As part of its effort to promote economic recovery and put people back to work in decent jobs, the United States Department of Labor (DOL) embarked in 2009 on a package of initiatives designed to ensure that workers were provided the full protections that they are entitled to under US law, including fair wages and safe working conditions. These initiatives are in line with the April 2010 G20 Labour and Employment Ministers’ recommendations to improve the quality as well as the quantity of jobs and promote respect for fundamental rights at work.

Measures to ensure that worker rights are protected may be particularly important in times of economic crisis, when employers face strong pressures to reduce labour costs and workers may be reluctant to jeopardize their jobs by challenging unfair or dangerous working conditions. These initiatives also respond to a longer-run challenge to improve the effectiveness of worker protections for the most vulnerable populations in the US labour market, including young workers, farm workers, workers with low pay in labour-intensive industries, workers fearful of reporting violations and workers for whom English is not a primary language.

**A two-pronged approach**

To better ensure that workers’ rights are respected, DOL is taking a two-pronged approach. First, it is targeting enforcement. More than 700 additional inspectors and investigators have been recruited, many of whom have unique foreign language proficiency, allowing them to reach some of the most vulnerable workers in the workforce who are unlikely to file complaints. DOL’s enforcement activities are also being focused on sectors that predominately employ vulnerable workers which have been hit hard by the crisis, and the Department has also stepped up its outreach efforts to educate vulnerable workers about their rights and how to get help from the Department. Second, DOL is facilitating business compliance with labour laws by providing incentives to businesses, offering expanded technical assistance and streamlining regulations. This two-pronged initiative involves a wide range of policies and programmes across DOL’s enforcement agencies.

**Better targeted enforcement**

Since limited resources make it difficult for labour investigators to visit more than a small fraction of all worksites in a given year, it is crucial that enforcement activities be targeted where they will have the greatest impact on compliance. One of DOL’s priorities is to better concentrate its enforcement activities on the most vulnerable workers and those employers who have the highest probabilities of violating labour laws. This effort builds on a foundation of strategic targeting. For example, Occupational Safety and Health Administration (OSHA) inspections have long focused resources on industries with the most fatalities and accidents, while the Wage and Hour Division (WHD) has devoted particular attention to nine selected low-wage industries in which minimum wage and overtime violations most often occur: hotel/motel, agriculture, day care, restaurants, garment manufacturing, guard services, health care, janitorial services and temporary help. However, it is increasingly recognized that a number of labour market trends — such as undocumented immigration and employers’ increasing use of irregular or indirect employment relationships — are associated with a heightened risk of labour law violations for certain workforce groups. The Department’s new targeting strategies are intended to more effectively enforce labour regulations for vulnerable groups in this contemporary context.

The Obama Administration’s misclassification initiative is a notable example of how vulnerable workforce groups are being more effectively targeted. Misclassification occurs when a worker, who legally is an employee, is instead treated as a self-employed “independent contractor”. Such practices deprive workers of labour and employment law protections and render them ineligible for social protection benefits such as unemployment insurance and workers’ compensation. While the precise extent of misclassification in the United States is unknown, studies suggest that it impacts approximately 10–30 per cent of firms and occurs most often in construction, janitorial services, home health care, childcare, transportation and warehousing, meat and poultry processing and other pro-
fessional and personnel services. Data available from state audits, although incomplete, suggest that the number of misclassified employees grew substantially between 2000 and 2007 (figure 1).

WHD began its initial efforts to understand the impact of misclassification in 2008, documenting that this practice is an important source of violations of the minimum wage and overtime compensation laws it enforces. DOL has requested US$45.8 million and 129 full-time equivalent employees in FY 2012 for a multi-agency initiative to strengthen and coordinate Federal and State misclassification deterrence efforts. DOL also plans to improve information sharing with other US Government and state government agencies.

**Initiatives to improve outreach**

Effectively protecting the rights of workers also requires that vulnerable workers are aware of their rights and know where to get help. DOL has launched a number of initiatives to reach out to vulnerable groups, placing particular emphasis on reaching out to low-skilled and migrant workers. Several examples follow.

**“We Can Help”:** The WHD initiated the “We Can Help” campaign in April 2010. The effort helps connect America’s most vulnerable and low-wage workers with the broad array of services offered by DOL. The campaign places a special focus on reaching employees in such industries as construction, janitorial work, hotel/motel services, food services and home health care, as well as workers with limited or no English. The campaign uses public service announcements, the Internet, and a toll-free hotline to inform workers about their right to the federal minimum wage and to overtime compensation and how to file a complaint with the WHD to recover wages owed.

**Community Outreach and Resource Planning Specialists (CORPS):** To increase its presence in communities with vulnerable workers, WHD has placed CORPS in WHD District Offices. This new type of specialist will assist Offices to increase employer and industry compliance with federal labour laws, in part through better utilization of stakeholder and community support, expertise and resources in enforcement efforts. The specialists will maintain lines of communication locally; engage partners in dialogue about local industry practices and labour concerns; provide training and resources to advocates and other stakeholders on wage and hour laws; and provide recommendations to WHD on how to serve workers at the local level.

**Migrant Worker Partnership:** In 2010, a successful Migrant Worker Partnership with Mexico was expanded to countries from Central America that also have significant migrant worker populations in the United States. Migrant workers — undocumented workers in particular — will often first reach out to their home country’s consulate if they face problems at work. Effective cooperation between DOL’s enforcement agencies (OSHA and WHD, in particular) and the embassy consulate networks in the United States is thus an effective way to reach these workers and help them understand their rights under US labour law. The Mexican embassy has 50 consulates throughout the United States. With the additional consulates from new countries joining the partnership, along with the OSHA and WHD’s network of other community partners (see description of OSHA’s Alliance Program, below), the partnerships form an important piece of a systematic strategy to identify and assist difficult-to-reach workers.

**OSHA outreach:** Following the landmark National Action Summit for Latino Worker Health and Safety that brought 1,000 participants from unions, consulates, trade and professional organizations together in Houston, Texas in 2010, OSHA has conducted a robust outreach programme that includes a series of public events organized to heighten workers’ awareness of

![Figure 1. Number of misclassified employees identified by state audits of employers, 2000–07](image)

their rights and build new partnerships. A variety of worker training and education events targeted to the most vulnerable workers in high-risk jobs are offered with the goal of increasing workers’ awareness of their rights and how they can receive the necessary assistance to exercise them.

Through its Alliance Program, OSHA works with unions, consulates, trade or professional organizations, faith- and community-based organizations, businesses, and educational institutions to leverage resources for protecting worker safety and health. A number of new initiatives have been taken to strengthen this system of alliances, particularly with respect to reaching Latino workers in the most dangerous jobs. On 20 May 2011, OSHA signed an alliance to foster safer and more healthful workplaces with the National Council of La Raza, the largest national Hispanic civil rights and advocacy organization in the United States.

Assisting businesses to comply with labour laws

DOL initiatives to strengthen enforcement have gone hand in hand with increased assistance to businesses to voluntarily comply with labour regulations. Businesses that wish to comply with labour laws may have difficulty accessing the information and technical assistance they require to comply with labour law. This is especially likely to be the case for small and medium-sized businesses and providing the necessary assistance can prevent unintentional violations. Compliance is also being encouraged by a systematic attempt to increase the cost effectiveness of existing regulations.

OSHA assistance: OSHA’s compliance assistance programmes for workers and employers are an important component of its increased enforcement efforts and represent 23 per cent of the agency’s FY 2012 budget request. In FY 2010, OSHA conducted 31,281 on-site consultations reaching 1.5 million workers. Other compliance assistance tools include OSHA’s website, publications, hotline, email consultations and its Outreach Training Program for students. In FY 2012, OSHA seeks to increase the number of persons trained through its federal and state compliance assistance programmes and through its Resource Centers, Education Centers and its Outreach Training Program.9

Revision of DOL regulations: DOL is also helping businesses to comply with labour laws by reviewing and streamlining its regulations with the goal of achieving desired outcomes at reduced cost. For example:

- In the area of hazard communication and implementation of the Globally Harmonized System for Classification and Labelling of Chemicals, OSHA’s preliminary estimate is that proposed modifications to establish a harmonized system for the classification and labelling of chemicals will create a substantial annualized savings for employers ranging from US$585 million to almost US$800 million.
- Electrical Product Approval Regulations are being revised. As technology has progressed, it has become more difficult for manufacturers of electrical products to understand how to comply with existing rules for obtaining approvals from the Mine Safety and Health Administration (MSHA). The proposed rule would improve both manufacturer and MSHA efficiency related to approval of electrical products for use in underground mines. MSHA anticipates that this could result in a US$500,000 – US$1.0 million savings to equipment manufacturers.
- The Abandoned Plan Program is being amended. Currently, bankruptcy trustees are not permitted to use the Employee Benefits Security Administration (EBSA) Abandoned Plans Program to terminate and wind up the affairs of individual account plans whose sponsors are in liquidation proceedings. EBSA plans to issue a proposed amendment that would allow bankruptcy trustees to participate. This revision would allow bankruptcy trustees to utilize the streamlined process under the Program, which will preserve plan assets and maximize benefits payable to participants and beneficiaries. EBSA preliminarily estimates that approximately 165 additional plans will participate in the revised programme resulting in cost savings of approximately US$1.12 million.

Monitoring progress

The DOL initiatives described above are very recent, and so it is too early to definitively assess their effectiveness. The Department plans to evaluate their cost effectiveness as experience accumulates and to make use of evaluation results to further refine policies to protect worker rights in cost-effective ways. In this context, WHD is upgrading its data system to more effectively measure the impacts of its enforcement activities. Whereas its data system previously focused on the size of wage recoveries resulting from enforcement actions, the focus is now on the impact WHD investigations and enforcement activities have on obtaining, maintaining and sustaining compliance across industries. This shift reflects a growing recognition that the ultimate goal is to prevent violations in the first place by providing strong incentives for employers to comply with labour laws, rather than to obtain compensation for workers after violations of the law have occurred and WHD has determined employees were underpaid.

In most respects, DOL initiatives to strengthen worker protection complement broader employment and economic policies in the United States. Indeed, DOL’s retrospective regulatory review represents a significant contribution to a government-wide initiative to streamline regulations.2 Similarly, the misclassification initiative described above is part of broader Obama Administration initiatives to reduce economic inequality and is being coordinated with the Middle Class Task Force in the office of the Vice President.
Challenges ahead

DOL initiatives to strengthen worker protection are particularly timely. Since US unemployment is receding slowly in the wake of the 2007–09 recession, the risk that workers' rights will be violated is likely to remain elevated for some time. These initiatives also represent a response to longer-run labour market trends, such as undocumented immigration and the spread of irregular employment relations. These trends have created gaps in worker protection and the DOL initiatives illustrate the need for regulatory systems to continuously adapt to changing economic and social conditions.

1 More than 600 of the Wage and Hour Division's (WHD) investigators speak a language other than English.
2 Construction is among the most dangerous industries and construction inspections comprise 60 per cent of OSHA's total inspections.
3 Weil (2010).
4 Weil (2010) identifies a number of industries where “fissured” employment relationships have proliferated.

In these industries, the beneficiary of the labour services rendered (e.g. a hotel chain) is not the direct employer of the workers (e.g. a subcontractor), thereby blurring responsibility for assuring that workers’ rights are respected.

5 Worker misclassification can also undermine the fiscal sustainability of these social programmes, since employers typically do not make their mandatory contributions for the affected workers.

6 GAO (2009).

7 WHD data also suggest that misclassification is a growing practice. Since January 2009, the Wage and Hour Division has collected over US$6 million in back wages for approximately 4,500 employees in cases where misclassification was the primary reason why the employer failed to pay the minimum wage or proper overtime. This was an increase of approximately 50 per cent from 2008.

8 The OSHA Alliance Program discussed above also involves outreach work with employers.

9 On 18 January 2011, President Obama issued Executive Order 13563, “Improving Regulation and Regulatory Review”, which aims to create a regulatory process that “strikes the right balance” between what is needed to protect health, welfare, safety, and the environment for all Americans, and what is needed to foster economic growth, job creation, and competitiveness.