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# FEDERAL CONTRACTING

## Opportunities Remain for Department of Labor to Improve Enforcement of Service Worker Wage Protections

Statement of Thomas M. Costa, Director, Education,  
Workforce, and Income Security

# GAO Highlights

Highlights of [GAO-22-106013](#), a testimony before the Committee on the Budget, United States Senate

## Why GAO Did This Study

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

This testimony describes (1) what available data reveal about past SCA cases, (2) challenges DOL reports facing in enforcing the SCA, and (3) SCA implementation challenges. For the October 2020 report on which this testimony is based (GAO-21-11), GAO used a variety of methods including analyzing SCA enforcement data; reviewing relevant federal laws, policy, and guidance; reviewing key agency documents, such as DOL's fiscal year 2018-2022 strategic plan; and interviewing DOL officials.

## What GAO Recommends

In its October 2020 report, GAO made six recommendations to improve DOL's oversight and information sharing with contracting agencies, including USPS. GAO recommended that DOL analyze its use of enforcement tools; that DOL and USPS implement written protocols to improve communication with each other; and that DOL improve its information sharing with contracting agencies on SCA debarments and investigation outcomes. DOL and USPS generally concurred with the recommendations. This statement describes progress toward implementing GAO's recommendations as of April 2022.

View [GAO-22-106013](#). For more information, contact Thomas M. Costa at (202) 512-4769 or [costat@gao.gov](mailto:costat@gao.gov).

May 5, 2022

## FEDERAL CONTRACTING

### Opportunities Remain for Department of Labor to Improve Enforcement of Service Worker Wage Protections

#### What GAO Found

The Department of Labor (DOL) completed over 5,000 Service Contract Act (SCA) cases in fiscal years 2014 through 2019 according to available data. For many, this resulted in awarding of back wages to federally contracted security guards, janitors, and other service workers. DOL enforces the SCA, which was enacted to protect workers on certain types of federal service contracts. DOL found SCA violations—primarily of wage and benefit protections—in 68 percent of cases. Employers across a range of service industries agreed to pay around \$224 million in back wages. Sixty cases resulted in debarment—a decision to prevent an employer from being awarded new federal contracts generally for 3 years. DOL's strategic plan emphasizes optimizing resources for resolving cases using all available enforcement tools. However, GAO found that DOL did not analyze its use of enforcement tools, such as debarment or employer compliance agreements. Therefore, DOL may have lacked a complete picture of the effectiveness of these enforcement strategies. GAO recommended that DOL analyze information on its enforcement actions, including SCA debarment processes and outcomes. In April 2022, DOL reported that it had developed a revised internal tracking system to provide a year-end summary of information on agency debarment actions. DOL has taken the first step, but DOL would still need to analyze this information.

DOL reported various challenges to enforcing the SCA, including difficulty communicating with contracting agencies. For example, DOL officials told GAO that poor communication with contracting agencies—particularly with the U.S. Postal Service (USPS)—can affect and delay cases, though USPS officials told GAO they were unaware of any communication gaps. Without addressing communication issues between USPS and DOL, USPS's implementation and DOL's enforcement of the SCA may be weakened. In April 2022, the two agencies reported that they had developed a draft Memorandum of Understanding (MOU) that outlines protocols and procedures to increase collaboration and SCA compliance. However, the agencies also noted that they had not been able to finalize the MOU because of communication challenges.

GAO found that contracting agencies may face SCA implementation challenges, including not having key information about SCA debarments and violations from DOL. When recording SCA debarments, DOL did not always include the unique identifier for an employer so that contracting agencies could accurately identify debarred firms. DOL also did not have a process that consistently or reliably informed contracting agencies about SCA violations by employers. Without improved information sharing by DOL, an agency may award a contract to an employer without being aware of or considering its past SCA violations. In April 2022, DOL reported that it had developed a tool that allows its SCA enforcement team to easily retrieve the former unique identifier for government contractors, and that they have advised regional staff to include this identifier with the debarment recommendations they submit to the national office. DOL also reported that it was developing, but had not completed, written guidance for its investigators and other field staff that will help ensure that contracting agencies are kept abreast of ongoing SCA investigations.

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May 5, 2022

Chairman Sanders, Ranking Member Graham, and Members of the Committee:

Thank you for the opportunity to discuss GAO's prior work on Service Contract Act implementation and enforcement.<sup>1</sup> The McNamara-O'Hara Service Contract Act (SCA) of 1965, as amended, was enacted to provide labor protections for workers on certain federal service contracts.<sup>2</sup> These protections include wage rates, fringe benefits, and other standards to ensure workers on these contracts generally receive pay and benefits that have been found by the Department of Labor to be prevailing in the locality where the contract work is performed.<sup>3</sup>

The Department of Labor (DOL), through its Wage and Hour Division (WHD), enforces the SCA. Federal agencies that work with contractors also have important responsibilities for implementing the SCA. For example, contracting agencies are responsible for including certain clauses in SCA solicitations and contracts, and in certain cases, required to evaluate a prospective contractor's past performance, which may include consideration of any past SCA violations.<sup>4</sup>

As SCA violations may result in workers not receiving earned wages and benefits, we reviewed various aspects of SCA enforcement and implementation. This statement is based on our October 2020 report that included (1) what available data reveal about past SCA cases, (2) challenges DOL reported facing in enforcing the SCA, and (3) SCA

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<sup>1</sup>GAO, *Federal Contracting: Actions Needed to Improve Department of Labor's Enforcement of Service Worker Wage Protections*, [GAO-21-11](#) (Washington, D.C.: Oct. 29, 2020).

<sup>2</sup>See Pub. L. No. 89-286, 79 Stat. 1034 (codified as amended at 41 U.S.C. §§ 6701-6707).

<sup>3</sup>For purposes of this statement, the term "worker" is used interchangeably with "service employee," the term used in the SCA.

<sup>4</sup>The Federal Acquisition Regulation (FAR) requires, among other things, that contracting officers include clauses containing the SCA requirements in solicitations and contracts to which the SCA applies. See 48 C.F.R. § 22.1006. In addition, requests for proposals that are expected to exceed a certain threshold (generally \$250,000 as of August 31, 2020) are generally required by the FAR to include an evaluation of a prospective contractor's past performance. See 48 C.F.R. §§ 2.101, 9.104-6(a)(1), and 15.304(c)(3)(i) and subpt. 42.15.

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implementation challenges. In the October 2020 report, we made several recommendations to improve DOL's oversight and information sharing with contracting agencies, including the U.S. Postal Service (USPS).<sup>5</sup> This statement also describes DOL and USPS's progress toward implementing our recommendations as of April 2022.

For the October 2020 report, we analyzed SCA enforcement data from DOL's Wage and Hour Investigative Support and Reporting Database (WHISARD) and from the General Service Administration (GSA) for fiscal years 2014 through 2019, the most recent data available at the time of our analysis. We also reviewed relevant federal laws, policy, and guidance; analyzed a nongeneralizable sample of SCA case narratives; reviewed key agency documents, such as DOL's strategic plan; interviewed DOL officials; and reviewed agency documents and interviewed officials at USPS and three other selected contracting agencies.<sup>6</sup>

We performed the work on which this statement is based in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Background

The SCA was enacted to provide labor protections for employees of contractors and subcontractors on federal service contracts.<sup>7</sup> SCA requires that, for contracts exceeding \$2,500, contractors pay their

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<sup>5</sup>GAO-21-11.

<sup>6</sup>The agencies were the Army Materiel Command, the National Institutes of Health, and the Pension Benefit Guaranty Corporation.

<sup>7</sup>The SCA applies to any contract or solicitation for a contract involving an amount exceeding \$2,500 made by the federal government or the District of Columbia, the principal purpose of which is to provide services in the United States through the use of service employees. See 41 U.S.C. § 6702(a). The SCA does not apply to certain types of contracts; for example, contracts for public utility services are exempt from the SCA. See 41 U.S.C. § 6702(b). The definition of "service employee" includes any individual engaged in performing services on a covered contract other than a bona fide executive, administrative, or professional employee as defined in 29 C.F.R. pt. 541. See 41 U.S.C. § 6701(3). Employee coverage under the SCA depends on whether the employee's work on a covered contract is that of a service employee and not on the alleged form of employment contract between the contractor and the employee. See 29 C.F.R. § 4.155.

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employees, at a minimum, the wage rates and fringe benefits—such as vacation benefits—that have been determined by DOL to be prevailing in the locality where the contracted work is performed.<sup>8</sup> The types of service jobs covered by the SCA include, among others, security guards, food service workers, maintenance workers, janitors, clerical workers, and certain health and technical occupations.

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## DOL Enforcement of the SCA

DOL has enforcement authority under the SCA; workers do not have a private right of action against an employer for any alleged SCA violations.<sup>9</sup> WHD has authority to conduct SCA investigations in response to complaints from service contract employees, federal contracting agencies, unions, and other interested parties, and through directed investigations of its own initiative.

WHD enforces and administers several laws pertaining to labor standards, in addition to the SCA. From fiscal years 2014 through 2019, SCA cases represented about 3 percent of WHD’s overall caseload. WHD tracks information on SCA investigations, violations, and findings in its investigations database—WHISARD.

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## Contracting Agency Responsibilities

While DOL has enforcement authority over the SCA, contracting agencies also play a role in administering the SCA’s requirements. The Federal Acquisition Regulation (FAR) outlines responsibilities for contracting agencies, including requirements related to implementing the SCA.<sup>10</sup> Principally, contracting agencies must determine whether the SCA applies (subject to DOL’s ultimate interpretative authority) and, if so,

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<sup>8</sup>The prevailing wage rates determined by WHD are location-specific for different types of occupations. For some SCA contracts, the required wages and fringe benefits are those that were contained in a collective bargaining agreement applicable to work under a predecessor contract. For most SCA contracts, however, prevailing wage rates and fringe benefits are set forth by WHD in area-wide wage determinations. In addition to the prevailing wage requirements for service employees, the SCA also provides that a contractor or subcontractor may not pay less than the minimum wage specified under the Fair Labor Standards Act of 1938, as amended (29 U.S.C. § 206(a)), to any employee engaged in performing on or in connection with the contract. See 41 U.S.C. § 6704.

<sup>9</sup>The term “employer” is used interchangeably with the term “contractor” in this statement. See 29 C.F.R. § 4.1a(f).

<sup>10</sup>One of the agencies in our scope, USPS, is required to follow the SCA, but it is exempt from certain laws that are generally applicable to other federal agencies. For example, USPS is not subject to most federal laws and regulations applicable to most federal purchasing, including the FAR.

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incorporate specific appropriate clauses into solicitations and contracts.<sup>11</sup> The contracting agency must also include a wage determination in the final contract, which is obtained from WHD.<sup>12</sup>

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## Consequences for Violating the SCA

When WHD finds that workers covered by SCA contracts have been underpaid, it may request that a contracting agency withhold contract funds. WHD generally calculates the unpaid wages and benefits owed by contractors. A contractor found to be in violation of the SCA is liable for the amount of any underpayment of wages or benefits.<sup>13</sup>

In addition to these actions, the SCA provides for a 3-year debarment period during which a contractor found to have violated the SCA is ineligible to receive future federal contracts, unless the Secretary of Labor recommends otherwise because of unusual circumstances.<sup>14</sup> Alternatively, DOL may use compliance agreements to prevent future violations. These agreements between DOL and a contractor may include monitoring by DOL.

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## Federal Contracting Information

The GSA maintains data systems that include information related to federal contracting.

- **System for Award Management (SAM).** Companies are generally required to register in SAM in order to submit a bid or an offer on solicitations for federal contracts. SAM also includes records identifying contractors that are excluded from doing business with the federal government, such as those debarred by DOL under the SCA. Agencies taking debarment actions are required by the FAR to include a unique company identifier when entering debarment information in SAM, if it is available. As of April 2022, the unique identifier required for doing business with the government is a government-owned, non-

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<sup>11</sup>See 48 C.F.R. § 22.1006. The SCA clauses include FAR § 52.222-41. See 48 C.F.R. § 52.222-41.

<sup>12</sup>Wage determinations generally are linked to the geographical area where the work will be performed.

<sup>13</sup>See 41 U.S.C. § 6705(a).

<sup>14</sup>The statutory debarment provided for under the SCA differs from administrative debarment provisions under the FAR. A debarment under the FAR is for a period generally not exceeding 3 years, and the FAR also provides for a suspension, which is a temporary exclusion pending the completion of an investigation or legal proceeding. In contrast, the SCA does not provide for debarment periods of less than 3 years, nor does it include a suspension provision.

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proprietary unique entity identifier. Previously, the unique identifier was the Data Universal Numbering System (DUNS) number.

- **Contractor Performance Assessment Reporting System (CPARS).** Performance evaluations of work performed under covered contracts are entered into CPARS. The FAR requires contracting agencies to prepare performance evaluations in CPARS for their contracts at least annually.<sup>15</sup>

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## Available Data Provide Information on SCA Case Characteristics and Enforcement Actions, but Have Limitations

Available data provide information on SCA cases such as the number of cases completed and the contracting agencies and industries involved.

The majority of SCA cases originated from complaints. From fiscal years 2014 through 2019, WHD completed 5,261 SCA cases, an average of 877 per year.<sup>16</sup> The majority (59 percent, or 3,109) of these cases originated as complaints. The remaining 41 percent (2,152) were initiated by WHD.

Most SCA cases focused on contractors at a small number of contracting agencies. For example, just over one-half of all SCA cases completed from fiscal years 2014 through 2019 concerned contractors of two agencies: the Department of Defense (DOD) and the USPS (see table 1).<sup>17</sup>

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<sup>15</sup>See 48 C.F.R. § 42.1502.

<sup>16</sup>We defined an SCA case as any WHD case that included an SCA component. Some of the cases were originally registered—i.e., designated—as SCA cases by WHD, and others were initiated under other labor statutes—such as the Fair Labor Standards Act of 1938, as amended—and added an SCA component during the course of the case. Of the cases registered under the SCA from fiscal years 2014 through 2019, 819 remained open at the end of this period.

<sup>17</sup>DOD ranks first among federal agencies in contract spending, generally, and cases that focused on DOD contractors made up about 35 percent (1,843) of WHD's completed SCA cases during this timeframe. Cases focusing on contractors of USPS made up the next-largest portion—about 16 percent (834) of completed SCA cases for the 6-year period we reviewed. Other contracting agencies that had a relatively high number of contractors as the subject of SCA cases included the Department of Homeland Security (428 or 8 percent of cases) and the Department of Veterans Affairs (422 or 8 percent of cases). For 502 out of 5,261 cases, we were not able to identify any associated agencies due to missing or unclear information in DOL's database. According to DOL officials, this field became mandatory at the end of fiscal year 2016.

**Table 1: Service Contract Act (SCA) Cases and Debarments by Selected Contracting Agency, Fiscal Years (FY) 2014 through 2019**

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

Source: GAO analysis of data from the U.S. Department of Labor and the Federal Procurement Data System – Next Generation, and information provided by the U.S. Postal Service. | GAO-22-106013

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

Industry sectors with the most SCA cases included Administrative Support and Waste Management and Remediation Services; Transportation and Warehousing; and Professional, Scientific, and Technical Services (see table 2).<sup>18</sup>

<sup>18</sup>WHD investigators categorize employers by industry using the North American Industry Classification System.



**Table 2: Top 5 Sectors for Service Contract Act (SCA) Cases, Fiscal Years (FY) 2014 through 2019**

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

Source: GAO analysis of U.S. Department of Labor data and federal procurement data. | GAO-22-106013

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

<sup>a</sup>Federal contracting obligation data do not include U.S. Postal Service contracting, which includes mail haul (surface mail transportation) contracts.

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

Available data also provide information on violations and enforcement actions. For example:

- WHD found SCA violations in 68 percent (3,562 of 5,261) of completed SCA cases. Across cases that resulted in one or more SCA violations from fiscal years 2014 through 2019, the most common type of SCA violation identified by WHD was fringe benefit violations, found in 82 percent (2,920) of cases with violations,

followed by prevailing wage violations, which were found in 69 percent (2,468) of cases with violations (see fig. 1).<sup>19</sup>

**Figure 1: Types of SCA Violations Identified by the Department of Labor’s Wage and Hour Division (WHD), Fiscal Years 2014 through 2019**



Source: GAO analysis of U.S. Department of Labor data. | GAO-22-106013

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

- WHD found that employers with violations complied with WHD’s findings in 94 percent (3,339) of cases.<sup>20</sup> From fiscal years 2014

<sup>19</sup>Cases may identify multiple violations and more than one type of violation.

<sup>20</sup>We determined compliance based on the data in the “compliance status” field in WHISARD. Specifically, we categorized any case that had violations in “refuse to remedy” or “refuse to comply” status as a “refuse to comply” case. We categorized the remaining cases, which had statuses that included “agree to comply” and “agree to remedy,” as “agree to comply” cases. We did not analyze the reasons for lack of compliance.

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through 2019, employers agreed to pay approximately \$224 million in back wages for SCA violations.<sup>21</sup>

- Available data indicate that WHD made 204 withholding requests to contracting agencies, which fulfilled 90 of them.<sup>22</sup> These requests made from fiscal years 2014 through 2019 totaled some \$23 million, and agencies withheld \$4 million of that amount.<sup>23</sup>
- There were a total of 5,261 SCA cases and 60 SCA debarments from fiscal years 2014 through 2019. This included cases having prior violations as well as those without prior violations. USPS contractors were associated with 30 (50 percent) of all SCA debarments during the period we reviewed. DOD contractors had the second-highest number of debarments, with 17 (28 percent) of all SCA debarments.<sup>24</sup>

DOL's efforts to assess its enforcement actions have been hindered by inconsistent data and by its lack of analysis of certain available enforcement information. We found inconsistencies in the data DOL collected on the names of contracting agencies associated with SCA cases because WHD staff had entered information on this field into the database in different ways. For example, in the DOL data we analyzed, there were at least 21 different variations for GSA, 27 for the Department of Veterans Affairs, and 37 for USPS. WHD had not provided any guidance to its regional and district offices on how to standardize data entry. Variations among agency names may have made it difficult for DOL to use these data to identify potential issues.

Consistent with federal internal control standards, which emphasize the importance of obtaining relevant data from reliable sources, we recommended that WHD provide guidance to staff on how to make these data more consistent. In April 2022, WHD reported that it had updated its enforcement database to include a list of federal agencies to designate in

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<sup>21</sup>We use the term "back wages" to include both prevailing wage and fringe benefit violations. The term "agreed to pay" comes from WHD's WHISARD database.

<sup>22</sup>WHD may request that contracting agencies withhold funds from SCA contracts when an employer for which WHD has identified SCA violations cannot or will not pay back wages owed to workers.

<sup>23</sup>We did not analyze the reasons some of these requests were not fulfilled, but we did speak to DOL officials about withholding challenges, discussed below.

<sup>24</sup>DOL contract enforcement staff manually maintain a list of debarment cases. Officials told us the number of debarments is very small and modifying the software to collect debarment data would be too resource intensive, so they do not maintain these data in WHISARD.

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government contracts investigations. Based on this information, we consider this recommendation implemented.

In addition, although DOL officials emphasized the importance of debarments and compliance agreements that may be pursued in lieu of debarment, we found that WHD does not routinely analyze the effectiveness or use of these SCA enforcement actions, such as by comparing different types of enforcement actions it uses. DOL's fiscal year 2018-2022 strategic plan called for using strategies to optimize resources and resolve cases by appropriately using all available enforcement tools, including litigation. Without analyzing information on the use of available enforcement tools such as debarment and compliance agreements, WHD may lack a complete picture of how it uses its resources on different strategies for resolving SCA cases, as well as the effectiveness of these enforcement strategies.

We recommended that WHD analyze information on its enforcement actions, including compliance agreements used by WHD's regional offices and SCA debarment processes and outcomes. In April 2022, WHD reported that it had developed a revised internal tracking system that contains additional information on SCA debarments. According to WHD, the revised system will be used to provide a year-end summary of debarment information that the agency has collected on debarments. We will continue to monitor DOL's progress in implementing this recommendation.

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

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### Communication Challenges

WHD officials told us that communication challenges with contracting agencies can make carrying out certain enforcement activities difficult. For example, officials said that gaps in communication can cause delays in paying back wages owed to workers and create challenges to withholding contract payments. Our review of selected SCA case narratives identified illustrative examples of communication challenges, including cases where contracting agencies—such as DOD, the Department of Veterans Affairs, and USPS—failed or took months to provide WHD with requested documents or respond to communications from WHD.

DOL officials from 10 out of 15 DOL offices we met with specifically noted challenges to communicating and collaborating with USPS on SCA-related issues. DOL and USPS established verbal communication protocols to assist with matters like obtaining contract documents, verifying withholding requests, and transferring funds for back wage payments, which some DOL officials said have helped improve communication. However, most DOL officials we interviewed cited challenges to working with USPS on SCA cases, indicating that some communication challenges with USPS persist. Without addressing communication gaps between USPS and WHD, USPS's implementation and WHD's enforcement of the SCA may be weakened.

Federal internal control standards emphasize the importance of reliable communication for effective oversight. As such, we recommended that DOL and USPS develop and implement written protocols to improve communication and collaboration between the two agencies to support SCA enforcement and implementation. In April 2022, the two agencies

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reported that they had developed a draft Memorandum of Understanding (MOU) that outlines protocols and procedures to increase collaboration and SCA compliance. However, the agencies also noted that they have not yet been able to finalize the MOU because of communication challenges.

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## Challenges Using Enforcement Tools

DOL officials we interviewed reported challenges to implementing enforcement actions such as withholding contract payments and debarring contractors, which they said are important actions for bringing contractors into compliance with the SCA.

- DOL officials noted several challenges associated with withholding contract funds to address noncompliance, including limited funds left to withhold at the end of a contract, a contractor's inability to meet ongoing payroll, contractor insolvency, and the absence of payment bonds to help ensure contract payment obligations.
- DOL officials also reported several challenges to debarring contractors for violating the SCA. For example, officials said that the debarment process can be lengthy and resource-intensive; debarring contractors can be challenging when they hold multiple year contracts with the federal government. In addition, debarment may be less effective if the debarred contractor starts a new business under a different name or under a family member's name and obtains new federal contracts during the debarment period.

DOL officials noted that alternatives to debarment, such as using compliance agreements, can sometimes resolve cases faster and without litigation. According to officials, compliance agreements can help contractors stay in business, protect workers' jobs, and ensure workers receive back wages more quickly. Officials told us that such agreements often include terms to help ensure future compliance, such as monitoring. Under the terms of compliance agreements, contractors might agree to stop bidding or submitting offers on solicitations for new contracts for a period of time or pay back wages on an installment plan.

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## Contracting Agencies Face SCA Implementation Challenges

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

Although contracting agencies are charged with excluding debarred contractors from receipt of awards, contracting officials may have difficulty identifying some SCA debarments because WHD does not consistently enter complete debarment information into SAM. Contracting officers use SAM to check records, known as exclusion records, on whether prospective contractors are currently excluded from receiving federal contracts.<sup>25</sup>

According to the FAR, exclusion records in SAM, such as SCA debarments, shall include a unique company identifier, among other things.<sup>26</sup> In the absence of the unique company identifier in the exclusion record, contracting officers may not easily be able to determine whether prospective SCA contractors are currently debarred from receiving federal contracts. Based on our analysis, we found that a contracting officer using the unique company identifier to search might find there are no active suspensions or debarments, even though there may be an active exclusion record for that company in the system. WHD officials told us that they do not consistently include the unique company identifier—the DUNS number at the time of our analysis—when entering SCA debarment information into SAM. For example, only two of the seven SCA debarments entered for non-USPS contractors in fiscal years 2018 and 2019 included the unique company identifier.<sup>27</sup>

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<sup>25</sup>SAM includes entity registration records that contain general information about a company, and exclusion records that document a suspension or debarment, including an SCA debarment. Companies are generally required to register in SAM in order to receive federal contracts.

<sup>26</sup>See 48 C.F.R. § 9.404. At the time of our analysis, the DUNS number was the unique identifier used in SAM. As noted above, as of April 2022, the unique identifier required for doing business with the government is a government-owned, non-proprietary unique entity identifier.

<sup>27</sup>USPS contractors are less likely to have a unique company identifier because the requirement for contractors to register in SAM is contained in the FAR, which does not apply to USPS contracting.

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According to WHD, staff regularly entered information about companies that had been debarred under the SCA into SAM, but they did not always enter the unique company identifier because officials said they did not see it as relevant to the debarment process. In addition, not all entities debarred under the SCA will have a unique company identifier.<sup>28</sup> For companies that do have a unique company identifier, it may be unnecessarily difficult for contracting officers to find SCA debarment records if the exclusion records lack the required identifier. This creates a risk that contracts may inadvertently be awarded to companies that are ineligible to receive federal contracts because of an active SCA debarment.

Federal internal control standards require agencies to externally communicate quality information to achieve their objectives. We recommended that WHD take steps to ensure that the unique company identifier designated by the FAR is included in SCA debarment records in SAM whenever appropriate and available. In April 2022, WHD reported that it had developed a tool that allows its SCA enforcement team to easily retrieve DUNS numbers for any government contractor. They further noted that the SCA branch had advised regional staff to include the DUNS number with the debarment recommendations they submitted to the national office, and explained that this would ensure inclusion of SCA debarment records in SAM. We will continue to monitor DOL's progress in implementing this recommendation, including how WHD will ensure its process incorporates the unique company identifier that is now required instead of the DUNS number.

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## Learning of SCA Case Outcomes

We also found that contracting agencies may not have complete information about past SCA violations by prospective contractors, because WHD lacks a process that ensures information about SCA case outcomes is consistently and reliably shared with these agencies. Information on past violations may assist contracting officers in determining whether prospective contractors have a satisfactory performance record. Contracting officers need relevant information from WHD to add information about SCA violations into performance

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<sup>28</sup>A unique company identifier may not always be available for SCA debarments because DOL can debar companies other than the prime contractor, such as subcontractors.



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evaluations in CPARS.<sup>29</sup> Based on our analysis of a sample of CPARS assessments for contracts with SCA violations, chosen based on high amounts of back wages assessed, we found that 93 of 100 CPARS assessments did not include any information about the SCA violations.

According to officials, WHD's internal policy directs its investigators to communicate with agency contracting officers, and WHD officials also told us that investigators invite contracting officers to the final conference with the contractor at the end of an investigation. According to WHD officials, investigators will contact the agency by telephone if the contracting officer does not attend the final conference. Officials we spoke with at one contracting agency described this as an informal process. Such contacts with contracting officers may not ensure that contracting agencies have consistent access to quality information about SCA violations on their contracts.

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

Federal internal control standards state that management should use quality information—which is current, complete, and timely—and communicate quality information externally to achieve the agency's objectives. As such, we recommended that WHD develop written procedures for consistently and reliably informing the relevant contracting agency about WHD's findings in SCA investigations that identify violations. In April 2022, WHD reported that it was developing written guidance for its investigators and other field staff that will ensure that contracting agencies are kept abreast of ongoing WHD investigations. We will review the written guidance once it is completed.

In conclusion, DOL has taken steps to improve its oversight of the SCA and communication with contracting agencies—for example, by strengthening its ability to track debarments. Nevertheless, certain challenges persist. These challenges hinder its ability to effectively and

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<sup>29</sup>Contracting officers are not specifically required to include SCA violations when entering performance evaluation information into CPARS, nor are agencies required to consider past SCA violations that did not result in debarment when making award decisions. Contracting officials we spoke with said that they check CPARS for information on SCA violations.

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efficiently enforce the SCA, increasing the chance that workers will not receive pay and benefits to which they are entitled. We will continue to monitor DOL and USPS' actions in response to our recommendations.

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Chairman Sanders, Ranking Member Graham, and Members of the Committee, this concludes my prepared statement. I would be happy to respond to any questions you may have at this time.

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## GAO Contact and Staff Acknowledgments

If you or your staff have any questions about this statement, please contact me at (202) 512-4769 or [costat@gao.gov](mailto:costat@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. GAO staff who made key contributions to this testimony are Betty Ward-Zukerman (Assistant Director), Eve Weisberg (Analyst-In-Charge), Daniel Dye, and Meredith Moore. Also contributing to this testimony were James Bennett, Kathryn O'Dea Lamas, Joy Solmonson, Adam Wendel, and Tatiana Winger.

Other staff who made contributions to the report that this testimony is based on are identified in the source product.

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## Strategic Planning and External Liaison

Stephen J. Sanford, Managing Director, [spel@gao.gov](mailto:spel@gao.gov), (202) 512-4707  
U.S. Government Accountability Office, 441 G Street NW, Room 7814,  
Washington, DC 20548

