether Wage and Hour has jurisdiction in the matter and whether or not it appears likely that a law Wage and Hour enforces has been violated. During this process, the assistant or technician may discover that more information is needed from the complainant before a determination can be made. The assistants or technicians may consult with the District Director or Assistant District Director during this initial determination phase. Once a preliminary determination has been made by the assistants or technicians, the complaint is forwarded to the District Director or Assistant District Director for review. The District Director or Assistant District Director then reviews the complaint and the recommendations of the assistant or technician. If a decision is made by the District Director or Assistant District Director that further investigative action is to be taken, the District Director or Assistant District Director might recommend an alternative approach in accordance with Wage and Hour's internal procedures. The approach may be one of

a full on-site investigation, an investigation limited to a specific group of employees or particular employment practice, an audit, or a conciliation of a specific situation, such as the failure to provide a last paycheck.

If the complaint is not found to be valid, the assistant or technician informs the complainant why no action will be taken, and if appropriate, refers the complainant to an entity that might be able to provide assistance.

If a complaint is accepted, it is then registered into the WHISARD system as a case and the complainant is sent an acknowledgment letter. The case is then put in inventory for assignment. Assignment of cases is made by the District Director or Assistant District Director based on a number of factors, including the presence of imminent danger, such as minors who are engaged in a hazardous occupation, work load, available resources, and the employer's geographic location.

Once a case has been assigned, the assigned investigator contacts the complainant to ensure all relevant information has been obtained. Excluding unusual circumstances, investigators are expected to submit cases for management review within 90 days of assignment. If additional time is needed, a written request may be made to the District Director or Assistant District Director. The investigator's first contact with the employer generally consists of an initial conference. During this conference, the investigator introduces himself or herself, assesses the employer to determine coverage, determines the number of employees involved, and decides what type of investigation will be conducted. Typically, investigators will begin the review of payroll records and then conduct employee interviews, after which the record-check phase is completed. If violations are found, the investigator computes the back wages or asks the employer to compute the back wages. Back wages are computed with gross amounts due each employee shown on the WH-56 Form. The WH-56 Form also includes the name and address of the employee, period covered, and the Act under which the back wages are due. The investigator holds a final conference with the employer to discuss the violations and how the employer intends to achieve compliance in the future. After a commitment to future compliance is achieved, the investigator requests payment for back wages during the final conference and if the employer agrees to pay, the employer signs the WH-56 Form. Once the District Director or Assistant District Director has reviewed the case, he or she sends an official letter to the employer summarizing the findings and confirming the agreement to pay.

If no such agreement was reached, the employer will usually be invited into the office for a second conference during which WH attempts to secure an agreement to pay the back wages. If no agreement is reached during this conference, legal remedies available to Wage and Hour and to employees are explained to the employer.

THIS PAGE INTENTIONALLY LEFT BLANK

Appendix B

Objectives, Scope, Methodology, and Criteria

Objectives

Our audit objective was to determine whether the New Orleans Office adequately responded to the labor crisis that followed Hurricane Katrina. To meet this objective, we designed our audit tests to answer the following questions:

1. Was the New Orleans Office adequately staffed, including Spanish and Portuguese-speaking investigators, to serve the needs of the New Orleans workforce after Hurricane Katrina?
2. Did the New Orleans Office intake procedures impede workers' ability to file complaints?
3. Did the New Orleans Office adequately communicate with complainants?
4. How did the New Orleans Office perform outreach and establish relationships within the community in order to gather and investigate complaints made by migrant workers?

Scope

Our audit covered activities relevant to our audit objective during the period July 1, 2005, through September 30, 2007. We conducted our audit at the Wage and Hour National Office, the Southwest Regional Office, in Dallas, Texas, and the New Orleans Office in New Orleans, Louisiana.

In planning and performing our audit, we considered internal controls of the New Orleans Office of Wage and Hour that were relevant to our audit objectives by obtaining an understanding of the program's internal controls, and assessing control risk for the purpose of achieving our objectives. The objective of our audit was not to provide assurance on the internal controls. Consequently, we did not express an opinion on the internal controls as a whole, but rather how they related to our objectives. Therefore, we evaluated the internal controls as they pertained to staffing, intake procedures, communication with complainants and outreach efforts.

Our consideration of the New Orleans Office's controls relevant to our audit objectives would not necessarily disclose all matters that might be reportable conditions. Because of the inherent limitations in internal controls, misstatements, losses, or noncompliance may nevertheless occur and may not be detected.

Methodology

To achieve our objective, we interviewed officials at the Wage and Hour Southwest Regional Office and the New Orleans Office to obtain an understanding of the measures taken to serve the New Orleans workforce after Hurricane Katrina. Furthermore, to identify relevant internal controls, we interviewed officials at the New Orleans Office and reviewed applicable regulations, policies and procedures.

We reviewed Congressional testimony given to the Subcommittee on Domestic Policy, House Committee on Oversight and Government Reform. We then interviewed or attempted to interview individuals and advocacy groups who appeared before the subcommittee to both confirm the relevant information they provided to the subcommittee and to obtain specific information or documented incidents that would support the statements that were made.

We relied on computer-processed data contained in the Wage and Hour Investigative Support and Reporting Database (WHISARD). We randomly selected a sample of 30 case files that were initiated and closed during the FY's 2005 through 2007 from the New Orleans Office's filing cabinets and compared those case numbers with the universe of investigations we obtained from the WHISARD to test the completeness of the WHISARD data. Additionally, we tested the reliability of select data elements for 30 complaint case files we had judgmentally selected to test communication between investigators and complainants. We also reviewed validation efforts from prior OIG audit work and tests that had been conducted on the data by Wage and Hour. Based on these tests and assessments, we conclude the data are sufficiently reliable to be used in meeting our objective.

From information provided by New Orleans Office officials, the Southwest Regional Administrator, and the WHISARD, we identified the number and names of the investigators assigned to the New Orleans area office during our audit period and identified those who spoke Spanish and/or Portuguese. We also obtained comparable information for the Little Rock, Arkansas, area office and used this for comparison purposes. We identified each of the investigators who accepted one or more rotational assignments to the New Orleans Office subsequent to Hurricane Katrina and confirmed the dates of their assignments and whether they spoke Spanish and/or Portuguese.

We interviewed an official in the National Office of Wage and Hour to determine whether Wage and Hour had a Continuity of Operations Plan (COOP). We reviewed the Southwest Region's COOP dated September 2007 to determine whether it adequately addressed the needs of the New Orleans workforce in the event of a emergency similar to that caused by Hurricane Katrina.

Additionally, we analyzed WHISARD data related to 1,797 investigations initiated between October 1, 2004, and September 30, 2007. For the New Orleans Office and for the 13 parishes⁹ served by the New Orleans area office we compared the number and type (complaint and directed) of investigations initiated in FY 2005 with various periods subsequent to Hurricane Katrina (1st and 2nd halves of FY 2006, and FY 2007). We also compared the time it took to assign and conclude investigations during FY 2005 with those periods subsequent to the hurricane.

We interviewed staff responsible for intake duties at the New Orleans Office to determine the procedures used to accept and evaluate complaints and compared these procedures with those required by the FOH. Additionally, we evaluated the qualifications of those individuals responsible for intake duties and reviewed the training they had received.

To test whether the New Orleans Office staff adequately communicated with complainants, we judgmentally selected 30 cases from a universe of 119 complaint investigations initiated subsequent to the hurricanes with employers in one of three parishes in the New Orleans area (Orleans, Jefferson and St. Bernard). We selected a variety of cases based upon the employer's parish, the period of time the investigation was initiated and the length of time of the investigation. We reviewed each case file and identified each time the investigator notified, or attempted to notify, the complainant throughout the investigation.

We interviewed New Orleans Office officials regarding their efforts to perform outreach, especially within the Hispanic community. We reviewed documentation related to their efforts, including time charges to that category. We also confirmed these efforts with outside sources, such as community organizations, worker advocacy groups and a Spanish-speaking radio station.

Auditing Standards

We conducted our audit 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 objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

⁹ We were provided with a map of the New Orleans District and the parishes served by the various area offices within the district. According the information we received, the New Orleans office served the following 13 parishes: Washington, St. Tammany, St. John the Baptist, St. James, St. Mary, St. Martin, Terrebonne, LaFourche, St. Charles, Jefferson, Plaquemines, St. Bernard and Orleans.

Criteria

The principal criteria that governed the work performed were as follows:

- 29 CFR, Subtitle B, Chapter V – Wage and Hour Division, Department of Labor
- ESA Wage and Hour Field Operations Handbook
- ESA Wage and Hour Southwest Region Continuity of Operations Plan (COOP) September 2007

Appendix C

Acronyms and Abbreviations

COOP	Continuity of Operations Plan
ESA	Employment Standards Administration
FLSA	Fair Labor Standards Act
FOH	Field Operations Handbook
FY	Fiscal Year
New Orleans Office	New Orleans District Office
OIG	Office of the Inspector General
Wage and Hour	Wage and Hour Division
WHISARD	Wage and Hour Investigative Support And Reporting Database

THIS PAGE INTENTIONALLY LEFT BLANK

AGENCY RESPONSE

U.S. Department of Labor

Assistant Secretary for
Employment Standards
Washington, D.C. 20210



March 27, 2008

MEMORANDUM FOR ELLIOT P. LEWIS
Assistant Inspector General
For Audits

FROM:

Victoria A. Lipnic
VICTORIA A. LIPNIC

SUBJECT:

**Audit Of The Wage And Hour Division New Orleans
District Office's Processing Of Workers' Complaints
Received In The Aftermath Of Hurricane Katrina
Report No. 04-08-002-04-420**

Thank you for the opportunity to comment on the Office of Inspector General's (OIG) audit report regarding the Wage and Hour Division's (WHD) response to allegations of labor law violations in the aftermath of Hurricane Katrina.

Audit Question No. 1: Was the New Orleans Office adequately staffed, including Spanish and Portuguese-speaking investigators, to serve the needs of the workforce after Hurricane Katrina?

Recommendation: Ensure that the Wage and Hour Continuity of Operations Plan (COOP) specifically addresses how Wage and Hour will serve a workforce such as that which migrated to New Orleans after Hurricane Katrina in the event of a disaster that forces Wage and Hour employees to evacuate an affected area.

Response: We are pleased with your conclusion that WHD adequately staffed the New Orleans District Office "to serve the needs of the New Orleans workforce after Hurricane Katrina." As you discuss in the report, WHD achieved that staffing by detailing Spanish-speaking and Portuguese-speaking investigators and managers to the region and by hiring additional investigators and team leaders in the New Orleans District Office.

WHD responded to the situation in the Gulf Coast region as soon as the area was secure and as soon as housing and office facilities for our investigators and other staff could be arranged. Because WHD has long recognized the value of retaining staff with multiple language skills, it was able to move the appropriate resources into the region. Dozens of detailed employees, including a number of Spanish and Portuguese language investigators, made significant contributions to the agency's enforcement efforts in the region. We appreciate your acknowledgement of the hard work that these investigators

completed under difficult circumstances, and we thank you for recognizing that WHD acted appropriately in its staffing of the New Orleans District Office.

With respect to your recommendation that WHD revise its Continuity of Operations Plan (COOP) to specifically address how the agency will “serve a workforce such as that which migrated to New Orleans after Hurricane Katrina,” we agree with your suggestion that the agency’s COOP plan may be improved by adding processes to continue operations if the agency experiences a disaster on the scale of the 2005 Gulf Coast hurricanes. We believe, however, that it is important to weigh the dangers associated with a premature return to a disaster area against the fact that the laws enforced by WHD provide remedies that allow the agency to reach back for a period of two to three years to protect the rights of workers and to secure back wage payments.

WHD learned a great deal from the challenges the agency faced following the hurricanes. The lessons learned regarding the safety and well-being of the agency’s staff, the sudden demographic shift of the workforce, and infusion of federal assistance have heightened WHD awareness of the importance of communication and teamwork in responding to similar circumstances. In light of these experiences, WHD will examine its COOP plan to ensure that it adequately addresses the issue raised in the OIG report.

Audit Question No. 2: Did the New Orleans Office’s intake procedures impede workers ability to file complaints?

Recommendation: Direct Wage and Hour district offices to maintain a record of all inquiries received. The record should include the date of the inquiry, the name of the individual making the inquiry, the nature of the inquiry, and the disposition of the inquiry.

Response: We are pleased that the report finds no evidence indicating that any worker’s ability to file a complaint was in any way impeded. We are, however, concerned that adopting your recommendation will actually create needless impediments for those who seek to contact WHD. First, the recommendation ignores WHD’s successful history of and experience in managing its complaint program. The agency’s assistants, technicians, and investigators receive training to ensure appropriate disposition of calls, and maintain a record of all complaints for which there is sufficient information to indicate that a wage and hour violation has occurred or may be occurring. Second, complying with the recommendation would create unnecessary privacy issues for certain individuals who contact WHD by requiring WHD to keep records of some of the most personal information a worker can divulge, *e.g.*, the worker’s or the worker’s family’s medical needs and/or conditions, despite the fact that the agency might not be able to take action on the worker’s behalf. Third, requiring and maintaining a record of every allegation or every inquiry ultimately would prove detrimental to WHD’s ability to provide assistance to employees who may be reluctant to complain, fearful of providing their name to a government authority, and uncertain that their concerns have merit. If such workers believe that their name, the date of their call, the nature of their inquiry, and the disposition of their situation is being recorded and may be released—even

inadvertently—then they may not seek assistance from WHD. Fourth, the recommendation may discourage employers who want or need to call WHD offices for compliance assistance. The Department's compliance assistance protocols grant anonymity to callers requesting assistance from its sub-agencies in order to encourage employers to seek information on how to comply with the law. Fifth, WHD has serious concerns about diverting enforcement resources to the costs of implementing and maintaining a tracking system of every inquiry received. WHD's call center receives over 450,000 calls a year. Approximately 250,000 are referred directly to WHD district offices—roughly 5,300 per district office. This figure does not even include the thousands of inquiries that are received directly by district offices.

We would also like to point out that the report notes concerns from the Southern Poverty Law Center (SPLC) relating to the handling of five complaints. The report documents the successful resolution of two cases that resulted from the SPLC complaints and noted that one case was pending litigation. After the SPLC resubmitted the fourth complaint at your suggestion, we learned that the complaint already had been investigated and concluded in July 2006 under the employer's trade name. The New Orleans District Office had no record of receiving the fifth complaint, but it appears the SPLC may have been using the wrong facsimile number.

Audit Question No. 3: Did the New Orleans Office adequately communicate with complainants?

Recommendation: Ensure that Wage and Hour investigators comply with Wage and Hour's policy of maintaining regular communication with complainants and document those communications in the case file.

Response: The report concludes that the New Orleans District Office did not adequately communicate with its complainants in a number of the cases that were reviewed. We would like to note that all of the files reviewed by OIG staff contain evidence of communication with the complainants. We acknowledge, however, that there were instances in which the Field Operations Handbook guidance relating to communications with complainants was not precisely followed. In several cases, the failure to follow procedures was directly related to the unique circumstance of having multiple investigators assigned to a single investigation. The use of short-term detailed staff sometimes resulted in situations in which cases had to be reassigned to other investigators when the detail assignments ended before the investigation was concluded. In other cases, the complainant failed to provide timely or updated contact information or failed to respond to a request for additional information. WHD relies on complainants to advise the agency of any change in their addresses or other contact information.

Despite the apparent lapses in communication in several cases, there is no indication that the lack of regular contact with complainants resulted in any deprivation of services or failure to adequately protect the rights of these workers. Notwithstanding the unique circumstances in the Gulf Coast cases, WHD will reaffirm its procedures for regular

communication with complainants and the subsequent documentation of such communications.

We would also like to comment on the draft report's discussion that WHD's longstanding policy of not revealing the existence of a complaint or not maintaining routine contact with employees other than the complainant may increase the likelihood that WHD will not obtain current contact information for those employees. WHD strongly believes that the potential risk of retaliation to complainants and the chilling effect on other workers far outweighs the possibility that the agency will have outdated employee contact information.

Audit Question No. 4: How did the New Orleans Office perform outreach and establish relationships within the community in order to gather and investigate complaints made by migrant workers?

Response: We appreciate your conclusion that WHD performed extensive community outreach and that the lack of employee complaints did not in any way diminish the agency's enforcement efforts in the Gulf Coast. The OIG report notes that WHD staff participated in community outreach events and reached out to worker advocacy groups to encourage workers and others to report allegations of violations. These extensive outreach and community relations activities may not have produced the volume of complaints anticipated by some advocacy groups. Regardless of expectations about what the volume of complaints should have been, as the report points out, the New Orleans District Office initiated a greater number of directed, *i.e.*, non-complaint-based, investigations in the period following the hurricane than it had in previous years.

Finally, we appreciate the report's recognition of the various outreach and community organization activities of the New Orleans District Office staff. The New Orleans District Office pursued many avenues to educate workers about their rights and the remedies available to them. The staff's twice weekly attendance at the Good News Camp—a faith-based encampment in City Park—was among the more direct approaches that that office used to reach workers. Investigators visited the camp, talked to workers who had wage-related complaints, and provided information on the laws that WHD enforces for a period of six months in 2006. WHD staff also distributed thousands of timekeeper booklets, fact sheets, Handy Reference guides, and other compliance materials at venues throughout the region. The same materials—in both English and Spanish—were also provided to scores of organizations that interact directly with workers in an effort to expand the impact of the compliance assistance activities.

Thank you, again, for the opportunity to comment on the content and recommendations of the draft report.

cc: Alexander J. Passantino, Acting Administrator, Wage and Hour Division
John McKeon, Deputy Administrator for Enforcement, Wage and Hour Division