



October 2020

FEDERAL CONTRACTING

Actions Needed to Improve Department of Labor's Enforcement of Service Worker Wage Protections

This Report Is Temporarily Restricted Pending Official Public Release.

Why GAO Did This Study

The SCA ensures that service workers on certain federal contracts receive pay and benefits that reflect current employment conditions in their locality. From fiscal years 2014 through 2019, the U.S. government obligated over \$720 billion on service contracts covered under the SCA.

GAO was asked to review SCA implementation and enforcement. This report examines (1) what available data reveal about past SCA cases, (2) what challenges DOL reports facing in enforcing the SCA, and (3) how contracting agencies implement the SCA. GAO analyzed DOL and federal procurement data for fiscal years 2014 through 2019, the most recent years available; reviewed a nongeneralizable sample of contract performance assessments; examined practices at three agencies selected to represent a range of contracting services and agency size; interviewed DOL officials; and reviewed relevant federal laws, policy, and guidance.

What GAO Recommends

GAO is making six recommendations, including that DOL analyze its use of enforcement tools; that DOL and USPS implement written protocols to improve communication with each other; and that DOL improve its information sharing with contracting agencies on SCA debarments and investigation outcomes. DOL and USPS generally concurred with the recommendations.

View [GAO-21-11](#). For more information, contact Thomas M. Costa at (202) 512-7215 or costat@gao.gov.

October 2020

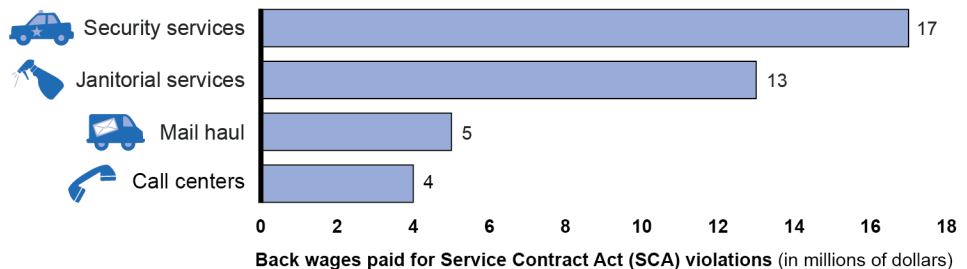
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What GAO Found

The Department of Labor (DOL) completed over 5,000 Service Contract Act (SCA) cases, which for many resulted in the awarding of back wages to federally contracted security guards, janitors, and other service workers, in fiscal years 2014 through 2019, according to available data. DOL enforces the SCA, which was enacted to protect workers on certain types of federal service contracts. DOL found SCA violations—primarily of wage and benefit protections—in 68 percent of cases. Employers across a range of service industries agreed to pay around \$224 million in back wages (see figure for examples). Sixty cases resulted in debarment—a decision to prevent an employer from being awarded new federal contracts for 3 years. DOL's strategic plan emphasizes optimizing resources for resolving cases using all available enforcement tools. However, DOL does not analyze its use of enforcement tools, such as debarment or employer compliance agreements. Therefore, DOL may lack a complete picture of how it uses resources on different strategies for resolving SCA cases, as well as the effectiveness of these enforcement strategies.

Back Wages Paid for SCA Cases in Example Industries, Fiscal Years 2014-2019



Source: GAO analysis of data from the U.S. Department of Labor. | GAO-21-11

Note: Mail haul refers to surface mail transportation by contract carriers. Values are adjusted for inflation and expressed in fiscal year 2019 dollars using the Gross Domestic Product Price Index from the U.S. Department of Commerce, Bureau of Economic Analysis.

DOL reported various challenges to enforcing the SCA, including difficulty communicating with contracting agencies. For example, DOL officials told GAO that poor communication with contracting agencies—particularly with the U.S. Postal Service (USPS)—can affect and delay cases, though USPS officials told GAO they were unaware of any communication gaps. Without addressing communication issues between USPS and DOL, USPS's implementation and DOL's enforcement of the SCA may be weakened.

GAO found that contracting agencies may face SCA implementation challenges, including not having key information about SCA debarments and violations from DOL. When recording SCA debarments, DOL does not always include the unique identifier for an employer so that contracting agencies can accurately identify debarred firms. DOL also does not have a process that consistently or reliably informs contracting agencies about SCA violations by employers. Without improved information sharing by DOL, an agency may award a contract to an employer without being aware of or considering its past SCA violations.

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Abbreviations

CPARS	Contractor Performance Assessment Reporting System
DOD	Department of Defense
DOL	Department of Labor
DUNS	Data Universal Numbering System
FAR	Federal Acquisition Regulation
FPDS-NG	Federal Procurement Data System-Next Generation
GSA	General Services Administration
HHS	Department of Health and Human Services
NIH	National Institutes of Health
PBGC	Pension Benefit Guaranty Corporation
SAM	System for Award Management
SCA	Service Contract Act
WHD	Wage and Hour Division
WHISARD	Wage and Hour Investigative Support and Reporting Database
USPS	U.S. Postal Service

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October 29, 2020

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

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

The Honorable Mark Takano
House of Representatives

The McNamara-O'Hara Service Contract Act (SCA) of 1965, as amended, was enacted to provide labor protections for workers on certain federal service contracts.¹ These protections include wage rates, fringe benefits, and other standards to ensure workers on these contracts receive pay and benefits that were found by the Department of Labor (DOL) to be prevailing in the locality where the contract work is performed.² From fiscal years 2014 through 2019, the U.S. government obligated over \$720 billion on contracts covered under the SCA, out of nearly \$2 trillion in service contract obligations overall.³ DOL, through its Wage and Hour Division (WHD), enforces the SCA. Federal agencies seeking contractors have important responsibilities for implementing the

¹See Pub. L. No. 89-286, 79 Stat. 1034 (codified as amended at 41 U.S.C. §§ 6701-6707).

²For purposes of this report, the term "worker" is used interchangeably with "service employee," the term used in the SCA.

³Obligation figures come from the Federal Procurement Data System–Next Generation (FPDS-NG), which is a system for collecting, developing, and disseminating procurement data. Values are adjusted for inflation and expressed in fiscal year 2019 dollars using the Gross Domestic Product Price Index from the U.S. Department of Commerce, Bureau of Economic Analysis. Federal agency reporting requirements for FPDS-NG are in the Federal Acquisition Regulation (FAR) subpt 4.6. We noted in the course of our analyses that contracting officials may not always accurately complete the FPDS-NG data field that indicates whether a contract is covered by the SCA. See appendix I for more information about this data field.

SCA.⁴ For example, requests for proposals that are expected to exceed a certain threshold (generally \$250,000 as of August 31, 2020) are required by the Federal Acquisition Regulation (FAR) to include an evaluation of a prospective contractor's past performance, which may include consideration of any past SCA violations.⁵

We last reported on DOL's enforcement of the SCA more than 15 years ago.⁶ As SCA violations may result in workers not receiving earned wages and benefits, you asked that we review aspects of SCA enforcement and implementation.

This report examines (1) what available data reveal about past SCA cases, (2) what challenges DOL reports facing in enforcing the SCA, and (3) how contracting agencies implement the SCA.

To determine what available data reveal about past SCA cases, we analyzed data from DOL's Wage and Hour Investigative Support and Reporting Database (WHISARD) for fiscal years 2014 through 2019. We also analyzed data from WHISARD and the General Service Administration's (GSA) Federal Procurement Data System-Next Generation (FPDS-NG) for fiscal years 2014 through 2019 to determine whether certain contractors found by DOL to have violated the SCA received subsequent federal contract awards. In examining what available data reveal about past SCA cases, we drew upon relevant federal standards for internal control.⁷ The information and communication component of internal control was significant to this objective, along with the related principle that management use quality information to achieve the entity's objectives, including using relevant data from reliable sources.

To learn about challenges DOL faces in enforcing the SCA, we interviewed officials from the WHD's National Office; each of the five

⁴The FAR requires, among other things, that contracting officers include clauses containing the SCA requirements in solicitations and contracts to which the SCA applies. See 48 C.F.R. § 22.1006.

⁵See 48 C.F.R. §§ 2101, 9.104-6(a)(1), and 15.304(c)(3)(i) and subpt. 42.15.

⁶See GAO, *Service Contract Act: Wage Determination Process Could Benefit from Greater Transparency, and Better Use of Violation Data Could Improve Enforcement*, [GAO-06-27](#) (Washington, D.C.: Dec. 7, 2005).

⁷GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: September 2014).

WHD Regional Offices and Regional Solicitor's Offices; and five District Offices (one within each region). We conducted site visits to WHD offices in three regions (Northeast, Southeast, and Southwest) that were selected according to which offices had the highest numbers of SCA cases, among other factors; and reviewed relevant documents such as DOL's strategic plan, WHD's internal operating plan, and regional planning initiatives. We also analyzed a nongeneralizable sample of SCA case narratives to provide illustrative examples of challenges DOL faces. We assessed DOL's actions to address these challenges against relevant federal standards for internal control. The information and communication component of internal control was significant to this objective, along with the related principle that management should externally communicate the necessary quality information to achieve its objectives.

To understand how contracting agencies implement the SCA, we first determined the extent to which information about SCA violations is available to contracting agencies. To do this, we analyzed federal contracting data from GSA's System for Award Management (SAM) and Contractor Performance Assessment Reporting System (CPARS). We also assessed DOL's information sharing policies and procedures against federal standards for internal control, and we reviewed requirements in the FAR. The information and communication component of internal control, which states that management should externally communicate the necessary quality information to achieve the entity's objectives, was significant to this objective.

We assessed the reliability of the WHD and federal contracting data by (1) performing electronic testing of relevant data elements, (2) reviewing existing information about the data and the systems that produced them, and (3) collecting information from federal officials knowledgeable about the data. Based on these reviews, we found these data to be sufficiently reliable for our purposes.

We selected three agencies to provide illustrative examples of SCA implementation—Army Materiel Command, the National Institutes of Health (NIH), and the Pension Benefit Guaranty Corporation (PBGC)—based on agency type (defense and non-defense), agency size, and volume of service contracting. We interviewed agency officials about SCA implementation challenges and practices at each of the three agencies, and reviewed agency documentation on SCA contracting and SCA compliance efforts. Our results are not generalizable to all contracting agencies during the time frame we reviewed. For a detailed description of our objectives, scope, and methodology, see appendix I.

We conducted this performance audit from June 2019 to October 2020 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

The SCA was enacted to provide labor protections for employees of contractors and subcontractors on federal service contracts.⁸ SCA requires that, for contracts exceeding \$2,500, contractors pay their employees, at a minimum, the wage rates and fringe benefits that have been determined by DOL to be prevailing in the locality where the contracted work is performed.⁹ The types of service jobs covered by the SCA include, among others, security guards, food service workers, maintenance workers, janitors, clerical workers, and certain health and technical occupations. Each year, WHD determines prevailing wage rates

⁸The SCA applies to any contract or solicitation for a contract involving an amount exceeding \$2,500 made by the federal government or the District of Columbia, the principal purpose of which is to provide services in the United States through the use of service employees. See 41 U.S.C. § 6702(a). The SCA does not apply to certain types of contracts; for example, contracts for the furnishing of services by radio, telephone, telegraph, or cable companies, subject to the Communications Act of 1934, as amended; contracts for public utility services; and employment contracts providing for direct services to a federal agency by an individual are exempt from the SCA. See 41 U.S.C. § 6702(b). The definition of “service employee” includes any individual engaged in performing services on a covered contract other than a bona fide executive, administrative, or professional employee as defined in 29 C.F.R. pt. 541. See 41 U.S.C. § 6701(3). Employee coverage under the SCA depends on whether the employee’s work on a covered contract is that of a service employee and not on the alleged form of employment contract between the contractor and the employee. See 29 C.F.R. § 4.155.

⁹The prevailing wage rates determined by WHD are location-specific for different types of occupations. For some SCA contracts, the required wages and fringe benefits are those that were contained in a collective bargaining agreement applicable to work under a predecessor contract. For most SCA contracts, however, prevailing wage rates and fringe benefits are set forth by WHD in area-wide wage determinations. In addition to the prevailing wage requirements for service employees, the SCA also provides that a contractor or subcontractor may not pay less than the minimum wage specified under the Fair Labor Standards Act of 1938, as amended (29 U.S.C. § 206(a)), to any employee engaged in performing on or in connection with the contract. See 41 U.S.C. § 6704.

under the SCA for over 300 standard service occupations in 205 metropolitan areas.¹⁰

DOL Enforcement of the SCA

DOL has enforcement authority under the SCA; workers do not have a private right of action against an employer for any alleged violations of the SCA.¹¹ WHD has authority to conduct SCA investigations in response to complaints or at its own initiative. For example, WHD investigates complaints from service contract employees, federal contracting agencies, unions, and other interested parties who allege that contractors have failed to pay either the wages or fringe benefits, or both, required under SCA-covered contracts. In addition, WHD conducts SCA investigations on its own initiative, known as directed investigations.

¹⁰In 2005, we noted that when making a wage determination, WHD analysts consult several sources of information, such as its SCA directory of occupations and data collected through two Bureau of Labor Statistics national wage surveys, for wage data on occupations. We reported that unions, contractors, employees, and others contend that the wage determination process is non-transparent and that the resulting wages do not necessarily reflect local wage conditions. We recommended that WHD make the basic methodology WHD uses to issue wage determinations publicly available. In response, WHD revised the manual of operations chapter that summarizes the data and analyses that are used for updating standard SCA wage determinations. See [GAO-06-27](#).

¹¹The term “employer” is used interchangeably with the term “contractor” in this report. See 29 C.F.R. § 4.1a(f).

Selected Laws Pertaining to Labor Standards Enforced by the Wage and Hour Division (WHD)

WHD enforces and administers several laws pertaining to labor standards, including laws related to federal minimum wage and overtime pay, as well as prevailing wage requirements applicable to federal contracts, including the Service Contract Act (SCA). In addition to the SCA, for example, WHD enforces the:

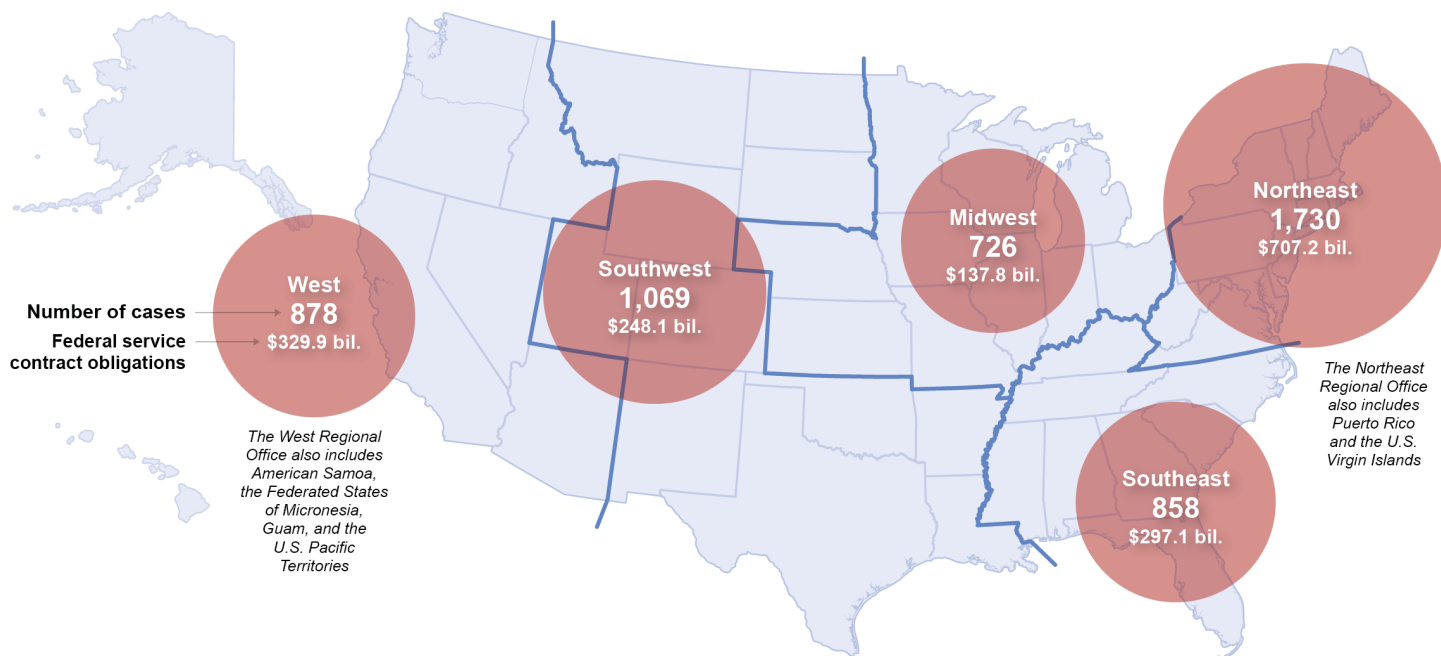
- Fair Labor Standards Act of 1938, as amended (FLSA). FLSA establishes minimum wage, overtime pay, recordkeeping, and child labor requirements and covers employees in the public and private sectors. See 29 U.S.C. §§ 201 et seq.
- Contract Work Hours and Safety Standards Act, as amended (CWHSSA). The CWHSSA requires contractors and subcontractors with certain contracts to pay overtime to laborers and mechanics employed in the performance of a contract on a public work of the federal government, a territory of the United States, or the District of Columbia. The CWHSSA also applies to other federal contracts involving the employment of laborers or mechanics, and to certain federally assisted contracts subject to Davis-Bacon labor standards to which the federal government is not a direct party. Overtime pay is equal to one and one-half times their basic rate of pay for all hours worked over 40 in a workweek. See 40 U.S.C. §§ 3701 et seq. and 29 C.F.R. § 5.15.
- Davis-Bacon Act, as amended (DBA). The DBA generally requires employers to pay locally prevailing wages and fringe benefits to laborers and mechanics employed on federally funded construction projects in excess of \$2,000. See 40 U.S.C. §§ 3141 et seq.

Source: GAO review of Department of Labor information. | GAO-21-11

WHD investigators play a key role in carrying out its enforcement activities. As of July 2020, there were approximately 760 WHD investigators located in five regional and 55 district offices throughout the country. From fiscal years 2014 through 2019, SCA cases represented about 3 percent of WHD's overall caseload. One-third of these cases were conducted by WHD's Northeast region, and one-fifth of cases originated in WHD's Southwest region (see fig. 1).¹²

¹²Typically, district offices undertake investigations of establishments located within their jurisdiction.

Figure 1: Service Contract Act Cases (SCA) and Federal Service Contract Obligations by Region, Fiscal Years 2014 through 2019



Source: GAO analysis of data from the U.S. Department of Labor and federal procurement data. | GAO-21-11

Note: Federal service contract obligations include both SCA-covered and non-SCA-covered service contracts. Obligation data come from the Federal Procurement Data System – Next Generation (FPDS-NG). These obligations exclude data from the U.S. Postal Service (USPS), which is not included in the FPDS-NG because USPS is not subject to the Federal Acquisition Regulation. Values are adjusted for inflation and expressed in fiscal year 2019 dollars using the Gross Domestic Product Price Index from the U.S. Department of Commerce, Bureau of Economic Analysis.

WHD tracks information on SCA investigations, violations, and findings in its investigations database—WHISARD.

Contracting Agency Responsibilities and the Federal Acquisition Process

Although DOL has enforcement authority over the SCA, contracting agencies play an important role in administering the SCA's requirements. The Federal Acquisition Regulation (FAR) outlines responsibilities for contracting agencies, including requirements related to implementing the SCA. Principally, contracting agencies must determine whether the SCA applies (subject to DOL's ultimate interpretative authority) and, if so,

incorporate specific appropriate clauses into solicitations and contracts.¹³ The contracting agency also must include a wage determination in the final contract, which is obtained from WHD.¹⁴ In addition, contracting agencies must cooperate with WHD investigations on possible violations of the SCA. The FAR also prescribes a role for agency labor advisors, who are responsible for advising contracting agencies on service contract labor matters.¹⁵

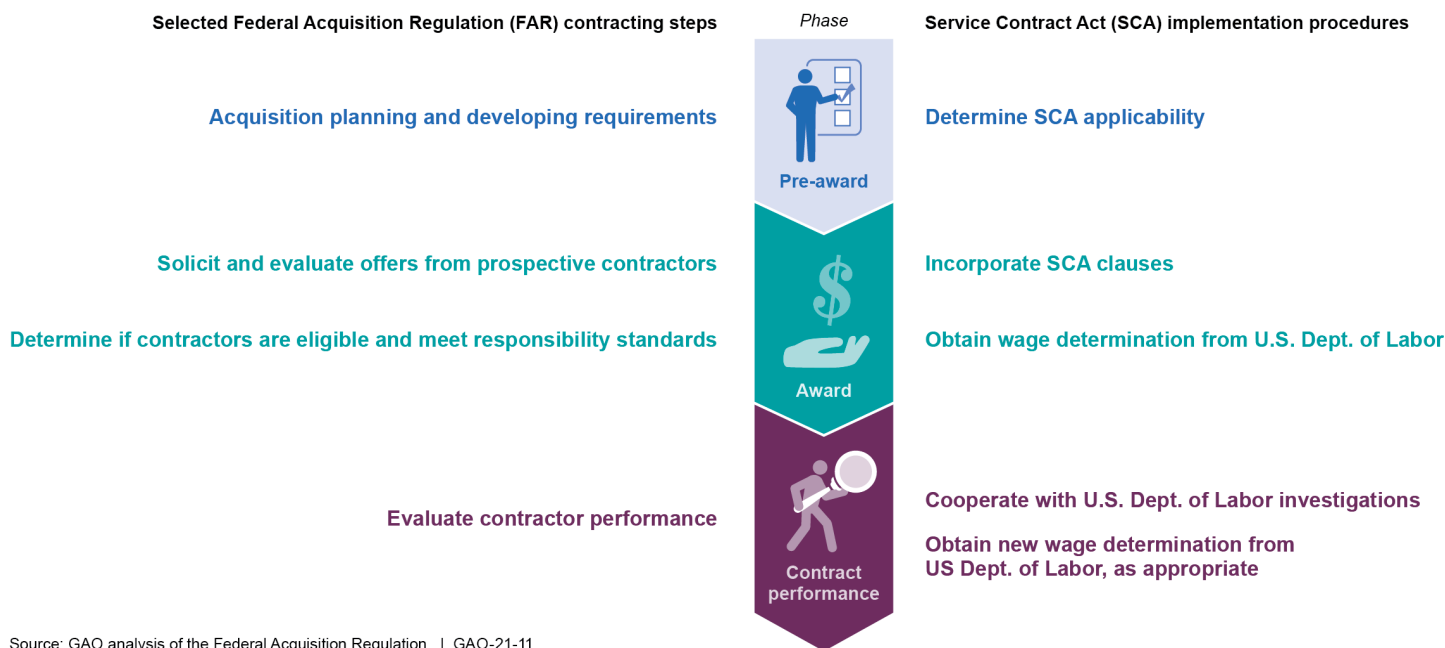
Federal agencies undertake various activities during the contracting process, such as acquisition planning and developing cost estimates; soliciting and evaluating offers from prospective contractors; determining whether prospective contractors are eligible to receive federal contracts and have a satisfactory performance record; and monitoring contract performance. See figure 2 for SCA-related contracting activities.

¹³The SCA generally applies to any contract or solicitation for a contract involving an amount exceeding \$2,500 made by the federal government or the District of Columbia, the principal purpose of which is to provide services in the United States through the use of service employees. See 41 U.S.C. § 6702(a) and 48 C.F.R. subpt. 22.10. The SCA clauses include FAR § 52.222-41. See 48 C.F.R. § 52.222-41.

¹⁴Wage determinations generally are linked to the geographical area where the work will be performed. If the place of performance is not known at the time of the solicitation, the contracting officer may include a clause stating that the appropriate wage determination will be incorporated into the resultant contract retroactive to the date of the contract award.

¹⁵See 48 C.F.R. §§ 22.1003-7 and 22.1008-1(f).

Figure 2: Selected Federal Acquisition Process Phases, Steps, and Procedures Relevant to Service Contract Act Contracting



Source: GAO analysis of the Federal Acquisition Regulation. | GAO-21-11

Consequences for Violating the SCA

When WHD, through its enforcement efforts, finds that workers covered by SCA contracts have been underpaid, it may request that a contracting agency withhold contract funds. In such cases, WHD generally calculates the unpaid wages and benefits owed by contractors. A contractor found to be in violation of the SCA is liable for the amount of any underpayment of wages or benefits.¹⁶ WHD may obtain these funds directly from the contractor or request that any contract amounts otherwise due to the contractor be withheld by the contracting agency in order to satisfy the liability. The amounts withheld are retained until paid to the affected workers. If the amounts paid by the contractor and those withheld from forthcoming payments are not sufficient to pay the amounts owed, the government may bring action against the contractor to recover the shortfall.

In addition to these actions, the SCA provides for a 3-year debarment period during which a contractor found to have violated the SCA is ineligible to receive future federal contracts, unless the Secretary of Labor

¹⁶See 41 U.S.C. § 6705(a).

recommends otherwise because of unusual circumstances.¹⁷ The term “unusual circumstances” is not defined in the SCA, but DOL has developed criteria for evaluating whether such circumstances exist in its regulations and guidance, and courts have interpreted the term through judicial decisions in individual cases. These criteria, which are generally prerequisites to relief, include factors such as having a good compliance history, cooperating with the investigation, repayment of moneys due, and providing sufficient assurances of future compliance.¹⁸

WHD and DOL’s relevant Regional Solicitor’s office assess each SCA case to determine if the case should be referred for debarment proceedings, before a DOL administrative law judge.¹⁹ Another option available to DOL is the use of compliance agreements. These are agreements between DOL and a contractor suspected of violating the SCA to prevent future violations, and may include monitoring by DOL.

Federal Contracting Information

The GSA maintains data systems that include information related to federal contracting, including the System for Award Management (SAM) and the Contractor Performance Assessment Reporting System

¹⁷The statutory debarment provided for under the SCA differs from administrative debarment provisions under the FAR. A debarment under the FAR is for a period generally not exceeding 3 years, and the FAR also provides for a suspension, which is a temporary exclusion pending the completion of an investigation or legal proceeding. In contrast, the SCA does not provide for debarment periods of less than 3 years, nor does it include a suspension provision. We have reported on a variety of issues involving suspensions and debarments under the FAR. See GAO, *Federal Contracts and Grants: Agencies Have Taken Steps to Improve Suspension and Debarment Programs*, [GAO-14-513](#) (Washington, D.C.: May 21, 2014) and GAO, *Suspension and Debarment: Characteristics of Active Agency Programs and Governmentwide Oversight Efforts*, [GAO-13-707T](#) (Washington, D.C.: June 12, 2013).

¹⁸See 29 C.F.R. § 4.188(b). DOL’s SCA regulations indicate that where these prerequisites are present and there are no aggravated circumstances, such as the contractor’s conduct in causing or permitting violations of the SCA is willful, deliberate or of an aggravated nature, a variety of factors must still be considered including whether the contractor has previously been investigated for violations of the Act; whether the contractor has committed recordkeeping violations which impeded the investigation; whether liability was dependent upon resolution of a bona fide legal issue of doubtful certainty; the contractor’s efforts to ensure compliance; the nature, extent, and seriousness of any past or present violations, including the impact of violations on unpaid employees; and whether the sums due were promptly paid. See 29 C.F.R. § 4.188(b)(3).

¹⁹Contractors can also agree to voluntary debarment. The decision of the administrative law judge in debarment proceedings can be further appealed to DOL’s Administrative Review Board, which issues final agency decisions. Depending on the statutes at issue, Administrative Review Board decisions can be appealed to the federal courts.

(CPARS). SAM contains various types of contract-related information, and companies are generally required to register in SAM in order to submit a bid or an offer on solicitations for federal contracts. SAM also includes records identifying contractors that are excluded from doing business with the federal government, such as those debarred by DOL under the SCA. Agencies taking debarment actions are required by the FAR to include a unique company identifier, currently the Data Universal Numbering System (DUNS) number, when entering debarment information in SAM, if it is available.²⁰

Performance evaluations of contracts are entered into CPARS. The FAR requires contracting agencies to prepare performance evaluations in CPARS for their contracts at least annually.²¹ CPARS evaluations include a 60-day window for contractors to comment on the evaluation in order to provide a balanced view of performance.

²⁰A DUNS number is a commercially available identifier for companies assigned by the firm Dun & Bradstreet. The federal government has contracted with Dun & Bradstreet since 1978 to provide DUNS identification numbers for all government contractors, in part because it is widely used and accepted both domestically and internationally. The federal government decided to change the official identifier required for doing business with the government. GSA is leading the transition away from the DUNS number to a government-owned, non-proprietary unique entity identifier, which will be requested and generated in SAM. The planned December 2020 date to transition to the SAM-generated unique entity identifier has been postponed to a future date still to be determined.

²¹See 48 C.F.R. § 42.1502.

Available Data Document SCA Case Characteristics and Enforcement Actions, but Have Limitations

Case Characteristics and Enforcement Actions

The Majority of SCA Cases Originated from Complaints and Over One-Half Were Associated with a Small Subset of Contracting Agencies and Industries

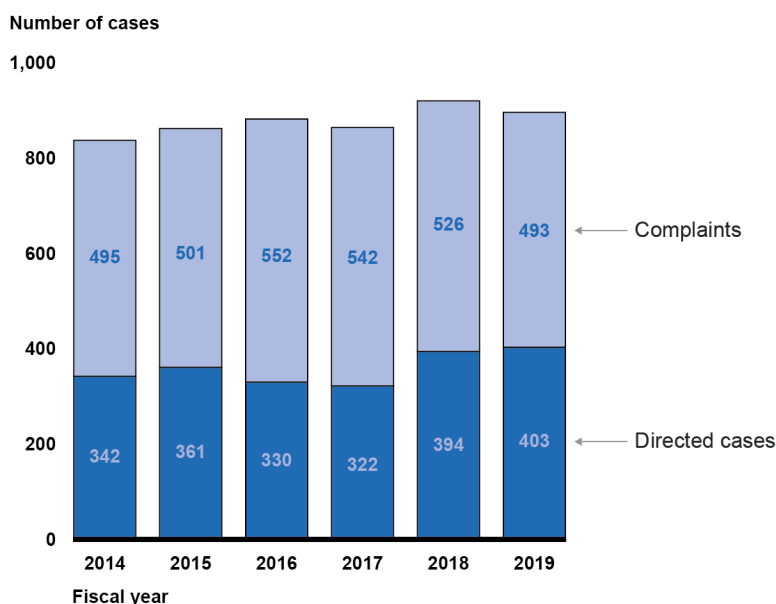
From fiscal years 2014 through 2019, WHD completed 5,261 SCA cases, an average of 877 per year. The majority (59 percent, or 3,109) of these cases originated as complaints.²² The remaining 41 percent (2,152) were initiated by WHD as directed cases—agency-initiated compliance actions.²³ While the number of cases conducted in response to complaints has remained relatively steady when comparing fiscal year 2019 with fiscal year 2014, the number of directed cases was 18 percent higher in fiscal year 2019 than in fiscal year 2014 (see fig. 3).²⁴

²²We are defining an SCA case as any WHD case that included an SCA component. Some of these cases were originally registered—i.e., designated—as SCA cases by WHD, and others were initiated under other labor statutes—such as FLSA—and added an SCA component during the course of the case. Of the cases registered under the SCA from fiscal years 2014 through 2019, 819 remained open at the end of this period.

²³In 2005, we found that WHD did not fully use the compliance data it collected to plan compliance assistance, target specific service industries or geographic locations for SCA investigation, or set strategic enforcement goals. We recommended that WHD consider analyzing its historical SCA contractor violation data, including debarments, to help plan its compliance assistance and investigative efforts, as appropriate. [GAO-06-27](#). In response, WHD developed reports on SCA violations and debarments, and incorporated these reports into its annual planning process.

²⁴According to WHD officials, WHD offices use internal data as well as publicly available federal contracting information for targeting certain service industries and identifying cases for directed investigations. Although WHD officials reported using USASpending.gov—a government source for data on federal awards—as one relevant data point to select federal contractors for directed cases, some of the data they used may have been incomplete. USASpending.gov draws upon data from the Federal Procurement Data System—Next Generation (FPDS-NG), which includes federal contract action data reported by federal agencies in accordance with FAR Subpart 4.6 Contract Reporting. We noted in the course of our analyses that contracting officials may not always accurately complete the FPDS-NG data field that indicates whether a contract is covered by the SCA. Thus, when considering which companies to target for its directed cases, WHD may not have had access to full data. See appendix I for more information about this data field.

Figure 3: Number of Service Contract Act Cases by Fiscal Year and Source of Case



Source: GAO analysis of data from the U.S. Department of Labor. | GAO-21-11

Note: Directed cases are agency-initiated compliance actions. Numbers are based on the fiscal year the cases were concluded.

This growth in directed cases continues an increase since we last reported on this topic in 2005.²⁵ Further, the proportion of cases that originated in directed cases was higher in fiscal year 2019 than in fiscal year 2014, while the proportion that originated in complaints was lower in fiscal year 2019 compared to fiscal year 2014. DOL officials said various external factors may influence the number of cases it conducts, making it difficult to determine the reasons for this change.

Most SCA cases from fiscal years 2014 through 2019 focused on a small number of contracting agencies. For example, just over one-half of all SCA cases completed during this time concerned contractors of two agencies—the Department of Defense (DOD) and the U.S. Postal Service

²⁵In 2005, we found that of the 654 SCA cases for fiscal year 2004, 13 percent (or 84) were initiated as directed cases by WHD while the remaining 87 percent (570) were initiated by complaints.

(USPS).²⁶ DOD ranks first among federal agencies in contract spending, generally, and cases that focused on DOD contractors made up about 35 percent (1,843) of WHD's completed SCA cases during this time frame. For fiscal years 2014 through 2019, DOD obligated around \$2 trillion on its contracts, according to FPDS-NG data, which represented 64 percent of total federal contracting obligations during that time. Cases focusing on contractors of USPS made up the next-largest portion—about 16 percent (834) of completed SCA cases for the 6-year period we reviewed—and USPS estimated that its total federal contracting spend during that time frame totaled about \$71 billion, less than 4 percent of overall DOD contracting obligations. Other contracting agencies that had a relatively high number of contractors as the subject of SCA cases included the Department of Homeland Security (428 or 8 percent of cases) and the Department of Veterans Affairs (422 or 8 percent of cases). See appendix II for more information on federal agencies represented in WHD's SCA caseload and their respective federal contracting obligations.

The industry sector with the most SCA cases was the Administrative Support and Waste Management and Remediation Services industry, which includes occupations such as office administrative services, facilities maintenance, janitorial services, security services, and trash disposal (see table 1).²⁷

²⁶For 502 out of 5,261 cases, we were not able to identify any associated agencies due to missing or unclear information in the Department of Labor's database. According to DOL officials, this field became mandatory at the end of fiscal year 2016.

²⁷WHD investigators categorize employers by industry using the North American Industry Classification System.

Table 1: Top 5 Sectors for Service Contract Act (SCA) Cases, Fiscal Years (FY) 2014 through 2019

Sector	Number of SCA Cases, FY14-FY19	Federal Contracting Obligations, FY14-FY19	Examples of Industries
Administrative Support and Waste Management and Remediation Services	1,943	\$279 billion	<ul style="list-style-type: none"> Office Administrative Services Security Services Janitorial Services Call Centers
Transportation and Warehousing	1,207	\$112 billion	<ul style="list-style-type: none"> Specialized Freight Trucking Mail Haul^a
Professional, Scientific, and Technical Services	525	\$927 billion	<ul style="list-style-type: none"> Management, Scientific, and Technical Consulting Services Computer Systems Design and Related Services
Health Care and Social Assistance	320	\$53 billion	<ul style="list-style-type: none"> Vocational Rehabilitation Services Individual and Family Services
Construction ^b	248	\$209 billion	<ul style="list-style-type: none"> Building Equipment Contractors Residential Building Construction

Source: GAO analysis of U.S. Department of Labor data and federal procurement data. | GAO-21-11

Note: Values are adjusted for inflation and expressed in fiscal year 2019 dollars using the Gross Domestic Product Price Index from the U.S. Department of Commerce, Bureau of Economic Analysis.

^aFederal contracting obligation data do not include U.S. Postal Service contracting, which includes mail haul (surface mail transportation) contracts.

^bAccording to a DOL official, even though federal construction contracts are covered separately by the Davis-Bacon Act, as amended, the North American Industry Classification System code for "construction" may appear in SCA cases because these contracts might include non-construction work, such as SCA-covered maintenance.

Data Show the Majority of SCA Cases Identified Violations

WHD found SCA violations in 68 percent (3,562 of 5,261) of completed SCA cases from fiscal years 2014 through 2019. This percentage was relatively consistent for both directed cases and those initiated by complaints, and across WHD regional offices. The contracts associated with these cases had over \$73 billion in obligations from fiscal years 2014

through 2019.²⁸ WHD also found violations of other acts, such as FLSA, in more than one-half of cases with SCA violations (1,859 cases).²⁹

Across cases that resulted in one or more SCA violations, the most common type of SCA violation identified by WHD was fringe benefit violations, found in 82 percent (2,920) of cases with violations, followed by prevailing wage violations, which were found in 69 percent (2,468) of cases with violations (see fig. 4).³⁰ Fringe benefit violations may occur when employers do not provide workers with what DOL has determined are the appropriate health and welfare benefits, or holiday or vacation benefits. For example, WHD found that one company that provided janitorial services for USPS on an SCA-covered contract failed to pay its workers any vacation pay from May 2014 through May 2016. WHD counts fringe benefit and prevailing wage violations at the worker level.³¹ From fiscal years 2014 through 2019, WHD identified just over 102,000 fringe benefit violations and nearly 85,000 prevailing wage violations across 2,320 employers and just over 127,000 workers.³²

²⁸We were not able to identify obligations on all contracts with SCA violations. For example, while we noted above that USPS contractors made up 16 percent of SCA cases from fiscal years 2014 through 2019, USPS contracts are not required to be reported to FPDS-NG because USPS is not subject to the FAR. In other instances, the contract information in WHISARD did not match any contract actions in FPDS-NG from fiscal years 2014 through 2019. Specifically, for 2,799 cases (53 percent), we were able to match contract information from WHISARD to FPDS-NG. For the 2,462 remaining cases for which we were unable to match contract information, 833 involved USPS. The single case that involved USPS for which we were able to match contract information also had the Office of Personnel Management as a contracting agency.

²⁹From fiscal years 2014 through 2019, there were 1,384 cases with both SCA violations and violations of FLSA.

³⁰Cases may identify multiple violations and more than one type of violation.

³¹Thus, a contractor who fails to pay a worker the proper wage and the proper fringe benefit would be cited for two separate SCA violations.

³²WHD tracks compliance at the violation level; cases often include multiple violations. For analysis purposes, we considered a case to be noncompliant if any of its associated violations were identified as such.

Figure 4: Types of SCA Violations Identified by the Department of Labor’s Wage and Hour Division (WHD), Fiscal Years 2014 through 2019



Source: GAO analysis of U.S. Department of Labor data. | GAO-21-11

Note: Recordkeeping violations are not included in this figure. WHD did not begin compiling data for recordkeeping violations in its enforcement database until fiscal year 2019, for which it identified 226 cases with recordkeeping violations. Percentages were rounded to the nearest unit.

Representatives of other organizations we met with told us that fringe benefits can be complicated for employers to calculate, which may contribute to the frequency of these violations under the SCA. (See text box for discussion of factors WHD officials described as contributing to violations.)

Practices Described as Contributing to Service Contract Act (SCA) Violations

While the Wage and Hour Division (WHD) does not track reasons for SCA violations in its enforcement database, WHD officials told us that various factors can contribute to SCA violations, such as misclassification of a job into a different pay rate or not paying workers according to the prevailing wage. Four examples or types of factors that we identified follow.

- WHD found that a contractor of the U.S. Department of Veterans Affairs classified staff for a call-in computer help desk as Data Entry Operators rather than Personal Computer Support Technicians, resulting in overall prevailing wage violations of \$140,000.
- In several cases that we reviewed, WHD found that employees of mail haul contractors of the U.S. Postal Service were paid according to the number of trips they took to deliver mail or according to a flat daily rate, rather than for the number of hours they worked. (Establishments primarily engaged in performing one or more parts of the basic mail service, such as sorting, routing, or delivery [except bulk transportation of mail] are included in this industry.)
- Another practice that can give rise to SCA violations, according to WHD officials, is if a contractor makes a winning bid or offer on a contract that will not support the prevailing wage.
- WHD noted that using an incorrect wage determination can lead to SCA prevailing wage violations if the employee is paid at a lower rate than required for the work they are doing.

Source: GAO analysis of information from the U.S. Department of Labor. | GAO-21-11

According to WHD officials, the agency also began tracking recordkeeping violations in WHISARD in fiscal year 2019.³³ These violations may occur when the contractor either fails to keep appropriate records or does not provide them to WHD during the course of an investigation.³⁴ WHD identified recordkeeping violations in about 32 percent (226) of SCA cases with violations in fiscal year 2019. There are no monetary penalties associated with recordkeeping violations.

Using data from FPDS-NG, we identified 622 contractors that had SCA violations from fiscal years 2014 through 2019 and that received subsequent federal contract awards during that period, after the WHD

³³WHD did not provide an explanation when asked why these violations were not recorded in WHISARD prior to that time.

³⁴See 29 C.F.R. §§ 4.185 and 4.6(g).

investigation was concluded.³⁵ These 11,398 awards involved over \$35 billion in contract obligations. Generally, for purposes of the SCA, only debarred entities are ineligible for future contract awards, unless the Secretary of Labor recommends otherwise because of unusual circumstances.³⁶

In addition, from fiscal years 2014 through 2019, WHD identified at least 379 cases with SCA violations as having prior SCA or non-SCA violations based on past investigations.³⁷ Of these cases, 19 resulted in SCA debarments and 360 did not (see the next subsection for discussion of debarment).³⁸ WHD officials said there are a number of reasons why WHD may not seek debarment in cases involving prior violations, including resource constraints, the length of the administrative process, and the use of other enforcement tools.

³⁵These data only include contracts documented in FPDS-NG, for both the contracts with violations and the subsequent awards, and therefore exclude contracts from agencies that are subject to the SCA but not covered by FPDS-NG, such as USPS. Subcontractors identified as such in WHISARD were also excluded.

³⁶Although the SCA does not contain provisions related to suspensions, under the FAR contractors may also be suspended from receiving contracts. See 48 C.F.R. §§ 9.407-1 to 9.407-5. A suspension is a temporary exclusion pending the completion of an investigation or legal proceeding. We did not examine whether any of these contractors that received subsequent awards had been debarred at the time of the award.

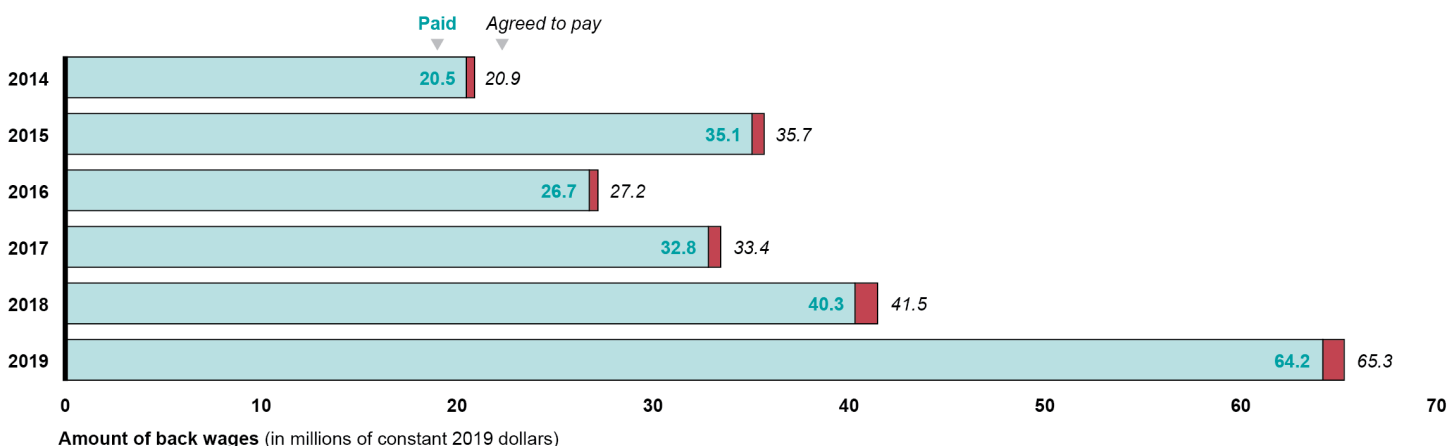
³⁷These prior violations may include violations of the SCA as well as violations of other laws that WHD enforces. This information in WHISARD is optional, so the numbers presented may be an underestimate. WHD noted that it did not use these two fields for enforcement planning.

³⁸There were a total of 5,261 SCA cases and 60 SCA debarments from fiscal years 2014 through 2019. This includes cases having prior violations as well as those without prior violations.

SCA Enforcement Actions Included Assessing around \$224 million in Back Wages and Debarring 60 Employers

WHD found that employers with violations complied with WHD’s findings in 94 percent (3,339) of cases from fiscal years 2014 through 2019.³⁹ During this period, employers agreed to pay approximately \$224 million in back wages for SCA violations.⁴⁰ This ranged from \$19 million in the Midwest region to \$90 million in the Northeast. Employers eventually paid 98 percent (around \$220 million) of this amount (see fig. 5).⁴¹

Figure 5: Amount of Back Wages Agreed to and Paid by Employers for Closed Service Contract Act Cases (\$ in millions), Fiscal Years 2014 through 2019



Source: GAO analysis of data from the U.S. Department of Labor. | GAO-21-11

Note: We use the term “back wages” to include both prevailing wage and fringe benefit violations. The term “agreed to pay” indicates the amount of back wages employers agreed to pay. Values are adjusted for inflation and expressed in fiscal year 2019 dollars using the Gross Domestic Product Price Index from the U.S. Department of Commerce, Bureau of Economic Analysis.

³⁹We determined compliance based on the data in the “compliance status” field in WHISARD. Specifically, we categorized any case that had violations in “refuse to remedy” or “refuse to comply” status as a “refuse to comply” case. We categorized the remaining cases, which had statuses that included “agree to comply” and “agree to remedy,” as “agree to comply” cases. We did not analyze the reasons for lack of compliance.

⁴⁰We use the term “back wages” to include both prevailing wage and fringe benefit violations. The term “agreed to pay” comes from WHD’s WHISARD database.

⁴¹WHD makes efforts to return back wages to the affected workers but is not always successful. Unclaimed funds are eventually transferred to the Department of the Treasury. For example, in 2015, DOL’s Office of the Inspector General found that between 2010 and 2014, WHD transferred to the U.S. Treasury some \$60 million of back wages owed to employees it was unable to locate, across various labor standards it enforces. Department of Labor, Office of the Inspector General, Office of Audit, *Wage and Hour Division Needs to Strengthen Management Controls for Back Wage Distributions*, Report Number 04-15-001-04-420.

WHD may request that contracting agencies withhold funds from SCA contracts when an employer for which WHD has identified SCA violations cannot or will not pay back wages owed to workers. Available data indicate that from fiscal years 2014 through 2019, WHD made 204 withholding requests to contracting agencies, which fulfilled 90 of them. These requests totaled some \$23 million, and agencies withheld \$4 million of that amount.⁴²

According to information provided by WHD, there were 60 debarments under the SCA from fiscal years 2014 through 2019, amounting to around 10 debarments per year. USPS contractors were associated with 30 (50 percent) of all SCA debarments during the period we reviewed. DOD contractors had the second-highest number of debarments, with 17 (28 percent) of all SCA debarments.⁴³ For more information on SCA debarments, see Appendix II.

Limitations in Data and Analysis

DOL's efforts to assess its enforcement actions may be hindered by inconsistent data and by its lack of analysis of certain available enforcement information. We found inconsistencies in the data DOL collects on the names of contracting agencies associated with SCA cases because WHD staff enter information on this field into the database in different ways. According to a WHD official, WHD staff can either use a drop-down menu in the system or manually enter the names of contracting agencies in the database. For example, in the DOL data we analyzed, there were at least 21 different variations for GSA, 27 for the Department of Veterans Affairs, and 37 for USPS. (For more information on the steps we took to analyze these data, see app. I.) WHD does not provide any guidance to its regional and district offices on how to standardize data entry. DOL and WHD strategic planning documents emphasize the importance of using data to inform enforcement efforts.⁴⁴ Federal internal control standards emphasize the importance of obtaining relevant data from reliable sources. In addition, these standards state that

⁴²We did not analyze the reasons some of these requests were not fulfilled.

⁴³DOL contract enforcement staff manually maintain a list of debarment cases. Officials told us the number of debarments is very small and modifying the software to collect debarment data would be too resource intensive, so they do not maintain these data in WHISARD.

⁴⁴Department of Labor, FY 2018-2022 Strategic Plan and FY 2020 Wage and Hour Division Operating Plan.

management should evaluate sources of data for reliability.⁴⁵ These variations among agency names may make it difficult for DOL to use these data to identify potentially problematic issues.

In addition, although DOL officials emphasized the importance of debarments and compliance agreements that may be pursued in lieu of debarment, we found that WHD does not routinely analyze the effectiveness or use of these SCA enforcement actions, such as by comparing different types of actions.⁴⁶ Although WHD officials told us that current performance measures broadly cover debarment, we could not identify any specific measures used by WHD to analyze debarment as an enforcement mechanism. According to DOL officials, due to the small number of debarments compared to the total number of SCA cases, it would be difficult to gauge the overall impact of WHD debarment efforts. However, DOL's current strategic plan calls for using strategies to optimize resources and resolve cases by appropriately using all available enforcement tools, including litigation. Without analyzing information on the use of available enforcement tools such as debarment and compliance agreements, WHD may lack a complete picture of how it uses its resources on different strategies for resolving SCA cases, as well as the effectiveness of these enforcement strategies.

⁴⁵[GAO-14-704G](#).

⁴⁶As part of our 2005 recommendation to WHD about analyzing enforcement data, we recommended that WHD analyze debarment information not included in WHISARD to help plan its compliance assistance and investigative efforts. WHD implemented the recommendation by including a recidivism measure that captures the number of debarments in its fiscal year 2007 performance plan. See [GAO-06-27](#). When we asked WHD officials if they still use this measure, they said that the agency has moved away from using the recidivism measure but that current enforcement performance measures capture similar information and take resource usage into account.

DOL Faces Challenges Related to Communicating with Contracting Agencies about Enforcement and Carrying Out Some Enforcement Activities

Communication Challenges

WHD officials told us that communication challenges with contracting agencies can make carrying out certain enforcement activities difficult. Our review of selected SCA case narratives identified illustrative examples of communication challenges, including cases where contracting agencies—such as DOD, the Department of Veterans Affairs, and USPS—failed or took months to provide WHD with requested documents or respond to communications from WHD. For example, in one of the case narratives we reviewed, DOL noted that over a period of several months, USPS staff did not respond to numerous e-mail and voice messages from DOL. Although DOL has enforcement authority for the SCA, it relies on contracting agencies to incorporate SCA provisions and wage determinations into their service contracts and solicitations, as appropriate, and to provide information and documents—such as contracts—to WHD during the course of investigations.

DOL officials said that gaps in communication can cause delays in adding SCA provisions to contracts and paying back wages owed to workers, and create challenges to withholding contract payments. SCA cases can take several years to conclude, and some officials noted that communication challenges can contribute to investigation length. A WHD internal strategic planning document states that contracting agencies sometimes lack appropriate staff to handle SCA matters, and several DOL officials told us that contracting officers may lack knowledge of and experience with the SCA. Officials also noted that high rates of turnover among contracting officers can make it difficult and time consuming to identify points of contact at contracting agencies.

WHD National Office officials said they have taken steps to improve communication with contracting agencies, such as developing good working relationships with agency labor advisors.⁴⁷ Agency labor advisors serve as agencies' subject matter experts and advise contracting officers on SCA matters, among other things.⁴⁸ The WHD National Office officials also said labor advisors are a valuable resource for resolving complex issues and communicating with contracting officers.

DOL officials commented on communication issues broadly, and officials at 10 out of 15 DOL offices we met with specifically noted challenges to communicating and collaborating with USPS on SCA-related issues.⁴⁹ DOL and USPS established verbal communication protocols to assist with matters like obtaining contract documents, verifying withholding requests, and transferring funds for back wage payments, which some DOL officials said have helped improve communication. However, most DOL officials we interviewed cited challenges to working with USPS on SCA cases, indicating that some communication challenges with USPS persist. USPS officials told us they are not aware of any communication gap between the two agencies, and that WHD staff can contact USPS by email. WHD officials at the national level said staff typically contact USPS by email, and that sometimes USPS responds in a timely manner, while in other instances it does not.

A WHD internal strategic planning document from 2017 stated that communication challenges with USPS make it more difficult to bring contractors into compliance through withholding of contract payments. Some DOL officials we interviewed noted the usefulness of agreements, such as memoranda of understanding, with contracting agencies to facilitate communication and information sharing. DOL and USPS do not have an active memorandum of understanding regarding the SCA.⁵⁰

⁴⁷DOL contract enforcement staff also conduct prevailing wage seminars each year to educate SCA stakeholders, including contracting officers, and provide training to contracting agencies upon request.

⁴⁸Agency labor advisors provide assistance to contracting agencies by advising on federal contract labor matters. See 48 C.F.R. § 22.001.

⁴⁹USPS is required to follow the SCA, but it is exempt from certain laws that are generally applicable to other federal agencies. For example, USPS is not subject to most federal laws and regulations applicable to most federal purchasing, including the FAR.

⁵⁰In addition, USPS does not currently have a labor advisor. The FAR, which prescribes a role for labor advisors, does not apply to USPS contracting.

Federal internal control standards emphasize the importance of reliable communication for effective oversight.⁵¹ In addition, federal internal control standards state that management should decide on appropriate methods of communication, such as a written document, and periodically evaluate methods of communication to ensure quality information is being communicated. Without addressing communication gaps between USPS and WHD, USPS's implementation and WHD's enforcement of the SCA may be weakened.

Challenges Using Enforcement Tools

DOL officials we interviewed said that while withholding contract payments and debarring contractors are important enforcement actions for bringing contractors into compliance with the SCA, certain challenges make these actions difficult to implement.

Withholding Contract Payments

According to DOL officials, requesting that contracting agencies withhold contract payments can be a valuable enforcement tool because it imposes an immediate cost to noncompliant contractors and may motivate them to comply with the terms of the contract. However, DOL officials also noted several challenges associated with withholding contract funds to address noncompliance, including limited funds left to withhold at the end of a contract, a contractor's inability to meet ongoing payroll, contractor insolvency, and the absence of contract bonds to help ensure contract payment obligations. For example:

- For any SCA contract, there may not be enough contract funds remaining toward the end of the contract to fulfill the withholding request. Officials noted that withholding generally works best as an enforcement action when used during the early stages of an SCA contract.
- Certain service contracts pay out in increments over time instead of paying out toward the end of the contract. While this may ensure that funds are available to withhold at any point during the contract, in some instances, DOL officials indicated that withholding contract payments for these types of arrangements can make it difficult for contractors to meet ongoing payroll obligations.
- Some officials said contractor insolvency can pose challenges to withholding contract funds and recovering back wages. Our review of 45 selected SCA case narratives for which WHD determined that the

⁵¹See [GAO-14-704G](#). Also see The Committee of Sponsoring Organizations of the Treadway Commission (COSO) Internal Control – Integrated Framework (2013): Information and Communication component.

contractor refused to comply with its findings identified 10 contractors that went bankrupt or out of business.

- While federal law governing certain federal construction contracts requires contractors to obtain bonds to ensure the terms of a contract are fulfilled, such a requirement does not apply to SCA contracts.⁵² Contract bonds guarantee the performance and payment of contract obligations. According to a DOL official, contract bonds are priced in a way that provides an incentive for contractors to comply with contract terms and to consider all of the contract costs up front when developing their bids. The cost of including contract bonds, however, likely increases contract costs.⁵³

Debarring Contractors or Using Compliance Agreements

DOL officials told us that debarment can be a useful enforcement tool, and an official from the WHD's National Office cited debarment as the main deterrent to repeated SCA violations. Further, according to DOL officials, the threat of debarment can be useful for obtaining back wages owed to service contract workers and for assurances of future compliance. One official said contractors often want to avoid debarment, and the threat of debarment can sometimes lead to alternative actions and solutions. However, officials reported several challenges to debarring contractors for violating the SCA:

- The debarment process can be lengthy and resource-intensive. For example, one DOL official said obtaining all of the information necessary to support debarment can be time consuming. Another official described a years-long debarment case in which the contractor was able to obtain new contracts and continued to commit violations during the course of the lengthy debarment review.
- Debarring contractors can be challenging when they hold multi-year contracts with the federal government. DOL officials said that since contractors may be permitted to complete existing contracts (unless the agency head directs otherwise), it is possible for a multi-year contract period to outlast the 3-year debarment period. Agencies may not place additional orders or extend existing contracts with a debarred contractor.
- Debarment may be less effective, according to DOL officials, if the debarred contractor starts a new business under a different name or

⁵²For example, chapter 31 of title 40 of the U.S. Code requires performance and payment bonds for any construction contract exceeding \$150,000. See 48 C.F.R. § 28.102-1.

⁵³GAO, *Small Business Contracting: Surety Bond Waivers for Construction Contracts*, [GAO-17-683R](#), (Washington, D.C.: Aug. 7, 2017).

under a family member's name and obtains new federal contracts during the debarment period.

DOL officials noted that alternatives to debarment, such as using compliance agreements, can sometimes resolve cases faster and without litigation. According to officials, compliance agreements can help contractors stay in business, protect workers' jobs, and ensure workers receive back wages more quickly. Officials told us that such agreements often include terms to help ensure future compliance, such as monitoring. Under the terms of compliance agreements, contractors might agree to stop bidding or submitting offers on solicitations for new contracts for a period of time or pay back wages on an installment plan. According to one official, when installment plans are used to pay back wages, the compliance agreements may include a clause providing that if the contractor defaults on payments, they will agree to be voluntarily debarred. Compliance agreements are an important part of DOL's enforcement efforts, but, as noted above, WHD does not routinely analyze the effectiveness or use of these agreements.

Contracting Agencies Face SCA Implementation Challenges and Selected Contracting Agencies Have Adopted Various Supporting Practices

Agencies May Face Challenges Obtaining Complete Information on Past SCA Violations When Awarding New Contracts

Identifying SCA Debarments

Although contracting agencies are charged with excluding debarred contractors from receipt of awards, contracting officials may have difficulty identifying some SCA debarments because WHD does not consistently enter complete debarment information. Contracting officers use SAM to check records, known as exclusion records, on whether prospective contractors are currently excluded from receiving federal contracts.⁵⁴ According to the FAR, exclusion records in SAM, such as SCA debarments, shall include a unique company identifier, among other things.⁵⁵ The DUNS number is the unique identifier currently used in SAM.⁵⁶

⁵⁴SAM includes entity registration records that contain general information about a company, and exclusion records that document a suspension or debarment, including an SCA debarment. Companies are generally required to register in SAM in order to receive federal contracts.

⁵⁵See 48 C.F.R. § 9.404.

⁵⁶As noted above, according to GSA officials, the federal government decided to change the official identifier from the DUNS number to a government-owned, non-proprietary unique entity identifier, which will be requested and generated in SAM. This transition has been postponed to a future date to be determined.

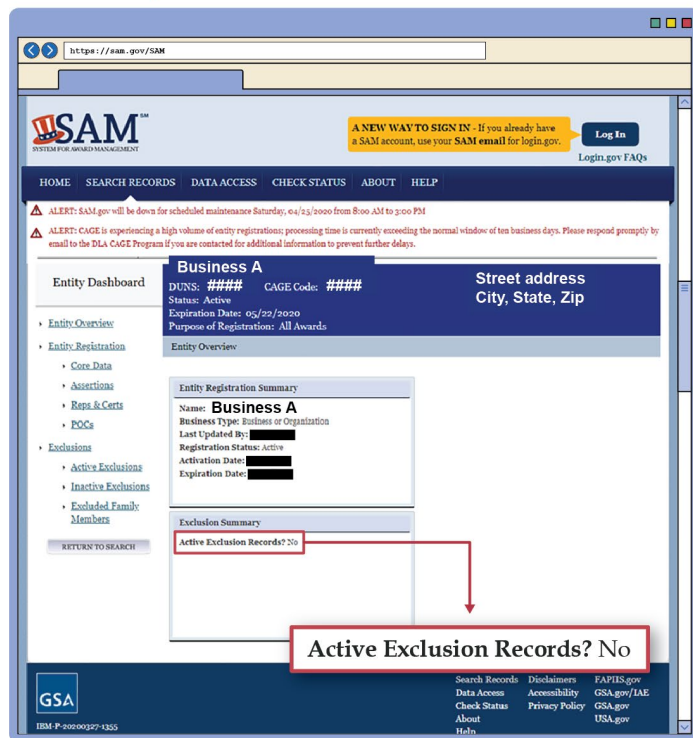
In the absence of a DUNS number in the exclusion record, contracting officers may not easily be able to determine whether prospective SCA contractors are currently debarred from receiving federal contracts. In this case, to find the exclusion record they would have to search SAM by company name instead of by DUNS number, and differences in how company names are recorded in the system may present challenges to locating the correct exclusion records. The SAM interface also includes entity dashboard pages that summarize different records associated with a given company, based on the DUNS number.⁵⁷ Based on our analysis, we found that a contracting officer using the DUNS number to search might find the entity dashboard for the company that indicates there are no active suspensions or debarments, even though there may be an active exclusion record for that company in the system. See example in figure 6.

⁵⁷If an exclusion record includes a DUNS number, the system will associate the exclusion record with the company's other records, and the entity dashboard page will then note that there is an active exclusion.

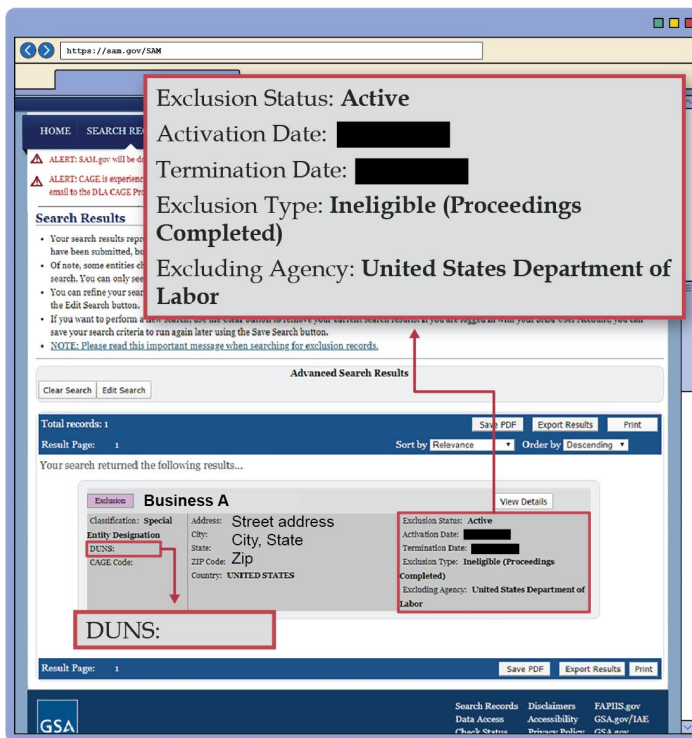
Figure 6: Screenshots from the System for Award Management Website (SAM.gov) Showing Inconsistent Information on Active Exclusions for the Same Company

The entity dashboard on the left should show that there is an active exclusion for this company, but it does not because the system matches records using the DUNS number, which is missing from the exclusion record on the right.

Entity dashboard shows no active exclusions



But an active exclusion record exists, without a DUNS number



Source: GAO analysis of data from the System for Award Management website (SAM.gov). | GAO-21-11

Note: This example is an anonymized version of actual search results for a debarred company. The records were found by separately searching SAM exclusion and registration records by company name, and the address fields were used to confirm that they are the same entity.

WHD officials told us that they do not consistently include a DUNS number when entering SCA debarment information into SAM. For example, only two of the seven SCA debarments entered for non-USPS contractors in fiscal years 2018 and 2019 included the DUNS number.⁵⁸ Federal internal control standards require agencies to externally communicate quality information to achieve their objectives.⁵⁹ According

⁵⁸USPS contractors are less likely to have a DUNS number because the requirement for contractors to register in SAM is contained in the FAR, which does not apply to USPS contracting.

⁵⁹GAO-14-704G.

Learning of SCA Case Outcomes

to WHD, staff regularly enter information about companies that have been debarred under the SCA into SAM, but they do not always enter the DUNS number because officials said they do not see it as relevant to the debarment process. In addition, not all entities debarred under the SCA will have a DUNS number. The SAM User Guide and website inform users that not all exclusions will include a DUNS number.⁶⁰ For companies that do have a DUNS number, it may be unnecessarily difficult for contracting officers to find SCA debarment records if the exclusion records lack the required unique company identifier. This creates a risk that contracts may inadvertently be awarded to companies that are ineligible to receive federal contracts because of an active SCA debarment.

We found that contracting agencies may not have complete information about past SCA violations by prospective contractors, because WHD lacks a process that ensures information about the outcomes of its SCA cases is consistently and reliably shared with these agencies. Information on past violations may assist contracting officers in determining whether prospective contractors have a satisfactory performance record. Contracting officers can add information about SCA violations into performance evaluations in CPARS—which other contracting officers can draw upon for information on prospective contractors—but to do so they need relevant information from WHD.⁶¹ Based on our analysis of a sample of CPARS assessments for contracts with SCA violations, chosen based on high amounts of back wages assessed, we found that 93 of 100 CPARS assessments did not include any information about the SCA violations.

According to officials, WHD's internal policy directs its investigators to communicate with agency contracting officers, and WHD officials also told us that investigators invite contracting officers to the final conference with the contractor at the end of an investigation. According to WHD officials, investigators will contact the agency by telephone if the contracting officer does not attend the final conference. Officials we spoke with at one

⁶⁰Though a DUNS number is required to register to receive federal contracts, it may not always be available for SCA debarments because DOL can debar companies other than the prime contractor, such as subcontractors.

⁶¹Contracting officers are not specifically required to include SCA violations when entering performance evaluation information into CPARS, nor are agencies required to consider past SCA violations that did not result in debarment when making award decisions. Contracting officials we spoke with said that they check CPARS for information on SCA violations.

contracting agency described this as an informal process. Such contacts with contracting officers may not ensure that contracting agencies have consistent access to quality information about SCA violations on their contracts. As discussed above, WHD officials identified high turnover among contracting officers as a challenge to SCA enforcement and said that other channels for communication, such as agency labor advisors and dedicated email addresses, may be more effective.

WHD also provides information about SCA violations through DOL's Enforcement Data website. However, these records may not be timely. A senior WHD official told us that publishing this information is not always a priority and that it can take 4 to 6 weeks after the end of a quarter to publish information on that quarter's concluded cases.

According to federal internal control standards, management should use quality information—which is current, complete, and timely—and communicate quality information externally to achieve the agency's objectives.⁶² Until WHD develops a process to consistently and reliably notify contracting agencies about SCA investigation outcomes, contracting officers may not have complete information to evaluate contractor performance. As a result, contracting agencies might make awards to contractors without being aware and without considering that the contractor was found to have violated the SCA in the past.⁶³

Selected Agencies Vary in Their Experiences with SCA Implementation and Identified Certain Supporting Practices

Officials at Army Materiel Command, the National Institutes of Health (NIH), and the Pension Benefit Guaranty Corporation (PBGC) told us that they follow the procedures outlined in the FAR, which covers required steps for SCA implementation. These include inserting clauses and wage determinations in applicable contracts and solicitations, and cooperating with any WHD investigations. The FAR provisions also include the use of agency labor advisors to provide support to contracting officers on contract labor matters and refer questions about SCA applicability to WHD when necessary. WHD officials told us that labor advisors are a valuable resource for agencies and for WHD. Individuals fill this role at Army Materiel Command and the Department of Health and Human Services (covering NIH), according to officials at those agencies, while

⁶²GAO-14-704G.

⁶³Contracts awarded to contractors with previous SCA violations are not necessarily awarded improperly because only currently debarred entities are ineligible for federal awards during the 3-year period of their debarments.

PBGC officials told us that the agency does not have an agency labor advisor because its SCA contract portfolio is too small to justify staffing this position.⁶⁴ Instead, according to officials, PBGC's procurement law office provides support on federal contract labor matters.

The selected agencies varied as to whether they reported specific challenges with SCA implementation, such as incorporating SCA clauses and wage determinations into appropriate contracts and solicitations. Officials at two agencies also identified various additional practices to support SCA implementation and ensure FAR requirements are met, during the different phases of the acquisition process (pre-award, award, and contract performance).

Army Materiel Command. Officials from Army Materiel Command explained that cases where WHD required the agency to retroactively insert SCA clauses or correct an SCA wage determination in an awarded contract are not captured in any database. However, contracting officials at four Army Materiel Command installations said they were aware of several instances where such an error occurred. In three cases, officials said WHD found that the wage determinations Army Materiel Command used were incorrect. There was also a set of contracts that Army Materiel Command officials said they found to be lacking SCA clauses or wage determinations when responsibility for those contracts was transferred from one field office to another. These officials said the contract terms were modified to correct this as contract options were exercised.

According to officials, Army Materiel Command generally relies on its contracting officers to properly implement the SCA according to the procedures in the FAR and the Army FAR Supplement.

NIH. NIH officials identified four instances where WHD found that an NIH contract needed retroactive SCA clause insertion or correction. In one instance, officials said NIH awarded a contract for a research study without incorporating the appropriate SCA clauses, believing that such contracts were exempt from the SCA. WHD determined that the contract was subject to the SCA and directed NIH to retroactively incorporate the appropriate SCA clauses and wage determination into the contract, according to NIH officials.

⁶⁴As of January 2020, PBGC reported having only five active contracts that were subject to the SCA.

Contracting agencies may encounter unexpected costs as a result of errors in SCA implementation. According to NIH officials, each of the four retroactive contract modifications entailed additional costs to the agency beyond what had originally been planned. Officials said the agency had to make equitable adjustments to the contracts to compensate the contractors for the additional expenses incurred or otherwise provide additional funds to cover the increased costs.⁶⁵ According to NIH officials, costs to NIH for these types of contract modifications ranged from approximately \$183,000 to approximately \$3.75 million.⁶⁶ Officials told us that certain NIH components are taking steps to deal with the potential cost risk. For example, National Cancer Institute officials said its contracting officers will be expected to communicate with program offices about possible implications and risks involved with contracting for SCA-covered positions. The National Cancer Institute is also developing additional training and job aids on this topic for dissemination to contracting staff, according to officials.

Officials from NIH also identified contract file reviews, training for contracting personnel specific to contract labor standards, and an effort to monitor SCA compliance after award as particularly effective practices supporting the agency's SCA implementation. To help ensure FAR compliance prior to awarding contracts, NIH's Board of Contract Awards has conducted reviews of selected contract files for compliance with various contracting requirements, using a detailed checklist. The checklist included questions specific to SCA implementation (see fig. 7). According to NIH officials, the Board of Contract Awards is currently suspended due to staff shortages, but the agency is in the process of reinstating it. NIH officials told us that updated policy and guidance documents are currently in the draft stage, and officials hope to begin reviews by January 2021.

⁶⁵Contracting officers equitably adjust the contract price to reflect any changed cost of performance resulting from incorporating a wage determination or revision. See 48 C.F.R. pt. 22.1015.

⁶⁶These figures were provided to us by NIH officials and we did not independently verify them.

Figure 7: Selected Questions from the National Institutes of Health Board of Contract Awards Review Checklist—Negotiated Acquisitions

No.	Action Item	FAR/HHSAR/NIH Policy Part	Yes	No	N/A	Comments
A.47	Has market research been accomplished to ensure that a noncompetitive contract is necessary?	FAR 10.002(b)(2)				
A.48	If other than full and open competition, has JOFOD been prepared and approved, and made publicly available as applicable?	FAR 6.303-1, 6.304, 6.305 HHSAR 306.3				
A.49	If JOFOD under FAR 6.302-2, is the total period of a performance under the resulting contract not exceeding the time necessary to meet the unusual & compelling requirements, less than the time necessary to award the contract competitively, and not exceeding one year unless the head of the agency has determined that exceptional circumstances apply (det. may be made after contract award – see FAR 6.302-2(d)(5))	FAR 6.302-2(d)				
A.50	If Service Contract Act (SCA) is not applicable, is the rationale adequately documented, or if SCA is applicable, is wage determination in the file or being requested via e98 process?	Service Contract FAR 22.1002, 22.1008-1				

Negotiated RFP –12/11 (Current through FAC 2005-54)

A.50 If Service Contract Act (SCA) is not applicable, is the rationale adequately documented, or if SCA is applicable, is wage determination in the file or being requested via e98 process?

No.	Action Item	FAR/HHSAR/NIH Policy Part	Yes	No	N/A	Comments
B.9	Are proper clauses included?	FAR 52.301 Matrix, NCI Contract Workform				
B.10	If applicable, has the proper language regarding Personal Identity Verification been included in the solicitation?	HHSAR 304.13, NCI Workform				
B.11	If contract or order (including task or delivery order) exceeds simplified acquisition threshold, and is a cost reimbursement type contract/order, have the proper clauses regarding Limitations on Pass-Through Charges been included?	FAR 15.408, 52.215-22, 52.215-23				
B.12	If SCA is applicable, does RFP contain the proper wage determination and clauses?	FAR 22.1007, FAR 22.1009, 22.1016				
B.13	If required, does the RFP contain the proper wage determination or a statement that it will be included later, and is proposed contract limited to 5 years or less?	FAR 22.1002				
B.14	If oral RFP used, is there compliance with FAR?	FAR 15.203(f)				
B.15	If letter contract and a sole source acquisition, is there compliance with FAR?	FAR 15.203(e)				

Negotiated RFP –12/11 (Current through FAC 2005-54)

RFP= Request for proposals

B.13 If required, does the RFP contain the proper wage determination or a statement that it will be included later, and is proposed contract limited to 5 years or less?

Source: GAO analysis of National Institutes of Health (NIH) documentation. | GAO-21-11

NIH officials also reported efforts to monitor contractor performance for SCA compliance after a contract has been awarded. They also identified new training for contracting officers specific to contract labor standards.

PBGC. PBGC officials reported that they were not aware of any instances where WHD required PBGC to retroactively insert the SCA clauses. Officials explained that PBGC generally requires contract file reviews by its Office of the General Counsel for all contracts valued in excess of \$200,000. According to officials, contract file reviews at various phases of the acquisition process provide an opportunity to identify potential procurement issues, including SCA issues. For example, the Office of the General Counsel may ask during its reviews whether the contracting officer has made a determination regarding SCA applicability. PBGC officials noted that these reviews identify potential SCA issues about four to six times per year.

Conclusions

The SCA focuses on ensuring that service workers—janitors, landscapers, and call center staff, among others—on covered contracts generally receive pay and benefits comparable to what other workers in their locality receive. As the enforcer of the SCA, DOL is responsible for ensuring that contractors pay service workers correctly and provide them

with proper benefits. DOL maintains data on SCA investigations and has found numerous violations of the SCA through its enforcement activities; however, inconsistent data entry hinders DOL's efforts to use such data for enforcement purposes. Further, DOL lacks a complete picture of the effectiveness of its enforcement efforts because it does not analyze information on enforcement tools such as compliance agreements and debarment.

DOL also relies on contracting agencies' cooperation and collaboration throughout the investigation process to effectively enforce the SCA. However, DOL officials told us communication challenges with contracting agencies, especially USPS—which has the second largest number of SCA cases of any agency—can make carrying out certain enforcement activities difficult. Poor communication and collaboration can delay SCA investigations and create obstacles to DOL's enforcement of the SCA, such as working with contracting agencies to withhold contract funds.

Finally, contracting agencies may have incomplete information about SCA violations from DOL, which could affect their ability to make fully informed decisions when awarding new contracts. DOL sometimes records SCA debarments without the identifying number that contracting officers use to accurately identify debarred contractors. In addition, DOL does not always communicate enforcement findings in a way that is reliably available to contracting agencies.

Without better tracking its enforcement actions and communicating with contracting agencies—including reliably sharing information on case outcomes—DOL's efforts to enforce SCA may not achieve their fullest effect. Taken together, these challenges hamper DOL's ability to enforce the SCA as effectively and efficiently as it could, increasing the chance that workers will not receive pay and benefits to which they are entitled.

Recommendations for Executive Action

We are making six recommendations, including five to DOL and one to USPS. Specifically:

The Secretary of Labor should ensure that the Administrator of the Wage and Hour Division standardizes data entry on contracting agencies associated with SCA investigations in WHISARD by providing guidance to staff on how to make these data more consistent. (Recommendation 1)

The Secretary of Labor should ensure that the Administrator of the Wage and Hour Division analyzes information on its enforcement actions,

including compliance agreements used by WHD's regional offices and SCA debarment processes and outcomes. (Recommendation 2)

The Secretary of Labor should ensure that the Administrator of the Wage and Hour Division, in collaboration with the U.S. Postmaster General, develops and implements written protocols to improve communication and collaboration between the two agencies to support SCA enforcement and implementation. In doing so, they should revisit the effectiveness of existing protocols and other methods of collaboration with USPS on SCA-related issues. (Recommendation 3)

The U.S. Postmaster General, in collaboration with the Administrator of the Wage and Hour Division, should develop and implement written protocols to improve communication and collaboration between the two agencies to support SCA enforcement and implementation. In doing so, they should revisit the effectiveness of existing protocols and other methods of collaboration with the Department of Labor on SCA-related issues. (Recommendation 4)

The Administrator of the Wage and Hour Division should take steps to ensure that the unique company identifier designated by the Federal Acquisition Regulation (currently a Data Universal Numbering System number) is included in SCA debarment records in the System for Award Management whenever appropriate and available. (Recommendation 5)

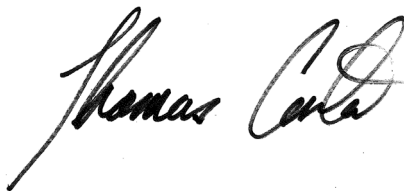
The Administrator of the Wage and Hour Division should develop written procedures for consistently and reliably informing the relevant contracting agency about the Wage and Hour Division's findings in SCA investigations that identify violations. (Recommendation 6)

Agency Comments and Our Evaluation

We provided a draft of this report for review and comment to DOD, DOL, GSA, the Department of Health and Human Services (HHS), PBGC, and USPS. DOL and USPS provided written comments that are reprinted in appendixes III and IV, respectively. DOL generally concurred with our recommendations. USPS agreed with the recommendation to improve communication with DOL. Both DOL and USPS provided technical comments, which we incorporated as appropriate. DOD, GSA, HHS, and PBGC did not have any comments on the report.

With respect to our second recommendation that the WHD Administrator analyze enforcement action information, though DOL indicates that the universe of enhanced compliance agreements and debarments under SCA is small, it responds that it has developed specific protocols to ensure oversight of these actions at the national level and will use this information to make key enforcement decisions. We believe that compiling and analyzing information on these enforcement actions, such as their results and general distribution, will improve DOL's understanding of them and inform its enforcement activities.

As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies to appropriate congressional committees, the Secretary of Defense, the Secretary of Labor, the GSA Administrator, the Secretary of Health and Human Services, the Director of PBGC, and the Postmaster General. In addition, the report will be available at no charge on the GAO website at <http://www.gao.gov>. If you or your staff have any questions about this report, please contact me at (202) 512-7215 or costat@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix V.

A handwritten signature in black ink, reading "Thomas Costa". The signature is fluid and cursive, with the first name "Thomas" and the last name "Costa" clearly distinguishable.

Thomas M. Costa, Acting Director
Education, Workforce, and Income Security

Appendix I: Objectives, Scope, and Methodology

This report examines: (1) what available data reveal about past Service Contract Act (SCA) cases, (2) what challenges the Department of Labor (DOL) reports facing in enforcing the SCA, and (3) how contracting agencies implement the SCA.

To determine what available data reveal about past SCA cases, we analyzed data from DOL's Wage and Hour Investigative Support and Reporting Database (WHISARD) for fiscal years 2014 through 2019. We analyzed SCA data on the number of cases completed; cases by contracting agency and industry; and the number and types of violations found by the Wage and Hour Division (WHD), among other data. We also analyzed WHISARD data to identify contracts with SCA violations from fiscal years 2014 through 2019. We then matched those contract data to data from the General Service Administration's (GSA) Federal Procurement Data System-Next Generation (FPDS-NG) to identify contractors that had contracts with SCA violations from fiscal years 2014 through 2019 that then received subsequent awards of federal contracts. Values are adjusted for inflation and expressed in fiscal year 2019 dollars using the Gross Domestic Product Price Index from the U.S. Department of Commerce, Bureau of Economic Analysis. The information and communication component of internal control was significant to this objective, along with the related principle that management use quality information to achieve the entity's objectives, including using relevant data from reliable sources.¹ Our data analysis and data matching process are described below.

To determine the challenges that DOL reported facing in enforcing the SCA, we interviewed DOL officials from the WHD's National Office; each of the five WHD Regional Offices and Regional Solicitor's Offices; and five selected District Offices (one within each region). These interviews included site visits to WHD Regional and District offices in the Northeast, Southeast, and Southwest. We selected site visit locations based on high SCA caseloads and the proximity of District Offices to Regional Offices. We also reviewed relevant documents such as DOL's strategic plan, WHD's internal operating plan, and regional planning initiatives. In addition, we analyzed a nongeneralizable sample of SCA case narratives selected from cases for which WHD determined the employer did not comply with the findings of WHD's investigation, as described below. We

¹GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: September 2014).

assessed DOL's actions against GAO's standards on internal control in the federal government.² The information and communication component of internal control was significant to this objective, along with the related principle that management should externally communicate the necessary quality information to achieve its objectives.

To understand how contracting agencies implement the SCA, we first determined the extent to which information about SCA violations is available to contracting agencies. To do this, we analyzed information from GSA's System for Award Management (SAM) and its Contractor Performance Assessment Reporting System (CPARS). We analyzed data records from SAM to determine whether information on SCA contractors that were debarred in fiscal years 2018 and 2019 was included in the system and easily identifiable. We also analyzed a nongeneralizable sample of performance assessments for contracts in CPARS to determine whether they contained SCA violation information. The methodologies for these analyses are discussed in detail below. We also asked officials about DOL's information sharing policies and procedures and assessed them against federal internal control standards. We also reviewed requirements in the Federal Acquisition Regulation (FAR). The information and communication component of internal control was significant to this objective, along with the related principle that management should externally communicate the necessary quality information to achieve its objectives.³

We selected three agencies to provide illustrative examples of SCA implementation—Army Materiel Command, the National Institutes of Health (NIH), and Pension Benefit Guaranty Corporation (PBGC)—based on agency type (defense and non-defense), agency size, and volume of service contracting. Our selection of contracting agencies is discussed in detail below. We also interviewed agency officials about SCA implementation challenges and practices, and reviewed agency documentation on SCA contracting and SCA compliance efforts. Our results are not generalizable to all contracting agencies during the time frame we reviewed.

²[GAO-14-704G](#).

³[GAO-14-704G](#).

Violations Data and Data Matching

We obtained data on closed cases from DOL's WHISARD database for fiscal years 2014 through 2019. Data fields that we focused on included the number of cases that included SCA findings (including cases for which investigations began under different labor standards such as those under the Fair Labor Standards Act of 1938, as amended); the number of cases with SCA violations and with violations of other laws that WHD enforces; the number of SCA cases broken down by contracting agency and by industry; case outcomes; amounts of back wages due from contractors; amounts of back wages and benefits that contractors agreed to pay service contract employees; the amount of withholding requested and received by WHD from contracting agencies; and the number of repeat and recurring violations.

We also obtained information from WHD on debarred contractors, including the number of debarred contractors by year, contracting agency, and industry.

We assessed the reliability of the WHISARD data by: (1) interviewing agency and contractor officials knowledgeable about the data; (2) reviewing existing information about the data and the system that produced them, such as the WHISARD User Guide; WHISARD data dictionary of tables; and WHD's 2018 WHISARD Data Integrity Report, the latest such report available; and (3) conducting electronic data consistency checks. We determined that the selected WHISARD data elements were sufficiently reliable to analyze what available data reveal about past SCA cases and to examine how contracting agencies implement the SCA.

It was not always possible to identify contracting agencies in WHISARD because the data were collected in a non-mandatory, free text field. As a result, some agency names were missing or unclear, as discussed. To analyze enforcement data by contracting agency, we had to identify missing information and standardize agency names. To do this, we matched contract numbers from WHISARD to FPDS-NG. For the 899 out of 5,261 cases that had no agency name listed in WHISARD, we were able to identify the contracting agency in FPDS-NG for 397 cases through our data matching process. We also used our data matching process to standardize contracting agency names by creating a crosswalk of agency names. For matched contract numbers, we compared the contracting agency name in WHISARD to the name in FPDS-NG and used the crosswalk to categorize and standardize the agencies listed in WHISARD. For example, if our contract number match indicated that the "23d Contracting Squadron" in WHISARD was linked to the Air Force in FPDS-

NG, we would then categorize all WHISARD entries for the 23d Contracting Squadron as Air Force. For records where the agency name in WHISARD was missing or unclear, if the contract matched in FPDS-NG, we used the agency associated with the contract. Through this process, we were able to clarify agency names for 22 additional cases.

We also matched violations data from WHISARD with contracting data from FPDS-NG in order to identify prime contractors on contracts with violations that received subsequent contract awards. Specifically, we again used the contract numbers listed in WHISARD to identify the FPDS-NG records for contracts where WHD found violations. We obtained the Data Universal Numbering System (DUNS) number for the prime contractor from these records. This provided a reliable unique identifier for the prime contractor, which we used to identify new awards in FPDS-NG. We restricted this to new awards received at least six months after the original case with violations, to exclude contracts that may have been awarded concurrently. Our subsequent awards findings are not representative of all prime contractors associated with SCA violations, because this methodology excluded contracts not reported in FPDS-NG and cases where the contract number in WHISARD did not match any contract action in FPDS-NG in fiscal years 2014 through 2019. For 2,799 cases (53 percent), we were able to match contract information from WHISARD to FPDS-NG. For the 2,462 remaining cases, 833 involved the U.S. Postal Service (USPS), which is not included in FPDS-NG.⁴

We assessed the reliability of the FPDS-NG data by (1) interviewing agency officials knowledgeable about the data, and (2) reviewing existing information about the data and the system that produced them, such as the FPDS-NG User Manual, the FPDS-NG Data Element Dictionary, and the Federal Government Procurement Data Quality Summary. We determined that the FPDS-NG data elements needed to conduct the data matching were sufficiently reliable to analyze what available data reveal about past SCA cases and to examine how contracting agencies implement the SCA. However, other than noting the total amount of SCA-covered federal contracting obligations, we did not use data from field 7C from FPDS-NG for our analysis because we determined it was unreliable. This field records whether a contract is subject to the SCA and incorporates the SCA clauses. One agency official told us that field 7C

⁴As noted earlier, the single case that involved USPS for which we were able to match contract information also had the Office of Personnel Management as a contracting agency.

data about its contracts were incorrect because the agency's contracting officers misunderstood the purpose of the field and listed some contacts as SCA-covered when they actually were not. We also identified some contracts where field 7C indicated "No" or "N/A"—indicating the contract is not subject to the SCA or the SCA does not apply to the contract—but the SCA clauses actually were in the contracts. Because we determined that data from field 7C were not reliable, we selected contracting agencies based on their numbers of and obligations for service contracts overall, rather than SCA-covered contracts specifically, as described below.

Case Narrative Review and Selection

To provide illustrative examples of challenges faced by DOL in enforcing the SCA, we reviewed a nongenerablizable sample of SCA case narratives for cases that concluded from fiscal years 2014 through 2019 for the departments of Homeland Security, Veterans Affairs, and the Army, and USPS. We selected the case narratives from cases for which WHD determined the employer did not address the findings of WHD's investigation by taking directed steps such as paying back wages and that were associated with a high number of SCA violations among the "refuse to comply" cases. We selected 45 cases in total—11 for the Department of Homeland Security; 10 for the Department of Veterans Affairs; eight for the Department of the Army; and 16 for USPS. The 45 cases represent 37 different employers.

Review of Information on Past SCA Violations

To determine the extent to which information on past SCA violations is available to contracting agencies, we reviewed information on debarments in SAM and past performance information in CPARS. Contracting officers use the information in SAM to identify companies that are ineligible to receive federal contracts. First, we used information provided by DOL on companies that were debarred under the SCA in fiscal years 2018 and 2019. There were 15 such companies. Next, we searched SAM for each of the 15 companies to determine whether the system included accurate and current information on debarment. We also reviewed information in SAM to determine whether the 15 debarment records contained a DUNS number, which is a unique identifier for companies.

We also reviewed a nongeneralizable sample of performance assessments in CPARS to better understand the extent to which information on SCA violations, aside from debarments, is available to contracting agencies. As described above, we matched WHISARD and FPDS-NG data to identify contractors on contracts with SCA violations from fiscal years 2014 through 2019 that then received subsequent

awards of federal contracts. We identified 1,037 such cases. From these cases, we selected a nongeneralizable sample of 100 cases, chosen based on highest back wages assessed. We used contract numbers to match the 100 cases to their corresponding assessments in CPARS. We reviewed each performance assessment to determine if it contained any information on SCA violations found by WHD. We did not analyze the nature or extent of the information. This non-generalizable sample is not representative of all SCA cases or of all CPARS assessments.

Contracting Agency Selection

To provide illustrative examples of how contracting agencies implement the SCA and what implementation challenges they face, we selected three agencies to include both defense and non-defense agencies and to represent a range of service contracting volume. Selected agencies are not representative of all contracting agencies, but provide a range of perspectives to illustrate SCA implementation in practice. In order to capture potential variation among agencies, we selected one large defense agency, one large non-defense agency, and one small non-defense agency. We defined “large” agencies in terms of service contracting volume, and selected two based specifically on (1) the amount of obligations for service contracts and (2) the number of new service contracts awarded for fiscal years 2014 through 2018, based on data from FPDS-NG. Based on these data, we selected the Department of the Army as the defense agency and the Department of Health and Human Services as the non-defense agency. Within each of the two large agencies we selected, we focused on one component that had significant service contracting activity from fiscal years 2014 through 2018. For the Department of the Army, we selected the Army Materiel Command and for the Department of Health and Human Services, we selected NIH. For the smaller non-defense agency, we selected PBGC, an independent agency that engages in significant service contracting. PBGC was selected from agencies that report contracting obligations in FPDS-NG based on its contracting volume and our previous reporting on its contracting profile.⁵

We conducted this performance audit from June 2019 to October 2020 in accordance with generally accepted government auditing standards.

⁵In 2011, we reported that PBGC relied heavily on service contracts. GAO, *Pension Benefit Guaranty Corporation: More Strategic Approach to Contracting Still Needed*, [GAO-11-588](#) (Washington, D.C.; June 29, 2011). Specifically, we reported that nearly 80 percent of PBGC’s total budget in fiscal year 2010 was spent on contracts. In fiscal year 2018, PBGC obligated about \$300 million in service contracts, according to FPDS-NG, which accounted for almost 75 percent of its total funding for administrative activities of approximately \$415 million for that fiscal year.

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.

Appendix II: Service Contract Act Cases and Debarments by Selected Contracting Agency, Fiscal Years 2014 through 2019

Table 2 depicts the number of SCA cases for the 11 contracting agencies that had the highest numbers of SCA cases associated with their respective contractors. The table also includes overall agency contract obligations and the number of debarments associated with each contracting agency.

Table 2: Service Contract Act (SCA) Cases and Debarments by Selected Contracting Agency, Fiscal Years (FY) 2014 through 2019

	Contracting Agency	Number of SCA cases, FY14-FY19	Overall agency contract obligations (FY19 dollars in billions), FY14-FY19	Number of SCA debarments, FY14-FY19
1	Department of Defense	1,843	\$2,000	17
2	U.S. Postal Service	834	\$71	30
3	Department of Homeland Security	428	\$96	3
4	Department of Veterans Affairs	422	\$148	4
5	General Services Administration	278	\$74	0
6	Department of Agriculture	182	\$39	3
7	Department of Transportation	146	\$41	1
8	Department of Justice	134	\$48	1
9	Department of Energy	98	\$181	0
10	Department of Health and Human Services	81	\$149	0
10	Department of the Interior	81	\$27	0

Source: GAO analysis of data from the U.S. Department of Labor and the Federal Procurement Data System – Next Generation, and information provided by the U.S. Postal Service. | GAO-21-11

Note: The same case may be associated with multiple agencies. For 502 cases, we were not able to identify any associated agencies due to missing or unclear information in the Department of Labor's database. The U.S. Postal Service provided estimates of its contracting obligations. Obligations are rounded to the nearest billion. Values are adjusted for inflation and expressed in fiscal year 2019 dollars using the Gross Domestic Product Price Index from the U.S. Department of Commerce, Bureau of Economic Analysis. One debarment included in the table was associated with two agencies—the Department of Defense and the Department of Homeland Security. The Environmental Protection Agency and the Smithsonian Institution, which had lower numbers of SCA cases than the agencies included in the table, each had one debarment under the SCA during FY 2014 through 2019.

Appendix III: Comments from the Department of Labor

U.S. Department of Labor

Wage and Hour Division
Washington, DC 20210



October 9, 2020

Mr. Thomas M. Costa
Acting Director,
Education, Workforce and
Income Security
U.S. Government Accountability Office
Washington, D.C. 20548

Dear Mr. Costa:

The U.S. Department of Labor's (Department) Wage and Hour Division (WHD) appreciates the opportunity to respond to the Government Accountability Office (GAO) Draft Report entitled "*Federal Contracting: Actions Needed to Improve Department of Labor's Enforcement of Service Worker Wage Protections.*"

GAO's objectives in conducting this study, as outlined to then Acting Secretary of Labor Patrick Pizzella on August 7, 2019, were to examine: (1) what is known about past wage and hour violations on contracts covered by the Service Contract Act, and (2) how do Labor and federal contracting agencies identify and address wage and hour violations on SCA-covered contracts.

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

Recommendation 1: *The Secretary of Labor should ensure that the Administrator of the Wage and Hour Division standardizes data entry on contracting agencies associated with SCA investigations in WHISARD by providing guidance to staff on how to make these data more consistent.*

WHD agrees with this recommendation and will provide guidance to staff on standardizing data entry on contracting agencies associated with SCA investigations.

Recommendation 2: *The Administrator of the Wage and Hour Division should analyze enforcement action information, such as compliance agreements used by Wage and Hour Division's regional offices and SCA debarment processes and outcomes.*

The universe of enhanced compliance agreements and debarments in SCA cases is too small to support a data analysis. However, the information may anecdotally inform decisions around enforcement objectives; therefore, WHD has developed specific protocols to ensure enhanced compliance agreement and debarment oversight at the National level and will use this information to make key enforcement decisions.

Recommendation 3: *The Secretary of Labor should ensure that the Administrator of the Wage and Hour Division, in collaboration with the U.S. Postmaster General, develops and implements written protocols to improve communication and collaboration between the two agencies to support SCA enforcement and implementation. In doing so, they should revisit the effectiveness of existing protocols and other methods of collaboration with USPS on SCA-related issues.*

WHD agrees with the recommendation that the Department and the United States Postal Service (USPS) should collaborate to develop additional procedures to enhance communication and effectiveness between the two agencies to support the enforcement and implementation of the SCA. As recommended by GAO, WHD will reexamine its existing protocols to determine the extent to which new protocols need to be implemented, and will provide the resulting new written protocols to WHD staff and the USPS. WHD will continue to work with the USPS on increasing SCA compliance.

Recommendation 5: *The Administrator of the Wage and Hour Division should take steps to ensure that the unique company identifier designated by the Federal Acquisition Regulation (currently a Data Universal Numbering System number) is included in SCA debarment records in the System for Award Management whenever appropriate and available.*

WHD agrees it will take steps to improve collection of the Data Universal Numbering System number for SCA cases and will enter the number into the System for Award Management in the case of contractor debarment, when applicable.

Recommendation 6: *The Administrator of the Wage and Hour Division should develop written procedures for consistently and reliably informing the relevant contracting agency about the Wage and Hour Division's findings in SCA investigations that identify violations.*

WHD agrees with this recommendation, and will develop written procedures to prioritize informing the contracting agency when WHD investigations find violations.

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

Sincerely,

Cheryl M. Stanton

Cheryl M. Stanton
Administrator

Appendix IV: Comments from the United States Postal Service

MARK A. GUILFOIL
VP, SUPPLY MANAGEMENT



October 7, 2020

Mr. Thomas M. Costa
Acting Director, Education, Workforce,
and Income Security Issues
General Accountability Office
441 G Street, NW
Washington, DC 20548-0001

Dear Mr. Costa:

Thank you for providing the United States Postal Service (Postal Service) with the opportunity to review and comment on the United States Government Accountability Office's (GAO) draft report titled, "Actions Needed to Improve Department of Labor's Enforcement of Service Worker Wage Protections." Our comments on the draft report and our response to the GAO's recommendation for executive action are set forth below.

General Comments

The Postal Service serves the nation through the delivery of essential products and written communications for our customers. We pride ourselves in helping millions of people across the country and world-wide communicate in an effective and efficient manner. The subject report discusses our communications and information sharing with the Department of Labor (DOL), Wage and Hour Division (WHD). The report notes that DOL officials view that communication protocols between the two agencies could be strengthened concerning Service Contract Act (SCA) violations. The Postal Service desires a strong working relationship with the DOL, and agrees that additional actions can be implemented to enhance communications.

A principal issue noted in the report is that the GAO stated there were various types of communication challenges, where the Postal Service was included in a listing with two other agencies that failed or took months to provide the DOL's WHD with requested documents or respond to communications from the WHD. The GAO has not provided any data to the Postal Service to support these statements. It would be helpful if the GAO would provide us with supplemental data so that we may resolve any communication issues.

Also, thank you for consideration of the technical comments to the draft report which have been sent separately.

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Response to GAO's Recommendation

With respect to your specific recommendation, we provide the following response:

Recommendation 4:

The U.S. Postmaster General, in collaboration with the Administrator of the WHD, should develop and implement written protocols to improve communication and collaboration between the two agencies to support SCA enforcement and implementation. In doing so, they should revisit the effectiveness of existing protocols and other methods of collaboration with the DOL on SCA-related issues.

Management Response:

Management agrees with this recommendation. We agree that strong communication between the Postal Service and the DOL is essential to support SCA enforcement and implementation. The Postal Service will work together with the DOL to develop and implement written protocols to improve communication and collaboration between our organizations. Our targeted implementation date is April 2021.

Again, the Postal Service appreciates the opportunity to respond to the GAO's draft report and recommendation for executive action.

Sincerely,



Mark A. Guilfoil

cc: Sally K. Haring, Manager, Corporate Audit and Response

Appendix V: GAO Contact and Staff Acknowledgments

Contact

Thomas M. Costa at (202) 512-7215 or costat@gao.gov

Staff Acknowledgments

In addition to the contact named above, Betty Ward-Zukerman (Assistant Director), Eve Weisberg (Analyst-In-Charge), Daniel Dye, Suellen Foth, Meredith Moore, and William T. Woods made key contributions to this report. Also contributing to this report were Marie Ahearn, James Bennett, Brandon Booth, Kyle Browning, Lilia Chaidez, Caitlin Croake, Charles Culverwell, Ranya Elias, Gina Hoover, Robin Marion, Sheila McCoy, Claudine Pauselli, Cathy Roark, Joy Solmonson, Almeta Spencer, Adam Wendel, and Tatiana Winger.

Related GAO Products

Defense Contracting: Enhanced Information Needed on Contractor Workplace Safety. [GAO-19-235](#). Washington, D.C.: Feb. 21, 2019.

Federal Regulations: Key Considerations for Agency Design and Enforcement Decisions. [GAO-18-22](#). Washington, D.C.: Oct. 19, 2017.

Small Business Contracting: Surety Bond Waivers for Construction Contracts. [GAO-17-683R](#). Washington, D.C.: Aug. 7, 2017.

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Government Is Analyzing Alternatives for Contractor Identification Numbers. [GAO-12-715R](#). Washington, D.C.: June 12, 2012.

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Service Contract Act: Wage Determination Process Could Benefit from Greater Transparency, and Better Use of Violation Data Could Improve Enforcement. [GAO-06-27](#). Washington, D.C.: Dec. 7, 2005.

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