

U.S. Department of Labor

Office of Inspector General—Office of Audit

REPORT TO WAGE AND HOUR DIVISION



WAGE AND HOUR DIVISION NEEDS TO STRENGTHEN MANAGEMENT CONTROLS FOR BACK WAGE DISTRIBUTIONS

Date Issued March 31, 2015
Report Number: 04-15-001-04-420

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

BRIEFLY...

Highlights of Report Number 04-15-001-04-420, issued to the Administrator for Wage and Hour.

WHY READ THE REPORT

The Wage and Hour Division (WHD) enforces federal minimum wage and overtime pay requirements of the Fair Labor Standards Act. Back wages may be distributed directly to employees by the employer, or WHD may collect the back wages from the employer and attempt to locate the employees and distribute the amounts due to them. During the 5-year period encompassing Fiscal Years (FYs) 2009 through 2013, WHD reported it assessed employers \$1.1 billion in back wages. Of this amount, employers were responsible for paying approximately \$839 million directly to their current and former employees. For the remaining \$264 million, WHD was responsible for collecting the back wages from employers and then disbursing the monies to the employees involved in the cases.

WHY OIG CONDUCTED THE AUDIT

We conducted an audit of WHD's back wage distribution process to determine if: (1) WHD followed its policy and procedures for distributing back wages to employees; and (2) WHD properly accounted for and reported on back wages due to employees.

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/2015/04-15-001-04-420.pdf>.

March 2015

WAGE AND HOUR DIVISION NEEDS TO STRENGTHEN MANAGEMENT CONTROLS FOR BACK WAGE DISTRIBUTIONS

WHAT OIG FOUND

We found WHD did not consistently follow its policy and procedures for distributing back wages to employees. Most notably, in those cases for which WHD was responsible for distributing back wages to workers — generally involving workers who had left employment with the company — WHD made minimal efforts to locate them. As a result, between 2010 and 2014 WHD transferred to the U.S. Department of the Treasury (Treasury) \$60 million of back wages owed to employees it had not been able to locate. If WHD does not improve its efforts to find employees owed back wages, we estimate that an additional \$12 million will be transferred to Treasury by the end of 2015.

WHAT OIG RECOMMENDED

We recommend the Administrator for Wage and Hour develop reporting tools that will support greater oversight and performance management of the back wage follow-up and distribution process, promote the continual exploration and use of alternative tools for locating employees due back wages, update the Field Operations Handbook, and establish uniform procedures for staff to utilize all existing available tools and resources for locating employees due back wages.

The Wage and Hour Administrator agreed with our recommendations and stated WHD will reinforce the importance of efforts the agency has already undertaken to strengthen its back wage follow-up procedures and systems.

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U.S. Department of Labor

Office of Inspector General
Washington, D.C. 20210



March 31, 2015

Inspector General's Report

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The Wage and Hour Division (WHD) enforces federal minimum wage, overtime pay, recordkeeping, and child labor requirements of the Fair Labor Standards Act (FLSA). When WHD investigators encounter wage violations, they recommend changes in employment practices to bring the employer into compliance and request payment of back wages due to employees. Back wages may be distributed directly to employees by the employer, or WHD, under certain conditions,¹ may collect the back wages the employer owes and attempt to locate the employees and distribute the amounts due to them.

During the 5-year period encompassing Fiscal Years (FYs) 2009 through 2013, WHD reported it assessed employers \$1.1 billion in back wages. Of this amount employers were responsible for paying approximately \$839 million directly to their employees and former employees, and had to provide proof of such payments to WHD. For the remaining \$264 million, WHD was responsible for collecting the back wages from employers and then disbursing the monies to the employees involved in the cases.

We conducted an audit of WHD's back wage distribution process to determine if: (1) WHD followed its policy and procedures for distributing back wages to employees; and (2) WHD properly accounted for and reported on back wages due to employees.

We found WHD did not consistently follow its policy and procedures for distributing back wages to employees. Most notably, in those cases for which WHD was responsible for distributing back wages to workers — generally involving workers who had left employment with the company — WHD made minimal efforts to locate them. As a result, between 2010 and 2014 WHD transferred to the U.S. Department of the

¹WHD may collect and disburse back wages when the employer is unable to locate the employee, the employer prefers WHD to make the distribution, WHD has reasons to believe the employer will not make full and prompt payment, or the employee refuses to accept payment.

Treasury (Treasury) \$60 million of back wages owed to employees it had not been able to locate. If WHD does not improve its efforts to find employees owed back wages, we estimate an additional \$12 million will be transferred to Treasury by the end of 2015.

In the 122 cases we sampled for which employers were responsible for disbursing back wages, almost 86 percent of employers (105 of 122) had made the payments as required. In 13 cases from this sample, we found instances where WHD did not follow all of its procedures. In eight cases, employers did not honor their agreements and WHD failed to transfer those cases to Treasury for collection, in violation of its own policy. As a result, the workers affected by those cases are unlikely to receive back wages totaling \$1.4 million. Furthermore, in 5 sampled cases involving \$304,281 in back wages, WHD transferred the debt to Treasury for collection, but failed to notify the employers of the pending transfer. Such advance notice is intended to give employers a final chance to pay its workers the back wages they are owed. We also identified four cases in which employers had paid back wages to their employees, but WHD had not obtained proof of payment.

Finally, we found WHD's financial reports were limited in their ability to demonstrate the age of back wage payments or the rate of disbursement from year to year (or cumulatively). For example, we identified significant differences between back wage receivables end-of-year and beginning-of-year balances in FYs 2010 – 2011, and FYs 2011 – 2012, as well as a lack of proper reconciliations between back wage amounts recorded in WHD's official management information system with amounts recorded in subsidiary systems. As a result, WHD lacked assurance that all back wage cases had been entered into its system, it had properly followed up on those cases, and errors regarding back wages collected or paid out had been detected and corrected.

Our audit focused on back wage activities that occurred during the period October 1, 2009, through September 30, 2012. We randomly selected 245 cases (122 cases in which employers were responsible for back wage distributions and 123 cases in which WHD was responsible for distribution) to test for compliance with policies and procedures for the distribution of back wages due to employees. We included financial data for FY 2009 through FY 2013 to better illustrate trends related to back wage assessments and distribution.

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

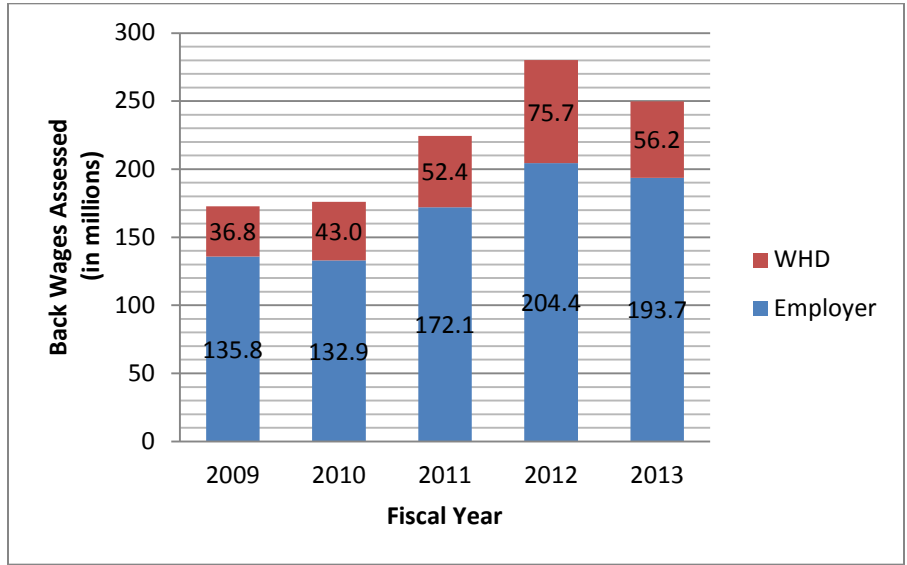
Background

WHD conducts investigations based on complaints it receives or self-initiates (called directed investigations) to ensure employers comply with FLSA requirements. An investigation may be performed as 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. While a complaint may include a single employee, other affected employees may be identified and included as part of the resolution. Prior to conducting an investigation, a case is set up in WHD's case management system, the Wage and Hour Investigative Support and Reporting Database (WHISARD), where it receives a case ID number. All activities on this case including Acts examined, violations found, back wages due, Civil Monetary Penalties assessed, and other data are captured in this system.

The amount of back wages owed may be computed by WHD or by the employer, if asked by WHD. WHD will identify the name and address of the employee(s), period covered, and the Act under which the back wages are due. WHD conducts 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, WHD requests payment for back wages during the final conference. If the employer agrees to pay, the employer is provided an official letter summarizing the findings and confirming the agreement to pay. If no agreement to pay is reached, the employer may be invited to a second conference in an attempt to secure an agreement to pay the back wages. When an agreement is reached, the case is registered into the Wage and Hour Investigative Support and Reporting Database (WHISARD). In cases where an agreement cannot be reached, legal remedies available to WHD and to employees are explained to the employer. For example, the Secretary of Labor may file suit on behalf of employees for back wages and an equal amount in liquidated damages, or employees may pursue individual civil actions.

As depicted in Chart 1 below, approximately \$839 million, or 76 percent, of the \$1.1 billion in back wages assessed from FY 2009 through FY 2013 was disbursed directly to workers by their employers. The remaining \$264 million, or 24 percent, was sent to WHD to distribute to employees.

Chart 1: Back Wages Administered by WHD vs. Employers



Objective — Did WHD follow its policy and procedures for distributing back wages to employees?

Employees did not receive millions of dollars owed to them because WHD did not follow its policy and procedures for distributing back wages.

The WHD Field Operations Handbook (FOH) requires WHD staff to make every reasonable effort to locate workers and pay them the back wages they are owed. FOH notes at the very least, telephone and city directories and Internet locator applications are to be utilized in attempting to locate affected workers. FOH also states motor vehicle departments and the Internal Revenue Service locator service are other potentially useful resources for locating workers. Prior to January 2013, WHD used a contractor that provided locator services. WHD stated the company was acquired by another firm and subsequently discontinued providing these services to WHD.

FOH, Section 53c21, requires WHD to transfer back wages to Treasury as miscellaneous receipts if the employee cannot be located after 3 years.² For the period FY 2010 through FY 2014, WHD transferred \$60.3 million to Treasury for unlocated employees (see Table 1). In addition, we estimate \$12 million³ in undisbursed back wages will be transferred to Treasury in FY 2015.

²Undisbursed back wages are transferred to Treasury after 3 years. Therefore, the \$60.3 million of undisbursed back wages transferred to Treasury in FYs 2010 to 2014 represent back wages generally collected during FYs 2007 to 2011.

³We used the amount of undisbursed back wages transferred to Treasury over the last 5 years (\$60.3 million/5) to arrive at an average of \$12 million.

Table 1: Undisbursed Back Wage Transferred to Treasury

Fiscal Year	Undisbursed Back Wages Transferred to Treasury
2010	\$ 10,472,288
2011	\$ 10,034,454
2012	\$ 5,262,071
2013	\$ 15,665,291
2014	\$ 18,900,207
Totals	\$ 60,334,311

Source: WHD Officials

To assess WHD’s efforts to ensure workers received the back wages they were owed, we selected a random sample of 245 cases (122 cases in which the employers were responsible for back wage distributions and 123 in which WHD was responsible for distribution). In 95 (39 percent) of the 245 cases we sampled, WHD did not comply with its policies and procedures for distributing back wages. Specifically, WHD did not make reasonable efforts to locate employees in 87 cases for which it was responsible for distributing workers’ back wages. Furthermore, WHD did not refer eight sampled cases to Treasury for collection after employers failed to honor their agreements to pay back wages directly to their workers. Because WHD did not comply with its own policy requirements in these 95 sampled cases, employees may not receive almost \$3 million in back wages.

We also found 5 cases where WHD did not notify employers of the impending transfer of their cases to Treasury for debt collection, and did not follow up in 4 cases to verify employers had made required back wage payments.

In 87 sampled cases where WHD was responsible for distributing back wages, \$1.4 million has gone unclaimed because WHD efforts to locate workers were not sufficient.

We reviewed 123 back wage cases from three of the five WHD regional offices where WHD was responsible for locating and making back wage payments to workers. WHD staff mailed Form WH-60s to verify workers’ current addresses. However, when forms were returned as undeliverable, WHD made no additional efforts to locate the workers.

As shown in Table 2 below, WHD was responsible for locating and paying back wages to 9,696 employees from the sampled cases. WHD was unable to locate 7,491 of these employees who were owed \$1,437,705 in back wages.

Table 2: Sampled Cases Involving Employees WHD Did Not Locate

WHD Region	Number of Cases	Number of Employees Entitled to Back Wages	Total Back Wages Disbursed to Date*	Number of Employees WHD Was Responsible for Locating	Number of Employees Not Located	Undisbursed Back Wages for Employees Who Could Not Be Located
NE	22	6,530	\$23,240,426	1,614	457	\$455,185
SE	18	4,036	\$1,689,653	1,958	1,711	\$196,883
SW	47	24,768	\$31,837,685	6,124	5,323	\$785,637
Totals	87	35,334	\$56,767,764	9,696	7,491	\$1,437,705

* Of the 35, 334 employees, Employers paid back wages directly to 25,451 (72 percent) and not paid 187. For the remaining 9, 696 employees, WHD paid back wages to 2,205.

To evaluate an alternative resource for locating employees owed back wages, we judgmentally selected 100 employees WHD could not locate from the 123 cases we sampled, and used CLEAR software⁴ to identify different addresses than those WHD had in its files for 57 of the 100 employees. We shared our results with WHD officials so they could renew their efforts to locate these employees.

WHD officials expressed interest in considering both CLEAR and the National Directory of New Hires (NDNH) as potential tools for locating employees.⁵ However, NDNH, owned and operated by the U.S. Department of Health and Human Services' Office of Child Support Enforcement, is only available to authorized entities for authorized purposes. WHD would have to seek and receive access in order to use this tool.

Employing more advanced tools and resources such as CLEAR and NDNH could enhance WHD's efforts to locate employees who are owed back wages.

WHD did not refer eight sampled cases to Treasury for collection after employers failed to honor their agreements to pay back wages directly to their workers, or notify employers in five sampled cases of the impending transfer of their cases to Treasury for debt collection.

⁴CLEAR is an investigative platform designed for professionals who need information about people and companies.

⁵NDNH is a national database of wage and employment information. It contains information on all newly hired employees as reported by employers to each State Directory of New Hires, quarterly wage information on individual employees from the records of state workforce agencies (SWA) and federal agencies, and unemployment insurance information on individuals who have received or applied for unemployment benefits, as reported by SWAs.

The Back Wage Financial System (BWFS) User Guide states if an employer fails to pay back wages by 120 days after the agreed-to-pay date, the employer then should be notified that the entire amount is declared due. If the employer has not paid the entire amount 60 days after being notified, then the case should be transferred to Treasury for debt collection.

WHD generates a tickler report for cases to be sent to Treasury to ensure back wage cases are transferred timely. However, we found WHD had not transferred 8 cases, totaling \$1.4 million, to Treasury more than 180 days after the agree-to-pay date (see Exhibit 2, Cases Not Referred to Treasury as Required).

For example, one employer had paid approximately 490 (48 percent) of the affected employees by the agree-to-pay date of June 30, 2007. On September 28, 2007, WHD asked the employer to submit the remaining \$1,202,998 in back wages due or provide proof that payment had been made to the remaining employees. By January 2008, the remaining back wages should have been referred to Treasury for debt collection. This did not happen; instead, WHD followed up with two other letters dated July 15, 2008, and July 30, 2008, again requesting the employer submit the back wages to WHD or provide proof that employees had been paid. WHD never transferred these cases to Treasury for collection, but instead reduced the balance the employer owed to zero without providing an explanation for why it took this action.

In addition, in five of the sampled cases, totaling \$304,281, we found WHD had transferred the cases to Treasury without providing the required advance notification to the employers. The notification is intended to provide the employer with a “last chance” to pay the back wages.

WHD did not follow up to obtain verifications that employers paid back wages in four sampled cases.

In our sample of 122 cases in which employers distributed back wages, we found most employers properly paid the back wages they owed; generally the workers were still employed by the company and the back wage transaction was simply a matter of issuing another check or adjusting future salary payments. We did identify 4 instances involving 225 employees where WHD staff did not obtain documentation⁶ required to verify employers had distributed back wages as they had agreed to do. Without this documentation, WHD could not provide assurance that these 225 employees received the \$2.5 million in back wages they were owed.

Furthermore, WHD regional office employees stated an additional 900 cases in one regional office had not been properly processed due to WHD management’s lack of

⁶ WHD investigators had not obtained the Form WH-58 or other documents that WHD considered “Final Pay Evidence”, such as Form WH-59 (Confirmation of Payment), cancelled checks, or bank statements, per Section 3.3.2 of the BWFU User Guide.

oversight of the workload and succession planning for a key position. For these 900 cases, we found WHD had not:

- Ensured employers involved in 540 of the 900 back wage cases had paid approximately \$3.4 million in back wages as agreed. Because more than 180 days had passed without any collection activities, these cases were being referred to Treasury for debt collection.
- Obtained proof of payment in 45 of the 900 cases where the employers purportedly paid employees \$287,347 in back wages.
- Followed up with employers involved in 72 of the 900 cases involving \$459,755 in back wages owed to employees to recover the owed back wages.

These cases further illustrate WHD management did not exercise sufficient oversight and succession planning. Consequently, employees may not receive back wages they are due because debt collection action had not been taken against the delinquent employers. In other cases, employers may not have been given an opportunity to resolve issues or make payments related to delinquent back wage accounts.

Objective — Did WHD properly account for and report on back wages due to employees?

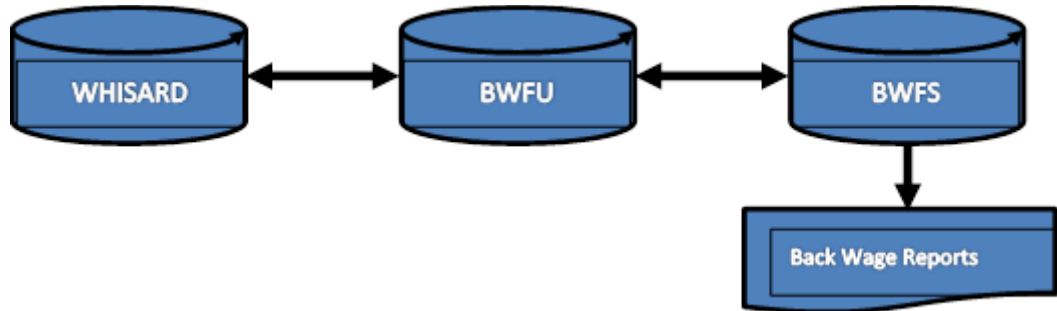
WHD did not accurately account for or report back wages.

We found WHD did not accurately account for or report back wage financial activities. Specifically, WHD recorded significant differences between the Case Activity Report accounts receivable ending and beginning balances in FY 2010 and FY 2011. Further, WHD could not reconcile back wage distributions for FY 2010 to other related reports, and the monthly reconciliations reports for FYs 2011 and 2012 could not be reconciled to the report on receivables that WHD is required to provide to Treasury. The various financial and performance reports generated by the WHD case management and financial systems could not readily provide an accurate running balance or rate of the disbursement of back wage payments by fiscal year. Proper accounting and reporting for back wages is important to ensure WHD has entered all back wage cases into its system, is properly following up on those cases, and is detecting and correcting any errors regarding back wages collected or paid out.

WHISARD is used to track cases from beginning to end. The manual for the Back Wage Follow-Up (BWFU) system outlines the process for the distribution of back wages by employers, starting with the Back Wage Payment Deadline Date (BWPDD). The BWFU process helps WHD ensure employers timely pay back wages as they have agreed and facilitates WHD's efforts to collect back wages for employees who cannot be located.

Employers' payment activities are recorded in WHISARD under Case Management (see Chart 2 below and Exhibit 1 for details).

Chart 2: Relationship between WHD's Key Reporting Systems



BWFS is a subsystem of WHISARD that tracks the back wages WHD collects from employers and the disbursement of those wages to employees. BWFS also provides information to create the Case Activity Report. The Case Activity Report is an internal report that provides WHD with: (1) beginning accounts receivable balances; (2) accounts receivable activities (new receivables, payments on receivables, write offs and adjustments) during the period; and (3) ending accounts receivable balances on an employer case-by-case basis. This report provides information at the regional level for the subcategories of Lump Sum Receivables, Installment Receivables, and Referred to Treasury Receivables.

The Case Activity Report is used to populate the Treasury Report on Receivables (TROR), a report intended to inform federal decision makers of the gross book value of the debts held by the federal government. The Treasury's Financial Management Service Instructional Workbook for Preparing TROR requires figures provided in TROR to be reconcilable with the agency's financial statements.

Significant differences existed between the Case Activity Reports' accounts receivables ending and beginning balances.

The Case Activity Report contained significant differences between the accounts receivable ending and beginning balances in FYs 2010 – 2011, and 2011 – 2012. As detailed in Table 3 below, we found the following differences:

- The 10/01/2010 beginning balance was \$13.6 million more than the 09/30/2010 ending balance.
- The 10/01/2011 beginning balance was \$8.5 million more than the 09/30/2011 ending balance.

Table 3: Case Activity Report

Payment Method	Ending Balance 9/30/2010	Beginning Balance 10/01/2010	Ending Balance 9/30/2011	Beginning Balance 10/01/2011
Lump Sum	\$ 1,582,140	\$ 18,396,311	\$ 4,215,668	\$ 12,461,764
Installment	\$ 1,610,951	\$ 1,582,234	\$ 2,234,255	\$ 2,600,603
Debt Referred to Treasury	\$ 8,513,187	\$ 5,356,365	\$ 7,448,377	\$ 7,358,642
Total	\$ 11,706,277	\$ 25,334,911	\$ 13,898,300	\$ 22,421,008
Difference	\$13,628,633		\$8,522,708	

WHD officials attribute these particular differences to a glitch in BWFU in WHISARD wherein the system would accept an overpayment if erroneously entered by the user. WHD officials also stated that the glitch has been fixed and the data cleanup was approximately 75 percent completed as of June 2014.

WHD officials also attributed its financial reporting problems to the loss of key personnel, as well as the lack of integration among its four Data Management System applications (WHISARD, Certificates Processing System, BWFS, and Civil Monetary Penalties). WHD officials stated that modernizing its Information Technology (IT) system is expected to result in improved system functionality, including increased reporting capabilities. In response to recommendations in two prior OIG audit reports,⁷ WHD has contracted with a firm to examine the agency's IT infrastructure and recommend a plan for IT modernization.

To address the data management system problems, WHD officials stated they had requested funds for IT modernization in their last three budgets, but no funding had been appropriated. Furthermore, WHD officials stated they have prioritized modernization as a critical need for the agency and have been working with the Department's Chief Information Office to develop modernization plans consistent with Departmental guidance and requirements. WHD officials also stated they are pursuing a modular development approach, which will allow the agency to develop its technology through an iterative approach, which allow for greater flexibility in system design and funding. With these improvements, WHD officials indicated they may be able to more accurately illustrate its effectiveness in managing back wages.

⁷OIG Audit Reports Titled: WHD Northeast Region's Management of Civil Monetary Penalties and Back Wages Could be Improve, Report No. 04-10-001-04-420; and Wage and Hour's Management Oversight of the FLSA's Minimum Wage and Overtime Exemption Provisions Under 29 CFR Part 541 Could Be Strengthened, Report No. 04-10-002-04-420

WHD could not reconcile back wage distributions.

Reconciling accounts on a regular basis is imperative to maintaining accurate financial records on the amount of back wages collected and the amount paid out. Accurate financial records help WHD to ensure all cases have been entered in its system and it does not lose track of cases.

We found WHD did not prepare or adequately support monthly reconciliation reports to other internal financial reports related to back wage collections and disbursements. WHD was unable to prepare the cumulative Monthly Reconciliation report for FY 2010. In addition, the FYs 2011 and 2012 Monthly Reconciliation reports we reviewed did not reconcile to any other report on back wages activities. According to the BWFU User Guide, all checks received in a district office must be logged in and out of WHISARD. Similarly, payment information must be entered into BWFS in order to show the flow of back wage collections.

Our review of 245 cases also revealed 25 cases for which WHD had not updated WHISARD and/or BWFS to reflect the correct amount of back wage payments by employers, as detailed below:

- 14 cases showed WHD staff did not record all payment information into WHISARD. Consequently, employers' accounts were incorrectly put into a delinquent status which made them subject to interest charges and penalties. For example, in one case an employer owed \$185,563, of which \$107,876 was paid directly to employees and recorded in BWFS. WHD distributed the remaining balance of \$77,687 to employees but did not record the amount in BWFS. Consequently, BWFS automatically placed this case in a Delinquent Status – Pending Treasury as if the employer had not paid back wages due.
- 11 cases had data that did not match in WHISARD and BWFS because WHD staff did not update both systems. In one case, WHD collected \$26,255 which was correctly recorded in BWFS, but WHISARD incorrectly showed the amount to be \$18,181 (see Exhibit 3).

According to a WHD official, the agency was aware that most of the reports provided for our review could not be supported with detailed records or reconciled to each other.

Conclusion

Employers were responsible for paying workers directly for more than 76 percent of back wages identified as a result of WHD investigations. However, for those cases for which WHD assumed this responsibility, it needs to improve its efforts to locate affected workers and pay them the back wages they are due. Between FYs 2010 – 2014, WHD transferred about \$60 million in undisbursed back wages to Treasury. In addition, we estimate \$12 million will be transferred to Treasury by the end of FY 2015. Employees

owed these monies may never receive their back wages because WHD did not spend sufficient time or efforts to locate them. To maximize the amount of back wages distributed to employees, WHD should ensure its staff complies with policy requirements for locating employees, and explore other methods that could be used to locate employees.

RECOMMENDATIONS

We recommend the Administrator for Wage and Hour:

1. Develop reporting tools that will support greater oversight and performance management of the back wage follow-up and distribution process.
2. Promote the continual exploration and use of alternative tools for locating employees due back wages.
3. Update the FOH and establish uniform procedures for staff to utilize all existing available tools and resources for locating employees due back wages.

Wage and Hour Division's Response

The Wage and Hour Administrator agreed with our recommendations. In addition, Wage and Hour indicated that it recognized that any back wage due can significantly impact workers earning the minimum wage. The Administrator stated that the recommendations reinforce the importance of efforts the agency has already undertaken to strengthen its back wage follow-up procedures and systems. Wage and Hour's response to our draft is included in its entirety in Appendix C.

We appreciate the cooperation and courtesies Wage and Hour personnel extended to the Office of Inspector General during this audit. OIG personnel who made major contributions to this report are listed in Appendix D.



Elliot P. Lewis
Assistant Inspector General
for Audit

Exhibits

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Exhibit 1**Milestones for Back Wage Payment Due Date**

Milestone	Description
Back Wage Payment Deadline Date (BWPDD)	This is the date on which the employer should issue checks to those Employees they have agreed to pay. With an installment case, this is the date of each installment.
BWPDD + 7 days	This is the date on which Preliminary Pay Evidence is due to be received in the District Office (DO).
BWPDD + 30 days	If Preliminary Pay Evidence was not received, this is the date on which the DO will issue the Notification Letter with 30 Days to respond. (NOTE: The notification letter can be issued at various times in the process. This is the earliest it would be issued.) This is also when the un-locatable Employee listing is due from the employer.
BWPDD + 60 days	If the Notification Letter did not elicit a response from the employer, this is the point at which a Joint Review Conference (JRC) with the Regional Solicitor (RSOL) should be held to determine if the debt is eligible for Debt Collection. The Demand Letter is issued immediately if the debt is declared a debt due the government. (NOTE: In some Regions, a JRC is only held under specific circumstances. Whatever, the Region's policy is, this is the first point at which an office can determine if the case will be forwarded on for Debt Collection action.)
Date Declared Debt Due the Government	This is the date on which the regional office/DO/RSOL determined the case had a sufficient agreement to pay to declare it a debt due the government. This action can occur anytime from the 60th to the 120th day from the BWPDD. Immediately following this action, the Demand Letter is issued and the case is transferred to regional office control to start the Debt Collection Process. (See the note under BWPDD + 60 days.)
BWPDD + 80 days	This is the date on which the DO contacts the employer either by phone or in writing to request a check in the net amount for the un-locatable Employees, as well as any missing final pay evidence.
BWPDD + 90 days	This is the date on which the check for un-locatable Employees and any remaining final pay evidence are due.
BWPDD + 120 days	This is the last day on which a DO can transfer control of a case to the RO and still be considered timely.

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Exhibit 2**Cases Not Transferred to Treasury as Required**

<i>Not Transferred to Treasury After 180 days</i>		
Case ID No,	Amount Subject to Debt Collection	Number of Employees
<i>Northeast (2)</i>		
1600044	\$ 24,930.94	2
1643722	643.20	4
Northeast Sub-Totals	\$25,574.14	6
<i>Southeast (5)</i>		
1421516	\$1,202,998.44	528
1572620	110,967.49	143
1619933	3,925.67	75
1639876	9,525.99	10
1648343	2348.52	4
Southeast Sub-Totals	\$ 1,329,766.11	760
<i>Southwest (1)</i>		
1658556	\$5,464.44	10
Southwest Sub-Totals	\$5,464.44	10
TOTAL	\$1,360,804.69	776
<i>Required Employer Notification</i>		
<i>Northeast (2)</i>		
1569465	\$261,250.00	175
1641134	1,819.84	11
Northeast Sub-Totals	\$263,069.84	186
<i>Southeast (1)</i>		
1619933	\$3,925.67	75
Southeast Sub-Totals	\$6,274.19	75
<i>Southwest (2)</i>		
1563633	\$19,005.38	11
1637848	\$18,279.76	16
Southwest Sub-Totals	\$37,285.14	27
TOTAL	\$304,280.65	288

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Exhibit 3

Case Data Not Updated in WHISARD and BWFS

BW Payment Not Entered (14 Cases)				
Case ID No.		Actual Back Wages Received	Amount Entered in WHISARD	
Northeast Cases (5)				
1545342		\$97,683.45	\$0.00	
1569465		13,750.00	0.00	
1576061		6,568.94	8,431.75	
1597400		1,300,000.00	1,292,050.41	
1612228		\$26,255.04	\$18,180.84	
Northeast Totals		\$1,444,257.43	\$1,318,663.00	
Southeast Cases (6)				
1421516		\$1,043,861.32	\$1,047,878.00	
1540643		0.00	2,066.26	
1590832		185,563.03	163,627.64	
1600804		28,676.40	34,079.05	
1621681		976.46	847.49	
1628498		4,651.94	3,921.94	
Southeast Totals		\$1,263,729.15	\$1,252,420.38	
Southwest Cases (3)				
1533335		\$862.76	\$784.12	
1537937		0.00	997.14	
1586039		137,036.00	118,814.80	
Southwest Totals		\$137,898.76	\$120,596.06	
Data Did Not Match (11 Cases)				
Case ID No.		Per Case File Documentation	WHISARD	BWFS
Northeast Case (1)				
1612228			\$18,180.84	\$26,255.04
Southeast Cases (2)				
1590832			\$77,686.87	0
1605613		Employees – 3,428	Employee – 3,421	
Southwest Cases (8)				
1463702		\$2,556.51		\$3,319.92
1529499		\$18,097.32		\$13,071.52
1534960		\$1,408,705.24		\$1,588,884
1548361				
1561851			\$9,051.40	0
1583919		Employees - 913	Employees 923	
1643943		\$41,842.29	\$34,060.68	
1670789		\$1,851.20	0	

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Appendices

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Appendix A**Objectives, Scope, Methodology, and Criteria**

Objectives

1. Did WHD follow its policy and procedures for distributing back wages to employees?
2. Did WHD properly account for and report back wages due to employees?

Scope

The audit focused on WHD's controls and processes for supervising the payment of back wages owed employees between October 1, 2009, and September 30, 2012,⁸ starting from the date employers agreed to pay them. However, we included financial data for FYs 2009 through 2013 to better illustrate trends related to back wages assessments and distributions. Our audit work was performed at the WHD National Office in Washington, DC; and regional offices located in Atlanta, GA, Dallas, TX, and Philadelphia, PA.

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

Methodology

To answer our audit objectives, we relied on computer-processed data in WHISARD and BWFS. We assessed the reliability of the data by: (1) performing various testing of required data elements; (2) interviewing WHD officials with knowledge of the data; and (3) reviewing other supporting financial reports. We also examined WHD's tools used to locate both current and former employees. We interviewed key WHD personnel and conducted walkthroughs of the National and regional offices' operations to gain an understanding of back wage collections, disbursements, and reporting. Based on these tests and assessments, we concluded the data was sufficiently reliable to be used in meeting the audit objectives.

The purpose of our sampling plan was to assist us in determining the effectiveness of WHD supervision of back wage distributions. We identified a total of 63,945 cases

⁸Except for opened cases after September 30, 2012, but concluded before December 31, 2012, most of the audit work related to activities from October 1, 2009, through September 30, 2012. We wanted to determine why cases remained opened if longer than 1 year.

(58,069 concluded and 5,876 opened cases that were reviewed). These cases consisted of 981,084 affected employees that were due \$901,584,765 in back wages. We selected three of the five WHD regions with the highest number of back wage cases, which accounted for 47,700 of the 63,945 cases in our universe. We selected a random sample of 245 cases (122 which the employers were responsible for back wage distributions and 123 for which WHD was responsible for distribution).⁹ These cases involved 54,820 affected employees who were due \$115,260,305 in back wages.

For each selected case, we performed substantive testing with program requirements, such as ensuring key milestones were met and whether the appropriate action was taken in cases of noncompliance. We excluded cases with \$50 or less in total back wages because WHD policy requires little to no effort to locate employees who are due these amounts, and we determined the number of cases and related dollar amount were not material. Three of our original samples had to be replaced because one case was not available due to a Freedom of Information Act request, and WHD could not locate two cases at the Southeast Region.

Using CLEAR software, we attempted to identify a different employee address not listed in WHD file. To this end, we judgmentally selected 100 un-located employees from our sample for address verification. The employee names came from the three WHD regions we visited during the audit — Northeast (34), Southeast (34) and Southwest (32). We chose employees that either had a social security number or address provided — preferably both — in the case file.

In planning and performing our audit, we considered whether internal controls significant to our audit objectives were properly designed and placed in operation. This included the review of documentation to evaluate the adequacy of WHD controls for back wage collections and distributions, and reporting results. We confirmed our understanding of these controls through interviews and review and analysis of documentation. We evaluated the adequacy of internal controls used by WHD for reasonable assurance that the agency was operating and reporting back wage collections and distributions in compliance with federal regulations and guidance. Our consideration of internal controls would not necessarily disclose all matters that might be significant deficiencies. Because of inherent limitations in internal controls, misstatements or noncompliance may nevertheless occur and not be detected.

⁹The 245 back wage cases were selected from WHD's Northeast, Southeast, and Southwest Regional Offices. At the time of our review, 18 of the 53 opened cases had been concluded - therefore increasing the number of concluded cases to 209 and decreasing the number of opened cases to 36.

Criteria

Fair Labor Standards Act of 1938

Field Operation Handbook

WHISARD Back Wage Follow-Up User Guide

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Appendix B

Acronyms and Abbreviations

BW	Back Wages
BWFS	Back Wage Financial System
BWFO	Back Wage Follow Up
BWPDD	Back Wage Payment Deadline Date
DO	District Office
FOH	Field Operations Handbook
FLSA	Fair Labor Standards Act
IT	Information Technology
NDNH	National Directory of New Hires
OIG	Office of Inspector General
RSOL	Regional Solicitor
Treasury	U.S. Department of the Treasury
TROR	Treasury Report on Receivables
WHD	Wage and Hour Division
WHISARD	Wage and Hour Investigative and Support Database

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WHD Response to Draft Report

U.S. Department of Labor

Wage and Hour Division
Washington, D.C. 20210

MAR 27 2015

MEMORANDUM FOR: ELLIOT P. LEWIS
Assistant Inspector General

FROM: DAVID WEIL 
Administrator

SUBJECT: Response to the Office of Inspector General's Report:
Wage and Hour Division Needs to Strengthen Management
Controls for Back Wage Distributions
Report No. 04-15-001-04-420

The Wage and Hour Division (WHD) appreciates the opportunity to respond to the Assistant Inspector General's February 27, 2015 report titled *Wage and Hour Division Needs to Strengthen Management Controls for Back Wage Distributions*. The report provides three recommendations, and WHD's responses to these recommendations are provided below.

While WHD agrees with the recommendations presented in the report, it is important to restate the context for the overall findings. As the report acknowledges, most back wages (76%) are paid directly to workers by their employers. Of the remaining back wages, the average annual back wages cited by the report that are transferred to the Department of Treasury represent five percent of average annual back wages due to workers during that same timeframe. Between FY 2010-2014, the report estimated an annual average of \$12 million in back wages were transferred to the Department of Treasury. During that same timeframe, WHD found an annual average of \$234 million in back wages due to workers.

As an agency focused on industries that employ vulnerable workers and are most likely to break laws that ensure workers receive a fair day's pay for a fair day's work, WHD recognizes that any back wages due can significantly impact workers earning the minimum wage. The recommendations reinforce the importance of efforts the agency has already undertaken to strengthen its back wage follow-up procedures and systems and give further priority to the actions the agency has identified as next steps.

Recommendation 1: Develop reporting tools that will support greater oversight and performance management of the back wage follow-up and distribution process.

Response: WHD agrees with this recommendation. WHD has initiated a process for developing a set of reporting tools that would complement existing reports and better inform decision-

makers. While the back wage distribution process produces numerous financial reports, they are designed to meet specific financial reporting requirements and reflect the nature of the underlying transaction data, but are not readily conducive to performance reporting by fiscal year. For example, as we have explained to the OIG, the Case Activity Reports will capture only those cases with activities during a specified accounting period. These reports are not designed to function as a ledger of beginning and ending fiscal year balances. WHD will develop custom reports that can provide accurate, timely, and complete data suitable for performance management and oversight. Nonetheless, this audit report has attempted to derive balances from reports not designed to provide that type of information.

Recommendation 2: Promote the continual exploration and use of alternative tools for locating employees due back wages.

Response: WHD agrees with this recommendation. As mentioned above, the vast majority of back wages that employers agree to pay are disbursed to employees, either by the employers or by WHD. If workers cannot be located after three years, the back wages are transferred to the Department of Treasury. Due to the transient nature of the low-wage workforce that WHD primarily serves, finding these workers can be difficult. For example, it is not uncommon for employers to provide incomplete or inaccurate employee contact information. When coupled with the fact that many of the low-wage workers WHD serves speak languages other than English, and move frequently because they work in industries with migratory labor patterns, locating the workers proves challenging.

WHD has undertaken several efforts in recent years to locate workers more effectively. For example, local WHD offices have established more than 40 Memoranda of Understanding (MOUs) with numerous foreign consulates to conduct outreach to workers from those countries and work with the consulates to locate workers who are owed back wages. WHD offices are also piloting the use of other search tools that have been used by law enforcement agencies to locate individuals. One of these tools is CLEAR, the software that OIG auditors used to attempt to locate employees owed back wages.

Most recently, in January 2015 WHD launched a revamped web-based tool called “Workers Owed Wages” (WOW) to replace the online Back Wage Employee Locator System (BWELS). This updated and streamlined web-based application, available in English and Spanish, allows workers or their advocates to answer a series of simple questions to find out if WHD is holding back wages collected on their behalf. If they are owed wages, WOW connects them with the appropriate WHD office. The tool is featured prominently on WHD’s website. Since WOW was launched a few weeks ago, over 150 individuals who have used the tool discovered they are owed back wages. WHD offices are now in the process of confirming identities and addresses and disbursing back wages to these individuals. So far, WOW has enabled WHD to disburse over \$60,000 in back wages to workers.

Recommendation 3: Update the Field Operations Handbook (FOH) and establish uniform procedures for staff to utilize all existing available tools and resources for locating employees due back wages.

Response: WHD agrees with this recommendation. As a result of this audit, we will update the FOH to ensure that it provides adequate guidance to national, regional, and local staff regarding the back wage collection and disbursement process. We will develop training for the relevant staff to ensure that the updated FOH protocols are understood going forward. At the regional level, we have also begun piloting new software tools to help locate employees owed back wages. We will identify which approaches yield the best results and implement the tools more broadly across the agency, as resources allow. In the near term, we will remind the appropriate staff of the already available tools and resources that can be used to locate employees. We will also continue to promote the new WOW web-based system.

Again, thank you for the opportunity to comment on this report.

cc: Patty Davidson
Deputy Administrator for Operations

Ann Lichter
Assistant Administrator for Planning, Performance, Evaluation, and Training

Barbara Brown
WHD Audit Liaison

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Appendix D

Acknowledgements

Key contributors to this report were Anthony Grice, Dwight Gates, Velma Ivey, Sharon Newby, Christy Marshall, and Thomas Price.

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U.S. Department of Labor
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