

APPENDIX B: AGENCY'S RESPONSE TO THE REPORT

U.S. Department of Labor

Wage and Hour Division
Washington, DC 20210



July 20, 2020

MEMORANDUM FOR: ELLIOT P. LEWIS
Assistant Inspector General for Audit

FROM: CHERYL M. STANTON *Cheryl M. Stanton*
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SUBJECT: Response to the Office of the Inspector General's Draft Report:
COVID-19: WHD Needs to Closely Monitor the Pandemic Impact
on its Operations

The Wage and Hour Division ("WHD") appreciates the opportunity to respond to the July 14, 2020 draft report of the Office of Inspector General ("OIG") titled *COVID-19: WHD Needs to Closely Monitor the Pandemic Impact on its Operations*. The report provides four recommendations, and WHD's responses to these recommendations are set forth below.

While WHD agrees with the recommendations presented in the report, it is important to restate the context of the overall findings. As the report acknowledges, WHD responded quickly after Congress passed the Families First Coronavirus Response Act (FFCRA) by issuing guidance and training to all staff at the national and field levels, conducted public webinars for employers and employees, established and launched a COVID-19 and the American Workplace public website. In these unprecedented times, WHD's priority remains and will continue to be that of the American workforce.

Recommendation 1: Develop a plan to monitor the effectiveness of the agency's oversight of the FFCRA and the FLSA programs so that the agency can identify if or when operational adjustments are necessary to most effectively utilize resources.

Response: WHD agrees with this recommendation and has developed a robust, flexible infrastructure for closely monitoring the FFCRA and FLSA programs, including system-wide impacts from the pandemic. Through sustained, frequent communications; evolving cross-functional teams; and comprehensive data reporting, WHD is well-positioned to adapt to changes in the regulated community as a result of the pandemic. WHD continues to refine and improve custom data reports and visualizations supporting effective and efficient case management in the field. Case inventory reports ensure all levels of management receive up-to-date information in order to adjust strategies and resources as needed. WHD is closely monitoring time spent across enforcement activities and the level of resources dedicated to delivering responsive customer service. WHD is adjusting resources based on peak call times and trends in order to determine optimal staff levels to maintain exceptional customer service.

WHD established cross-functional workgroups to mitigate and manage the impacts of

COVID-19 on operations, enforcement, and outreach activities as well as to implement responsibilities under the FFCRA. WHD is also leveraging these experiences to develop and advance promising practices around the use of technology and coordinated national responses. For example, WHD is developing and sharing models for conducting virtual investigations, supplemented complaint intake guidance to prioritize FFCRA case actions, and issued special guidance to ensure consistency in enforcement. WHD has identified and is managing FFCRA-related risks as part of the DOL enterprise risk management program. WHD has emphasized data-driven decision-making, coordination across offices, and flexibility to effectively respond to this rapidly changing environment. WHD leadership regularly issues updates to guidance internally and externally based on emerging trends and performance analysis. Consistent with this recommendation, WHD will continue building upon these systems and infrastructure moving forward.

Recommendation 2: Maintain a backlog of delayed on-site investigations and develop a plan to manage the backlog once full operations resume.

Response: WHD agrees with this recommendation and is leveraging existing case management systems, which already track case backlogs. WHD is able to monitor impacts to the case inventory through measures on case hours and status. Due to the widespread and unprecedented impact of the pandemic, WHD is monitoring the potential effects on all cases, rather than narrowly defining a subset tied to FFCRA. WHD has remained fully operational and sustained enforcement activity throughout the pandemic response. Resources were re-aligned to meet the emerging priorities, for example responding to an unprecedented call volume. WHD began pivoting planned enforcement strategies to account for impacts to local economies. As local conditions permit, WHD will strategically prioritize on-site enforcement, while also applying lessons learned from virtual investigations. Consistent with current case management practices, WHD reviews a range of data reports to support management of case backlogs, such as the case inventory report, and will continue to timely address near-and long-term impacts on case backlogs.

Recommendation 3: Identify the potential impact of the New York Attorney General’s lawsuit to the agency and its mission; and *if needed*, take appropriate action to mitigate its impact.

Response: WHD will administer and enforce the rule according to the current health care provider definition unless and until the court vacates the regulation; if that occurs, WHD will assess its legal obligations and options.

Recommendation 4: Update its COVID-19 operating plan addendum regarding the agency’s oversight of the FFCRA to include:

- a. Specific performance goals;
- b. Agency plans to use the \$2.5 million received from the CARES Act;
- c. Enforce outreach plans for the FFCRA once COVID-19 restrictions are lifted; and,
- d. Enforce outreach plans for the FFCRA after it expires on December 31, 2020.

Response: WHD agrees with the recommendation and will clarify the agency’s approach to each of the above identified areas. WHD established performance measures in the FY 2020 COVID-19 Operating Plan addendum that will be baselined for the remainder of FY 2020 and monitored moving forward. Given the need for flexibility and the short-term nature of the program, WHD does not intend to establish annual targets for these measures and will rely on a proven mix of data analytics, cross-functional teams, and continuous communication to ensure effective and efficient case management. WHD has incorporated FFCRA related goals into the existing performance framework and will continue developing supplemental plans and reports consistent with DOL and government-wide guidance. The additional resources from the CARES Act were incorporated into the agency’s spending plan. WHD submitted a plan to the Departmental Budget Center stating that the funds will be used for enforcement, IT system modification, rulemaking, training, and public awareness outreach.

WHD is committed to maintaining the visibility of FFCRA among the public and stakeholders. Following an unprecedented rulemaking effort and customer service response, WHD has moved to implement a widespread FFCRA public awareness campaign, including Public Service Announcements. WHD is encouraging creative, expanded approaches to outreach, including virtual events and innovations in how the agency disseminates compliance assistance materials. Similar to enforcement, WHD will maintain these efforts even as COVID-19 restrictions are lifted throughout the country. After the FFCRA expires on December 31, 2020, WHD will transition resources from educational outreach efforts toward ensuring ongoing enforcement actions are resolved. Progress will be monitored as part of the agency’s performance framework, including the Department-wide enterprise risk management system.

Thank you again for the opportunity to comment on this report.

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