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Report to the Honorable
Luis V. Gutierrez
House of Representatives

September 2002

WORKER PROTECTION

Labor's Efforts to Enforce Protections for Day Laborers Could Benefit from Better Data and Guidance

GAO-02-925

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Highlights

WORKER PROTECTION
Labor's Efforts to Enforce Protections for Day Laborers Could Benefit from Better Data and Guidance

Highlights of GAO-02-925, a report to the Honorable Luis V. Gutierrez, House of Representatives

Why GAO Did This Study

Day laborers are individuals who generally work for different employers and get paid on a daily basis. They may congregate on street corners and wait for employers to offer them work. Little is actually known about these workers or their working conditions. Congressional representatives, researchers, and advocacy groups have raised concerns that day laborers may be used for the most hazardous work but not paid appropriate wages or provided safe working conditions. Due to these concerns, GAO was asked to determine what is known about the day laborer workforce and identify the factors that affect Labor's ability to enforce the protections afforded day laborers under certain labor laws.

What GAO Recommends

GAO recommends that Labor obtain better information about the presence of day laborers or violations experienced by day laborers. GAO also recommends that Labor provide guidance to its local offices to ensure more consistent enforcement of protections for day laborers.

The Department of Labor provided GAO with written comments on a draft of this report, emphasizing its commitment to protecting all workers, including day laborers. While Labor did not comment on all recommendations, it agreed with those it did comment on.

What GAO Found

Although limited, existing information on the nature and size of the day laborer workforce suggests that these workers may be prone to workplace abuses and are probably undercounted. While individual sources may be limited in scope, taken together, they indicate that day laborers are generally young Hispanic men with limited educational skills and significant language barriers, with some portion being undocumented. These characteristics make workers vulnerable to various types of workplace dangers and abuses. The only nationally representative data on the day laborer population comes from Labor's Bureau of Labor Statistics, which in 2001 identified about 260,000 day laborers who wait on street corners for employment. However, these data may undercount day laborers. The methodology used to collect this information may affect Labor's ability to reach people not having fixed addresses, a condition that may apply to day laborers.

A number of factors relevant to day laborers and their work affect Labor's ability to enforce the protections afforded them under laws that also cover many other workers. Labor has difficulty getting complete information about potential violations involving day laborers. Also, Labor's investigative procedures are generally not designed for individuals in nonstandard work arrangements such as day laborers. Finally, Labor officials in local offices are uncertain about the extent of coverage for some day laborers and the responsibilities of some employers who employ day laborers.

Day laborers at an employer's truck.

Source: Latin American Workers' Project, New York.

This is a test for developing highlights for a GAO report. The full report, including GAO's objectives, scope, methodology, and analysis is available at www.gao.gov/cgi-bin/getrpt?GAO-02-925. For additional information about the report, contact Robert E. Robertson (202-512-7215). To provide comments on this test highlights, contact Keith Fultz (202-512-3200) or e-mail HighlightsTest@gao.gov.

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Abbreviations

BLS	Bureau of Labor Statistics
CHIRLA	Coalition for Humane Immigration Rights of Los Angeles
CPS	Current Population Survey
DLSA	Day Labor Services Act
FLSA	Fair Labor Standards Act of 1938
OSHA	Occupational Safety and Health Administration
OSH Act	Occupational Safety and Health Act of 1970
WHD	Wage and Hour Division

G A O
Accountability * Integrity * Reliability

United States General Accounting Office
Washington, DC 20548

September 26, 2002

The Honorable Luis V. Gutierrez
House of Representatives

Dear Mr. Gutierrez:

"Day laborers" is a term that generally refers to individuals who work and get paid on a daily or short-term basis. To find work, day laborers often congregate on street corners and wait for employers to drive by and offer them work. The term also includes those who may be employed by temporary staffing agencies that assign them work on a daily basis with client employers. Day laborers have an informal relationship with the labor market, often working for different employers each day, being paid in cash, and lacking key benefits, such as health or unemployment insurance. However, day laborers, like many other workers in this country, may be eligible for wage and safety protections provided under two key federal laws: the Fair Labor Standards Act (FLSA) and the Occupational Safety and Health Act (OSH Act). The U.S. Department of Labor (Labor) administers both acts: the former through its Employment Standards Administration's Wage and Hour Division (WHD), the latter through its Occupational Safety and Health Administration (OSHA). WHD is responsible for ensuring that all covered workers receive at least the federal minimum hourly wage and overtime pay. OSHA is required to ensure that employers provide safe and healthy workplaces for their workers to avoid injury or death. Coverage under both laws does not depend on a worker's immigration status.

Because of day laborers' informal relationship with the labor market, congressional representatives, researchers, and advocacy groups have raised concerns that day laborers may be used for the most hazardous work but not paid appropriate wages or provided safe working conditions. However, little is actually known about who these day laborers are, what their working conditions are, or the extent to which protections afforded under federal wage and safety and health laws are enforced. As a result, you asked us to determine what is known about the nature and size of the day laborer workforce and identify the key factors that affect Labor's ability to enforce the protections afforded day laborers under FLSA and the OSH Act.

To determine what is known about the size and nature of the day laborer workforce, we reviewed available data on day laborers, such as

information from Labor's Bureau of Labor Statistics (BLS) on day laborers and available studies, and interviewed representatives of key national associations representing day laborers and employers who use them. We also conducted structured interviews with 25 nonprofit, local government, or temporary staffing agencies that work with or employ day laborers (see app. I for more details on how we selected these agencies). To identify the key factors that affect Labor's ability to enforce the protections afforded day laborers under FLSA and the OSH Act, we reviewed provisions of FLSA and the OSH Act, implementing regulations and guidance; obtained and reviewed enforcement procedures; and analyzed enforcement statistics from WHD and OSHA. For both objectives, we interviewed federal WHD and OSHA officials in Washington, D.C., as well as state labor officials in four states—California, Illinois, New York, and Virginia.[1] During our state visits, we visited nonprofit and local government agencies that work with day laborers and interviewed day laborers at each site we visited. We also compared provisions of the wage laws and requirements of these states with FLSA (see app. III for this comparison). We performed our work between December 2001 and August 2002 in accordance with generally accepted government auditing standards.

Results in Brief

Although limited, existing information on the nature and size of the day laborer workforce suggests that these workers may be prone to workplace abuses and are probably undercounted. Available information shows that day laborers are generally young Hispanic men with limited educational skills and significant language barriers, with some portion also being undocumented. Research has shown that these characteristics are typical of workers willing to accept lower wages or work in substandard conditions. The only nationally representative data on the day laborer population comes from Labor's BLS, but these data may undercount day laborers. For example, the methodology BLS uses to collect this information may affect BLS's ability to reach respondents not having telephones or fixed addresses—conditions that may apply to day laborers. In 2001, BLS identified about 260,000 day laborers who wait on street corners for employment, yet one study of day laborers in California identified about 20,000 day laborers in one metropolitan area alone.

[1]We selected these states based on a variety of state-specific factors, including perceived high numbers of day laborers; use of day laborers at nationally important locations, such as the World Trade Center and the Pentagon sites; and local efforts to enforce existing laws.

A number of factors that are directly relevant to the unique characteristics of day laborers and their work affect Labor's ability to enforce the protections afforded them under FLSA and the OSH Act. First, because neither WHD nor OSHA can get complete information about potential violations involving day laborers, it is hard to focus resources on them. For example, day laborers are generally reluctant or unaware of their right to complain to authorities about not being paid promised wages or working in unsafe conditions. Similarly, available information that Labor uses to target its investigations, such as data on injuries and fatalities, may not accurately reflect the extent to which day laborers are injured or killed. As a result, neither WHD nor OSHA may be reaching those industries or workplaces where day laborers work. Although both agencies have made efforts to educate workers or obtain better data, these efforts may not be sufficient. Second, WHD's and OSHA's investigative procedures make it difficult to detect violations of worker protection laws involving day laborers who often have nonstandard work arrangements. As a result, the procedures may cause both agencies to miss violations. Finally, WHD officials are uncertain about the extent of coverage for day laborers in some cases, and the responsibilities of temporary staffing agencies under the OSH Act are unclear. This may lead to inconsistencies in the protections provided to day laborers. For example, even though FLSA can cover employees working for homeowners in a domestic service capacity, some local WHD officials we interviewed did not believe this provision applied to day laborers. Also, because the responsibilities of temporary staffing agencies under the OSH Act to ensure the safety of workers they assign to client employers are not clearly delineated, OSHA officials had different approaches to holding temporary staffing agencies accountable for the safety of these workers.

We are making recommendations to the Secretary of Labor to improve Labor's efforts to protect day laborers, including obtaining better information to help focus resources on day laborers and clarifying requirements under FLSA and the OSH Act. Labor generally agreed with those recommendations that it commented on.

Background

Day labor is a phenomenon that is not new to the United States; it has traditionally served as an informal device for bringing together employers who need workers and individuals willing to work. Both in times of economic prosperity or downturn, employers see many advantages to using day laborers—there are generally few commitments the employer must make to the day laborer, and the employer has the flexibility of using the day laborer only when work is available. Additionally, there are

numerous reasons why individuals would work as day laborers—for some, it is an opportunity to earn income when temporarily laid off; for others, it is a first job in the United States; for yet others, it is the only employment option available given substance abuse or other social difficulties. In other cases, this informal relationship offers an opportunity for employers to avoid paying employment taxes and offers workers a chance to earn undetected income.

There are generally two types of day laborers. The first type of day laborer is one that gathers on street corners, waiting for employers to drive by and offer them daily employment. (See figs. 1 and 2.)

Figure 1: Day Laborers Waiting for Employment

Source: Latin American Workers' Project, New York.

Figure 2: Day Laborers at an Employer's Truck

Source: Latin American Workers' Project, New York.

Across the country, there are likely thousands of street corners or informal meeting places where day laborers wait for work. In these locations, it is up to the day laborer and the employer to negotiate a wage and various conditions of work. In many locations, however, nonprofit or local government agencies have made efforts to gather day laborers at a single site and establish procedures for obtaining work, negotiating wages, and ensuring that wage and safety requirements are met (see figs. 3 to 5). Appendix II describes how several of these agencies operate.

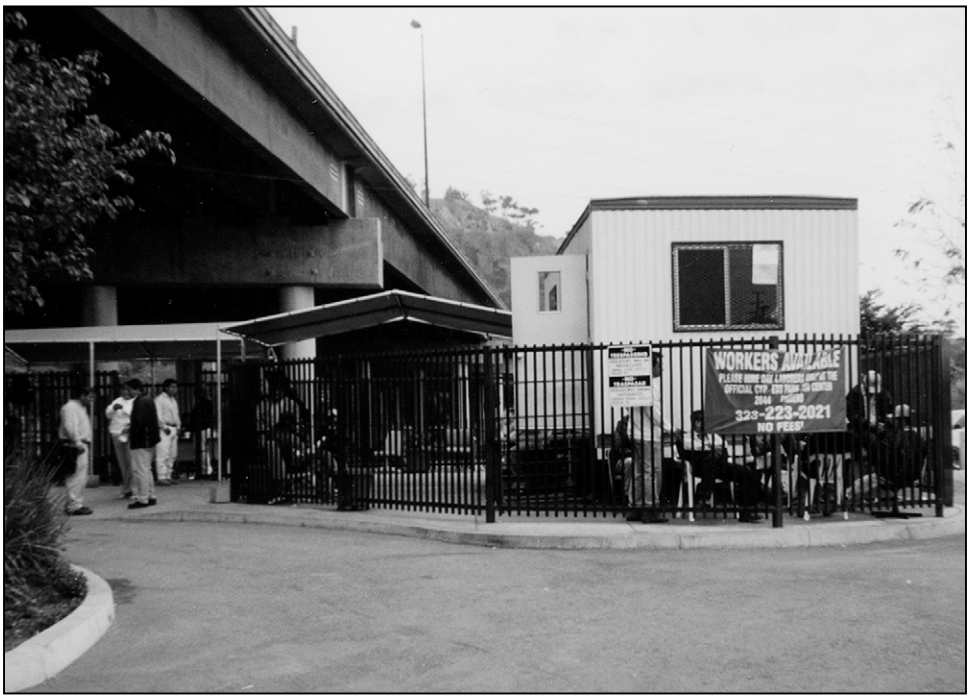
Figure 3: Shelter Construction at an Organized Day Labor Site

Source: Latin American Workers' Project, New York.

Figure 4: Day Laborers Signing up for Work

Source: Latin American Workers' Project, New York.

Figure 5: An Organized Day Labor Site



Source: GAO.

The second type of day laborer is one that is employed by for-profit temporary staffing agencies that assign them to work at client employers on a daily basis. To receive these assignments, day laborers must physically report to the temporary staffing agency office. In many cases, these workers are also paid on a daily basis by payroll check—in fact, one agency's motto is "Work today; get paid today." Generally, the temporary staffing agencies that employ day laborers are not those that are known for providing professional or administrative white or pink-collar workers to client employers.

No national data on day laborers existed until 1995, when BLS surveyed various types of "contingent" workers.[2] This survey was conducted as a

[2]The term "contingent" has been used for many years to describe a variety of nonstandard work arrangements. It describes the impermanent nature of certain work arrangements, such as those (1) providing a relatively low level of job security, (2) with more variable or less predictable hours, and (3) that reflect a change in the traditional rights of workers and the benefits offered to them.

supplement to BLS's monthly Current Population Survey (CPS).[3] BLS has conducted the supplemental survey four times: 1995, 1997, 1999, and 2001. Several researchers have also conducted studies on particular groups of day laborers in select locations across the country, including Los Angeles and Chicago. These studies attempted to obtain information not only about day laborers' demographics and work characteristics, but also about the extent to which day laborers may be experiencing violations of existing laws.

Day laborers, like many other workers in the United States, may be covered by the two federal laws that govern basic wage and workplace safety protections: FLSA and the OSH Act. To be covered, the worker must be "an employee" as defined by the law, among other requirements. The protections afforded by these laws do not extend to independent contractors. FLSA requires that employers pay the federal hourly minimum wage and overtime to covered workers, while the OSH Act requires employers to provide a workplace free of recognized hazards in order to avoid worker injury, illness, or death. To comply with the law, employers may have to provide safety training and personal protective equipment, among other practices.

FLSA originally covered only those employees engaged in interstate commerce or in the production of goods for commerce.[4] Coverage was later extended to include all employees of a business "enterprise" that met certain criteria.[5] Specifically, under the current law, all employees of an employer (such as those working for a temporary staffing agency) would be covered if it had some employees engaged in interstate commerce or in the production of goods for commerce and annual gross sales or business volume of at least $500,000. If annual gross sales were below $500,000, only those employees actually engaged in activities involving interstate commerce would be covered. Such activities might include taking orders over the telephone from customers in another state or transporting equipment to another state. Coverage under the OSH Act is broader. All employees of a particular employer are covered if the employer is engaged in a business affecting commerce. Coverage under the OSH Act does not

[3]The CPS surveys approximately 50,000 households each month. This information is the primary source of nationally representative data used to develop national employment and unemployment rates.

[4]See P.L. No. 75-718 §§ 6, 7 (1938).

[5]See P.L. No. 87-30 §§ 5(b), 6(a) (1961).

depend on the specific activities of the employee or the volume of the employer's business.

FLSA specifically covers individuals working as employees in a domestic service capacity for homeowners, performing tasks that would ordinarily be performed by the homeowner.[6] Examples of such tasks include gardening, housecleaning, or chauffeuring. On the other hand, while the OSH Act is silent on its coverage of domestic service workers, an OSHA regulation specifically excludes homeowners who employ workers in a domestic service capacity.[7] Coverage under both laws does not depend on a worker's immigration status.

To carry out their responsibilities, WHD and OSHA perform a number of activities. They generally conduct workplace investigations that result from a worker complaint or initiate them based on other information. Recently, both agencies have increased their emphasis on compliance assistance, that is, providing information to employers, workers, and others of their rights under the laws. These efforts require WHD and OSHA to work with state enforcement agencies. State laws play an important role in supplementing FLSA's protections because states may enact more stringent provisions in their laws than in federal law. This means that a state law could cover employers and individuals not covered under FLSA. If an employer is covered under FLSA and a state law, the more stringent provision of either law will generally apply. Under the OSH Act, OSHA has delegated enforcement responsibility to state labor agencies in 23 states.[8] These states have the option of implementing more stringent requirements than the federal program, and in many cases, they have done so. For example, California requires employers to have an injury and illness prevention program—something not required by OSHA.

[6]Workers performing domestic service qualify for the minimum wage if they work a total of more than 8 hours a week for one or more employers or receive cash wages from one employer totaling at least $1,300 in 2002. See 29 U.S.C. § 206(f); 66 Fed. Reg. 54047 (Oct. 25, 2001).

[7]29 C.F.R. § 1975.6.

[8]The OSH Act allows states to operate their own safety and health programs as long as they are determined by OSHA to be at least as effective as the federal OSHA program. Two of the state programs cover only state and local government employees.

Available Data Suggest that Day Laborer Population Is Vulnerable and May Be Undercounted

Available information indicates that the day laborer workforce is prone to workplace abuses and is probably undercounted. The characteristics of day laborers that we and others identified, such as limited English proficiency, are generally recognized by Labor and others as those that make workers vulnerable to workplace abuses. Moreover, our work and other recent research indicate that the size of the day laborer population may be greater than nationally available data suggest.

Data on Day Laborer Characteristics Show a Population at Risk

While individual sources may be limited in scope, taken together, they provide a general picture of the day laborer population as young Hispanic men with limited educational skills and significant language barriers. Our interviews with nonprofit and local government agencies working with day laborers indicated that the majority of day laborers were Hispanic men, with some portion being foreign born.[9] A study performed by a researcher in California generally corroborated this, finding that nearly one-third of the day laborer population studied had been in this country for less than 1 year.[10] We also found that, even though the majority of the day laborers were between 18 and 30 years old, they generally had less than a high school education; the study in California found that, in some cases, day laborers had only about 7 years of education.[11] We also found that these workers often lacked basic proficiency in speaking or writing English, with some of them not even proficient in their own language. Finally, although we were unable to quantify the percentage, we found that some portion of the day labor population was undocumented.[12] In some cases,

[9]We also identified some day laborers who were black, eastern European, or female. Although available BLS data show most day laborers are white (88 percent), this is because ethnicity is asked separately from race. Thus, Hispanics will indicate first whether they are of white or black race, then separately indicate their ethnicity as Hispanics. Data from the survey show that Hispanics make up nearly 40 percent of the entire day laborer population.

[10]Abel Valenzuela, Jr., *Working on the Margins: Immigrant Day Labor Characteristics and Prospects for Employment*, Working Paper No. 2, Center for Comparative Immigration Studies, University of California-San Diego, May 2000.

[11]We did find a small percentage of day laborers who had more than a high school diploma, usually obtained in their home country.

[12]Individuals working for temporary staffing agencies may be more likely to be documented and authorized to work since they generally have to provide documentation of their legal work status to their employer. However, we were told of instances where temporary staffing agencies did not ask for documentation or where day laborers provided fraudulent documentation.

day laborers working for temporary staffing agencies were slightly more ethnically diverse, with higher levels of education and skills.[13]

Research has shown that these characteristics make workers vulnerable to various types of workplace dangers and abuses, a fact that Labor also acknowledges.[14] First, immigrants to the United States, especially newer ones, are more willing to accept lower wages and substandard work that offers few benefits or protections, which makes them attractive to unscrupulous employers who may exploit them as a cheap source of labor. For example, often immigrants take the more informal, contingent work in this country, and we found in a previous GAO report that workers in contingent work arrangements had lower family incomes than those in traditional work arrangements and many have incomes below the federal poverty threshold.[15] Second, lower education and skill levels often mean that workers are willing to take jobs that pose a greater health risk. In that respect, we found that most of the day laborers worked in unskilled occupations, such as laborer or landscaper, in more hazardous industries, such as construction; day laborers working through temporary staffing agencies were also employed in manual labor occupations in manufacturing and warehousing. Lower educational levels also mean that workers may not be aware of the labor protections available to them, their rights as employees under the law, or the dangers associated with hazardous conditions. Third, limited proficiency in speaking or reading English makes it more difficult for workers to understand the relative risk of their employment or communicate such dangers to employers, a point stressed by representatives of several nonprofit and local government agencies we interviewed that worked with day laborers. Finally, being undocumented means that workers may not want to be found, so they will endure a higher level of abuse to remain undetected.

[13]Several temporary staffing agencies were unable to provide specific information on race, age, and educational levels because they do not collect this type of information.

[14]This report does not fully address the characteristics or vulnerability of day laborers who are not served by any group, as that information is difficult to obtain. For example, we heard of Chinese day laborers in New York working for storefront or "fly-by-night" temporary staffing agencies. These workers are likely to be as vulnerable as those day laborers working with the agencies we contacted.

[15]See U.S. General Accounting Office, *Contingent Workers: Incomes and Benefits Lag Behind Those of Rest of Workforce*, GAO/HEHS-00-76, (Washington, D.C.: June 30, 2000). The Department of Health and Human Service's 2002 Poverty Guidelines identifies the poverty threshold for a family of three as $15,020.

Size of the Day Laborer Population May Be Greater than Available Data Indicate

The only nationally representative source of data on day laborers is BLS's CPS Contingent Work Supplement. For a variety of reasons, these data may underestimate the actual number of day laborers seeking work in the United States. Data from the survey show that in 2001, there were about 260,000 individuals working as day laborers.[16] BLS also reported that about 1.2 million workers found work through temporary staffing agencies in 2001, but the survey does not attempt to determine what percent of those individuals, if any, were day laborers. Other studies of day laborers are not national in scope, but may indicate the presence of relatively large numbers of day laborers. For example, one study of day laborers in Southern California estimated the population to be as high as 20,000 in one metropolitan area.[17] Based on our interviews with nonprofit and local government agencies that serve day laborers on street corners, we identified about 2,600 day laborers who seek work daily from 28 street corners identified by these agencies. Regarding day laborers working through temporary staffing agencies, staff at one agency serving day laborers estimated that about 30,000 day laborers were sent out each day by temporary staffing agencies in Chicago alone. Moreover, one national temporary staffing agency we interviewed reported that it employed almost 700,000 individuals as day laborers in 2001.

When one considers the methods used by BLS to collect data on day laborers, the findings of these additional studies may be even more convincing as to the potential undercounting of day laborers. We have reported that BLS's methodology is inadequate for measuring certain hard-to-reach segments of the population and, as a result, may undercount them.[18] For example, BLS's survey relies on address lists that are dependent on stable or established residences. Day laborers may move frequently to find work or live with relatives. In addition, BLS does most of the interviewing by telephone, and day laborers may not have access to a

[16]BLS does not publish information on day laborers separately, but while the number of other types of contingent workers has remained relatively stable since 1995, the number of day laborers has increased by 135 percent. In 2001, day laborers accounted for about 2 percent of the contingent workforce.

[17]See footnote 10.

[18]U.S. General Accounting Office, *Child Labor in Agriculture: Changes Needed to Better Protect Health and Educational Opportunities*, GAO/HEHS-98-193, (Washington, D.C.: Aug. 21, 1998).

telephone, or speak English.[19] Finally, individuals who are wary of government may avoid participating in surveys. None of the day laborers we interviewed at the four sites we visited recalled ever being surveyed by the government.[20]

Labor's Efforts to Enforce Protections for Day Laborers Are Hampered by Limited Data, Traditional Procedures, and Difficulty in Determining Coverage

A number of factors affect Labor's ability to enforce the protections afforded day laborers under FLSA and the OSH Act.[21] The limited information available on day laborers makes it difficult for WHD and OSHA to focus resources on them. In addition, traditional investigative procedures used by WHD and OSHA may hurt their ability to detect violations affecting employees in nonstandard work arrangements, such as day laborers. Finally, applying FLSA and the OSH Act to day laborers is challenging because it requires sufficient information and resources to determine coverage. In addition, in some cases, WHD officials are uncertain about the extent of coverage for day laborers under FLSA, and the responsibilities of temporary staffing agencies under the OSH Act are unclear, which may lead to situations where day laborers are not protected.

Limited Information about Day Laborers Makes it Difficult to Focus Resources on Them

WHD and OSHA generally rely on two types of information to conduct investigations to identify potential violations. They (1) rely on complaints from individuals who believe they may have suffered a violation and (2) analyze data on wages or workplace conditions to specifically target

[19]BLS said that it can conduct the survey in person if necessary and does have the ability to conduct the survey in Spanish; however, some day laborers may not have a fixed address or may speak a language other than Spanish.

[20]Moreover, the characteristics of this workforce reflected in BLS's data raise questions about the extent to which BLS reaches day laborers employed by temporary staffing agencies. For example, BLS's 2001 data show that individuals working for temporary staffing agencies are predominately white and employed in clerical and administrative occupations, which does not reflect the characteristics of day laborers working for temporary staffing agencies.

[21]We determined that the day laborers who were the subject of our review generally do not appear to meet the legal criteria to be considered independent contractors under the OSH Act or FLSA. We determined this through our structured interview questions regarding the ownership of tools and transportation and the supervision of employees.

problematic industries or worksites. In both cases, this information fails to identify the presence of day laborers or potential violations affecting them.

Both WHD and OSHA initiate much of their enforcement activity in response to complaints filed by individual workers. In fiscal year 2001, about 70 percent of WHD's investigations under FLSA were complaint-driven; for some industries, such as the construction or temporary staffing industry, the majority of the investigations it conducted were due to complaints. OSHA is required by law to respond to all valid complaints about serious hazards from employees,[22] although it relies less heavily on complaints than WHD, historically initiating about 20 percent of its investigations based on complaints.[23] However, WHD and OSHA officials reported that they received few or no complaints from day laborers. Day laborers may not complain for a variety of reasons. For some day laborers, language barriers may prevent them from being aware of or taking advantage of their right to complain to authorities. In addition, the day laborers may fear loss of employment, either through employer retribution, deportation, or the time necessary to file and resolve a complaint.[24] Representatives of nonprofit agencies serving day laborers told us of cases where, even when they have filed complaints, they have received little action from WHD or it has taken too long for WHD to complete a case.[25]

Nonetheless, available information indicates day laborers face numerous potential violations. Many of these potential violations involve nonpayment of wages, including overtime. For example, the majority of nonprofit and local government agencies working with day laborers we interviewed reported that day laborers complained at least once a week about nonpayment of wages. These agencies reported that they recovered

[22]OSHA also responds to all fatalities, catastrophes, and cases of imminent danger.

[23]In some states, the percentage of compliant-driven inspections is higher than the national average.

[24]In one of our previous reports, Labor officials reported that there is a misperception among the foreign-born working community, actively promoted by those who do not want employees to cooperate with Labor, that cooperating with Labor will automatically result in an Immigration and Naturalization Service investigation. See U.S. General Accounting Office, *Illegal Aliens: Significant Obstacles to Reducing Unauthorized Alien Employment Exists*, GAO/GGD-99-33, (Washington, D.C.: Apr. 2, 1999).

[25]We reviewed a sample of complaint-based investigations in the temporary staffing industry for both OSHA and WHD and confirmed that none of the complaints came from day laborers.

over $750,000 in owed wages that day laborers did not receive from employers in 2001. Other researchers corroborated our findings, reporting that over half of the day laborers in their studies were not paid the wages due to them.[26] Violations may also involve the safety and health of day laborers. For example, the majority of the nonprofit and local government agencies working with day laborers that we interviewed said that few, if any, day laborers receive personal protective equipment or safety training. Other researchers corroborated our findings, with one reporting that 75 percent of day laborers in the study did not receive protective equipment when performing hazardous work.[27] Many researchers and agencies dealing with day laborers agreed that day laborers underreport their concerns about workplace safety and health because they believe no corrective action will be taken and are willing to risk their safety as long as they are paid.

Labor has made various efforts to address the fact that day laborers are less likely to complain. These efforts include educating workers and improving access to the complaint process. For example, in Chicago, OSHA and WHD have been working with nonprofit and faith-based organizations to educate workers about their rights and help them identify potential violations. As a result, OSHA received complaints that resulted in 35 cases with violations that it may not have otherwise detected. In its comments on a draft of this report, WHD said that it has been increasing its appearances on Spanish-speaking radio and television in an effort to inform workers about their rights. OSHA, in its comments, also provided additional information on its efforts to provide assistance with safety and health training for day laborers. According to nonprofit agencies we interviewed that work with day laborers, information and assistance provided to day laborers led to improved working conditions and a decline in the need to file complaints. We did not find similar levels of outreach in all locations we visited, and not all outreach efforts have included temporary staffing agencies or a broad range of organizations that work with day laborers.

Regarding access to the complaint process, OSHA has translated its complaint form and other publications into Spanish, created a

[26]See, for example, Dan Kerr and Chris Dole, *Challenging Exploitation and Abuse: A Study of the Day Labor Industry in Cleveland*, Prepared for the Cleveland City Council, Ohio, Sept. 2, 2001.

[27]See footnote 10.

1-800 telephone number accessible to Spanish speakers, and developed a Spanish language web site. OSHA has also compiled a list of Spanish speakers in the agency and has formed an Hispanic Task Force that is, among other things, developing recommendations for implementing a national strategy to address the problems of Hispanic and immigrant worker populations. WHD is in the process of translating compliance assistance materials into Spanish and has about one-quarter of its staff that speak Spanish. WHD's national office told us that it has developed a "Wage Hours Recordkeeper" in English and Spanish to provide temporary and transient workers—such as day laborers—the information needed to determine if they are paid properly. While both agencies are making progress in their activities, these efforts may not reach the full range of day laborers, since they generally lack access to the Internet, may speak languages other than Spanish, or may be illiterate.

The second way that WHD and OSHA identify potential violations is by analyzing available data on workplace demographics, conditions, and past investigations to target problematic industries or worksites. Generally, WHD targets industries with the lowest wages or the most vulnerable workers. For example, WHD uses BLS data on worker demographics, yet as we noted earlier, BLS data may undercount workers with characteristics similar to those of day laborers. WHD also uses wage information to identify low-paying occupations or industries, yet our research showed that day laborers obtaining employment from street corners work an average of 2 to 3 days a week and are generally paid in cash at the end of the day. As a result, it is not clear whether these kinds of wage payments would be reflected in data collected from employers on wages paid to workers. On the basis of this type of information, WHD identified industries other than construction or the temporary staffing industry for their national targets. Yet, most of the agencies we surveyed reported that a majority of day laborers work in the construction industry.[28] Finally, the database on past investigations that WHD uses to target industries does not identify whether violations involve day laborers. For example, WHD's data show that, in 2001, temporary staffing agencies had a higher likelihood of monetary violations than employers in any other industries investigated, but the database does not identify whether any of these workers are day laborers.

[28]At the local level, WHD offices have the authority to target construction. In 2001, about 3 percent of WHD's investigations in construction were targeted.

OSHA targets the most hazardous industries and worksites for investigation, using injury and illness data collected and reported by employers and its database on past investigations. However, this information does not show where day laborers work or the full extent of their injury experience because when employers record an injury, they are not required to note whether the worker was a day laborer. Furthermore, because client employers—not temporary staffing agencies—must record injuries and fatalities of temporary staffing agency day laborers, the data OSHA uses cannot identify the extent to which day laborers working for temporary staffing agencies are injured or killed. Finally, when OSHA targets particular worksites for investigation, the information it uses may not reflect smaller worksites, where many day laborers work and which experts believe are the most hazardous sites in the industry. For example, OSHA targets construction at the national level, but the data it uses to target worksites in the industry does not generally include construction projects valued at less than $50,000 and that are residential. OSHA's local offices have flexibility to exclude additional construction worksites from targeted inspection; we found some local offices excluded projects valued at up to $2,000,000. In addition, because OSHA counts inspections by the number of contractors at a worksite, there is an incentive to target larger construction worksites, which may be likely to have more contractors.

Recently, both WHD and OSHA made efforts to collect additional data that better identified potential violations involving day laborers working for temporary staffing agencies. A regional WHD office collected data from a randomly selected number of temporary staffing agencies to determine whether these agencies were in compliance with FLSA. In 1997, local OSHA offices in Ohio obtained workers' compensation data to better identify injury rates for day laborers working at temporary staffing agencies.[29] These improved data helped the agencies determine wage and safety problems that may have otherwise gone undetected. For example, WHD found that almost one-third of temporary staffing agencies were not in compliance with FLSA, while OSHA found that temporary staffing agencies had some of the highest numbers of workers' compensation claims with total costs exceeding $8.4 million.[30] In both cases, the offices

[29]Although the client employer records an injury, the temporary staffing agency pays workers' compensation for the injured worker.

[30]High rates of workers' compensation payments indicate either a large number of injuries or potentially fewer injuries that incurred significant costs—an indicator of a potentially hazardous work environment.

worked with the temporary staffing agencies to reduce wage and hour abuses and ensure a safer workplace. For example, OSHA's Ohio office began the Choice program to work with temporary staffing agencies, providing compliance assistance to smaller agencies and requiring on-site investigations of all injuries involving temporary workers, such as day laborers. Recent results show that 60 percent of the participating temporary staffing agencies reduced their overall workers' compensation costs and over half reduced the number of workdays lost to injuries and illnesses. While these initiatives may help WHD and OSHA better identify where day laborers work and the violations they face, the agencies have not yet fully assessed the results of these efforts to consider their application agencywide.

At the national level, OSHA is undertaking another effort to collect additional data that will provide a better understanding of the extent to which day laborers are involved in workplace fatalities. In 2002, OSHA implemented a temporary procedure that required OSHA investigators, for all fatality and catastrophe investigations, to determine if the worker was foreign-born, Hispanic, or had language barriers. If that were the case, the OSHA investigator would then determine if the worker was a day laborer. OSHA has not yet begun to evaluate this information, but the information should prove useful to gain a better understanding of day laborers' fatality experience. However, this process is still in the pilot stage and OSHA will not identify fatalities and catastrophic accidents of day laborers that are not foreign born, Hispanic, or do not have language barriers. Moreover, OSHA does not ask if the day laborer was provided through a temporary staffing agency.

Labor's Investigative Procedures Make it Difficult to Detect Violations Affecting Employees in Nonstandard Work Arrangements

Although both WHD and OSHA conduct thousands of investigations each year to detect employer noncompliance and remedy potential violations, their investigative procedures may not be able to detect violations affecting employees in nonstandard work arrangements, such as day laborers. As part of their investigations, WHD and OSHA are visiting fewer worksites, and WHD generally gives advance notice when it visits worksites. As a result, both agencies may miss potential violations involving day laborers.

WHD and OSHA conduct thousands of investigations each year without visiting worksites. For example, in 2001, WHD conducted as many as 55 percent of its investigations by fax or telephone. Although OSHA does not keep similar statistics, since 1995, it has been encouraging its investigators to handle complaint investigations informally by telephone.

By not going on-site, investigators lose the opportunity to observe the worksite or interview employees. Also, in some instances, the investigations focus on a single worker, a single minor violation, or a particular timeframe. All of these are activities that reduce WHD's and OSHA's ability to uncover potential violations affecting day laborers. In addition, FLSA provides Labor with no authority to assess penalties for failing to keep accurate payroll records.[31] Without the threat of a financial penalty from WHD and because employers may hire day laborers to purposely avoid costs, such as overtime and taxes, wage records may not reflect actual payments made to workers, such as day laborers. Without visiting the workplace, WHD cannot compare employers' wage records with individuals actually working at the site to make sure that the payroll records accurately reflect all the workers and the payments made. WHD data show that WHD is five times more likely to find violations of recordkeeping requirements when it visits the workplace or collects additional information.

When WHD does visit worksites, the procedures it uses may reduce the likelihood of uncovering potential violations related to day laborers. According to WHD guidance, investigators have the discretion to give employers advance notice of an impending investigation, but it would be inappropriate to provide such notice when there is reason to believe that the employer's behavior will change as a result of advance notice. The local WHD offices we visited provided advance notice for the majority of their investigations. Given that employers hire day laborers sporadically, employers may choose not to hire day laborers on the day of the investigation or alter records for the investigation, limiting WHD's opportunity to find day laborers.

Labor Faces Challenges When Applying Provisions of FLSA and the OSH Act to Day Laborers

Applying FLSA and the OSH Act to day laborers is challenging for a number of reasons. In some cases, WHD lacks the necessary information on potential violations or the resources to determine coverage under FLSA. In other cases, the extent to which these laws cover day laborers is uncertain. Even when these laws cover day laborers, they may not account for the nonstandard work arrangements of day laborers, which could jeopardize their economic or physical well-being.

[31]A court can assess a penalty if an employer is convicted of willfully violating recordkeeping requirements. 29 U.S.C. §§ 215(a)(5), 216(a).

Some Provisions of FLSA and the OSH Act Are Difficult to Apply

Applying FLSA and the OSH Act to day laborers is difficult because coverage may depend upon the type of employer or the specific work a day laborer performs. Under FLSA, day laborers employed by enterprises with an annual business volume of more than $500,000 and some employees engaged in interstate commerce are covered; this could include day laborers working for large temporary staffing agencies. However, it is not always clear how coverage would apply to day laborers employed by enterprises making less than $500,000 per year because only those workers determined to be engaged in interstate commerce or in the production of goods for commerce are covered. According to WHD officials, in some cases, WHD officials are unable to obtain the information needed to determine this coverage. For example, we found that many day laborers work for small construction subcontractors performing manual labor, such as installing drywall. According to WHD officials, a determination would have to be made that the building the day laborer worked on was to be used for interstate commercial activity in order for the day laborer to be covered. However, this kind of information is not always available. In other cases, information on the employer location and hours worked is not readily available. Proving such coverage can be difficult and resource-intensive. Because WHD's resources are limited, it must determine the potential impact of investigating smaller employers that may have violations affecting a small number of individuals versus larger employers that may have greater numbers of individuals and more violations.

In other cases, coverage may depend on how local offices determine whether an employee is engaged in the production of goods for commerce. For example, a worker may be covered if engaged in an activity that is "closely related or directly essential" to the production of goods for interstate commerce. In applying this provision, WHD officials explained that a day laborer serving as a security guard for a building that houses companies involved in the production of goods would be covered because that activity is closely related or directly essential to these interstate activities. Yet, a day laborer mowing the lawn at the same building would not be covered because that function would not be considered closely related or directly essential to these interstate activities. The distinction is not always obvious and Labor has recognized this in its regulations. According to Labor, coverage cannot always be determined with precision

and may require authoritative decisions of the courts for a final determination.[32]

Regarding domestic service work, FLSA provides that employees doing household chores are covered if they meet certain requirements. Not all WHD officials appeared to recognize the application of this provision to day laborers. WHD officials at headquarters said that day laborers picked up from street corners would be covered by this provision of FLSA, while officials in the WHD district offices we visited had differing views. For example, one office interpreted this provision to cover only long-term domestic employees. As a result, day laborers performing domestic service work may be protected under this provision in some areas but not in others.

Because of the difficulty in asserting coverage for individuals working for small employers, WHD often refers such potential violations to state enforcement agencies.[33] In some cases, state laws may provide greater protection than FLSA. For example, all four states we visited protect the wages workers were promised, which can exceed the federal minimum wage. (App. III compares selected wage provisions under FLSA and the laws and requirements of the four states we visited.) However, we found that, in practice, advantages associated with relying on state enforcement agencies may not be realized. First, not all states' laws cover small employers, for example, neither Virginia's nor Illinois' law covers employers with four or fewer workers. As a result, day laborers working for very small employers may be unlikely to get protection under FLSA or the state law. Second, most of the state officials we interviewed said that their investigations were "complaint-driven." Officials in Illinois and New York, for instance, reported spending all of their time responding to complaints. This, combined with their limited resources, makes it unclear that they could pursue all referrals from WHD. Third, officials in some states we visited told us that their investigators rarely pursued enforcement actions that required on-site investigations, relying primarily on telephone or fax investigations. As a result, like WHD, state agencies may also miss violations. This reliance on state enforcement agencies may be even more problematic for day laborers not covered by FLSA in those

[32]29 C.F.R. § 776.17.

[33]WHD might also inform the individuals of their private right of action to file suit in state or federal court.

states with less stringent protections, such as no minimum wage or overtime provisions.

While day laborers employed by temporary staffing agencies are covered by the OSH Act, the exact responsibilities of temporary staffing agencies and that of their clients is not always clear. According to OSHA, temporary staffing agencies are responsible for general safety training and the provision of general personal protective equipment. Yet, there is no clear, centralized guidance from OSHA on the legal responsibilities of temporary staffing agencies or their clients to properly ensure the safety of the day laborers they employ. Neither the OSH Act nor the implementing regulations elaborate on these responsibilities. Furthermore, OSHA has provided interpretations of the requirements in response to inquiries, but temporary staffing agencies are not required to follow them. Determining whether the temporary staffing agency or client employer is responsible for providing training and can be cited for failing to ensure the safety of their workers is a complex area that may be confusing, which may leave day laborers without sufficient safety and health protections at the worksite. For example, a local OSHA office cited both the temporary staffing agency and client employer after temporary workers suffered injuries at the client employer's worksite for failing to provide sufficient training and concluded that each employer believed the other employer was responsible for training the workers. On the other hand, some OSHA officials said that they would be less likely to cite temporary staffing agencies. If temporary staffing agencies are not appropriately cited, day laborers working for these agencies may be subject to inadequate safety and health protections. A centralized source of information clarifying the role of temporary staffing agencies and client employers could allow OSHA to more uniformly apply the law and make it easier for both temporary staffing agencies and client employers to understand their responsibilities.

Certain Practices under Existing Laws May Adversely Affect Day Laborers

Even when WHD and OSHA are able to enforce protections under FLSA and the OSH Act, certain practices allowed by these laws may adversely affect day laborers' economic and physical well-being. The unique characteristics and nonstandard work arrangements of day laborers make them more susceptible to these practices than workers in traditional work arrangements. These practices relate to wage deductions, transportation safety, and compensation for time waiting to be employed. Addressing these issues is difficult because any resolution would involve complicated tradeoffs between the potential benefits to day laborers and the potential costs to employers.

Under FLSA, an employer can take a variety of deductions from wages.[34] Employers can deduct charges for items such as meals, lodging, transportation, or cashing of payroll checks as long as the item is for the employee's benefit and acceptance is voluntary and uncoerced. Employers can deduct these items even if they bring wages below the federal hourly minimum wage.[35] Employers can also deduct charges for other items, such as tools or uniforms, as long as those items do not take the employee's wages below the federal hourly minimum wage.[36] Representatives of temporary staffing agencies told us that they generally pay minimum wage or whatever the local market will bear and generally take the standard deduction for taxes as well as other items, such as transportation, from day laborers' pay. Agencies we interviewed that work with day laborers reported that most day laborers relied on employers for some of these items.[37] As a result, the hourly wage received by day laborers can often be much less than the originally established wage. Nonprofit and local government agencies working with day laborers told us that some day laborers receive $2 an hour as a result of several deductions. These practices do not generally affect traditional workers because they do not rely on employers for services such as transportation, check cashing, or meals.

Another practice that may have greater repercussions for day laborers than for traditional workers concerns physical safety when commuting to and from the worksite. Over the past 2 years, there have been several reports of day laborers being killed or injured while being driven to a worksite by an employer. In 2001, for example, a temporary worker was killed as she was being transported by the temporary staffing agency to a job assignment. OSHA did not investigate the case because it was outside its jurisdiction. In general, individuals commuting to and from work are not considered to be working, so their transportation safety is not covered under the OSH Act. However, the commuting pattern for day laborers is different than the pattern for workers in traditional work arrangements.

[34]See 29 U.S.C. § 203(m); 29 C.F.R. pt. 531.

[35]These items can be deducted only if they are customarily provided and priced at a reasonable cost or fair value. 29 C.F.R. §§ 531.30-.33,.36-.37. Check cashing fees or other such deductions are illegal in some states.

[36]See 29 C.F.R. § 531.36(b).

[37]One temporary staffing agency we interviewed dispenses pay using a cash machine that charges a fee ranging from $1 to $1.99. A pending class action suit in three states alleges this practice is illegal.

Most workers in traditional work arrangements rely on their own car, a carpool, or public transportation to get from home to the workplace. Day laborers, on the other hand, travel from their homes to a nearby location, such as a street corner or a temporary staffing agency, to obtain work. Because day laborers often do not have access to a car or work in locations inaccessible by public transportation, they depend on the employer to get them from the street corner or temporary staffing agency to the worksite. Federal law covers transportation for migrant and seasonal agriculture workers to and from the job site if they are transported by their employer.[38] Additionally, because employers are not required by OSHA to record an injury that occurs during transport, OSHA cannot determine how often this occurs. Assuming that day laborers are less likely to receive workers' compensation or have health insurance, any medical costs associated with the injury would be incurred by the community at large.

Compensation for waiting time is another issue that may affect day laborers differently than workers in traditional work arrangements. Most workers in traditional work arrangements have a steady employer and regular work location and go directly from home to the worksite. Day laborers, on the other hand, must wait at particular locations to obtain employment—even if they are employed by temporary staffing agencies. We found that, in many cases, day laborers wait 3 to 4 hours before being assigned a work assignment, spend between 1 to 3 hours in travel time to and from the worksite, and generally work at least 8 hours on the job. This could add up to a 12- to 15-hour day. According to WHD officials, waiting on a street corner for a job offer or at a temporary staffing agency for an assignment to a client is not counted as wait time. In addition, even after a worker is provided a work assignment, WHD generally would not consider the time it takes to get to the site to be compensable work time under FLSA.[39]

Conclusions

Both WHD and OSHA acknowledge that those individuals working as day laborers are some of this nation's most vulnerable workers. Moreover, both struggle with the problem that the characteristics that make day

[38] 29 U.S.C. § 1841.

[39] Labor's Office of the Solicitor commented that, depending on the particular facts, some waiting time may be compensable, such as when the waiting time occurs between the first and last tasks performed during a workday.

laborers most susceptible to workplace abuses also make it difficult for Labor and others, especially in light of limited resources, to find and protect them. It is also difficult to protect a group of workers that may not want to be found. These difficulties may lead to workers who are not receiving the protections they are entitled to under law, as well as larger problems associated with an underground economy, illegal immigration, and unreported income. Both WHD and OSHA have made a commitment to protect these workers and others like them, but they are hampered by incomplete data and difficulty in applying some of the legal protections available to these workers.

Both agencies' efforts to protect day laborers could be enhanced by having better information about where day laborers work and what violations they may face. While current efforts to provide education and outreach and collect additional data on day laborers have promise, such efforts can be expanded. For example, efforts by OSHA and WHD may benefit from greater involvement with temporary staffing agencies or a larger network of agencies representing day laborers to ensure that day laborers are aware of their rights. Also, WHD and OSHA could benefit by exploring the results of their local efforts to collect additional data on day laborers working for temporary staffing agencies. By not doing so, WHD and OSHA lose the opportunity to identify better ways to obtain valuable information about where day laborers work and the potential violations they face. Moreover, unless OSHA refines and permanently implements its data collection procedure for fatality investigations, it may not get a complete picture of the number or characteristics of day laborers killed on the job.

Finally, WHD officials did not uniformly understand how to apply FLSA's domestic service provision to day laborers. Because of this apparent lack of understanding, day laborers providing identical services for homeowners may be treated differently depending on the knowledge level of WHD officials. Furthermore, with respect to OSHA, in the absence of regulations or a centralized source of information that specifies the responsibilities of temporary staffing agencies for the health and safety of their workers, OSHA's local offices may risk inconsistent application of the OSH Act and joint employers may fail to provide sufficient safety protections.

Recommendations for Executive Action

To further WHD's and OSHA's efforts to obtain better information concerning the presence of and potential for violations involving day laborers, we recommend that the Secretary of Labor:

- direct WHD and OSHA, as a part of their education and outreach efforts, to enhance the procedures they use to reach day laborers, such as expanding their contact with temporary staffing agencies or other agencies that work with day laborers;

- direct WHD and OSHA to review the results of local efforts to obtain additional data on the presence and violation experience of day laborers working for temporary staffing agencies for possible replication in other locations or agencywide; and

- direct OSHA to finalize its current effort to collect data on fatalities and catastrophes and refine it by asking first whether someone is a day laborer, including whether the individual worked for a temporary staffing agency.

To ensure that Labor's local offices have consistent policies and an understanding of how and when to enforce protections afforded under FLSA and the OSH Act, we recommend that the Secretary of Labor:

- instruct WHD to clarify when day laborers may be covered under the domestic service provision of FLSA; and

- instruct OSHA to consider the development of regulations to specify temporary staffing agency responsibility for safety and health under the OSH Act, or at a minimum, centralize existing information on temporary staffing agencies' responsibilities.

Agency Comments and Our Evaluation

WHD and OSHA provided us with written comments on a draft of this report, which are reproduced in appendixes IV and V, respectively. WHD agreed with all of the recommendations that applied to it. OSHA agreed with our recommendation regarding enhancing the education and outreach procedures it uses to reach day laborers and did not object to the others. The agencies also provided technical comments, as did BLS and Labor's Office of Solicitor, which we incorporated in the report where appropriate.

Both WHD and OSHA emphasized their commitment to protecting day laborers under FLSA and the OSH Act. WHD said that it is strongly committed to providing effective compliance assistance to those workers covered by FLSA. OSHA said that employers of day laborers have the same obligations as any other employer. Nonetheless, OSHA acknowledges that particular outreach and enforcement efforts may be necessary to address the particular circumstances of day laborers.

Both agencies provided additional information on their outreach efforts. For example, WHD is developing a plain language fact sheet, in English and Spanish initially, covering the application of wage and hour laws to the employment of temporary workers such as day laborers. OSHA has formed an alliance with the Hispanic Contractors of America to expand outreach and communication on safety and health awareness and best practices for Spanish-speaking employers and employees in the construction industry.

WHD and OSHA commented on our assessment of particular procedures affecting their ability to detect violations involving day laborers. Both agencies said that off-site investigations, such as telephone and fax contacts with employers, are the most timely and effective method of securing last paychecks for workers. They noted that these investigations can be used as an indicator that an on-site investigation of the employer might be warranted. We agree that this method may be efficient and have value for workers who are likely to complain about working conditions; however, we continue to believe that this method may not be the most effective for day laborers, who generally may be reluctant to complain. OSHA also said that its construction targeting, which generally reaches larger sites, does not preclude OSHA from inspecting sites where day laborers can be found because small contractors regularly subcontract work at large construction sites and at many projects valued over $50,000. However, several experts told us that larger construction contractors with higher-value projects tend to use unionized subcontractors who rarely hire nonunion workers, such as the day laborers we encountered.

We are sending copies of this report to appropriate congressional committees, the Secretary of Labor, and the Assistant Secretaries of Labor for Employment Standards and Occupational Safety and Health. We will also make copies available to others upon request. In addition, the report will be available at no charge on GAO's Web site at http://www.gao.gov.

Please contact me or Lori Rectanus on (202) 512-7215 if you or your staff have any questions about this report. Other contacts and staff acknowledgments are listed in appendix VI.

Sincerely yours,

Robert E. Robertson
Director, Education, Workforce, and
Income Security Issues

Appendix I: Identification and Selection of Agencies Serving Day Laborers

To determine what is known about the size and nature of the day laborer workforce in the United States, we initially examined demographic data on day laborers from the Bureau of Labor Statistics' Current Population Survey Contingent Work Supplement. Although this information is collected directly from individuals working as day laborers, it lacked detailed data about the characteristics of day laborers and their work that were necessary to address this objective, such as the number of hours or days worked, means of transportation used to get to job sites, and frequency and method of payment for work completed. Moreover, data available from other studies and reports focused on day laborers in certain geographic locations. As a result, we collected supplemental information through structured interviews from agencies that work with day laborers.

We identified two types of agencies that assist day laborers. One type consists of nonprofit and local government agencies that work with day laborers seeking employment on street corners. The second type includes temporary staffing agencies that employ day laborers.

Identifying Agencies Serving Day Laborers

Given the lack of a national directory of agencies that work with day laborers, to identify as many agencies as possible, we interviewed experts; visited local agencies in the Washington, D.C., metropolitan area; and reviewed research studies and reports identified by experts, a literature review, and the Internet. We sought to obtain the broadest ethnic and geographic representation possible. We found that the majority of the agencies on our list were Hispanic-based groups, which may have some effect on our findings regarding the ethnicity of day laborers. We observed and were told of day laborers of other ethnic backgrounds, such as Asians in New York, and Polish and other eastern European groups in Chicago, but few, if any of the organizations on our list focused solely on serving these groups. We ultimately identified 84 agencies representing 14 states; the overwhelming majority of the agencies (61) were located in California, with Texas having the next highest number (4).

To identify temporary staffing agencies, we started with a list of 11 firms identified by the American Federation of Labor-Congress of Industrial Organizations (AFL-CIO) as the primary employers of blue-collar workers in the United States. The American Staffing Association, an organization that represents temporary staffing agencies, confirmed that these were the major employers of skilled and/or unskilled blue-collar workers.

Selecting Agencies Serving Day Laborers

To identify nonprofit and local government agencies for our structured interviews, we chose one agency from each of the 14 states represented on the list of 84 and added 4 agencies each from California, Illinois, New York, and Virginia to interview during our site visits. We also added 1 agency each from California and Texas because they represented the largest number of agencies on our list. In total, we selected 20 nonprofit and local government agencies and all 11 temporary staffing agencies we initially identified.

Delivery of Structured Interviews

From February to June 2002, we contacted the 31 nonprofit, local government or temporary staffing agencies (20 nonprofit or local government and 11 temporary staffing agencies). We asked these agencies about (1) the characteristics of the day laborer workforce, such as race, age, and education; (2) types of work day laborers typically perform; (3) working conditions that day laborers face in the areas of wages, safety, and health; and (4) litigation concerning federal wage, safety and health provisions that involved day laborers. We did not independently verify the information provided by the agencies.

Three of the 20 nonprofit and local government agencies we interviewed worked with day laborers employed by temporary staffing agencies. We included their results with the 11 temporary staffing agencies—for a total of 14. Three temporary staffing agencies declined to participate and 3 others did not employ day laborers as we defined them, leaving a final total of 8. As a result, the information in this report represents 17 nonprofit and local government agencies and 8 temporary staffing agencies in which 3 street agencies were re-categorized as temporary staffing agencies. (See table 3.)

Table 1: Agencies Participating in Structured Interviews

Agency name	Location
Nonprofit and local government agencies	
Coalition for Humane Immigrant Rights of Los Angeles	California
San Diego County Jobs for Progress	California
San Francisco Day Laborer Program	California
American Friends Service Committee	Colorado
Roswell Intercultural Alliance	Georgia
Latin Union of Chicago	Illinois
CASA of Maryland	Maryland
Wind of the Spirit Immigrant Resource Center	New Jersey
Latin American Workers Project	New York
Workplace Project	New York
Association of Latino Workers of North Carolina	North Carolina
VOZ: Workers' Rights Education Project	Oregon
Denton Humanitarian Association	Texas
Oscar Romero Workers' Center	Texas
Culmore Family Resource Center	Virginia
Shirlington Employment and Education Center	Virginia
CASA Latina	Washington
Temporary staffing agencies	
Adecco	[a]
Chicago Coalition for the Homeless[b]	Illinois
Day Laborers' Organizing Committee[b]	Ohio
Labor Connection	[a]
Labor Finders International	[a]
Labor Ready	[a]
Primavera Works[b]	Arizona
Tandem Staffing Solutions	[a]

[a]These temporary staffing agencies have offices in locations nationwide or in certain regions of the United States.

[b]The responses we received from these agencies related to day laborers working for temporary staffing agencies.

Source: GAO.

Appendix II: Services Provided to Day Laborers by Selected Nonprofit Agencies

As part of our efforts to identify what was known about the nature and size of the day laborer workforce, we conducted on-site visits with one nonprofit agency that works with day laborers in each of the four states we visited. During these visits, we obtained information on the characteristics of the day laborer workforce, as well as how these agencies broker employment for day laborers and work to improve day laborers' working conditions.

Description of Nonprofit Agencies Visited

The four nonprofit agencies we visited seek to improve the welfare of a population broader than day laborers, to include low-income workers, the homeless, and local citizens. All of the agencies provide information to workers to educate them about their rights in the workplace. They also help day laborers obtain employment and provide them with a range of social services, from teaching English and offering classes on childcare to providing medical screenings. At one of the locations of the Coalition for Humane Immigration Rights of Los Angeles (CHIRLA), day laborers can receive English classes from a local welfare agency representative while they wait to be assigned to a job. In some cases, these services are offered to workers who stay at the site after it closes. (See table 2 for a description of these agencies and the services they provide to day laborers.) In addition, the agencies provide legal support by referring workers for legal assistance or litigating cases themselves on behalf of workers.

Table 2: Description of Agencies GAO Visited and the Services They Provide

Agency/location	Purpose	Services provided to day laborers
Shirlington Employment and Education Center, Arlington, Va.	Provides employment and training services to individuals in the community.	• Provides services, such as classes in English and computers. • Brokers employment.
Coalition for Humane Immigration Rights of Los Angeles, Los Angeles, Calif.	Organizes workers and provides social services to improve the overall welfare of low-income workers.	• Provides services, such as English and literacy classes. • Litigates cases. • Brokers employment.
Chicago Coalition for the Homeless, Chicago, Ill.	Seeks to empower homeless individuals.	• Organizes day laborers to address grievances.
Latin American Workers' Project, New York, N.Y.	Provides outreach and education to workers to help them organize.	• Offers English classes. • Litigates cases. • Brokers employment.

Source: Shirlington Employment and Education Center, Coalition for Humane Immigration Rights of Los Angeles, Chicago Coalition for the Homeless, and Latin American Workers' Project.

Several of these agencies began to serve day laborers because local communities were increasingly displeased at seeing day laborers congregating on street corners or at convenience or home warehouse stores.[1] Local citizens reported that they feared for their safety or they feared that congregating could affect local commerce. Advocates for day laborers feared for the safety and welfare of day laborers—either they were being injured as a result of running into traffic to respond to employers' solicitations for work or they were complaining about not receiving promised wages or adequate working conditions. Local groups—including social welfare agencies, worker advocates, local government, and police—often worked together to develop and fund solutions to connect day laborers and employers.

Toward that end, three of the four organizations worked with local groups to build or identify locations that could be used to broker employment between day laborers and employers. (Chicago's Coalition for the Homeless does not broker employment.) The Shirlington Center has a building where day laborers wait for work. The Latin American Workers' Project operates two sites in New York: one in the basement of a church and the other on a parking lot along the banks of the Atlantic Ocean. A tent was recently donated to the latter site to provide shelter. CHIRLA operates three sites around the Los Angeles area that are also located in parking lots.[2] The agencies publicize these new locations to employers and encourage them to use these sites to find workers. In one location, police will ticket employers or day laborers who use street corners. However, some day laborers refuse to use these sites, believing that their employment opportunities are better at unorganized sites. It is hard to reach all day laborers and unorganized sites continue to exist. For example, New York officials identified 26 unorganized sites around New York City, while CHIRLA representatives identified about 150 unorganized sites in Los Angeles County.

The agencies established procedures at these job sites to facilitate the brokering of employment. These procedures were often developed with the input of day laborers and typically require that they provide basic

[1]Representatives from all of these agencies said that many local communities continue to make efforts to pass anti-loitering ordinances in an effort to prevent day laborers from gathering at street corners. In at least three states—Virginia, California, and Illinois—those ordinances or efforts have been struck down by the courts.

[2]CHIRLA provides mediation and other services for six unorganized corners.

information, such as their name, address, and telephone number and abide by certain rules. For example, day laborers at one agency must do some community work to "pay off" the services provided by the agency. At two agencies, employers who participate must also provide information, including their name, address, telephone number, and license plate number. One agency, however, does not request such information, fearing that those requirements may scare away employers.

When the day laborers arrive at the site around 6 a.m., they sign in, listing their name, skills, and level of English proficiency. When employers arrive seeking a worker for a particular job, a representative of the agency will select a worker's name from the list or pick a name through a lottery system. Employers may request certain workers, for example, one that has a certain skill or speaks English. The agencies let the day laborers negotiate wages with employers. However, one agency established a certain minimum wage that employers must pay. At several sites, the day laborers have informally agreed among themselves on a minimum hourly wage and will not go below it.

Resolving Potential Violations Involving Day Laborers

All the agencies help day laborers remedy workplace problems involving wages or safety and health. To resolve the problem, they first contact the employer directly. In some cases, it works well; but in other cases, some day laborers do not have information about the employer, such as a telephone number or address, making it difficult to pursue. To address this problem, CHIRLA and the Latin American Workers' Project have begun to provide books and cards to the day laborers where they can track the hours they work, the locations where they have worked (to help assert individual coverage under FLSA), and other information that will help identify the employer.

If the problem is not resolved by dealing directly with the employer, the agencies may conduct a community action to push the employer to resolve the issue. For example, one agency organized a protest in front of the employer's premises. Other strategies include picketing the employer's work or home and seeking media attention. The agencies also help workers file complaints with state or federal agencies, or in small claims court. However, the agencies reported that most workers are reluctant to do so.

If the problem persists, the agencies may litigate cases on behalf of day laborers (to recover unpaid wages or obtain workers' compensation for a work-related injury, for instance), provide legal advice, or refer cases to

local or state legal agencies for litigation. All four agencies partner with private law firms or local, state, or federal agencies that can also litigate cases. The Latin American Workers' Project, for example, refers cases to the Puerto Rican Legal Defense Fund or the New York State Attorney General.

As a result of these efforts, these four agencies reported that, collectively, they retrieved over $280,000 in wages owed to workers in 2001. In addition, two agencies reported a significant reduction in the number of complaints regarding wages, safety, and health.

Appendix III: Selected Features of FLSA and Requirements in Four States

This table compares selected features of FLSA with state wage laws, regulations, and administrative orders in the 4 states we visited. It highlights only those provisions that are most applicable to day laborers. State requirements play an important role in supplementing FLSA's protections because states may enact more stringent provisions. This means that a state could cover employers and individuals not covered under FLSA. If an employer is covered under FLSA and a state requirement, the more stringent provision will generally apply. We supplemented this table with information provided by state officials.

Provisions	FLSA	California	Illinois	New York	Virginia
General coverage	All individuals employed by • employers earning $500,000+ annually in sales, and employees engaged in interstate commerce, or in the production of goods for commerce; • employers earning less than $500,000 and individual is engaged in interstate commerce, or in the production of goods for commerce, or closely related and directly essential to interstate commerce; or • homeowners performing domestic services, such as house cleaning or gardening for 8+ hours a week or earning at least $1,300 in 2002.	Individuals employed by an employer, including homeowner, with certain exceptions.	Individuals employed by an employer, with certain exceptions.	Individuals employed by an employer, including homeowners, with certain exceptions.	Individuals employed by an employer, with certain exceptions.
Exclusions most relevant to day laborers	Individuals working for companies earning less than $500,000 and employees are not engaged in interstate commerce.	None	Workers • employed by employers with fewer than four employees or • employed by a homeowner performing domestic service in a private home.	None	Workers • employed by employers with fewer than four employees; • employed by a homeowner performing domestic service in a private home; or • covered by FLSA.

Provisions	FLSA	California	Illinois	New York	Virginia
Wages	Minimum wage: $5.15/hour.	Established rate of pay but no lower than $6.75/hour.	Established rate of pay but no lower than $5.15/hour.	Established rate of pay but no lower than $5.15/hour.	Established rate of pay but no lower than $5.15/hour.
Overtime	For over 40 hours in any workweek, workers earn 1-½ times the regular rate of pay.	Same as federal law. Daily overtime: workers earn 1-½ times the regular rate of pay for every hour worked over 8 hours in 1 day and double the regular rate every hour worked after 12 hours in 1 day.	Same as federal law.	Same as federal law.	None
Deductions most relevant to day laborers	Can deduct items considered to be an employee benefit, even if it brings workers below the minimum wage, such as meals, lodging; must be at the actual cost. Can deduct for check cashing or transportation if the services are voluntary and considered to be an employee benefit. Can deduct items considered to be for an employer's benefit, such as transportation and uniforms, but deductions cannot bring wages below the minimum.	Employees must provide written authorization for deductions. Can deduct items that take workers below the minimum wage, such as meals, but the law sets a cap. Cannot deduct for personal protective equipment. Employers must provide itemized statement of deductions at time of payment.	Can deduct the reasonable cost of meals and lodging, if it is for the employee's benefit, even if it brings workers below the minimum wage. Can deduct for transportation, but not if it brings wages below the minimum. Can deduct the reasonable cost of uniforms and equipment with employee's written consent, but not if it brings wages below the minimum. Employers must provide itemized statement of deductions at time of payment.	Can deduct charges for items considered an employee benefit, such as meals and lodging, even if it brings worker below the minimum wage; the state sets caps for these items.[a] Allowances for uniforms are added to not deducted from wages. Cannot deduct charges for transportation or personal protective equipment. Employers must provide itemized statement of deductions at time of payment.	No deductions allowed without written and signed employee authorization. Requires written statement of deductions upon request.

Provisions	FLSA	California	Illinois	New York	Virginia
Recordkeeping	Employers must keep payroll records.	Employers, including homeowners, must keep payroll records.	Employers must keep payroll records.	Employers, including homeowners, must keep payroll records.	None
	Only courts may assess a penalty for failure to keep payroll records.	Penalty of $500 for failure to keep payroll records.	State enforcement agency currently not authorized to assess penalties for failure to keep records.[b]	Penalty for failure to keep payroll records is up to $1,000 for a first violation, $1,000-$2,000 for a second violation, and $2,000-$3,000 for a third violation.	
Other			The Day Labor Services Act (DLSA) provides additional protections to day laborers employed by temporary staffing agencies.[c] Check cashing fees are prohibited, transportation fees are capped at 3% of daily wages, and other deductions, such as meals, uniforms, and equipment, must be at the actual cost or market value. DLSA also recommends that temporary staffing agencies hire people who speak languages that are generally used near day labor service agencies.		

[a]New York State law uses the term "allowances" to denote charges for items such as meals and lodging. For this table, however, we refer to these allowances as "deductions."

[b]According to state Labor officials, new legislation authorizing the state agency to assess penalties will take effect in 2003.

[c]Although the act only covers "day labor service agencies," for this table, we are referring to them as temporary.

Source: GAO comparison of the Fair Labor Standards Act of 1938, with the pertinent state laws, requlations, and administrative orders of California, Illinois, New York and Virginia.

Appendix IV: Comments from the Employment Standards Administration

Note: GAO comments supplementing those in the report text appear at the end of this appendix.

U.S. Department of Labor

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

SEP 10 2002

Mr. Robert E. Robertson
Director
Education, Workforce, and
Income Security Issues
United States General Accounting Office
441 G Street, N.W., Room 5930
Washington, D.C. 20548

Dear Mr. Robertson:

Thank you for the opportunity to comment on the draft report prepared by the General Accounting Office (GAO) entitled, Worker Protection: Labor's Efforts to Enforce Protections for Day Laborers Could Benefit from Better Data and Guidance, GAO-02-925. The comments that follow focus on references in the report to the Employment Standards Administration's Wage and Hour Division (WHD). Please note, however, the enclosed letter from the Occupational Safety and Health Administration (OSHA) which addresses those sections of the report that specifically refer to OSHA. We have also forwarded under separate cover technical corrections from the Office of the Solicitor and from the Bureau of Labor Statistics.

The draft cites (pg.16) a variety of reasons that cause day laborers' reluctance to complain of potential violations. The same reasons cause worker reluctance to cooperate with the conduct of WHD investigations, often to the extent of refusing to provide information critical to establishing violations of worker protection laws.

See comment 1.

The draft incorrectly indicates (pg.17) that the WHD "lacks a core of Spanish-speaking staff in its offices." In fact, approximately one quarter of WHD staff nationwide is Spanish-speaking. As a result of a concentrated hiring effort over the last decade, this ratio is much higher in those areas of the country with high concentrations of Spanish-speaking workers; for example, approximately 40 percent of the WHD Western Region staff are Spanish-speaking.

See comment 2.

The draft indicates (pg. 20) that telephone and fax contacts with employers sometimes focused on single workers/violations/timeframes, and reduced the ability to uncover potential violations affecting day laborers. These contacts, called conciliations, are the most timely, effective method of securing last pay checks for workers, including day laborers. A pattern of conciliations, however, is seen as an indicator that a full on-site investigation of the employer might be warranted. (See also OSHA's concern with this segment of the report.)

Working for America's Workforce

See comment 3.

The draft's indication (pg.20) that "there is no penalty for failing to keep accurate payroll records under the Department of Labor's FLSA regulations" is misleading. A more accurate statement is: "the FLSA provides the Department of Labor with no authority to assess penalties for failing to keep accurate payroll records."

The draft indicates (pg. 21) that advance notice of a WHD visit, as is done in the majority of investigations, allows employers to refrain from hiring day laborers on the day of the investigation, thus limiting the WHD's opportunity to find day laborers. In those circumstances where the employment of day laborers is a potential compliance issue, the WHD would typically exercise its discretion and conduct an unannounced investigation.

See comment 3.

The draft's indication (pg. 25) that "federal law covers transportation for agriculture workers to and from the job site if they are transported by their employer" is also misleading. A more accurate statement would read: "Federal law covers transportation for migrant and seasonal agricultural workers...".

The draft makes three recommendations to the Secretary of Labor specific to the WHD. Our response follows, after a restatement of each of the recommendations.

1. Direct WHD and OSHA, as part of their education and outreach efforts, to enhance the procedures they use to reach day laborers, such as expanding their contact with temporary staffing agencies or other agencies that work with day laborers.

Response: The WHD is strongly committed to providing effective compliance assistance to the regulated community. As part of its growing outreach effort to employers and employees and their representatives, the WHD will develop and disseminate a plain language fact sheet, in English and Spanish initially, covering the application of wage and hour laws to the employment of temporary workers such as day laborers. The WHD will provide this fact sheet to temporary staffing agencies and other agencies that work with day laborers, along with an invitation to work with the WHD to insure compliance with wage hour laws.

The WHD is using a variety of media to reach immigrant workers, who constitute many of those in day labor jobs. In addition to public service announcements, the agency has been increasing its use of Spanish-speaking radio and television programs to explain workers' rights. The agency is also reaching out to the Spanish press. The WHD seeks opportunities to participate in community programs such as Cinco de Mayo and to address "English as a Second Language" classes. The WHD is also working to translate fact sheets and other materials into Spanish. Most of the agency's workers' rights posters and many of the more significant compliance assistance materials have already been translated. The agency works with community and faith-based organizations that function as intermediaries between the WHD and workers who may need assistance. The WHD has developed a "Wage Hours Recordkeeper" in English and Spanish to provide temporary and transient workers - such as day laborers - the information needed to determine if they are paid properly. This booklet, evidently similar to that developed by the Latin American Worker's project cited on page 34 of the draft report, helps workers

track the hours they work. The WHD provides this booklet to WHD offices across the country for distribution to workers through community and faith-based organizations.

2. Direct WHD and OSHA to review the results of local efforts to obtain additional data on the presence and violation experience of day laborers working for temporary staffing agencies for possible replication in other offices or agency wide.

Response: The WHD will collect and review these results and consider them for possible replication.

3. Instruct the WHD to clarify when day laborers may be covered under the domestic service provision of FLSA.

Response: The WHD will add clarifying instruction on the potential application of domestic service provisions of the FLSA to the employment of day laborers to its Field Operations Handbook. Similarly, WHD training will be supplemented to include this clarification.

Again, thank you for the opportunity to comment on this report. If you have any questions, please contact Griffin Crump at 693-0308.

Sincerely,

Victoria A. Lipnic

Victoria A. Lipnic

Enclosure

GAO Comments

1. We clarified the paragraph that discusses WHD's Spanish-speaking staff to indicate that WHD has about one-quarter of its staff that speak Spanish.

2. See discussion in Agency Comments section of report.

3. We modified the report's language as suggested.

Appendix V: Comments from the Occupational Safety and Health Administration

Note: GAO comments supplementing those in the report text appear at the end of this appendix.

U.S. Department of Labor

Assistant Secretary for
Occupational Safety and Health
Washington, D.C. 20210

SEP 10 2002

Mr. Robert E. Robertson
Director
Education, Workforce, and Income Security Issues
United States General Accounting Office
441 G Street NW, Room 5930
Washington, DC 20548

Dear Mr. Robertson:

We have reviewed the draft report prepared by the General Accounting Office (GAO) entitled "Worker Protection: Labor's Efforts to Enforce Protections for Day Laborers Could Benefit from Better Data and Guidance." Based upon our review of the report, there are several issues of significant concern to the Occupational Safety and Health Administration (OSHA) about the GAO report.

First and foremost, we want to emphasize that employers of day laborers have the same obligations as any other employer. The OSH Act gives employers the ultimate responsibility to provide all their workers a safe and healthful workplace, free from occupational hazards, regardless of ethnicity, citizenship or employment status. Standards are intentionally written specific to a workplace hazard and do not focus on specific population groups. Employers must comply with regulations promulgated by OSHA, and implement the regulations in such a way as to protect all workers under their control from the hazards to which they may be exposed. Immigrant, Hispanic/Latino and/or Day Laborers are all protected by agency standards in the same manner as any other worker population. Nonetheless we acknowledge that particular outreach and enforcement efforts may be necessary in order to address the circumstances of many day laborer workers.

In that regard, OSHA has undertaken significant efforts to develop programs for Hispanic immigrant workers and day laborers. Many of OSHA's area offices have programs to reach day laborers. The programs are designed to meet the needs of the local population. In August 2001, the Agency responded to Secretary of Labor Elaine Chao's concerns about protecting Hispanic workers by forming the Hispanic Task Force. This task force is pulling the local programs together, conducting a gaps

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analysis and developing suggestions and recommendations for implementing a national integrated strategy to address the problems of Hispanic and immigrant worker populations, including day laborers. We believe the GAO report should recognize OSHA's significant, non-data related initiatives.

The majority of day laborers fall into the category of Hispanic and immigrant workers, the subject of our task force initiative. According to page 12 of your report, one-third of day laborers have been in this country for less than one year. In addition, according to the same page of the report "the majority of day laborers were Hispanic men." OSHA's Hispanic Task Force has already suggested and OSHA has initiated a number of program efforts that address several of your recommendations. For example, when looking at the barriers that language may pose to Hispanic/Latino workers and employers, the Agency has:

- translated numerous materials into Spanish,
- established a nationwide Spanish capability 1-800 complaint/concern telephone line,
- introduced a new web page for Spanish-speaking employers and workers,
- initiated new efforts in working with Spanish employers, Hispanic Chamber of Commerce groups, and Mexican Consulates,
- formed an alliance with the Hispanic Contractors of America to expand outreach and communication on safety and health awareness and best practices for Spanish-speaking employers and employees in the construction industry.
- increased its cooperation with NIOSH to determine (and then overcome) the barriers Special Populations at Risk may encounter, and to learn the best methods to train Hispanic/Latino and immigrant workers in preventing workplace injuries and illnesses, and
- enhanced its data collection methods.

We plan to continue to share special project and program information nationwide, work with community and faith-based groups, and form special business alliances and partnerships to address the problem of increased fatal injuries to Hispanic/Latino and immigrant workers, including day laborers. In fact we will be participating in the National Safety Congress' Hispanic Forum in October presenting information about OSHA to a significant number of Hispanic community groups.

OSHA's participation in the Roswell Intercultural Alliance (RIA) in Georgia is another example of the work we are doing with day laborers. RIA has been actively assisting day laborers for the last seven years by providing a place for the laborers to come to find work. However, the center wasn't attracting as many employers as they had hoped. RIA turned to OSHA for help. OSHA

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began a partnership with RIA to coordinate safety and health training programs. OSHA is working with Georgia Tech University, safety directors of a few construction companies and a local chapter of the Association of Builders and Contractors (national trade association representing about 23,000 contractors, subcontractors, material suppliers and related firms from across the country and from all specialties in the construction industry), to provide the day laborers at the RIA Center with 6 hours of safety training. After receiving training the participants are issued a certificate from Georgia Tech. This special training program has attracted employers and day laborers as well. The employers are interested in hiring day laborers that understand safety concepts and how to protect themselves. The workers find that they can get better jobs, many of which turn into permanent employment by having a certificate in safety training. In fact, 22 of the 60 laborers trained to date have obtained full time permanent employment due to their safety certificates. OSHA is also working with a center in Duluth, Georgia and the city of Fort Worth, Texas to develop similar programs. Each of our ten regions has similar outreach programs for day laborers, Hispanic and/or immigrant workers. The national focus brought to these programs is strengthening them. The GAO report should emphasize this point.

Finally, we have several more specific concerns with the report.

See comment 1.

On page 19, your report states that OSHA targets construction sites valued at $50,000 or more and day laborers generally work for small employers. However it should be noted that small contractors regularly subcontract work at large construction sites and certainly at many of the construction sites valued over $50,000. This criterion does not preclude OSHA from inspecting sites where many day laborers will be found.

Also, on page 20, your report indicates OSHA has implemented a temporary procedure that required OSHA investigators, for all fatality and catastrophe investigations, to determine if the worker was foreign-born, Hispanic or had language barriers and then, if that were the case to determine if the worker is a day laborer. This description fails to mention that the new OSHA procedure is defined as "temporary" only because it is a pilot project. The temporary procedure for fatality/catastrophe investigations, including changes to the OSHA Form 170, has been introduced into OSHA's regional and area offices and will remain in place until the permanent procedure is incorporated into the agency's overall redesign of the Integrated Management Information System (IMIS). The agency changed the Form 170 in May to include several questions about ethnicity and language capabilities, such as country of origin, and whether language barriers may have caused or contributed to the workplace accident. OSHA compliance officers are now using this new procedure to report current

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fatality/catastrophic event investigations and are also completing the form for fatalities/catastrophes that have occurred since October 2001; thus giving the agency data for all of Fiscal Year (FY) 2002.

See comment 2.

Additionally, your report indicates OSHA is visiting fewer worksites. To the contrary, OSHA's enforcement efforts are not declining. OSHA inspections have steadily increased from 24,024 in FY 1996 to 36,400 in FY 2002. In FY 2003, OSHA expects to increase its current level of inspections in high hazard workplaces from 36,400 to 37,700.

See comment 1.

The GAO report (page 20) also implies OSHA's phone/fax system for handling complaints from workers may not be effective since it prevents inspectors from actually visiting worksites. To the contrary, since it was implemented in 1996, the new system has been praised by workers and employers alike since the system provides immediate feedback to employees who complain to the agency about corrective action taken. If the complainant is still not satisfied with the action taken by an employer, an onsite investigation is scheduled. Without this system, employees would have to wait for several days to a week for a complaint inspection to be scheduled, while the hazard remained uncorrected. Given the transient nature of day laborer working conditions, OSHA believes the phone/fax system is superior to the more traditional on-site approach of handling worker complaints.

Thank you for providing us with an opportunity to comment on your draft report. If you have questions, please contact Frank Frodyma on (202) 693-1914.

Sincerely,

John L. Henshaw

GAO Comments

1. See discussion in Agency Comments section of report.

2. We do not disagree with the number of investigations that OSHA's cites in its comments. The data OSHA cites in support of increasing number of investigations include those conducted by telephone and fax. As a result, these numbers do not necessarily indicate increases in worksite visits.

Appendix VI: GAO Contacts and Staff Acknowledgments

GAO Contacts

Lori Rectanus, (202) 512-9847
Monika Gomez, (202) 512-9062

Staff Acknowledgments

Ronni Schwartz made significant contributions to this report, in all aspects of the work throughout the review. In addition, Lisa Lim and Torey Silloway assisted in gathering and analyzing information collected on our site visits; H. Brandon Haller helped develop our data collection instrument and our overall design and methodology; Julian Klazkin provided legal support; and Patrick DiBattista assisted in report and message development.

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