



**Less than One-Fifth of First Source
Provisions Have Been Effectively
Implemented and the District
Has Not Demonstrated Success in Hiring
and Retaining District Employees**

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Audit Team:

Margaret Jacobson, Analyst
Lawrence Perry, Deputy Auditor

A Report by the Office of the District of Columbia Auditor
Kathleen Patterson, District of Columbia Auditor

Table of Contents

Background.....	1
Scope, and Methodology.....	7
Results.....	9
Conclusion	26
Agency Comments	27
ODCA Response to Agency Comments	28
Appendix A: First Source Operations Plan	29
Appendix B: First Source Strategic Achievement Plan	30
Appendix C: Analysis of the Implementation Status of First Source Law Provisions.....	31
Appendix D: Areas to Address During SOP Implementation to Strengthen Their Effectiveness.....	32

Background

For more than 30 years, the First Source Program (Program) has been cited as an important part of the District of Columbia's strategy to provide job opportunities and reduce unemployment among District residents. According to the Department of Employment Services' (DOES) website, the Program "ensures that city residents are given priority for new jobs created by municipal financing and development programs." The First Source Law (Law) requires that the Mayor include for every government-assisted project or contract a requirement that the beneficiary enter into an First Source Agreement (hereafter referred to as employment agreement) with the District of Columbia which states that:

- The first source for finding employees to fill all jobs created by the government-assisted project or contract will be the First Source Register; and
- The first source for finding employees to fill any vacancy occurring in all jobs covered by an employment agreement will be the First Source Register.¹

There have been numerous changes to the program and Law since the inception of the program. The most recent significant changes were initiated through the "Workforce Intermediary Establishment and Reform of First Source Amendment Act of 2011" (the Act).² According to the October 4, 2011, committee report issued by then-Chair of the Committee on Housing and Workforce Development, former Councilmember Michael Brown, the committee's rationale at that time included:

- "Focusing on compliance within the District's First Source Law has become the accepted short hand to refer to finding ways to get residents hired. While First Source cannot solve all the deficiencies related to job opportunities available for District Residents, the concept is key because it governs contractual relationships where the District is in a strong negotiating position. Recognizing this and considering the annual volume of contracting, the District must use this leverage to focus on maximizing job opportunities whenever public funding is used."
- "High levels of unemployment have persisted citywide for multiple years now; the rate has experienced large fluctuations and as of August 2011 was 11.1 percent as reported by the US Department of Labor and in some Wards of the city the unemployment rate is estimated to be over 30%. Sustained high levels of unemployment typically lead to severe financial hardships for those affected."
- "Labor market data shows that there are over 700,000 jobs in the District and yet approximately 72% of those jobs are held by people living outside the city's borders. The District's Congressionally-imposed ban on taxing any of the income that leaves the city means that the District is subsidizing surrounding jurisdictions to the tune of \$1 billion to \$2 billion a year in lost revenue. The District's sustained rate of high unemployment, the sharp increase in the demand for social services, and the inability to tax income at the source, puts the city in a unique situation that makes local hiring critical to the overarching health of the jurisdiction."
- "Conceptually, the prevailing attitude related to the use of District funding and other incentives is a united voice calling for the companies and organizations receiving these benefits to hire District residents. Practically, the current First Source law is limited in scope because the 51% District-resident requirement for entities under First Source agreements only applies to new hires. In addition, enforcement and applying proscribed penalties is nearly impossible because showing

¹ See DC Code § 2-219.03(a).

² The "Workforce Intermediary Establishment and Reform of First Source Amendment Act of 2011" (B19-0050, Law 19-0084) became effective on February 24, 2012.

evidence of noncompliance with the statute's "best efforts" to meet the 51% new hire requirement is a very low legal standard. As currently written, our First Source law is essentially a goal that the city encourages our District contractors to meet."³

After passage, significant changes to the Law included, but were not limited to:

- Increasing the base subsidy level that triggers an employment agreement from \$100,000 to \$300,000.
- Requiring each government-assisted⁴ construction project receiving government assistance totaling \$5 million or more to adhere to enhanced First Source hiring requirements.
- Requiring specific documentation evidencing a good-faith effort to comply with First Source requirements prior to obtaining a waiver from an employment agreement.
- Including pro-rated fines for not reaching specific hiring requirements.

Law Requirements for Projects or Contracts Receiving Government Assistance Totaling between \$300,000 and \$5,000,000

The Law requires that the Mayor include in each government-assisted project or contract that receives government assistance totaling between \$300,000 and \$5,000,000 a provision that at least 51 percent of the new employees hired on the project or contract shall be District residents.⁵

As written, this requirement applies only to new positions created that are not immediately filled by individuals already on the payroll of the contractor (e.g. a transfer of a current employee working on another project of the beneficiary).

The Law also requires that each government-assisted project or contract that receives government assistance totaling between \$300,000 and \$5,000,000 submit to DOES each month following the start of the project or contract a hiring compliance report for the project or contract that includes the:

- Number of employees who worked on the project or contract.
- Number of current employees transferred.
- Number of new job openings created.
- Number of job openings created by employee attrition.
- Number of job openings listed with DOES.
- Total monthly and direct and indirect labor costs associated with the project or contract.
- Total number of District residents hired for the reporting period and the cumulative total number of District residents hired.

³ See Committee on Housing and Workforce Development Committee Report on B19-50, the "Workforce Intermediary Establishment and Reform of First Source Amendment Act of 2011", October 14, 2011.

⁴ DC Code § 2-219.01(5) defines "Government assisted project or contract" as any construction or non-construction project or contract receiving funds or resources from the District of Columbia, or funds or resources which, in accordance with a federal grant or otherwise, the District of Columbia government administers, including contracts, grants, loans, tax abatements or exemptions, land transfers, land disposition and development agreements, tax increment financing, or any combination thereof, that is valued at \$300,000 or more.

⁵ See DC Code § 2-219.03 (e)(1)(A).

- Total number of all employees hired for the reporting period and cumulative total number of employees hired, including each employee's:
 - Name.
 - Social Security Number.
 - Job title.
 - Hire date.
 - Residence.
 - Referral source for all new hires.⁶

Law Requirements for Construction Projects or Contracts Receiving Government Assistance Totaling \$5 Million or More⁷

The Law requires that the Mayor include in each government-assisted⁸ construction project receiving government assistance totaling \$5 million or more, a provision requiring that:

- At least 20 percent of journey worker hours by trade shall be performed by District residents.
- At least 60 percent of apprentice hours by trade shall be performed by District residents.
- At least 51 percent of skilled laborer hours by trade shall be performed by District residents.
- At least 70 percent of common laborer hours by trade shall be performed by District residents.⁹

The Law also requires that each month following the start of the construction project or contract, beneficiaries submit to DOES copies of their monthly cumulative certified payrolls, monthly and cumulative certified payrolls from all subcontractors at any tier working on the project or contract, as well as a report of the total monthly direct and indirect labor costs associated with the project or contract.¹⁰ Last, the Law requires bidders and awardees on construction projects or contracts totaling \$5 million or more to submit employment plans that identify specific details regarding associated jobs and strategies to meet their hiring requirements.¹¹

Law Requirements for Companies Bidding on Construction Projects

According to the Law, bidding companies on construction projects are to submit an employment plan to include:

- Strategies to meet the local hiring requirements as part of its response to a solicitation.
- Descriptions of health and retirement benefits provided to employees who worked on any of the bidder or offeror's past three completed projects or contracts.
- A description of the bidder's efforts to provide District residents with ongoing employment and training opportunities after they complete work on the project or contract on the job for which they were initially hired.

⁶ ⁶ See DC Code § 2-219.03 (e).

⁷ For purposes of this report a reference to "construction project" is referring to a construction project over \$5 million with enhanced First Source requirements.

⁸ "Government assisted project or contract" means any construction or non-construction project or contract receiving funds or resources from the District of Columbia, or funds or resources which, in accordance with a federal grant or otherwise, the District of Columbia government administers, including contracts, grants, loans, tax abatements or exemptions, land transfers, land disposition and development agreements, tax increment financing, or any combination thereof, that is valued at \$300,000 or more. See D.C. Code § 2-219.01(5).

⁹ See D.C. Code § 2-219.03(e)(1A)(a).

¹⁰ See D.C. Code § 2-219.03(e)(1A)(D).

¹¹ See D.C. Code § 2-219.03(e)(1A)(F).

- Disclosure of past compliance with the Workforce Act and the Davis-Bacon Act of 1931, where applicable, on projects or contracts completed within the last two years.

These plans are to be evaluated and scored by the Mayor, based on the above requirements, and shall be worth 10 percent of the overall score of the bid or proposal.

Law Requirements for Companies Awarded a Construction Contract or Project

The winning bidder on a contract or project has an additional requirement to submit a revised employment plan which includes, but is not limited to:

- A projection of the total number of hours to be worked on the project or contract by trade.
- A projection of labor hours per labor category in the construction industry.
- A description of skill requirements by job title or position.
- Strategies to fill the hours by DC residents prior to beginning work on the project.¹²

Law Requirements for Submission of Final Request for Payment

With the submission of the final request for payment from the District, beneficiaries are required to submit a report to the Mayor that documents its compliance with hiring requirements or submit a request to the Mayor for a waiver of compliance. This request for a waiver shall include the following documentation:

- Material supporting a good-faith effort to comply.
- Referrals provided by DOES and other referral sources.
- Advertisement of job openings listed with DOES and other referral sources.¹³

The Mayor may waive hiring requirements if the Mayor finds that:

- DOES has certified that a good-faith effort to comply has been demonstrated by the beneficiary.
- The beneficiary is located outside the Washington Standard Metropolitan Statistical Area.
 - None of the contract work is performed inside the Washington Standard Metropolitan Statistical Area.
 - The beneficiary published each job opening or part-time work need for seven calendar days in a District newspaper of city-wide circulation.
 - DOES certifies that there are insufficient eligible applicants from the First Source Register that possess the skills required by the positions, or the eligible applicants are not available for part-time work or do not have a means to travel to the onsite job, or
- The beneficiary enters into a special workforce development training or placement arrangement with DOES.¹⁴

¹² *Id.*

¹³ See D.C. Code § 2-219.03(e)(2)

¹⁴ See D.C. Code § 2-219.03(e)(3)(A).

DOES is required to consider the following when determining a good-faith effort to comply:

- Whether DOES has certified that there is an insufficient number of District residents in the labor market who possess the skills required to fill the positions that were created because of the project or contract.
- Whether the beneficiary posted the jobs on the DOES website for a minimum of 10 calendar days.
- Whether the beneficiary posted each job opening or part-time work needed in a District newspaper with city-wide circulation for a minimum of seven calendar days.
- Whether the beneficiary has substantially complied with the relevant monthly reporting requirements.
- Whether the beneficiary has submitted and substantially complied with its most recent employment plan that has been approved by DOES.
- Any additional documented efforts.¹⁵

Penalties Established by Law

The Law establishes penalties for failure to meet specific hiring requirements. If a contractor or subcontractor is not able to achieve the 51 percent new hire or any of the other percentages requirements for the different labor categories, the contractor is subject to a penalty of 1/8 of 1 percent of the direct and indirect labor costs of the project for each percentage by which the contractor fails to meet the hiring requirements.

The Law also establishes a penalty of 5 percent of the total amount of the direct and indirect labor costs of the project or contract for a willful breach of the employment agreement, failure to submit required monthly reports, or deliberate submission of falsified data. Last, the Law states that upon the second violation within a 10-year time frame of the required hiring or reporting requirements or failure to receive a good-faith waiver from DOES the Mayor shall debar a person or entity from consideration for award of contracts or subcontracts with the District of Columbia for a period of not more than five years.¹⁶

Office of First Source Compliance Duties

The Law established the Office of First Source Compliance (OFSC) as a single administrative unit in DOES.¹⁷ According to the Law, the main functions of OFSC are to:

- Monitor and track each beneficiary of government assisted projects in the District to ensure compliance with the First Source Agreement.
- Ensure that each beneficiary who is presently working on a governmental-assisted project or is bidding on a governmental-assisted project is in compliance with the First Source Agreement.
- Require the beneficiary to submit to the Office a report on the 15th of each month on a form proposed by the Mayor.
- Submit to the Council and the Mayor a quarterly report on a form proposed by the Mayor.¹⁸

Prior to October 2016, OFSC was located in the DOES' Office of Employer Services. OFSC moved to the Office of Labor Law Enforcement (OLLE) in FY 2017. With the move, came new leadership. The new leadership developed a First Source Operations Plan and a new six-month strategic operation achievement plan, attached as Appendices A and B, respectively.

¹⁵ See D.C. Code § 2-219.03(e)(3)(B).

¹⁶ See D.C. Code § 2-219.03(e)(4).

¹⁷ See D.C. Code § 2-219.33.

¹⁸ See D.C. Code § 2-219.34.

Currently there are three monitors and a supervisor in OFSC. According to DOES these monitors and supervisor currently monitor 864 employment agreements related to 280 contracts or projects in both the construction and non-construction sectors.

Reports

The Law requires that the Mayor submit a report to the Council of the District of Columbia on January 31st and July 31st of each year. The report shall include for each preceding six-month period: (1) the number of government-assisted projects or contracts for which employment agreements were executed; (2) the number of jobs that result from employment agreements; (3) the number of District residents employed in government-assisted projects or contracts; and (4) the number of names of unemployed District residents on the First Source Register.¹⁹

Overall, the Law includes 48 significant requirements that impact the Mayor, contracting agencies and DOES. It should be noted that the fiscal impact statement prepared by the Chief Financial Officer indicated that there were sufficient funds available in the FY 2012 to FY 2015 budgets to implement the provisions of the “Workforce Intermediary Establishment and Reform of First Source Amendment Act of 2011” (the Act).²⁰

In November 2016 ODCA initiated and completed an audit to determine:

1. Whether DOES has necessary policies and procedures in place to effectively monitor, enforce, and is enforcing compliance of First Source Law requirements.
2. If necessary controls are in place to accurately report hiring rates required under the Law.

Because First Source has been such a long-standing program in the District, we also conducted additional analysis which is included in this white paper to assess whether all the requirements of the Law have been implemented, and whether policies and procedures are in place to effectively implement all the requirements of the Law. This white paper also includes:

- A comparison of the District’s First Source Program to other jurisdictions and best practices.
- The employment projections and hiring statistics for the 27 projects or contracts included in our audit sample.
- An assessment of the final policies and procedures submitted by DOES on March 14, 2018.
- The compliance status of recommendations related to the First Source Program cited in our August 1, 2016, report entitled [District Agencies Did Not Provide Sufficient Oversight of Private Development Projects and Have Not Collected Potentially Significant Fines](#).²¹

¹⁹ See D.C. Code § 2-219.04.

²⁰ The “Workforce Intermediary Establishment and Reform of First Source Amendment Act of 2011” (B19-0050, Law 19-0084) became effective on February 24, 2012. According to the Chief Financial Officer (CFO), the legislation was expected to cost \$267,400 in FY 2012 and \$682,527 (which included \$400,00 to upgrade IT systems) over the FY 2012 through FY 2015 budget and financial plan. Funds available from the Districts short-term borrowing fund would be reprogrammed by the Mayor to cover the cost of implementation. The CFO further indicated that the enhanced reporting requirements for projects receiving \$5 million or more in assistance would require an additional compliance officer.

²¹ <http://www.dcauditor.org/sites/default/files/Private%20Development%20Review%20Letter%20Report%208%201%2016%20-%20FINAL.pdf>

Scope and Methodology

Scope

The period under analysis was FY 2014 through FY 2016 (October 1, 2013, through September 30, 2016). The sample size of the audit was a mix of varying contracts or projects receiving government assistance from the District. Our stratified random sample included construction, retail, non-construction, and mixed-development contracts or projects. We chose a random sample to include a mix of construction and non-construction projects, and varied forms of government assistance. We included 27 contracts/projects in our sample that encompassed a review of 235 available employment agreements with general contractors, subcontractors, and other businesses found in DOES' records. The contracts/projects in our sample received government assistance either through contracts, tax abatements, or Tax Increment Financing (TIF). Figure 1 provides a list of the contracts or projects in our sample.

Figure 1: Sample Contracts or Projects

DOES Contract/Project Name	Project/Contract Type	Beneficiary
Monroe Street Market/Catholic University South Campus Redevelopment	Mixed Use/Redevelopment	Brookland South Campus, LLC
Ballou High School	School Modernization Construction Project	Chiaromonte/Hess JV
Parking Operations	Non-Construction	U Street Parking Services (UPS)
Removal of Surplus	Non- Construction	Creative Recycling Services, LLC
TANF Placement Services	Non- Construction	KRA Corporation
TANF Work Readiness	Non- Construction	DB Grants Associates
6925 Georgia Avenue Apartments	Construction	CM Construction
Design Build Roosevelt High	School Modernization Construction Project	Smoot/Gilbane JV
AE Services-IDIQ Services	Architect and Engineering Services	Brailsford & Dunlavey
Hope Village	Non-Construction	Hope Village, Inc.
2321 4 th Street	Construction	Harkins Builder Inc.
Wharf Parcel 11 A St. Augustine Episcopal Church	Construction	Hoffman-Struever Waterfront LLC
Pruning Services	Non-Construction	Adirondack Tree Experts
Pruning Services	Non-Construction	C&D Tree Service Inc.
Pruning Services	Non-Construction	Kennedy Development LLC
Villages at Dakota Crossing	Construction	NVR Inc. t/a Ryan Homes
Adams Morgan Line Hotel	Construction/Hospitality	Walsh Construction
Safeway Georgia Ave.	Non-Construction/Retail	Safeway, Inc.
Duke Ellington School	School Modernization Construction	GS Sigal
Security Services for DC Public Schools	Non-Construction	Allied Barton Security Services LLC

DOES Contract/Project Name	Project/Contract Type	Beneficiary
Southwest Waterfront Development	Mixed Use/ Redevelopment Project	Hoffman-Struever Waterfront LLC
Giant Alabama Ave.	Retail	Giant of Maryland
Giant 7 th Street	Retail	Giant of Maryland
Giant Park Road	Retail	Giant of Maryland
Giant H Street	Retail	Giant of Maryland
Premium Billing Services	Retail	NFP Health Services Administrators, LLC
Mission Oriented Business Integration	Non-Construction	All You Need Personnel, Inc.

Eight of the 27 projects in our sample started in the scope period but are still ongoing.

Methodology

To determine whether the requirements of the Law have been implemented and whether policies and procedures were in place to effectively implement the Law, we specifically:

- Reviewed each significant requirement of the Law.
- Conducted interviews with OFSC staff on each of the significant requirements of the Law to determine if each requirement had been met.
- Requested and reviewed available Standard Operating Procedures.
- Documented monitoring procedures from both supervisor and monitors' verbal accounts.
- To determine employment projections and hiring statistics for the 27 contracts or projects in our sample, we reviewed available employment agreements and available required monthly report submissions.

Results

Despite being in effect for numerous years, significant requirements of the law have not been implemented or are not being implemented effectively.

As previously stated, we identified 48 Law requirements that impact the Mayor, contracting agencies and DOES. We evaluated the status of each requirement using the following classifications.

Figure 2: Implementation Status Classifications and Methodology

Implementation Status	Auditor's Methodology
Implemented (I)	We reviewed available documentation related to the 27 contracts or projects in our sample. We further conducted staff interviews to determine whether the requirement has been implemented.
Not Implemented (NI)	We reviewed available documentation related to the 27 contracts or projects in our sample. We further conducted staff interviews to confirm whether the requirement has been met.
Not Effectively Implemented (NEI)	We reviewed and analyzed available documentation related to the 27 contracts or projects in our sample. In these instances, we found that although the requirement was implemented in some form, the requirement was not being implemented effectively.
Undetermined (U)	We were unable to determine if this requirement has been met due to the lack of data or DOES policies addressing the requirement.

Overall, we found that 39, or 81 percent, of the 48 requirements were either not implemented or not implemented effectively. This may be attributed to many reasons, including but perhaps not limited to:

- A failure of the Mayor to implement many of the requirements of the Law in a timely manner.²²
- A failure of former DOES senior officials to effectively implement requirements of the Law, at their own discretion, most specifically related to the assessment and issuance of allowable penalties.
- A failure of coordination among numerous District agencies to ensure effective implementation. This deficiency was cited in the Auditor's August 1, 2016, report entitled "District Agencies Did Not Provide Sufficient Oversight of Private Development Projects and Have Not Collected Potentially Significant Fines".²³ The Auditor made specific recommendations in the 2016 report and will discuss implementation of these recommendations later in this report.
- A failure in the Law to clearly delegate specific responsibilities to District agencies or to the beneficiaries receiving government assistance.
- A lack of sufficient resources to effectively monitor the program.

Examples of some of the law's 48 provisions that have not been implemented or not implemented effectively:

- DOES is not able to determine that contractors are giving first preference to unemployed District residents because the source of job referrals has not been consistently reported.

²² Mayor's Order 2018-010 was issued January 10, 2018 delegating many of the Mayor's responsibilities. However, for purposes of this report, we discussed rules and responsibilities that were in effect during the scope of our review.

²³ <http://www.dcauditor.org/sites/default/files/Private%20Development%20Review%20Letter%20Report%208%201%2016%20-%20FINAL.pdf>

- The requirement to have an employment agreement on file with all First Source contractors has not been consistently met. Of the 124 contracts over \$300,000 awarded by the Department of General Services in FY 2016 ODCA could not find employment agreements at DOES for 30 of these awards, which totaled \$22 million in government assistance.
- The law requires hiring compliance forms to be filed with DOES each month following the start of the contract or project, and from the sample of 27 projects reviewed by ODCA, not a single DOES-created monthly reporting form was submitted containing all 11 required reporting elements.
- A beneficiary's revised employment plan is required once the contract or project has been given final approval. At the time of our review, DOES indicated that they had never received a copy of a single revised employment plan.
- Contractors are required to submit a report detailing compliance with provisions of the law, or seeking a waiver of compliance, as part of the final request for payment from the District and DOES conceded this requirement was not met during the period of our review.

A detailed analysis of the implementation status of the law's provisions is included as Appendix C.

The District has some of the most stringent first source or local job hiring law requirements and has failed to conduct regular reviews and assessments of hiring rates as is common in other jurisdictions.

In addition to the District of Columbia, we reviewed five other jurisdictions that have first source or local job hiring policies: Boston, St. Louis, San Francisco, Seattle, and Baltimore. The following factors were taken into consideration when comparing and analyzing the cities we reviewed that still have first source or priority job hiring policies. They included:

- Contract or project amount subject to first source or job policy.
- Specific employment requirements.
- Penalty for not achieving hiring or percentage requirements.

Figure 3 presents the considerations for each of the jurisdictions.

Figure 3: Key Hiring Requirements and Penalties for Contracts/Projects by Jurisdiction

Jurisdiction	Contract or Project Amount Subject to First Source or Job Policy	Key Hiring Requirements	Penalties
District of Columbia ²⁴	Each government-assisted project or contract that receives government assistance totaling \$300,000 or more.	For government-assisted projects or contracts receiving government assistance totaling between \$300,000 and \$5,000,000 at least 51% of the new employees hired on the project or contract shall be District residents. For government-assisted	If a contractor or subcontractor is not able to achieve the 51% new hire or any of the other percentages requirements for the different labor categories, the contractor is subject to a penalty of 1/8 of 1% of the direct and indirect labor costs of the project for each

²⁴ See generally D.C. Code Title 2, Chapter 2, Subchapter X. First Source Employment.

Jurisdiction	Contract or Project Amount Subject to First Source or Job Policy	Key Hiring Requirements	Penalties
		<u>construction</u> contract or project receiving government assistance totaling \$5 million or more: At least 20% of journey worker hours by trade shall be performed by District residents. At least 60% of apprentice hours by trade shall be performed by District residents. At least 51% of skilled laborer hours by trade shall be performed by District residents. At least 70% of common laborer hours by trade shall be performed by District residents.	percentage by which the contractor fails to meet the hiring requirements. The Law also establishes a penalty of 5% of the total amount of the direct and indirect labor costs of the project or contract for a willful breach of the employment agreement, failure to submit required monthly reports, or deliberate submission of falsified data. Lastly, the Law states that upon the second violation within a 10-year time frame of the required hiring or reporting requirements or failure to receive a good-faith waiver from DOES the Mayor shall debar a person or entity from consideration for award of contracts or subcontracts with the District of Columbia for a period of not more than 5 years.
Boston ²⁵	All city-funded projects, as well as “major development projects” as defined in the City of Boston Municipal Code.	51% of total worker hours of journey people and 51% of worker hours of apprentices in each trade on a covered project shall be by bona-fide Boston residents. At least 40% of the total work hours of journey people and 40% of the total work hours of apprentices in each trade on a covered project shall be by people of color. At least 12% of the total employees working in each	For the person who provides falsified information: \$300. For the contractor: cessation of work at no cost to the City of Boston until compliance is obtained, removal from the project altogether, withholding of payment until compliance is obtained, liquidated damages based on the value of the contract.

²⁵ See Establishing the Boston Residents Jobs Policy, Boston, MA, City of Boston Municipal Code. § 8-9 (2017).
[http://library.amlegal.com/nxt/gateway.dll/Massachusetts/boston/chapterviiidevelopment?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:boston_ma\\$anc=JD_8-9](http://library.amlegal.com/nxt/gateway.dll/Massachusetts/boston/chapterviiidevelopment?f=templates$fn=default.htm$3.0$vid=amlegal:boston_ma$anc=JD_8-9).

Jurisdiction	Contract or Project Amount Subject to First Source or Job Policy	Key Hiring Requirements	Penalties
		trade on a covered project shall be women.	
St. Louis ²⁶	Public works contracts for which the design team's estimated base value of the contract is \$1 million dollars or more.	A goal of 20% of all labor is to be performed by persons who reside in the city of St. Louis. A goal of a minimum 15% of labor hours are to be performed by apprentices. A goal of 25% of all labor hours are to be performed by minorities and a goal of 5% of all labor hours are to be performed by women.	None
San Francisco ²⁷	Contracts for public work or improvement projects in excess of \$600,000.	Pursuant to amendments effective March 25, 2017, the mandatory participation level shall be 30% of all Project Work Hours within each trade performed by local residents, with no less than 15% of all Project Work Hours within each trade performed by Disadvantaged Workers. At least 50% of the Project Work Hours performed by Apprentices within each trade shall be performed by Local Residents, with no less than 25% of Project Work Hours performed by Apprentices within each trade to be performed by Disadvantaged Workers.	The penalties for failing to meet the local hiring requirement include a fine equal to the journeyman or apprentice prevailing wage rate for the primary trade used by the contractor for each hour the contractor fell short, and debarment.

²⁶ St. Louis Municipal Ordinance #68412, Approved July 27, 2009. [<https://www.stlouis-mo.gov/internal-apps/legislative/upload/Ordinances/BOAPdf/68412x00.pdf>].

²⁷ See San Francisco Local Hiring Policy for Construction, Chapter 82 or San Francisco Administrative Code. [http://library.amlegal.com/nxt/gateway.dll/California/administrative/chapter82localhiringpolicyforconstructio?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:sanfrancisco_ca\\$anc=JD_Chapter82](http://library.amlegal.com/nxt/gateway.dll/California/administrative/chapter82localhiringpolicyforconstructio?f=templates$fn=default.htm$3.0$vid=amlegal:sanfrancisco_ca$anc=JD_Chapter82)

Jurisdiction	Contract or Project Amount Subject to First Source or Job Policy	Key Hiring Requirements	Penalties
Seattle ²⁸	Adopted in 2015, the Priority Hire ordinance requires City construction projects of \$5 million or more to have a percentage of project hours performed by workers living in economically distressed areas. ²⁹ City projects will have apprentice utilization requirements and women and people of color <u>aspirational</u> goals.	For <u>each</u> covered project, the Director (Director of Finance and Administrative Services or his or her designee or successor) shall establish the greatest practicable required percentage of labor hours to be performed by Priority Workers using past utilization percentages on similar public works projects from the previous three calendar years, and shall increase that percentage by no less than two percentage points above past performance and shall calibrate these required percentages annually. The City requires apprentice labor on construction projects estimated to cost \$1 million or greater. Contractors must ensure that up to 15 percent of the total contract labor hours are worked by apprentices enrolled in an apprenticeship program approved or recognized by the Washington State Apprenticeship and Training Council. ³⁰	The Director shall enforce the requirements in and may use actions such as withholding invoice payments, to the extent allowed by contract, or debarment.
Baltimore ³¹	Applicable to all City contracts greater than \$ 300,000, or agreements authorizing assistance that	At least 51% of the new jobs required to complete the contract or project must	Debarment for 1 year and/or any intentional violation is subject to a fine of not more than \$500 for each offense.

²⁸https://library.municode.com/wa/seattle/codes/municipal_code?nodeId=TIT20PUWOIMPU_SUBTITLE_IIPUWO_CH20.37PRHI

²⁹ <http://www.seattle.gov/city-purchasing-and-contracting/labor-equity/priority-hire>

³⁰ <http://www.seattle.gov/city-purchasing-and-contracting/social-equity/apprenticeships>

³¹ See Finance and Procurement – Local Hiring (Baltimore City Council Bill 12-0159).
https://moed.baltimorecity.gov/sites/default/files/es_local_hiring_law.pdf

Jurisdiction	Contract or Project Amount Subject to First Source or Job Policy	Key Hiring Requirements	Penalties
	are executed by the City on or after the Law's effective date, December 23, 2013. The Law requires compliance by vendors/contractors and their subcontractors regardless of the subcontractor award amount and by all persons benefitting from an agreement involving more than \$5 million in assistance for a City subsidized project.	be filled by Baltimore City residents.	

As can be seen from the table, the District has some of the most stringent first source or local job hiring law requirements with no other jurisdiction (besides Baltimore) having a requirement that 51 percent of new hires be local residents. *As previously stated, as written, this requirement for the District applies only to new positions created that are not immediately filled by individuals already on the payroll of the contractor (e.g. a transfer of a current employee working on another project of the beneficiary). This is in contradiction to a general perception that 51 percent of all employees working for contractor receiving government assistance shall be District residents.*

As evidenced, in the section of this report detailing projected hires and actual hires, many of the employment plans attached to the employment agreements we reviewed projected few or no new hires.

Bean, Kinney & Korman, PC, a local legal firm that has experience representing construction industry clients with contract issues and litigation in Northern Virginia, Maryland and the Washington, D.C., area, had concerns with amendments to the First Source Law expressing in a 2012 article that:

“One of the challenges for parties subject to the First Source Act has always been eliminating the perception that construction jobs require no skill and can be performed by anyone. Another challenge is that the mechanisms in place to assist beneficiaries in filling vacancies do not always assure beneficiaries’ ability to comply with the law. Contractors should be able to look to DOES for a bank of qualified persons for construction jobs, as well as assistance when the contractor’s own recruitment efforts do not produce the desired results of a qualified labor pool. Success in that area has not always been consistent.

“The Amended First Source Act has caused concern throughout the construction community. It is not an uncommon sentiment that smaller employers will not be able to meet the reporting requirements due to the fact that either the personnel necessary to compile the data are not in place or the cost to maintain the records will add to the bottom line costs that must be passed on to owners of projects. Additionally, opponents of the legislation are adamant that the mandatory hiring percentages are impossible for any sized employer to meet given the limited number of District residents that are qualified and/or have the skills to work in the construction industry. Finally, those persons who might otherwise be hired to work on a project

but are not District residents will be denied the opportunity to work on construction projects for which they might otherwise have been eligible.

“It remains to be seen whether the Amended First Source Act will result in increased job opportunities for District residents or the demise of contracting businesses for failure to comply with the requirements of the law.

One thing is certain – if you plan to do business in the District, it is essential you familiarize yourself with the requirements of the Amended First Source Act in order to make an intelligent bid for work and to navigate safely through the procedural requirements that could have a lasting impact on your ability to participate in future projects, whether within the District or another jurisdiction.”³²

Most cities in our review implemented a progressive labor hour percentage requirement rather than a number of locals hired requirement. This helps ensure transparency in terms of actual work performed and avoids the risks that a “head count” creates, such as contractors hiring a worker for one day to improve their hiring. We found that San Francisco came closest to achieving the percentages outlined in its first source law. This may have been achieved by phasing in the percentage requirements for the program over many years and reevaluating these percentages on a regular basis. In the start of its program, 20 percent was required and increased by 5 percent each year. The first year San Francisco implemented the 20 percent requirement (2014), it achieved 33 percent. The second year the city implemented a 25 percent requirement and achieved 34 percent (2015). The third year the city implemented a 30 percent requirement and achieved 4 percent (2016). We found that Seattle also reviews their percentage hour requirements on a regular basis based upon past performance.

We found that the District has failed to implement one of the key requirements of the Law about assessing the percentage requirements. Although the District is required to review and assess the percentage hiring and reporting requirements once every three years, this has not been done. *Specifically, the law requires that within one year of Feb. 24, 2012, the Mayor is to review the hiring and reporting requirements to determine the appropriateness of each percentage and make relevant findings of the determination in a report to the Council. After initial submission of this report, the Mayor shall regularly, but at least once every three years, conduct a new review of the hiring and reporting requirements to determine appropriateness of each percentage and make relevant findings of the determination in a report to the Council.*³³

The published results of the efforts made by the other jurisdictions in implementing first source or local job hiring requirements for the scope of our review are presented in Figure 4.

Figure 4: Key Hiring Requirements and Published Results by Jurisdiction.

Jurisdiction	Key Hiring Requirement	Published Results
District of Columbia	For government-assisted projects or contracts receiving government assistance totaling between \$300,000 and \$5,000,000 at least 51% of the new employees hired on the project or contract shall be District residents. For government-assisted <u>construction</u> contract or project receiving	January 2014-June 2014: 45.8% July 2014-December 2014: 40.5% January 2015-june 2015: 47.3% July 2015-December 2015: 51.7% January 2016-June 2016: 61.6% July 201 –December 2016: 60.4%

³² <https://www.beankinney.com/publications-articles-DC-jobs-bill-implications-contractors.html>

³³ See D.C. Code § 2-219.03.

Jurisdiction	Key Hiring Requirement	Published Results
	government assistance totaling \$5 million or more: At least 20% of journey worker hours by trade shall be performed by District residents. At least 60% of apprentice hours by trade shall be performed by District residents. At least 51% of skilled laborer hours by trade shall be performed by District residents. At least 70% of common laborer hours by trade shall be performed by District residents.	* Reported as % of District residents hired from contracts subject to First Source Agreements where the beneficiary receives government assistance between \$300,000 and \$5 million.³⁴ As previously stated, although the District has a percentage hour requirement for construction projects over \$5 million, they are not required by law to report publicly on these percentage hours.
Boston	51% of total worker hours of journey people and 51% of worker hours of apprentices in each trade on a covered project shall be by bona-fide Boston residents At least 40% of the total work hours of journey people and 40% of the total work hours of apprentices in each trade on a covered project shall be by people of color. At least 12% of the total work hours of journey people and 12% of the total work hours of apprentices in each trade on a covered project shall be women.	From 11/16/2013 to 5/15/2017 the total percentage for residents was 30.08%, percentage for minorities was 30.63% and percentage for female was 5.12%. For 30 projects the average resident labor hours were 41.26%, average labor hours for minorities were 41.5% and average labor hours for females were 3.95%.
St. Louis	A goal of 20% of all labor are to be performed by persons who reside in the city of St. Louis. A goal of a minimum 15% of labor hours are to be performed by apprentices. A goal of 25% of all labor hours are to be performed by minorities and a goal of 5% of all labor hours are to labor hours are to be performed by women.	FY 15-FY16: 1) Apprenticeship: 13.93% 2) Minorities: 23.37% 3) Women: 5.19% 4) City Residence: 10.4% FY14-FY15: 1) Apprenticeship: 13.78% 2) Minorities: 30.35% 3) Women: 5.11% 4) City Residence: 15.41% FY13-FY14 1) Apprenticeship: 15.03% 2) Minorities: 27.23% 3) Women: 7.33% 4) Residents: 17.5% 2011-Aug 2013: 1) Apprenticeship: 15.32%

³⁴ NOTE: The number of “new hires” presents a snapshot in time. This does not present a picture of how long a new hire stays employed.

Jurisdiction	Key Hiring Requirement	Published Results
		2) Minority: 22.51% 3) Women: 4.17% 4) Residents: 13.14%
San Francisco	Pursuant to amendments effective March 25, 2017, the mandatory participation level shall be 30% of all Project Work Hours within each trade performed by Local Residents, with no less than 15% of all Project Work Hours within each trade performed by Disadvantaged Workers. At least 50% of the Project Work Hours performed by Apprentices within each trade shall be performed by Local Residents, with no less than 25% of Project Work Hours performed by Apprentices within each trade to be performed by Disadvantaged Workers.	2015-2016: 1) Residents % for projects subject to 20% requirement: 33% 2) Residents % for projects subject to 25% requirement: 34% 3) Residents % for projects subject to 30% requirement: 45% Apprenticeship exceeds the 50% requirement with an average performance of 58%
Seattle	For <u>each</u> covered project, the Director (Director of Finance and Administrative Services or his or her designee or successor) shall establish the greatest practicable required percentage of labor hours to be performed by Priority Workers using past utilization percentages on similar public works projects from the previous three calendar years, and shall increase that percentage by no less than two percentage points above past performance and shall calibrate these required percentages annually. The City requires apprentice labor on construction projects estimated to cost \$1 million or greater. Contractors must ensure that up to 15 percent of the total contract labor hours are worked by apprentices enrolled in an apprenticeship program approved or recognized by the Washington State Apprenticeship and Training Council. ³⁵	2016: 18% economically distressed areas 7% women Nov 2103-Dec 2016: 21% economically distressed zip codes, 12% women, 15% apprentices, 12% residents
Baltimore	At least 51% of the new jobs required to complete the contract or project must be filled by Baltimore City residents.	No published results.

Hiring statistics submitted by beneficiaries and reported by DOES are not effectively tracked or thoroughly verified and may not provide a valid presentation of the effectiveness of the First Source Program.

As discussed in our methodology section, to determine employment projections and hiring statistics for the 27 contracts or projects in our sample, we reviewed available employment agreements, DOES hiring statistics

³⁵ <http://www.seattle.gov/city-purchasing-and-contracting/social-equity/apprenticeships>

and beneficiaries' monthly report submissions. For our review, we developed a checklist for each of the contracts or projects in our sample. Most of the records we were attempting to review should have been maintained in the normal course of business to ensure that an adequate audit trail could be maintained. This checklist was used to determine:

- The total level of District government assistance the beneficiary received.
- Whether there were signed employment agreements for required contractors, developers, general contractors and subcontractors.
- Whether an employment plan was attached to employment agreements as required by DOES.
- Whether monthly report submissions were adequately maintained to accurately determine hiring achievements.

Figure 5 presents our checklist and the deficiencies we found.

Figure 5: First Source Projects or Contracts Checklist

Checklist Item	Deficiencies
Total level of District government assistance	We were unable to verify the total level of government assistance due to the lack of accurate documentation. We identified signed and approved agreements that did not contain the contract amount, contract number or the amount of the tax abatement received all fields required on the agreement form. We also identified agreements that listed only "estimated amounts" for the contract amount and estimated dates for the start and end of the project.
Signed agreements for required contractors, developers, general contractors and subcontractors	We were unable to determine if DOES maintained a signed agreement for all contractors and subcontractors. For example, we identified a project where subcontractors were submitting monthly certified payroll reports but we could not find a signed employment agreement in DOES files. We found that for most of the large construction projects, the general contractor subcontracts out most of the construction work. We found in some cases general contractors were subcontracting work and the subcontractor did not have an employment agreement with DOES. In one particular case (Duke Ellington) our review of DOES monitoring files documented only 11 employment agreements. During our review of the monthly reports submitted for the project we found 53 subcontractors that were submitting monthly reports, but did not have an employment agreement on file with DOES. According to DOES, the responsibility to inform DOES of a beneficiary rests mainly with the contracting agency, the developer or the general contractor.
Employment plans attached to employment agreements	We found that most of approved and signed agreements we reviewed contained employment plans. We identified plans, however, that did not provide a list of current employees, a list of projected positions, or justification for why no jobs would be created—all required fields on the DOES-developed employment plan form.
Maintenance of monthly report submissions to accurately determine hiring rates	We found significant issues with data consisting mainly of the failure of DOES to track certain contracts and missing monthly reports for each project. We identified three IDIQ contracts in our sample that were subject to a first source agreement, yet DOES did not collect or maintain monthly report submissions for these contracts. Our analysis was further hampered because

Checklist Item	Deficiencies
	we could not determine an accurate number of missing reports because we do not know the start and end dates of work for each subcontractor and were only able to calculate hiring rates based on the first monthly report submitted and last report submitted. DOES did not maintain a copy of monthly reports in the hard copy files for 26 of the 27 projects in our sample.

In addition to missing monthly reports many employers submitted reports that lacked documentation to substantiate reported hiring statistics. For example, specific to the Adams Morgan Line Hotel, we found that 15 of 29 employers that submitted reports that indicated 172 DC residents were working on the project did not provide a listing of the employees including the name, address, date of hire and ward of the hired employee.

It should also be noted for the Adams Morgan Line Hotel different forms were used during specific time periods in our audit. For example, for July, August and September of 2016 employers were only required to provide cumulative hours worked. Below is an example of a monthly reporting form submitted by an employer.

Workforce Utilization: Cumulative Hours Worked

Classification	Total Hours	DC Resident Hours	Tax Abatement Legislative Requirement	Actual %	Requirement Met (Y/N)	If Requirement Not Met, Please Provide an Explanation
Construction Work Hours	335	87	51%	26%	N	On other projects

Source: DOES, Subcontractor Tax Abatement Contract Compliance Form

The DOES reporting form indicated that information in the report would be “verified via certified payrolls and/or other documentation,” however we found no indication in DOES files to document this verification.

Based on the available documentation we calculated that the beneficiaries of the 27 contracts or projects in our sample projected 342 new District resident hires.

Based on monthly report submission by beneficiaries we further calculated that 3,848 District residents were hired. We found, however, there is no tracking done by DOES to determine how long a new hire stays employed. The Law does not require (and DOES does not perform) tracking of hiring rates for trend analysis to measure the effectiveness of beneficiaries in keeping District residents employed once they are hired.

In viewing the hiring statistics, the reader should note that the number of “new hires” presents a snapshot in time. This is especially noteworthy for construction projects such as the school modernization projects and development projects in our sample. These projects are conducted in phases, with numerous subcontractors performing work during each respective phase. Some of the subcontractors may perform work for one month while others may perform work for more than a year. For purposes of reporting hiring statistics to the Council and the public, an employee hired on the project for one month and terminated after their

employer's work is completed on the project is presented in the same way as an employee hired by the subcontractor and remaining gainfully employed for the full year as a "new hire".

We further found, at the time of our review, DOES did not have a standardized practice for validating a beneficiary's monthly report submission through a review of a beneficiary's payroll records. As stated in our audit report, DOES accepted monthly reports that did not contain all required information such as names of employees hired, address of employees hired, and Social Security Numbers. The District relied on the self-reporting hiring statistics provided by beneficiaries without any supporting documentation.

Six non-construction projects in our sample were IDIQ contracts and DOES did not track any new hires on the contracts. In addition, due to the deficiencies in recordkeeping maintained by DOES we cannot say with any level of confidence that the number presented in the above table present the full hiring rates for each of the contracts or projects in our sample.

Figure 6 on the following page presents the number of employment agreements per contracts or project, the total projected number of new hires associated with each project, based upon available employment plans, and the number of new hires based upon monthly reports submitted by beneficiaries during the period of our review.

Figure 6: Projected and Calculated New Hires

#	Name	Type	Beneficiary	# of Signed First Source Agreements	Projected # of New Hires	# of New Hires Based on Submitted Monthly Reports
1	Monroe Street Market/ Catholic University South Campus Redevelopment	Mixed Use/ Redevelopment	Brookland South Campus, LLC	29	11	80
2	Ballou High School	School Modernization Construction Project	Chiaramonte/ Hess JV	27	86	620
3	Parking Operations	Non- Construction	U Street Parking (UPS)	1	3	3
4	Removal of Surplus	Non- Construction	Creative Recycling Services, LLC	1	0	No documentation maintained by DOES
5	TANF Placement Services	Non- Construction	KRA Corporation	1	0	4
6	TANF Work Readiness	Non- Construction	DB Grants Associates	1	4	0
7	6925 Georgia Avenue Apartments	Construction	CM Construction	1	0	4
8	Design Build Roosevelt High	School Modernization Construction Project	Smoot/ Gilbane JV	28	92	591
9	AE Services-IDIQ Services	Architect and Engineering Services	Brailsford & Dunlavey	1	1	9

#	Name	Type	Beneficiary	# of Signed First Source Agreements	Projected # of New Hires	# of New Hires Based on Submitted Monthly Reports
10	Hope Village	Non-Construction	Hope Village, Inc.	1	0	31
11	2321 4 th Street	Construction	Harkins Builder Inc.	19	6	9
12	Wharf Parcel 11 A St. Augustine Episcopal Church	Construction	Hoffman-Struever Waterfront LLC	12	2	1
13	Pruning Services	Non-Construction	Adirondack Tree Experts	1	2	No documentation maintained by DOES
14	Pruning Services	Non-Construction	C&D Tree Service Inc.	1	0	No documentation maintained by DOES
15	Pruning Services	Non-Construction	Kennedy Development LLC	1	18	No documentation maintained by DOES
16	Villages at Dakota Crossing	Construction	NVR Inc. t/a Ryan Homes	24	3	23
17	Adams Morgan Line Hotel	Construction/Hospitality	Walsh Construction	12	1	255
18	Safeway Georgia Ave	Non-Construction/Retail	Safeway, Inc.	1	7	69
19	Duke Ellington School	School Modernization Construction	GS Sigal	11	0	791
20	Security Services for DC Public Schools	Non-Construction	Allied Barton Security Services LLC	1	0	96

#	Name	Type	Beneficiary	# of Signed First Source Agreements	Projected # of New Hires	# of New Hires Based on Submitted Monthly Reports
21	Southwest Waterfront Development	Mixed Use/ Redevelopment Project	Hoffman-Struever Waterfront LLC	55	106	296
22	Giant Alabama Ave	Retail	Giant of Maryland	1	0	203
23	Giant 7 th Street	Retail	Giant of Maryland	1	0	298
24	Giant Park Road	Retail	Giant of Maryland	1	0	232
25	Giant H Street	Retail	Giant of Maryland	1	0	233
26	Premium Billing Services	Retail	NFP Health Services Administrators, LLC	1	0	No documentation maintained by DOES
27	Mission Oriented Business Integration	Non-Construction	All You Need Personnel, Inc.	1	0	No documentation maintained by DOES

The Bowser Administration claims to have implemented recommendations in our August 1, 2016, report entitled “District Agencies Did Not Provide Sufficient Oversight of Private Development Projects and Have Not Collected Potentially Significant Fines”³⁶ but the Mayor has not provided documentation to support implementation of a plan for ongoing coordination with relevant agencies.

In our August 1, 2016 report we provided the following recommendations to the Mayor and to the Director of DOES.

1. The Mayor should designate a single agency to (1) continuously identify all agreements signed with private developers throughout the District government and (2) develop a plan for ongoing coordination with relevant agencies to ensure that they are actively tracking compliance with each requirement, to completion.
2. The Director of DOES should develop procedures to accurately track compliance with First Source requirements and begin assessing penalties to noncompliant developers and contractors.

Regarding Recommendation 1, an official in the Office of the Deputy Mayor for Economic Development (DMPED) responded to our office that this recommendation had been implemented. The official however did not provide supporting documentation to validate the implementation of this recommendation, as requested. The Auditor will continue to follow up with DMPED to secure support documentation as part of our recommendation compliance follow up procedures

We found that DOES finalized written policies and procedures to track compliance with First Source requirements and the assessment of penalties on March 14, 2018. DOES issued the first penalty at the beginning of FY 2017.

DOES issued standard operating procedures for the Office of First Source Compliance on March 14, 2018. These policies should be further reviewed and enhanced to ensure effective implementation.

DOES issued final Standard Operating Procedures (SOPs) for the Office of First Source Compliance (OFSC) on March 14, 2018, the first SOPs since the inception of the program in 1984. Many of the procedures in the SOPs, if effectively implemented, will correct many of the monitoring and oversight deficiencies cited in our audit report and succeeding white paper. The SOPs covered critical monitoring areas including:

- Processes for obtaining and maintaining First Source Agreements.
- Obtaining and reviewing employment plans.
- Reviewing subcontractor lists of all contracts awarded on a project (company Name, contract amount, estimated start-date and end-date).
- Performing desk reviews and site visits.
- Audit of employer records that may include certified payrolls, employee addressees, and type of labor provided by employees for hours worked percentages.
- Issuing compliance failure notices, compliance status updates, and closeout letters.
- Assessing employers’ good faith efforts to hire District residents or meet hours worked percentage requirements.
- Processing fines or penalties.

³⁶ <http://www.dcauditor.org/sites/default/files/Private%20Development%20Review%20Letter%20Report%208%201%2016%20-%20FINAL.pdf>

- Participating in appeals as appropriate.

Our review of the SOPs identified specific areas that DOES should address during implementation of the SOPs to strengthen their effectiveness. These specific areas have been highlighted on the approved SOPs, and included at Appendix D. DOES should also analyze the current resources dedicated to the First Source Program, specifically the staffing levels for compliance monitors in relation to the detailed activities listed on pages 7 through 12 of the SOPs to ensure that these activities can be effectively be implemented. These activities specifically relate to monitoring and audit of employers and employment agreements and determination of good faith effort compliance.

Conclusion

As discussed in the background section of this white paper, in November 2016 ODCA initiated an audit to determine:

1. Whether DOES has necessary policies and procedures in place to effectively monitor, enforce, and is enforcing compliance of First Source Law requirements.
2. If necessary controls are in place to accurately report hiring rates required under the Law.

Because First Source has been such a long-standing program in the District, we conducted additional analysis, which is included in this white paper to assess whether all the requirements of the Law have been implemented and whether policies and procedures are in place to effectively implement all the requirements of the Law. This white paper also includes:

- A comparison of the District's First Source Program to other jurisdictions and best practices.
- The employment projections and hiring statistics for the 27 projects or contracts included in our audit sample.
- An assessment of the final policies and procedures submitted by DOES on March 14, 2018.
- The compliance status of recommendations related to the First Source Program cited in our August 1, 2016, report entitled [*District Agencies Did Not Provide Sufficient Oversight of Private Development Projects and Have Not Collected Potentially Significant Fines*](#).³⁷

We were encouraged by DOES's response to this white paper in that they concurred with many of the recommendations and expressed that certain actions were in progress to address deficiencies cited in this report.

³⁷ <http://www.dcauditor.org/sites/default/files/Private%20Development%20Review%20Letter%20Report%208%201%2016%20-%20FINAL.pdf>

Agency Comments

On April 2, 2018, we sent a draft copy of this report to DOES for review and written comment. DOES responded with written comments, which also included comments to the companion audit report entitled, ***DOES Lacks Policies and Procedures to Effectively Monitor D.C.'s First Source Program***, on April 17, 2018. Agency comments are appended in full to this report followed by ODCA's response to specific comments on this white paper. Attachments to DOES's April 17, 2018, response are located on the ODCA website, www.dcauditor.org.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services



MURIEL BOWSER
MAYOR

DR. UNIQUE MORRIS-HUGHES
INTERIM DIRECTOR

April 17, 2018

Ms. Kathleen Patterson
District of Columbia Auditor
Office of the District of Columbia Auditor
717 14th Street, Northwest
Suite 900
Washington, DC 20005

Re: Draft Report entitled, “DOES Lacks Policies and Procedures to Effectively Monitor D.C.’s First Source Program” and white paper entitled, “Fewer than One-Fifth of First Source Provisions Have Been Effectively Implemented and the District Has Not Demonstrated Success in Hiring and Retaining District Employees”

Dear Ms. Patterson:

The Department of Employment Services (DOES) is in receipt of the above-mentioned draft report and white paper prepared after the audit of the DOES Office of First Source Compliance (OFSC) for fiscal years 2014 through 2016. Although the audit and whitepaper reviews compliance activities from fiscal years 2014- 2016, it misses the mark on adequately describing the progress made from fiscal years 2017 to present. Here within, is a substantive outline of initial progress made in the current fiscal year and responses to findings and recommendation.

The Office of First Source Compliance was created through the Workforce Intermediary Establishment and Reform of First Source Act of 2011 (Act) and is charged with enforcing compliance with the Act. The Act requires beneficiaries to hire District residents for 51% of all new jobs created for all projects or contracts receiving government assistance totaling between \$300,000 and \$5,000,000. Further, the Act mandates minimum hours worked percentages for District residents on construction projects or contracts receiving government assistance of \$5,000,000 or more.

Over the past year, DOES made great strides in the development and implementation of a strategic course correction for the Office of First Source; these efforts included the realignment of the Office of Wage Hour within the agency that focused on both compliance and enforcement and the development of a six month operations plan. This plan addressed the following:

- Ensuring that the First Source staff made informed compliance decisions and enforcement actions supported by complete, accurate and valid data
- Establishing internal operational processes and procedures for all FS related duties and responsibilities

- Improving staff effectiveness through continuing education and training requirements and innovative tools and technology
- Connecting stakeholders and aligning them with strong compliance and monitoring practices and principles

Also, an achievement plan was developed and implemented to record and monitor the plan outcomes. For the first time in over 20 years, the agency has developed Standard Operating Procedures which provide clarity of roles for the public and the District as well clear policies and procedures. This year marked the first time ever that the agency levied fines for non-compliance. The agency anticipates the release of the proposed rules within the next 30 days. Albeit, the progress made in a relatively short period of time is outside of the audit period, it is important to note that the actions listed above provide an important course correction with implementing and providing oversight of the First Source law.

Audit Result: DOES was not monitoring all beneficiaries required to enter into a First Source employment agreement.

This audit result correlates with item 2 in Appendix C of the white paper. Item 2 indicates that D.C. Code § 2-219.03(c) has not been effectively implemented. D.C. Code § 2-219.03(c) states, “The Mayor shall transmit each employment agreement to the Department of Employment Services no less than 7 calendar days in advance of the project or contract start date, whichever is later, and no work associated with the relevant government assistance can begin on a project or contract until the employment agreement has been accepted by the Department of Employment Services.”

DOES Response:

DOES OFSC monitored and continues to monitor every project or contract that is subject to the Act, when the employment agreement is provided to DOES by the Office of Contracting and Procurement (OCP) and agencies with independent contracting authority, pursuant to the Act.

DOES uses several methods to identify projects and contracts subject to the Act.

- On a daily basis, DOES receives employment agreements from OCP and agencies with independent contracting authority, during the bidding process for projects and contracts. Bidders for projects and contracts sign and submit an employment agreement to OCP and agencies with independent contracting authority, as a part of the bidding process. Through this process, employment agreements are signed and provided to DOES, prior to contract award. Thus, employment agreements are entered into before finalization of

contract award as suggested in the first bullet point under Recommendation 1 found on page 10 of the draft report.

- DOES receives notifications about projects and contracts in the Procurement Automated Support System (PASS) that are subject to the Act, as they are developed. DOES uses the information to begin monitoring high profile employment agreements received during the bidding process. DOES also uses this information to contact contracting agencies and beneficiaries to obtain employment agreements, if not previously provided.
- DOES coordinates monthly with OCP staff assigned to DOES to receive information about projects and contracts in the Procurement Automated Support System (PASS) that are subject to the Act. DOES uses the information to begin monitoring employment agreements received during the bidding process. DOES also uses this information to contact contracting agencies and beneficiaries to obtain employment agreements, if not previously provided. The OCP staff assigned to DOES serve as the “watcher” identified in Recommendation 3 on page 11 of the draft report.
- DOES OFSC requests updated lists of awarded contracts from OCP and agencies with independent contracting authority, monthly.
- DOES OFSC proposed regulations, to be published, that will require District contracting agencies to submit updated lists of awarded contracts on the 1st of each month.
- Deputy Mayor for Planning and Economics (DMPED) provides DOES OFSC a quarterly check-in compliance report of their current projects that are subject to the Act.
- DOES OFSC meets with developers and general contractors to discuss the applicable requirements of the Act, according to their funding amount, and to gain other updates such as, estimated start dates, related contract controls, and to provide information on DOES referral recruitment. OFSC also requests from the General Contractors a list of the subcontractors awarded.
- To increase awareness of the requirements of the Act around submission of the employment agreements to DOES, DOES OFSC implemented a formal “train-the-trainer” initiative that allows the opportunity for DOES OFSC to discuss procedure and compliance requirements with the personnel of OCP and agencies with independent contracting authority. Two sessions were held – June 15, 2017 and March 7, 2018.

- See **Exhibit I** for additional compliance documents

OFSC EVENTS – Exhibit A			
Date	Time	Name of Training	Audience
April 26, 2017	10:00am – 12noon	Construction Roundtable	General Contractors
June 15, 2017	10:00am – 12:00pm	First Source Employment Agreement Requirements	Non Construction Contracting Agencies
June 15, 2017	2:00pm – 4:00pm	First Source Employment Agreement Requirements	Construction Contracting Agencies
December 13, 2017	10:00am – 12noon	First Source Employment Agreement Requirements	DHCD Representatives and contractors
February 21, 2018	10:00am-12:00pm 1:00pm – 3:00pm	LCP Tracker Training	Construction Contractors
February 22, 2018	10:00am-12:00pm 1:00pm – 3:00pm	LCP Tracker Training	Construction Contractors
March 7, 2018	10:00am-12:00pm	First Source Employment Agreement Requirements	Contracting Agencies Non-Construction
March 7, 2018	1:00am-3:00pm	First Source Employment Agreement Requirements	Contracting Agencies Construction
March 22, 2018	10:00am – 12:00pm	DSLBD CBE Vendors Training	Construction and Non-Construction

The above actions will increase knowledge of and compliance with the requirements of the Act.

Audit Result: DOES OFSC lacks written policies and procedures which lead to inconsistencies in monitoring efforts making it difficult to evaluate the effectiveness of the program in providing employment to district residents.

This audit result correlates with item 1 in Appendix C of the white paper. Item 1 indicates that D.C. Code § 2-219.03(a) has not been effectively implemented. D.C. Code § 2-219.03(a) states, “The Mayor shall include for every government-assisted project or contract a requirement that the beneficiary enter into an employment agreement with the District of Columbia government which states that: (1) The first source for finding employees to fill all jobs created by the government-assisted project or contract will be the First Source Register; and (2) The first source

for finding employees to fill any vacancy occurring in all jobs covered by an employment agreement will be the First Source Register.”

DOES Response:

DOES established formal Standard Operating Procedures (SOP) certified as legally sufficient on March 12, 2018. The SOP was developed after a rigorous review of best practices from other jurisdictions as well as an assessment of current practices. The SOP also encompasses the collective wisdom of the staff and lessons learned from prior years of monitoring projects and contracts. It also encompasses a penalty and standardized monitoring process.

Before the formal SOP signed by the DOES Director, OFSC operated pursuant to an informal written SOP, since its creation (**See Exhibit B**). Further, staff meetings were held monthly to discuss monitoring and enforcement issues and resolutions. In addition, staff met with the Office of the General Counsel to address monitoring and enforcement issues and resolutions, as needed.

Monitoring has varied and will continue to vary from project to project. Monitoring rigorousness and frequency depends on a number of factors including the size of the project, compliance with hiring or hours worked percentages, and the reporting structure chosen by the general contractor. The general contractor can choose to report requirements for the whole project or by each individual subcontractor.

See **Exhibit C** which details the reporting process that includes screenshots of the First Source Online Registration and Reporting System (FORRS), and the Employer user guide. Beneficiaries are routinely trained on how to input the required information. Note that the portal or FORRS system will not accept a submission unless all the required information is inputted.

Note that FORRS also tracks agreements by the Beneficiary as well as the project. The reports generated by FORRS detail the number of job openings created by employee attrition, and capture the employees’ SSN and hire date; however, the referral source data is currently in development stage to be captured in FORRS.

The direct and indirect labor costs are captured to assess the amount of the penalty for violation. This is generally not collected monthly because fines are assessed at the end of the project or contract. Thus, the direct and indirect costs are collected for the total project at the end of the project. Moving forward the OFSC will be capturing the direct and indirect labor cost in FORRS on a monthly basis.

DOES uses the below methods to ensure the completeness and accuracy of the information provided in the monthly reports by employers.

- Site visits
- Review of payroll records
- Social security verification
- Surveys
- Desk reviews - OFSC conducts periodic desk reviews to confirm that all documentation is complete and accurate including a signed First Source agreement, the Subcontractor award list, verification that Contractors are reporting online in the FORRS and that they are including employment plan projections, and the start and end date for the scope of work. OFSC will also conduct the desk review to verify that the Contractor is meeting the requirements for hiring and hours worked percentages. Once the review process concludes, OFSC monitors work with the Contractors to develop a corrective action plan and will perform follow-up as needed. A sample desk review form can be found in **Exhibit D**.

Note that FORRS also tracks agreements by the Beneficiary as well as the project. The reports generated by FORRS detail the number of job openings created by employee attrition, and capture the employees' SSN and hire date; however, the referral source data is currently in development stage to be captured in FORRS.

The direct and indirect labor costs are captured to assess the amount of the penalty for violation. This is generally not collected monthly because fines are assessed at the end of the project or contract. Thus, the direct and indirect costs are collected for the total project at the end of the project. Moving forward the OFSC will be capturing the direct and indirect labor cost in FORRS on a monthly basis.

DOES formed an internal committee across various offices within the agency to coordinate and manage the referral of District residents from the first source registry to fill jobs created by projects and contracts subject to the Act. The committee meets weekly to discuss best practices for identifying and designating jobs created by projects and contracts subject to the Act in DC Networks, matching District residents with the jobs created by projects and contracts subject to the Act, and tracking the referrals and outcomes of referrals of District residents to jobs created by projects and contracts subject to the Act. It is anticipated that this coordinated management will result in (1) an increase in the designation of jobs in DC Networks as created by projects and contracts subject to the Act; (2) an increase in referral of District residents from the first source

registry to jobs created by projects and contracts subject to the Act; and (3) improved tracking of referrals of District residents from the first source registry.

Also, on April 15, 2018, DOES will begin using a communications system designed to send job alerts to unemployed District residents. In addition, District residents registered with the DOES American Job Center will be advised of jobs created by projects and contracts subject to the Act directly from their assigned case managers. DOES continues to seek, and internally develop, new methods through which it can inform unemployed District residents of jobs created by projects and contracts subject to the Act.

Audit Result: DOES OFSC has not demonstrated effective policies and procedures to enforce penalties.

DOES Response: - this addresses Recommendations 6 and 7 found on page 13

The Mayor's Order, signed on January 10, 2018, clarified the role of OFSC in issuing fines for violations of First Source law and the ability to accept or deny the waiver request of Beneficiaries of government assistance falling under First Source. Absent the Mayor's Order, the law was ambiguous on whether the contracting agency or OFSC would pursue the penalty for violation, and whether OFSC or the Mayor had the authority to grant a good-faith waiver for failure to meet First Source requirements. In the past, notices were copied or forwarded to DGS and other contracting agencies regarding noncompliance of beneficiaries. (See Exhibit I)

Under the new SOP, OFSC issued penalties to contractors alleged to have violated the Act. As of December 2016, DOES imposed penalties against employers determined to be in violation of the Act. As a result, \$61,279.56 has been collected and deposited into the Job Training Fund. Going forward, DOES intends to impose penalties against violators with increasing regularity.

Furthermore, some Beneficiaries have either voluntarily contributed to the Job Training Fund or created workforce development programs to provide training to District residents.

DOES has also formed an internal inter-office committee to review beneficiaries' requests for waiver of the hiring or hours worked percentages requirement of the Act, based on good faith efforts. If a beneficiary is successful in receiving a waiver of the hiring or hours worked percentages requirement of the Act, fines are not imposed.

Audit Result: First Source semiannual reports did not contain all information required by D.C. law, cannot be validated, and do not provide a comprehensive picture of hiring statistics.

DOES Response:

The semiannual reports submitted for the audit period contained all information required by the Act. The First Source Register contains the list of unemployed D.C. residents. Records below include the list of Beneficiaries or their subcontractors and the list of District residents hired on their projects (See **Exhibit F**).

- January 1, 2015 to June 30, 2015; See Attachment
- July 1, 2015 to December 31, 2015; See Attachment
- January 1, 2016 to June 30, 2016; See Attachment
- July 1, 2016 to December 31, 2016. See Attachment

July 1, 2015 – December 31, 2016 each of these reports are accompanied with the lists of unemployed D.C. residents that are registered on the First Source Register (D.C. networks).

Attach Beneficiaries are in the Semi Annual Report backup data.

The Office of the District of Columbia Auditor (ODCA) conducted an audit focusing on the period of FY14 through FY16 to determine the effectiveness of First Source compliance procedures. The audit suggests deficiencies in the implementation and enforcement of the First Source Law. ODCA has provided its findings in the form of a white paper entitled, *Fewer Than One-Fifth of First Source Provisions Have Been Effectively Implemented and the District Has Not Demonstrated Success in Hiring and Retaining District Employees* (the Report).

While DOES appreciates the efforts of ODCA in compiling this report, it must respectfully differ from ODCA regarding its conclusions on the key points as outlined under “Results” on page 10 of the report. DOES submits its written response to ODCA’s report as follows:

I. A failure of the Mayor to implement many of the requirements of the law.¹²

¹ ODCA First Source Audit Report Draft, dated April 2, 2018, pg. 10, 12,

The Mayor recognizes the importance of establishing policies designed to strengthen compliance with the First Source Law. To that end, OFSC has developed a new Standard Operating Procedure and Operations Plan and under the current Mayor OFSC levied the first source fine in the program's 20 year history. These procedures will increase the effectiveness with which OFSC monitors, and enforces, compliance with the provisions of the Law. As ODCA noted on page 26 of the Report, "[m]any of the procedures in the SOPs, if effectively implemented, will correct many of the monitoring and oversight deficiencies cited in our audit report and succeeding white paper." These plans have undergone DOES legal review and have been deemed legally sufficient.

Further, both DOES and OFSC have come under new leadership since the scope of time for which the Report is concerned. New leadership has taken significant steps to enhance First Source monitoring capabilities. For instance, DOES will soon hire additional staff to help expand its monitoring, and general enforcement, capabilities. DOES will continue to assess the progress and effectiveness of OFSC as it strives to enforcement compliance with the Law.

II. A failure of former DOES senior officials to effectively implement requirements of the Law, at their own discretion, most specifically related to the assessment of allowable penalties.³

As of December 2016, DOES began imposing penalties against companies determined to be in violation of the First Source Law. As a result of this new policy, \$61,279.56 has been collected and deposited into the Job Training Fund. Going forward, DOES intends to impose penalties against violators with increasing regularity.

III. A failure of coordination among numerous District agencies to ensure effective implementation.⁴

In an effort to ensure effective implementation of the First Source Law, DOES has collaborated with multiple District agencies to raise awareness about the Law. Particularly, DOES, along with other District agencies, have hosted numerous webinars and training events focusing on the First Source Law. The following events were presented in FY17 and FY18:

OFSC EVENTS – Exhibit A

² As ODCA's report acknowledges, "Mayor's Order 2018-010 was issued January 10, 2018 delegating many of the Mayor's responsibilities." Mirroring OCDA's approach, DOES' response will assume the "rules and responsibilities that were in effect during the scope" of ODCA's review.

³ ODCA First Source Audit Report Draft, dated April 2, 2018, pg. 12 (Note: It is difficult to determine whether the audit report posits proper "issuance" of a penalty or an "assessment" of if the penalty amount is appropriate)

⁴ ODCA First Source Audit Report Draft, dated April 2, 2018, pg. 25

Date	Time	Name of Training	Audience
April 26, 2017	10:00am – 12noon	Construction Roundtable	General Contractors
June 15, 2017	10:00am – 12:00pm	First Source Employment Agreement Requirements	Non Construction Contracting Agencies
June 15, 2017	2:00pm – 4:00pm	First Source Employment Agreement Requirements	Construction Contracting Agencies
December 13, 2017	10:00am – 12noon	First Source Employment Agreement Requirements	DHCD Representatives and contractors
February 21, 2018	10:00am-12:00pm 1:00pm – 3:00pm	LCP Tracker Training	Construction Contractors
February 22, 2018	10:00am-12:00pm 1:00pm – 3:00pm	LCP Tracker Training	Construction Contractors
March 7, 2018	10:00am-12:00pm	First Source Employment Agreement Requirements	Contracting Agencies Non-Construction
March 7, 2018	1:00am-3:00pm	First Source Employment Agreement Requirements	Contracting Agencies Construction
March 22, 2018	10:00am – 12:00pm	DSLBD CBE Vendors Training	Construction and Non-Construction

Further, within the drafted municipal regulations for First Source law, the Department of General Services must provide a list of contract awards over \$300,000 to DOES on the 1st of each month. Further coordination and education efforts are underway with District agencies that issue contract awards.

IV. A failure in the Law to clearly delegate specific responsibilities to District agencies or to the beneficiaries receiving government assistance.

Lawmaking, and the failure of any law to “clearly delegate specific responsibilities”, is the province of Council. For the purposes of this response, DOES takes no position with regard to this OCDA finding.

However, in order to aid with the delegation of specific duties under the Law, the Mayor has issued Mayor’s Order 2018-010⁵. Drawing from the responsibilities clearly delegated to the Mayor under the Law, Mayor’s Order 2018-010 makes clear delegation of specific responsibilities to appropriate officials within District government.

V. A lack of sufficient resources to effectively monitor the program.

DOES recognizes the need for increased staff resources within OFSC and has assigned two additional positions to assist the Office with its monitoring efforts.

⁵ Please see Exhibit E.

VI. DOES is not able to determine that contractors are giving first preference to District residents because the source of job referrals has not been consistently reported.

To clarify, D.C. Code § 2-219.03(b) (1) requires that first preference be given to unemployed District residents and not District residents whom may be employed. DOES is currently updating the coding in the First Source register to distinguish between residents registered as unemployed and presently employed residents.

On April 15, 2018 DOES will begin using a communications system designed to send First Source job alerts to unemployed District residents. In addition, residents registered with DOES' American Job Center, will be advised of First Source related opportunities directly from their assigned case managers. DOES continues to seek, and internally develop, new methods through which it can inform unemployed District residents of opportunities available to them pursuant to the First Source Law.

VII. The requirement to have an employment agreement on file with all First Source contractors has not been consistently met. Of the 124 contracts over \$300,000 awarded by the Department of General Services in FY 2016 ODCA could not find employment agreements at DOES for 30 of these awards, which totaled \$22 million in government assistance.

While the agency appreciates ODCA's efforts in researching this finding, the facts uncovered are not strictly within the control of DOES. DOES is working diligently with the Department of General Services to ensure that DOES is apprised of all contracts and projects requiring a First Source Employment Agreement. Moreover, DOES and DGS are fully committed to ensuring that each contract and project contemplated by the First Source Law will include the required First Source Employment Agreement.

VIII. The law requires hiring compliance forms to be filed with DOES each month following the start of the contract or project, and from the sample of 27 projects reviewed by ODCA, not a single monthly reporting form was submitted containing all 11 required reporting elements.

DOES has recently implemented a new electronic reporting system which mandates submission of data corresponding to each of the 11 required reporting elements.⁶ Employers will be required to make submissions once monthly.

To clarify, however, there is no First Source Contract or Project that would require all 11 reporting requirements. A Contract or Project would either be between \$300,000 and \$5,000,000 requiring the 7 points of data, or be in excess of \$5,000,000 and require the 4 points of data concerning the hours worked percentages.

⁶ Please see Exhibit C for an example of the newly adopted electronic form.

Further, although First Source law requires a monthly report of a Contract's or Project's indirect and direct labor cost, this information is only used to assess a penalty, if applicable, at the end of the project. DOES made an economic decision to require this information upon the issuance of a penalty for failure to report monthly or failure to meet the applicable requirements at the project's end.

IX. A beneficiary's revised employment plan is required once the contract or project has been given final approval. At the time of our review, DOES indicated that they had never received a copy of a single revised employment plan.

OFSC's new SOP includes procedures for ensuring compliance with the First Source Law's revised employment plan provision. Additionally, OFSC now requires beneficiaries to complete a revised employment plan form.⁷ However, OFSC has always received with Employment Plans attached that demonstrated hiring projections of new hires that were also submitted to the DOES Business Services Group to make District resident referrals or, in some cases, work in partnership with the Beneficiary to conduct a hiring fair.

X. Contractors are required to submit a report detailing compliance with provisions of the law, or seeking a waiver of compliance, as part of the final request for payment from the District and DOES conceded this requirement has not been met.

DOES takes compliance with the First Source Law very seriously. Requiring contractors to submit a final compliance report is instrumental to DOES' efforts to determine compliance. DOES works hard to educate other District agencies about the requirement that contractors submit a compliance report before final payment is made. Moreover, DOES endeavors to keep contracting agencies updated regarding the compliance status of their contractors. As DOES continues to improve these procedures, adherence to this requirement will also increase. Conversely, when a contractor fails to submit its report before final payment, DOES may still impose penalties if it determines that a violation has occurred. The process for imposition of penalties is set forth in the new OFSC SOP.

XI. [M]any of the employment plans attached to the employment agreements we reviewed projected few or no new hires.⁸

The First Source Law requires that District residents receive 51% of new positions created under contracts covered by the Law. Crucially, the Law does not require that the beneficiary engage in new hiring for a project. Neither does it require that 51% of all employees on a project be

⁷ Please see Exhibit G (page 6) for the section of the OFSC SOP relating to revised employment plans. Please see Exhibit H for a copy of the Revised Employment Plan Form.

⁸ ODCA First Source Audit Report Draft, dated April 2, 2018, pg. 16

District residents. Simply, the 51% threshold applies only when a beneficiary seeks to hire new employees to a covered project. The projection of “few or no new hires” is not evidence of a failure to properly enforce compliance by DOES.

XII. Although the District is required to review and assess the percentage hiring and reporting requirements once every three years, this has not been done.⁹

DOES’ assessment of percentage hiring and reporting requirements is currently in progress and expected to be completed by September 30, 2018. Once the assessment is complete, DOES will make a recommendation to Council regarding the feasibility of current hiring and reporting requirements.

OCDA’s report also includes a comparison between the District’s percentage hiring rates and those of other jurisdictions. While DOES appreciates the Report’s multi-jurisdictional comparison, it must be noted that the District’s percentage hiring requirements are higher than any other jurisdiction included. It is also noteworthy that the District out performed all other included jurisdictions in percentage hiring. This performance is testament to the Mayor’s leadership towards putting District residents back to work, and, DOES’ expertise in carrying out that vision. As the Report so clearly indicates, not only is the District performing well in terms of percentage hiring, but, it has become a national leader in this regard.

Jurisdiction	Key Hiring Requirement	Published Results
District of Columbia	For government-assisted projects or contracts receiving government assistance totaling between \$300,000 and \$5,000,000 at least 51% of the new employees hired on the project or contract shall be District residents. For government-assisted construction contract or project receiving government assistance totaling \$5 million or more:	January 2014-June 2014: 45.8% July 2014-December 2014: 40.5% January 2015-june 2015: 47.3% July 2015-December 2015: 51.7% January 2016-June 2016: 61.6%

⁹ ODCA First Source Audit Report Draft, dated April 2, 2018, pg. 12

	At least 20% of journey worker hours by trade shall be performed by District residents. At least 60% of apprentice hours by trade shall be performed by District residents. At least 51% of skilled laborer hours by trade shall be performed by District residents. At least 70% of common laborer hours by trade shall be performed by District residents.	July 201 –December 2016: 60.4% * Reported as % of District residents hired from contracts subject to First Source Agreements where the beneficiary receives government assistance between \$300,000 and \$5 million.³⁴ As previously stated, although the District has a percentage hour requirement for construction projects over \$5 million, they are not required by law to report publicly on these percentage hours.
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XIII. In the audit report on page 20, ODCA found that hiring statistics are not being effectively tracked or thoroughly verified and therefore may not provide a valid presentation of the effectiveness of the First Source program.¹⁰ ODCA posits that:

DOES is not effectively tracking or verifying the hiring statistics submitted to DOES.

The information submitted does not fully represent the current reporting system that is in place. Page four of the SOP details the scope of the records that OFSC reviews to confirm an employer's compliance with the law.¹¹ As written in the SOP, OFSC also performs a number of compliance activities.¹² Further, Employers are required to submit reports in FORRS. Once the information is submitted, OFSC reviews contractor employee records to monitor the hiring data and measure compliance. OFSC then reviews and verifies the data by reviewing payroll records, conducting desk reviews, and conducting social security verification.¹³

¹⁰ ODCA First Source Audit Report Draft, dated April 2, 2018, pg. 20

¹¹ Please see page 4 of Exhibit G

¹² Please see page 7 of Exhibit G

¹³ Please see Exhibit C for a snapshot of the contract compliance data submitted by employers

XIV. We were unable to verify the total level of government assistance due to the lack of accurate documentation.

The responsibility of providing the documentation required to determine the “total level of government assistance” has historically belonged to the contracting agency. Regardless, DOES has developed a strategy to increase the likelihood that this critical information is recorded and preserved as necessary. First, each forthcoming First Source Employment Agreement must clearly state the government-assisted amount for the project or contract.¹⁴ Second, OFSC’s SOP now requires the compliance monitor to input the government-assisted amount into the First Source Online Registration and Reporting System (FORRS).¹⁵

XV. We were unable to determine if DOES maintained a signed agreement for all contractors and subcontractors.

The First Source Law requires the contracting agency to provide DOES with a signed First Source Employment Agreement no fewer than seven (7) days prior to commencement of the project. Further, the First Source Law requires the contracting agency, and the General Contractor, to provide DOES with signed copies of all agreements meeting its threshold requirements.

In regards to the Duke Ellington matter, while all General Contractors are required to submit certified payroll records through the LCP Tracker, only those subcontractors that meet the \$300,000 contract threshold are required to enter into a First Source agreement.

XVI. We found that most of approved and signed agreements we reviewed contained employment plans. We identified plans, however, that did not provide a list of current employees, a list of projected positions, or justification for why no jobs would be created—all required fields on the employment plan.

While DOES appreciates these findings, pursuant to DC Code 2-219.03(f)(ii), beneficiaries are not required to report information corresponding to current employees as part of its employment plan. Data relating to current employees is submitted, as a monthly report, through FORRS. DOES is committed to ensuring that each employer provide all data required to be included with their employment plan.

¹⁴ Exhibit H

¹⁵ Exhibit H and C

The yearly report to the council does include data that is useful in assessing the effectiveness of First Source law and its implementation. For instance, the data below shows that the 51% hiring goal is consistently met or exceeded. There has been a steady increase in the percentage of District residents hired over the past few years.

XVII. We found significant issues with data consisting mainly of the failure of DOES to track certain contracts and missing monthly reports for each project. We identified six IDIQ contracts in our sample that were subject to a first source agreement yet DOES did not collect or maintain monthly report submissions for these contracts.

Three of the six indefinite delivery/indefinite quantity (IDIQ) contracts referenced were “located” outside of the DC metropolitan area. The other three IDIQ contracts were for “on-call” services. Pursuant to DC Code 2-219.03, a contract is exempt from the provisions of the Law when a beneficiary is, 1) located outside of the DC Metro area, and, 2) when none of the contract work is performed in the metro area.

Regarding “on-call” contracts, DOES must rely on the contracting agency to inform it when services are being performed. Before receiving such information, DOES would be unaware of the need to perform monitoring.

XVIII. DOES did not track the amount of time that a new hire stays employed on a project, nor do they track the hiring rates for trend analysis to measure the effectiveness of beneficiaries in keeping District residents employed once they are hired.¹⁶

While the agency appreciates this finding, as noted on page 21 of the audit report, the Law does not require DOES to track the length of time that a new hire spends working on a project. In addition, the First Source Law does not require DOES to utilize employment statistics to determine trends in new hire retention. However, if so directed, data collected as part of DOES’ semi-annual report to Council could be used for trend analysis.

DOES Data Trend Analysis from Data Collected from Semi-Annual Reports January 2014 – December 2016		
Reporting Period	Goal	Actual %
January 2014 - June 2014	51%	45.8%
July 2014 -December 2014	51%	40.5%

¹⁶ ODCA First Source Audit Report Draft, dated April 2, 2018, pg. 12

January 2015 - June 2015	51%	47.3%
July 2015 - December 2015	51%	51.7%
January 2016 - June 2016	51%	61.6%
July 2016 - December 2016	51%	60.4%

XIX. DOES did not have a standardized practice for validating a beneficiary's monthly report submission through a review of a beneficiary's payroll records. Further, ODCA has noted that DOES accepted monthly reports that did not contain required information such as names of hired employees, address of employees hired, and Social Security Numbers as supporting documentation.

DOES continually strives to ensure that the agency is eliciting all data required pursuant to the First Source Law. DOES utilizes a number of methods to insure the completeness and accuracy of employment records, including the following:

- Site visits (**Exhibit I**)
- Review of payroll records
- Surveys
- Desk reviews (**Exhibit I**)

OFSC conducts periodic desk reviews to confirm that all documentation is complete and accurate including a signed First Source agreement, the Subcontractor award list, verification that Contractors are reporting online in the FORRS and that they are including employment plan projections, and the start and end date for the scope of work. OFSC will also conduct the desk review to verify that the Contractor is meeting the requirements for hiring and hours worked percentages. Once the review process concludes, OFSC monitors work with the Contractors to develop a corrective action plan and will perform follow-up as needed.¹⁷

- Social security verification

Since the timeframe analyzed in this report, FY14 through FY16, DOES has taken corrective action to address this shortcoming. Amongst these actions is the implementation of an operations

¹⁷ Please see Exhibit D for a sample Desk Review

plan which has improved many aspects of OFSC's performance, including the accurate recording of critical data, additional staff for monitoring, and enforcement of penalties.

Please let me know if you have any questions.

Kindly,

A handwritten signature in black ink, appearing to read 'U. Morris-Hughes', with a stylized flourish at the end.

Dr. Unique Morris-Hughes
Director, Interim

cc: Courtney R. Snowden, DMGEO
Betsy Cavendish, General Counsel, Executive Office of the Mayor
Rashad Young, City Administrator
Mohammad Sheikh, Deputy Director, Labor Standards Bureau, DOES
Michael Watts, Associate Director, Office of Wage Hour, DOES
Aniema Udofa, Associate Director, Compliance and Independent Monitoring, DOES

ODCA Response to Agency Comments

We were encouraged by DOES's response to our findings in that they concurred and expressed that certain actions were in progress to address deficiencies cited in our report. Based on ODCA's exit conference with DOES and our review of written comments, we have revised the draft report where applicable.

Although DOES included in their written comments to the draft report an outline of progress made in the current fiscal year, most of these actions were not occurring during the scope of our audit and the effective implementation of these actions cannot be evaluated and tested until sufficient time has elapsed.

We also offer the following response to a specific DOES response to this white paper:

DOES Response:

In regard to the Duke Ellington matter, while all General Contractors are required to submit certified payroll records through the LCP Tracker, only those subcontractors that meet the \$300,000 contract threshold are required to enter into a First Source Agreement.

Auditor's Response:

We concur that only subcontractors that meet the \$300,000 threshold are required to enter into a First Source Agreement. DOES should, however, review this issue with General Contractors and developers and obtain subcontracting lists with contract amounts to ensure that effective monitoring can occur for those subcontractors required to enter into a First Source Agreement.

Appendix A

First Source Operations Plan

D.C. Department of Employment Services

Office of Labor Law Enforcement

formerly the Office of Wage-Hour

Labor Standards Bureau

First Source

Operations Plan

October 31, 2016

Operations Plan Scope

Scope Statement

The District's First Source Employment Program (FS) is designed to increase the number of DC residents hired on government assisted projects to ensure residents are given priority for new jobs created by municipal financing and development programs. Currently, the city is not realizing the full potential of the law due to several operational challenges. As a result, DOES must take steps to strengthen improve its First Source program operations and performance.

The goals of these operational reforms are to 1) allow the agency to make informed compliance decisions and take enforcement actions that are supported by complete and valid data; 2) clarify and reinforce internal operational processes and procedures; 3) improve staff effectiveness through continued education and training requirements and 4) connect stakeholders and align them with strong compliance and monitoring principles.

Actions and deliverables needed to achieve the Office of Labor Law Enforcement (OLLE) First Source operational goals.

1. Informed compliance decisions and enforcement actions supported by complete, accurate and valid data.

1.1 Develop user friendly standardized First Source (FS) compliance reporting format (document to include assigned monitor, overall contract amount, point of contact, and company name), review/revise site visit monitoring forms and general correspondence (2weeks); establish a standardized and centralized filing system and protocols for all FS compliance documents and data; a centralized and accessible file center will be established in current FS file area. Please Attachment A.

1.2. Establish base level file documentation requirements/checklist for all FS files (construction/non-construction). Thus far FS staff has identified the items below as the base line:

a. Construction file:

- I. (Municipal developments) Contracting Agency FS Agreement;
- II. (Private developments) Developer FS Agreement, General contractor FS agreement (optional);
- III. Initial meeting correspondence (email);
- IV. Initial meeting agenda (optional);
- V. Subcontractor list;
- VI. Subcontractor FS Agreements (1 agreement for each sub);

- VII. Compliance reports (w/in 1 month);
- VIII. Non-compliance warning letter (optional);
- IX. Site visit form (Initial, middle, close)
- X. Certificate of Occupancy;
- XI. Hardship Waiver (optional)

b. Non-construction file:

- I. Notice of Contract Award from the Contracting Agencies.
- II. (Municipal development) Developer FS Agreement & General FS Contractor Agreement;
- III. Initial meeting correspondence (email);
- IV. Initial meeting agenda (optional);
- V. Subcontractor list;
- VI. Subcontractor FS Agreements (1 agreement for each subcontractor);
- VII. Compliance reports submitted thru DOES/First Source Online Reporting System by the 10th of each month.
- VIII. Non-compliance warning letter (optional);
- IX. Site visit form (Initial, middle, close)

1.3. Pursuant to item #2 requirements, compile all current FS construction and non-construction files/records/documentation for CY'S 2014, 2015 and 2016 (FS staff has indicated data is available through current data bases)

a. Compiled files will be distributed to FS staff for sufficiency review (monitors will not review files they created/monitor);

b. Ascertain the number of complete files for CY's 2014, 2015 and 2016 based:

c. Collect and/or correct all missing and/or erroneous FS documentation to bring FS files into compliance (see, item #2):

1.4. Upon completion of file sufficiency, review update peoplefirst3 tracking database with all updated FS files and documentation. (FS staff indicates PeopleFirst3 tracking is accessible through share drive:

2. Establish internal operational processes and procedures for all FS related duties and responsibilities.

2.1. First Source Team will develop a flow chart detailing the cradle to grave processing of construction, non-construction agreements/ projects.

a. Flow chart will display uniformity in the criteria and frequency for the issuance and documentation of enforcement escalation actions for non-compliance (i.e., Warning notification thru Citation)

b. Non-compliance reporting/notification mechanisms for stakeholders (i.e., contracting agency 1st offense, council 2nd offense, public/Mayoral press release 3rd+ offenses, etc.,) will be established;

c. Projects with continued non-compliance will be subject to **“High Profile”** monitoring criteria (see below).

2.2. Common criteria/indicators for **“High Profile Project”** designations will be established:

a. Separate **“High Profile (HP)”** project coding; intensive/enhanced monitoring criteria; structured stakeholder communication protocols will be established.

b. An internal **“High Profile Project Steering Committee”** consisting of the assigned FS monitor, FS supervisor and OLLE Associate Director (AD) will meet monthly, or as needed, to discuss HP project compliance, determine appropriate enforcement response levels and stakeholder communication/reporting needs.

3. Improved staff effectiveness through continued education and training requirements and innovative tools and technologies.

3.1. Effective immediately, OLLE will (require/recommend) relevant trainings included in all FS staff individual development plans (i.e., Math essentials, Project Management, Time Management, File Management, Case Management, Auditing Fundamentals, Communication Essentials, Writing Essentials, etc.,).

3.2. OLLE must build/purchase a database/software program that effectively interfaces the Local Compliance Program (LCP)(compiles % data for \$5mil projects), First Source Online portal (compiles old law stats (51%)) and Peoplefirst3 database (in-house tracking system for all FS agreements).

3.3. OLLE will engage its Internal Audit Team to develop a FS performance reporting metrics for quarterly reporting.

3.4. OLLE’s Internal Auditing Team will conduct scheduled (quarterly) and random program reviews and data validation audits of FS process and procedure compliance.

3.5. OLLE AD will conduct Quarterly operations meetings to review lessons learned and adopt best practices.

4. Connect stakeholders and align them with strong compliance and monitoring practices and principles.

4.1. OLLE AD and DOES General Counsel will revise all First Source Agreements to include affirmations, check lists or disclosure statements indicating projects are subject to Tax Abatements, Special Legislative provisions and/or any other ancillary provision subject to FS compliance monitoring and reporting;

4.2 OLLE AD and FS supervisor will schedule /convene a meeting/teleconference (or series of conferences with all District Contracting Agencies (CA) and provide uniform messaging as to FS compliance and monitoring practices and principles, to include the legislative mandate for FS agreements submission. CA's will be required to sign acknowledgment that failure to submit FS agreements as mandated by law relieves FS of all monitoring responsibility and places the same with the CA.

4.3. FS will develop an electronic template for CA's to document and submit a monthly report of FS activity (redundancy intended).

4.4. OLLE AD will convene a meeting with the Office of Economic Development and Planning to identify projects dating from 2014- to date that have received a Tax Abatement incentive and/ or are subject to special legislative requirements and to also establish a process that provides FS with a formal notification of upcoming projects receiving Tax Abatement incentives or are subject to special legislative requirements.

4.5. FS will convene regularly scheduled quarterly meeting/teleconference (or series of conferences with CA's and stakeholders to update on FS activity, review process changes, establish best practices and forge stronger interagency ties. (Quarterly)

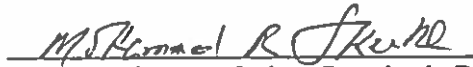
Approvals:



Associate Director, Office of Labor Law and Enforcement

1-9-17

Date



Deputy Director, Labor Standards Bureau

1/9/17

Date

Appendix B

First Source Strategic Achievement Plan

Appendix B: First Source Strategic Achievement Plan

Office of Labor Law Enforcement (OLLE) Operations Achievement Map

Date	Action / Deliverable	Responsibility	Due Date	Status
Goal No.1: Informed compliance decisions and enforcement actions supported by complete, accurate and valid data				
	1.1.Revised standardized First Source (FS) letter And agreements.	FS Supervisor	12.30.16	Letters completed 11-18-16 and FS members have reviewed and revised agreement format to improve its functionality. Draft to be submitted to AD Watts 12/30/16 for review.
	1.2. Establish a standardized and centralized filing system and protocols for all FS compliance documents and data	FS Staff	01.31.17	A standardized file composition has been identified. Ms. Shelton and Ms. Cooper began cataloging files on 11/15/16. To date, the administrative team has reviewed and catalogued and created approximately 147 projects for 2014 and 2015.
	1.3. Identify a centralized and accessible file center/location (TBD)	Associate Director (AD) OLLE	Completed	Centralized location identified. Active files will be within OLLE . Non-active in OLLE files storage area.
	1.4. Establish base level file documentation requirements/checklist for all FS files (construction/non-construction)	FS Staff	Completed	Team has agreed on standardized/ basic file components (FS Agreement, Employment Plan, Correspondence). These are the essential documents for FS files. Additional documentation, such as, monitoring reports and case notes will be included moving forward as new FORRS systems has greater capabilities (on-going).
	1.5. Pursuant to item 1.4 requirements, compile all current FS construction and non-construction files/records/documentation for PY2014, 2015 and 2016	FS Staff	01.31.17	OIT has identified and uploaded approximately 2624 FS agreement documents covering the period 2013-2016. The cataloging of existing files began 11/18/16. Files meeting standardized format are being compiled. (on-going)
	1.6. Compiled files will be distributed to FS staff for sufficiency review	OLLE Team	02.03.17	For the sufficiency review, compliance monitors will not review files they created/monitored (pending). Review will be conducted by the OLLE Audit Team.
	1.7. Ascertain the number of complete files for Calendar Year (CY) 2014, 2015 and 2016	FS Staff	01.31.17	Allotted time frame is estimation. The number of FS agreements must be verified. Admin Support Team has begun file count and compilation. (On-going).
	1.8. Collect and/or correct, all missing and/or erroneous FS documentation to bring FS files into compliance (see, item 1.4)	FS Staff	01.31.17	Admin Support Team has initiated file compilation and is acquiring documentation to bring files to standard. OLLE will verify completion (on-going)
	1.9. Update Peoplefirst3 tracking database with all updated FS files and documentation. This database is accessible through share drive	FS Staff	On-going	FS began file review, development and cataloging on 11/15/16. Because the number of files is significant, compiling the documentation for updating the database is an on-going process. OLLE will verify completion (on-going)

Goal No. 2: Establish internal operational processes and procedures for all FS related duties and responsibilities				
	2.1. Develop a flow chart detailing the cradle to grave processing of construction, non-construction agreements/ projects. a. Chart will display uniformity in the criteria and frequency for the issuance and documentation of enforcement escalation actions for non-compliance (i.e., warning notification thru citation); b. Non-compliance reporting/notification mechanisms for stakeholders (i.e., contracting agency 1st offense; District Council 2nd offense; Public/Mayoral press release 3rd+ offenses, etc.,) will be established; c. Projects with continued non-compliance will be subject to “High Profile Project (HPP)” monitoring criteria (see 2.2)	FS Supervisor	01.31.17	Team has provided OIT with current FS construction Agreement workflow process. The development of the non-construction workflow process has been delayed due to the launch of FORRS and need to address issues identified with FORRS system. Non construction workflow processes will resume in January 2017. These workflow processes will be used in the development of the FS program flow chart(s)
	2.2. Common criteria/indicators for “High Profile Project” designations will be established: a. Separate “High Profile Project” coding; intensive/enhanced monitoring criteria; and structured stakeholder communication protocols will be established; b. An internal “High Profile Project Steering Committee” consisting of the assigned FS monitor, FS supervisor and AD OLLE will meet monthly, or as needed, to discuss High Profile Project compliance, determine appropriate enforcement response levels and stakeholder communication /reporting needs	AD OLLE	01.31.17	- Team has identified criteria for HPP designation: \$100 million and above; - Community revitalization projects; - Mixed use projects. These criteria will be submitted to AD Watts for review and consideration. OLLE will verify completion - The High Profile Project Steering Committee will hold a HPP planning meeting on January 31, 2017 to review the six (6) projects currently designated HPPs. - An HPP oversight and review session will be conducted for Agency Leadership in February 2017.
Goal No. 3: Improved staff effectiveness through continued education and training requirements and innovative tools and technologies				
	3.1 Effective immediately, OLLE AD will require/ recommend relevant trainings included in all FS staff individual development plans (i.e., Math essentials , Project Management, Time Management, File Management, Case Management, Auditing Fundamentals, Communication Essentials, Writing Essentials)	AD OLLE	Immediately	- LCP Tracking training of OLLE audit team took place 12/13/16. - Audit Training and certification will be held onsite beginning January 30 2017 thru February 3, 2017. The training will provide International Audit Certifications for the OLLE team.
	3.2 Procure a database or software program that effectively interfaces the 3 current FS data systems that include 1) the Local Compliance Program (LCP) which compiles % of hours worked data for \$5mil or more project (new law); 2), The First Source Online portal which compiles the 51% new hire data (old law);and 3) PeopleFirst3 database which is an in-house tracking system for all FS agreements. Any new	AD OLLE	01.30.17	OIT has designed and FS’s launched a new registration and reporting portal (FORRS) on 12/13/16. FORRS provides a more efficient way for companies and organizations to remain compliant with monthly First Source reporting requirements. Beginning January 2017, FORRS will be the sole registration and reporting system for companies responsible for managing and reporting First Source employee data.

	system must calculate both old (51%) and new law (% hours worked) compliance requirements			
	3.3 Engage the OLLE internal Audit team to develop a FS performance reporting metrics for quarterly reporting	AD OLLE	1.17	FS and Audit Team will establish metrics by January 2017
	3.4 OLLE Internal Audit team will conduct scheduled (quarterly) and random program reviews and data validation audits of FS process and procedure compliance	OLLE Internal Audit Team	01.03.17	Audit Team will begin reviews Jan 2017 - through September 2017.
	3.5 Conduct quarterly operations meetings to review lessons learned and adopt best practices.	OLLE/FS Staff	03.14.17	Ongoing. The first session was held on Monday 11-14-16
Goal No. 4: Connect stakeholders and align them with strong compliance and monitoring practices and principles.				
	4.1. OLLE AD and DOES General Counsel (GC) will revise First Source Agreements to include affirmations, check lists or disclosure statements indicating projects are subject to Tax Abatements, Special Legislative provisions and/or any other ancillary provision that require FS compliance monitoring and reporting	OLLE AD and DOES GC	12.30.16	FS has developed language for submission and consideration.
	4.3. Develop an electronic template for Contracting Agencies (CA) to document and submit a monthly report of FS agreement activity (redundancy intended)	OWH Program Manager	01.16.17	Pending. Template currently being used for non-construction Is being reviewed for application with construction
	4.4 Convene a meeting with the Office of Economic Development and Planning to identify projects dating from 2014- to the present that have received a Tax Abatement incentive and to also establish a process that provides OLLE with a formal notification of upcoming projects receiving Tax Abatement incentives	AD OLLE/FS Team	02.17	FS will convene and conduct Train-the-Trainer session, during the month of February 2017, with DMPED and other Contracting Agencies to discuss communication protocols and process enhancements.
	4.5 Convene regularly scheduled quarterly meetings /tele-conferences with the CA's and stakeholders to update on FS activity, review process changes, establish best practices and forge stronger interagency ties.	FS Team	02.17	FS will schedule an initial quarterly meeting for February 2017.

Appendix C
Analysis of the Implementation Status of
First Source Law Provisions

Appendix C: Analysis of the Implementation Status of First Source Law Provisions

	D.C. Code Requirement	Auditor's Analysis	Status ¹
1	D.C. Code § 2-219.03 Employment Agreements required. (a) The Mayor shall include for every government-assisted project or contract a requirement that the beneficiary enter into an employment agreement with the District of Columbia government which states that: (1) The first source for finding employees to fill all jobs created by the government-assisted project or contract will be the First Source Register; and (2) The first source for finding employees to fill any vacancy occurring in all jobs covered by an employment agreement will be the First Source Register. (b) In selecting unemployed District residents from the First Source Register for interviews for all jobs covered by each employment agreement, the Mayor shall: (1) Give first preference to unemployed District residents pursuant to § 2-219.01(6)(A); and (2) Give second preference to unemployed District residents pursuant to § 2-219.01(6)(B) ² .	We found that the government assisted projects or contracts in our sample contained the requirement that the beneficiary enter into an employment agreement and employment agreements we reviewed contained the language that contained the subsequent language: (1) The first source for finding employees to fill any vacancy occurring in all jobs covered by an employment agreement will be the First Source Register; and (2) The first source for finding employees to fill any vacancy occurring in all jobs covered by an employment agreement will be the First Source Register. In selecting unemployed District residents from the First Source Register for interview for all jobs covered by each employment agreement, the Mayor shall: (1) give the first preference to unemployed District Residents pursuant to § 2-219.01(6)(A)³ and second preference to unemployed District residents pursuant to § 2-219-01 (6)(b). We further found that Department of Employment Services (DOES) is not tracking new hires to adequately determine whether vacancies occurring in all jobs covered by an employment agreement are using the First Source Register as the first source for finding employees for these vacancies or that first preference is given unemployed District residents, or that second preference is given. In our review of monthly report submitted by beneficiaries we found one of the requirements that was consistently not captured on the reports were referral sources of each new employee hired on the project. Without the referral source for each new employee, DOES cannot determine that beneficiaries are effectively using the First Source Register or that unemployed District residents are being given first preference. We also interviewed staff within the DOES Business Services Group (BSG) to determine how referrals are made and whether first preference is given to unemployed District residents pursuant to the law. We further requested any data they maintain that would ensure that preference requirements are met. BSG indicated the only metrics they maintain and are required to track are based on requirements of the Department of Labor, tracking only Retention, Penetration and Repeat Business.	NEI

¹ I: Implemented, NI: Not implemented, NEI: Not Effectively Implemented, U: Unable to Determine

² Any unemployed resident of the District of Colombia who does not receive unemployment compensation benefits pursuant to Chapter 1 of Title 51, and who lives within the boundaries of the advisory neighborhood commission in which the government -assisted project or contract is located.

³ Any unemployed resident of the District of Columbia who does not receive unemployment compensations benefits.

Appendix C: Analysis of the Implementation Status of First Source Law Provisions

	D.C. Code Requirement	Auditor's Analysis	Status ¹
2	D.C. Code § 2-219.03 Employment Agreements required. (c) The Mayor shall transmit each employment agreement to the Department of Employment Services no less than 7 calendar days in advance of the project or contract start date, whichever is later, and no work associated with the relevant government assistance can begin on a project or contract until the employment agreement has been accepted by the Department of Employment Services.⁴	This requirement is not being met on a consistent basis. Based upon interviews with Office of First Source Compliance (OFSC) staff, they often do not get a signed employment agreement until after the contract has been awarded and more than 7 days after work has commenced on the contract or project. We further found instances where DOES did not have an employment agreement for each contract or government assisted project or contract receiving \$300,000 or more in government assistance and is unaware that a contract or project has been awarded. This was based on our analysis of contracts valued at \$300,000 or more that were awarded in FY 2016 by the Department of General Services (DGS). Of the 124 contracts over \$300,000 awarded by DGS in FY 2016 we could not find employment agreement documentation at DOES for 30 of these awards totaling \$22,493,159 in government assistance. According to OFSC there are also additional different issues with construction and non-construction projects or contracts. For non-construction contracts or projects OFSC asserted that they must often reach out to the contracting agency to determine if a contract has been awarded. For non-construction projects OFSC staff have made it a practice to reach out to contracting agencies on a quarterly basis. According to OFSC, responders to a Request for Proposal (RFP) for a non-construction contract or projects will submit an initial employment agreement, a requirement of the RFP, and the contracting agency will forward this agreement to DOES. OFSC staff state however that they often still must follow up with the contracting agency to find out who the winning bidder is, so that the awardee can be notified to begin complying with the monthly reporting requirement and monitoring by OFSC can begin. For construction contracts or development projects, OFSC indicated the process for receiving employment agreements from all beneficiaries required to submit an agreement to DOES often breaks down. Although OFSC may be notified that the contract or project has been awarded to a general contractor (GC) or developer, ultimately it will be subcontractors that will be performing the work, hiring or transferring employees, and/or creating new job vacancies. According to OFSC, the general contractor is responsible for obtaining a first source employment agreement from the sub-contractors and there may be a delay getting this done. OFSC further indicated that the developer or general contractor is also responsible for ensuring	NEI

⁴ The Law requires that the Mayor include in each government-assisted project or contract that receives government assistance totaling between \$300,000 and \$5,000,000, a provision that at least 51% of the new employees hired on the project or contract shall be District residents. The Law also requires that the Mayor include in each government-assisted⁴ construction project receiving government assistance totaling \$5 million or more, a provision requiring that:

- At least 20% of journey worker hours by trade shall be performed by District residents;
- At least 60% of apprentice hours by trade shall be performed by District residents;
- At least 51% of skilled laborer hours by trade shall be performed by District residents; and
- At least 70% of common laborer hours by trade shall be performed by District residents.

Appendix C: Analysis of the Implementation Status of First Source Law Provisions

	D.C. Code Requirement	Auditor's Analysis	Status ¹
		that the subcontractors register in DOES's First Source Online Registration and Reporting System (FORRS) ⁵ In addition, these same subcontractors are required to upload monthly certified payrolls documents into DOES's Labor Compliance Payroll (LCP) tracking system. The Auditor finds however that this ultimately relies on self-reporting by beneficiaries of District funding. Without consistent monitoring of job sites and developer and GC payment information DOES and the District cannot be assured that the GC or developer is ensuring that all subcontractors are registering in FORRS and that the hiring and reporting requirements are being met. We further found, that the Law does not clearly stipulate transmission of contract, project or subcontract award status as a responsibility of the contracting agencies, developers, or general contractors.	
3	D.C. Code § 2-219.03 Employment Agreements required. (e) (1) (A) The Mayor shall include in each government-assisted project or contract that receives government assistance totaling between \$300,000 and \$5,000,000, a provision that at least 51% of the new employees hired to work on the project or contract shall be District residents. Collective bargaining agreements shall not be the basis for a waiver from this requirement.	Although this has been implemented, and the requirement is included in District contracts, as stated above the Law does not clearly stipulate that this requirement applies to subcontractors of the beneficiary or that the requirement be placed in sub-contracts entered into between the beneficiary and respective subcontractors they may hire to perform work.	I
4	D.C. Code § 2-219.03 Employment Agreements required. (e)(1)(B) Prior to the employment agreement being accepted by the Department of Employment Services, each beneficiary covered by this paragraph shall choose whether the 51% of the new employees hired	We did not find documentation in DOES monitoring files where the beneficiary declared whether the 51% new hires shall be cumulative of all hires, or met by each beneficiary and each individual subcontractor. We also found that current employment agreements required to be signed by beneficiaries did not require that beneficiaries make this declaration. As stated above, the Law does not clearly stipulate that the 51% new hire requirement applies to subcontractors of the beneficiary or in sub-contracts entered between the beneficiary and respective subcontractors they may hire to perform work. Failing to make this declaration and adequately monitor the contract and project could possibly allow for circumventing the spirit of the Law. We found that the following scenario could occur: Company A enters into a contract with the District for \$800,000 and	NI

⁵ Beginning December 13, 2016, the DC Department of Employment Services, First Source Program launched a new web-based application, the First Source Online Registration and Reporting System (FORRS). According to the DOES website FORRS will provide a more efficient way for companies and organizations to remain compliant with monthly First Source reporting requirements. Beginning January 2017, DOES indicated that FORRS would be the sole registration and reporting system for companies responsible for managing and reporting First Source employee data. <https://does.dc.gov/page/first-source-employment-program>

Appendix C: Analysis of the Implementation Status of First Source Law Provisions

	D.C. Code Requirement	Auditor's Analysis	Status ¹
	shall be: (i) Cumulative of all new hires, including those made by all subcontractors at any tier who work on the project or contract; or (ii) Met by each beneficiary covered by this paragraph and each individual subcontractor at any tier who works on the project or contract.	subcontracts out all the work, through four separate subcontracts valued at \$200,000; according to OFSC, since none of the subcontracts meets the \$300,000 threshold, the subcontractors would not be subject to the 51% new hire requirement, and OFSC would not be monitoring them for compliance. We identified specific examples of this in our file reviews, where the general contractor or developer entered into a signed employment agreement with DOES and indicated that they would have no hires and would subcontract out the work. We found however that there was no system in place to ensure that the GC or developer entered into an agreement with all their subcontractors. According to OFSC this declaration requirement will be included in newly developed employment agreements.	
5	D.C. Code § 2-219.03 Employment Agreements required. (e)(1)(C) Each beneficiary covered by this paragraph shall submit to the Department of Employment Services each month following the start of the project or contract a hiring compliance report for the project or contract that includes the: (i) Number of employees who worked on the project or contract; (ii) Number of current employees transferred; (iii) Number of new job openings created; (iv) Number of job openings created by employee attrition; (v) Number of job openings listed with the Department of Employment Services; (vi) Total monthly direct and indirect labor costs associated with the project or contract; (vii) Total number of all District residents hired for the reporting period and the cumulative total number of District residents hired; and (viii) Total number of all employees hired for the reporting	We found inconsistencies in this compliance reporting requirement by beneficiaries. We were not able to document a single monthly reporting form submitted by the beneficiaries in our sample that contained all 11 required reporting elements. The requirements most consistently missing were the number of job openings created by employee attrition, Social Security Number (SSN), hire date, and referral source of each new employee hired on the project.	NEI

Appendix C: Analysis of the Implementation Status of First Source Law Provisions

	D.C. Code Requirement	Auditor's Analysis	Status ¹
	period and the cumulative total number of employees hired, including each employee's: (I) Name; (II) Social security number; (III) Job title; (IV) Hire date; (V) Residence; and (VI) Referral source for all new hires.		
6	D.C. Code § 2-219.03 Employment Agreements required. (e)(1)(D)(i) Government-assisted construction projects or contracts covered by this paragraph shall be subject to the hiring and reporting requirements set forth in this paragraph until construction is completed and a final certificate of occupancy has been issued.	We found that there is not a dedicated procedure documenting in writing that the construction has been completed and a certificate of occupancy has been issued. However, DOES indicated that it is part of their monitoring process. They further indicated they confirm the start and end dates and get a copy of the certificate of occupancy. They further indicated that this process will be included in their new standard operating procedures. (SOPs) ⁶ However, in our review of completed projects in our sample we found no certificate of occupancy or any documentation indicating that the project had been completed.	NEI
7	D.C. Code § 2-219.03 Employment Agreements required. (e)(1)(D)(ii) Government-assisted non-construction projects or contracts covered by this paragraph shall be subject to the hiring and reporting requirements set forth in this paragraph for as long as the benefit is being received.	We found no documentation in sample files that indicated how long the hiring and reporting requirements are to be. For example, how long a tax abatement is going to be granted, or a TIF project is to receive the benefit. OFCS indicated that they will receive the first source agreement and set up the parameters in FORRS for however long the agreement states. OFCS also indicated they communicate with the contracting/agreement agency regarding these types of agreements.	NEI

⁶ Approved Standard Operating Procedures (SOPs) were issued by DOES March 14, 2018.

Appendix C: Analysis of the Implementation Status of First Source Law Provisions

	D.C. Code Requirement	Auditor's Analysis	Status ¹
8	D.C. Code § 2-219.03 Employment Agreements required. (e)(1)(D)(iii) A retail or commercial tenant that is a beneficiary as defined under § 2-219.01(1)(C) and is covered by this paragraph shall be subject to the hiring and reporting requirements set forth in this paragraph for 5 years following the commencement of the tenant's initial lease date.	According to OFSC staff, DOES will receive the first source agreement and set up the parameters in FORRS for five years. However, we found that DOES does not receive a copy of the lease and therefore cannot verify the accuracy of the employment agreement or whether monitoring efforts are started and maintained in accordance with the 5-year requirement in the law.	NEI
9	D.C. Code § 2-219.03 Employment Agreements required. (e)(1A)(A) The Mayor shall include in each government-assisted construction project or contract that receives government assistance totaling \$5 million or more, a provision requiring that: (i) At least 20% of journey worker hours by trade shall be performed by District residents; (ii) At least 60% of apprentice hours by trade shall be performed by District residents; (iii) At least 51% of the skilled laborer hours by trade shall be performed by District residents; and (iv) At least 70% of common laborer hours shall be performed by District residents. (B) Collective bargaining agreements shall not be a basis for a waiver from this requirement.	This provision relates to construction projects only. We found that DOES relies heavily on self-certification by the beneficiaries and their subcontractors. We found that beneficiaries and their subcontractors are required to upload their certified payrolls into LCP tracker on a weekly basis. According to DOES, LCP tracker has security features built in that will verify the SSN submitted and DOES then tracks the hours worked by category and LCP is programed to provide hours worked in real time, by category. A warning email is also sent out to contractors or sub-contractors who fail to report. Verification of these numbers and categories remains in question because there is no dedicated monitoring of certified payrolls at DOES, nor did DOES have SOPs detailing its process for monitoring payrolls.	NEI

Appendix C: Analysis of the Implementation Status of First Source Law Provisions

	D.C. Code Requirement	Auditor's Analysis	Status ¹
10	D.C. Code § 2-219.03 Employment Agreements required. (e)(1A)(C) As part of the employment plan required by subparagraph (F)(ii) of this paragraph, each beneficiary covered by this paragraph shall choose whether all residency work requirements shall be: (i) Cumulative of all hours worked, including those hours worked by subcontractors at any tier who work on the project or contract; or (ii) Met by each beneficiary covered by this paragraph and each individual subcontractor at any tier who works on the project or contract.	We did not find documentation within the DOES files included in our sample where the beneficiary declared whether the hours would be met cumulatively or by each subcontractor. Without making this choice, there may be issues in holding the subcontractors liable for not being in compliance.	NEI
11	D.C. Code § 2-219.03 Employment Agreements required. (e)(1A)(D) Each month following the start of the project or contract, beneficiaries covered by this paragraph shall submit to the Department of Employment Services copies of their monthly and cumulative certified payrolls, monthly and cumulative certified payrolls from all subcontractors at any tier working on the project or contract, as well as a report of the total monthly direct and indirect labor costs associated with the project or contract. (E) Government-assisted construction projects or contracts covered by this paragraph	We found that the dates on many of the employment agreements in our sample contained “estimated” start dates including a month and year but we had no contract or subcontract against which to verify these dates. Additionally, without notification from the subcontractor DOES may not be aware when the project starts, who subcontractors are or when the subcontractors began work, unless the GC or developer enters into employment agreements with subcontractors and timely registers in FORRS. (See analysis point 2 above)	NEI

Appendix C: Analysis of the Implementation Status of First Source Law Provisions

	D.C. Code Requirement	Auditor's Analysis	Status ¹
	shall be subject to the hiring and reporting requirements set forth in this paragraph until construction is completed and a final certificate of occupancy has been issued.		
12	D.C. Code § 2-219.03 Employment Agreements required. (e)(1A)(F)(i) Bids and proposals responding to a solicitation for a government-assisted project or contract covered by this paragraph shall include an initial employment plan outlining the bidder or offeror's strategy to meet the local hiring requirements as part of its response to the solicitation. These plans shall be evaluated and scored by the Mayor based on the criteria listed in sub-sub-subparagraphs (I), (II), and (III) of this sub-subparagraph. The evaluation shall be worth 10% of the overall score of the bid or proposal. The employment plan shall include the following: (I) Descriptions of the health and retirement benefits provided to employees who worked on any of the bidder or offeror's past 3 completed projects or contracts; (II) A description of the bidder or offeror's efforts to provide District	We found that DOES does not receive an initial employment plan outlining the bidder's or offeror's strategy to meet local hiring requirements. We then requested the bid packages for our sample projects from DGS. We found GCs for construction projects did submit an initial employment plan in response to the RFP for the project, however the employment plan did not have all the elements, such as descriptions of the health and retirement benefits provided to employees who worked on any of the bidder or offeror's past three completed projects, a description of the bidder or offeror's efforts to provide District residents with ongoing employment and training opportunities after they complete work on the job for which they were initially hired and a disclosure of past compliance with the Workforce Act and the Davis-Bacon Act. DOES indicated that they have never received a copy of the bidder's initial employment plan. According to DOES obtaining this initial employment plan from District contracting agencies would be launched September 2017 and will be assessable on the DOES website. As of the date of this report however, this information was not on the DOES website.	NEI

Appendix C: Analysis of the Implementation Status of First Source Law Provisions

	D.C. Code Requirement	Auditor's Analysis	Status ¹
	residents with ongoing employment and training opportunities after they complete work on the job for which they were initially hired; and (III) A disclosure of past compliance with the Workforce Act and the Davis-Bacon Act of 1931, approved March 3, 1931 (46 Stat. 1494; 40 U.S.C. § 3141 et seq.) ("Davis-Bacon Act"), where applicable, on projects or contracts completed within the last 2 years.		

Appendix C: Analysis of the Implementation Status of First Source Law Provisions

	D.C. Code Requirement	Auditor's Analysis	Status ¹
13	D.C. Code § 2-219.03 Employment Agreements required. (e)(1A)(F)(ii) The winning bidder or offeror shall submit a revised employment plan to the Mayor for approval prior to beginning work associated with the relevant government project or contract. The employment plan shall include: (I) A projection of the total number of hours to be worked on the project or contract by trade; (II) A projection of the total number of journey worker hours, by trade, to be worked on the project or contract and the total number of journey worker hours, by trade, to be worked by District residents; (III) A projection of the total number of apprentice hours, by trade, to be worked on the project or contract and the total number of apprentice hours, by trade, to be worked by District residents; (IV) A projection of the total number of skilled laborer hours, by trade, to be worked on the project or contract and the total number of skilled laborer hours, by trade, to be worked by District residents; (V) A projection of the total number of common laborer hours to be worked on the project or contract and the total number of common laborer hours to be worked by District	We requested revised employment plans from DGS and DOES and there were no revised employment plans collected by either agency. At the time of our review OFSC indicated that they have never received a copy of any awardee's revised employment plan. According to DOES obtaining this revised employment plan from District contracting agencies would be launched September 2017 and will be assessible on the DOES website. As of the date of this report however, this information was not on the DOES website.	NI

Appendix C: Analysis of the Implementation Status of First Source Law Provisions

	D.C. Code Requirement	Auditor's Analysis	Status ¹
	residents; (VI) A timetable outlining the total hours worked by trade over the life of the project or contract and an associated hiring schedule; (VII) Descriptions of the skill requirements by job title or position, including industry-recognized certifications required for the different positions; (VIII) A strategy to fill the hours required to be worked by District residents pursuant to this paragraph, including a component on communicating these requirements to contractors and subcontractors and a component on potential community outreach partnerships with the University of the District of Columbia, the University of the District of Columbia Community College, the Department of Employment Services, Jointly Funded Apprenticeship Programs, or other government-approved, community-based job training providers; (IX) A remediation strategy to ameliorate any problems associated with meeting these hiring requirements, including any problems encountered with contractors and subcontractors; (X) The designation of a senior official from the general contractor who will be responsible for implementing the hiring and		

Appendix C: Analysis of the Implementation Status of First Source Law Provisions

	D.C. Code Requirement	Auditor's Analysis	Status ¹
	reporting requirements; (XI) Descriptions of the health and retirement benefits that will be provided to District residents working on the project or contract; (XII) A strategy to ensure that District residents who work on the project or contract receive ongoing employment and training opportunities after they complete work on the job for which they were initially hired and a review of past practices in continuing to employ District residents from one project or contract to the next; (XIII) A strategy to hire graduates of District of Columbia Public Schools, District of Columbia public charter schools, and community-based job training providers, and hard-to-employ residents; and (XIV) A disclosure of past compliance with the Workforce Act and the Davis-Bacon Act, where applicable, and the bidder or offeror's general District-resident hiring practices on projects or contracts completed within the last 2 years.		

Appendix C: Analysis of the Implementation Status of First Source Law Provisions

	D.C. Code Requirement	Auditor's Analysis	Status ¹
14	D.C. Code § 2-219.03 Employment Agreements required. (e)(1A)(F) (iii) The Mayor shall require all beneficiaries of government-assisted projects or contracts covered by this paragraph that are not awarded through the contracting process to develop and submit to the Department of Employment Services the employment plan required in sub-subparagraph (ii) of this subparagraph. (iv) Once approved, the employment plan required by sub-subparagraph (ii) of this subparagraph shall not be amended except with the approval of the Mayor.	We did not find any employment plans for government assisted projects or contracts not awarded through the contract process. We reviewed documentation provided to ODCA for projects in our sample and found that these projects had no employment plans, except for the developer or GC who indicated that they would not be hiring because all jobs related to the contract or project would be performed by subcontractors.	NEI
15	D.C. Code § 2-219.03 Employment Agreements required. (e)(1A)(G) For the purpose of calculating hours worked by District residents, beneficiaries covered by this paragraph may receive double credit for hours worked by District residents who are certified by the Department of Employment Services as hard to employ as long as they include the resident's hard-to-employ certification as part of the monthly reporting. No more than 15% of the total hours worked by District residents may be comprised of double-credit hours.	DOES has not established a certification process to implement this process. There are no written policies and procedures. OFSC indicated that this is currently being programmed into the LCP tracker. Prior to this no contractors have come forward with request for credits for hard to employ citizens.	NI

Appendix C: Analysis of the Implementation Status of First Source Law Provisions

	D.C. Code Requirement	Auditor's Analysis	Status ¹
16	D.C. Code § 2-219.03 Employment Agreements required. (e)(1A)(H) For the purpose of calculating hours worked by District residents, beneficiaries covered by this paragraph may count any hours worked by District residents on other completed projects or contracts subject to and in excess of the Workforce Act's hiring requirements that are certified by the Mayor.	DOES has not established a written process to implement this requirement. According to OFSC, no contractors have come forward with request for credits for hard to employ citizens.	NEI
17	D.C. Code § 2-219.03 Employment Agreements required. (e)(1A)(I) Within one year of February 24, 2012, the Mayor shall review the hiring and reporting requirements set forth by this paragraph to determine the appropriateness of each percentage and make relevant findings of the determination in a report to the Council. After the initial submission of this report the Mayor shall regularly, but at least once every 3 years, conduct a new review of the hiring and reporting requirements set forth by this paragraph to determine the appropriateness of each percentage and make relevant findings of the determination in a report to the Council.	DOES Response: This requirement has not been implemented and should be completed by November 1, 2017. As of the date of this report, this had not been completed.	NI

Appendix C: Analysis of the Implementation Status of First Source Law Provisions

	D.C. Code Requirement	Auditor's Analysis	Status ¹
18	D.C. Code § 2-219.03 Employment Agreements required. (e)(1A)(J) The Department of Employment Services shall consider requests from beneficiaries to recommend to the D.C. Apprenticeship Council to alter the ratio of journey worker to apprentice positions as long as the request does not jeopardize the quality or safety of the project or contract and there is a compelling District-resident hiring rationale.	DOES Response: This has not been done.	U
19	D.C. Code § 2-219.03 Employment Agreements required. (e)(1B)(A) Within one year of February 24, 2012, the Mayor shall issue rules establishing enhanced hiring and reporting requirements for government-assisted non-construction projects or contracts that receive government assistance totaling \$5 million or more. (B)(i) These rules shall include industry-specific requirements by percentage of total hours worked for full-time and part-time hourly wage employees and by percentage of full-time and part-time salaried employees, broken out by job category. The proposed rules shall also establish the length of time that these projects or contracts shall comply with the hiring and reporting requirements. (ii) The proposed rules	DOES Response: The rules are in draft mode and are in our legal department for review.	NI

Appendix C: Analysis of the Implementation Status of First Source Law Provisions

	D.C. Code Requirement	Auditor's Analysis	Status ¹
	shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, by resolution, within this 45-day review period, the proposed rules shall be deemed disapproved. (iii) Until the final rules have been adopted after approval by the Council pursuant to this paragraph and paragraph (1C)(F) of this subsection, government-assisted non-construction projects or contracts that receive government assistance totaling \$5 million or more shall be subject to the hiring and reporting requirements set forth in paragraph (1) of this subsection.		
20	D.C. Code § 2-219.03 Employment Agreements required. (e)(1C)(A) Once final rules have been adopted after Council approval pursuant to paragraph (1B) of this subsection and subparagraph (F) of this paragraph, the Mayor shall include these District hiring and reporting requirements in each government-assisted non-construction project or contract that receives government assistance totaling \$5 million or more. These government-assisted non-construction projects or contracts	DOES Response: This requirement has not been implemented, the rules are in draft mode and were pending in the legal department for review.	NI

Appendix C: Analysis of the Implementation Status of First Source Law Provisions

	D.C. Code Requirement	Auditor's Analysis	Status ¹
	shall be subject to the procedures set forth in this paragraph.		
21	D.C. Code § 2-219.03 Employment Agreements required. (e)(1C) (B)(i) Bids and proposals responding to a solicitation for a government-assisted project or contract covered by this paragraph shall include an initial employment plan outlining the bidder or offeror's strategy to meet the local hiring requirements as part of its response to the solicitation. These plans shall be evaluated and scored by the Mayor based on the criteria listed in sub-sub-paragraphs (I), (II), and (III) of this sub-subparagraph. The evaluation shall be worth 10% of the overall score of the bid or proposal. The employment plan shall include the following: (I) Descriptions of the health and retirement benefits provided to employees who worked on any of the bidder or offeror's past 3 completed projects or contracts; (II) A description of the bidder or offeror's efforts to provide District residents with ongoing employment,	Auditor's Analysis: This has not been implemented. DOES indicated that this has not been implemented, the rules are in draft mode and pending in the legal department for review.	NI

Appendix C: Analysis of the Implementation Status of First Source Law Provisions

	D.C. Code Requirement	Auditor's Analysis	Status ¹
	training, and career advancement opportunities; and (III) A disclosure of past compliance with the Workforce Act, where applicable, on projects or contracts completed within the past 2 years.		
22	D.C. Code § 2-219.03 Employment Agreements required. (e)(1C)(B)(ii) The winning bidder or offeror shall submit a revised employment plan to the Mayor for approval, before beginning work associated with the project or contract. The revised employment plan shall include: (I) A projection of the total number of hours to be worked by full-time and part-time hourly wage employees on an annual basis by job category and the total number of hours to be worked by full-time and part-time hourly wage employees who are District residents; (II) A projection of the total number of full-time and part-time salaried employees on an annual basis by job category and the total number of full-time and part-	Auditor's Analysis: This has not been implemented. DOES indicated that this has not been implemented, the rules are in draft mode and pending in the legal department for review.	NI

Appendix C: Analysis of the Implementation Status of First Source Law Provisions

	D.C. Code Requirement	Auditor's Analysis	Status ¹
	time salaried employees that will be District residents; (III) A timetable outlining the total hours worked by full-time and part-time hourly wage employees by job category and the total number of full-time and part-time salaried employees by job category over the duration of the life of the hiring requirements set forth by the Department of Employment Services and an associated hiring schedule which predicts when specific job openings will be available; (IV) Descriptions of the skill requirements, including industry-recognized certifications required for the different positions; (V) A strategy to fill the District-resident hiring requirements, including whether the bidder plans to pursue potential community outreach partnerships with the University of the District of Columbia, the University of the District of Columbia Community College, the Department of Employment Services, or other government-approved, community-based job training providers; (VI) A remediation strategy to ameliorate any problems associated with meeting these hiring requirements; (VII) The designation of a senior official from the beneficiary who will		

Appendix C: Analysis of the Implementation Status of First Source Law Provisions

	D.C. Code Requirement	Auditor's Analysis	Status ¹
	be responsible for implementing the hiring and reporting requirements; (VIII) Descriptions of the health and retirement benefits that will be provided to District residents working on the project or contract; (IX) A strategy to hire graduates of District of Columbia Public Schools, District of Columbia public charter schools, and community-based job training providers, and hard-to-employ residents; and (X) A disclosure of past compliance with the Workforce Act, where applicable, and the bidder or offeror's general District hiring practices on projects or contracts completed within the past 2 years.		
23	D.C. Code § 2-219.03 Employment Agreements required. (e)(1C)(B)(iii) The Mayor shall require all beneficiaries of government-assisted projects or contracts covered by this paragraph that are not awarded through the contracting process to develop and submit to the Department of Employment Services the employment plan required in sub-subparagraph (ii) of this subparagraph. (iv) Once approved, the employment plan required by sub-subparagraph (ii) of this subparagraph shall not be amended	Auditor's Analysis: This has not been implemented. DOES indicated that this has not been implemented, the rules are in draft mode and are pending in the legal department for review.	NI

Appendix C: Analysis of the Implementation Status of First Source Law Provisions

	D.C. Code Requirement	Auditor's Analysis	Status ¹
	except with the approval of the Mayor.		
24	D.C. § Code 2-219.03 Employment Agreements required. (e)(1C)(C) For the purpose of calculating hours worked and full-time and part-time salaried positions filled by District residents, beneficiaries covered by this paragraph may receive double credit for hours worked and for full-time and part-time salaried positions filled by District residents who are certified by the Department of Employment Services as hard to employ as long as they include the resident's hard-to-employ certification as part of the monthly reporting. No more than 15% of the total hours worked and full-time and part-time salaried positions filled by hard-to-employ District residents may be comprised of double-credit hours or double-credit full-time and part-time salaried positions.	Auditor's Analysis: This has not been implemented. DOES indicated that this has not been implemented, the rules are in draft mode and are pending in the legal department for review.	NI
25	D.C. Code § 2-219.03 Employment Agreements required. (e)(1C)(D) For the purpose of calculating hours worked and full-time and part-time salaried positions filled by District residents, beneficiaries covered by	There are no written policies and procedures for complying with this requirement.	NEI

Appendix C: Analysis of the Implementation Status of First Source Law Provisions

	D.C. Code Requirement	Auditor's Analysis	Status ¹
	this paragraph may count any hours worked and full-time and part-time salaried positions filled by District residents on other completed projects or contracts subject to and in excess of the Workforce Act's hiring requirements that are certified by the Mayor.		
26	D.C. Code § 2-219.03 Employment Agreements required. (e)(1C)(E) Within one year of the effective date of the rules approved by the Council pursuant to paragraph (1B) of this subsection, the Mayor shall review the hiring and reporting requirements set forth by this paragraph to determine the appropriateness of each percentage and make relevant findings of the determination in a report submitted to the Council. After the initial submission of this report the Mayor shall regularly, but at least once every 3 years, conduct a new review of the hiring and reporting requirements set forth by this paragraph to determine the appropriateness of each percentage and make relevant findings of the determination in a report submitted to the Council.	Auditor's Analysis: This has not been implemented. DOES indicated that this has not been implemented, the rules are in draft mode and are pending in the legal department for review.	NI

Appendix C: Analysis of the Implementation Status of First Source Law Provisions

	D.C. Code Requirement	Auditor's Analysis	Status ¹
27	D.C. Code § 2-219.03 Employment Agreements required. (e)(1C)(F) Within 90 days of the effective date of the rules approved by the Council pursuant to paragraph (1B) of this subsection, the Mayor shall issue rules to implement the provisions of this paragraph. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved.	Auditor's Analysis: This has not been implemented. DOES indicated that this has not been implemented, the rules are in draft mode and are pending in the legal department for review.	NI
28	D.C. Code § 2-219.03 Employment Agreements required. (e)(2) With the submission of the final request for payment from the District, the beneficiary shall: (A) Document in a report to the Mayor its compliance with paragraph (1), (1A), (1B), or (1C) of this subsection; or (B) Submit a request to the Mayor for a waiver of compliance with paragraphs (1), (1A), (1B), or (1C) of this subsection, which shall include the following documentation: (i) Material supporting a good-faith effort to comply; (ii) Referrals provided by the Department of Employment Services	This has not been implemented. We requested final pay requests from construction contracts awarded by DGS and found that they also did not receive this information. OFSC indicated that OFSC now prepares this compliance report and transmits this the contracting agency. OSC further indicated they now review the documentation supporting good faith efforts they now require from non-compliant contractors and keep the contracting agency in the loop.	NI

Appendix C: Analysis of the Implementation Status of First Source Law Provisions

	D.C. Code Requirement	Auditor's Analysis	Status ¹
	and other referral sources; and (iii) Advertisement of job openings listed with the Department of Employment Services and other referral sources.		
29	D.C. Code § 2-219.03 Employment Agreements required. (e)(3)(A) The Mayor may waive the provisions of paragraph (1), (1A), (1B), or (1C) of this subsection if the Mayor finds that: (i) The Department of Employment Services has certified that a good-faith effort to comply has been demonstrated by the beneficiary; (ii)(I) The beneficiary is located outside of the Washington Standard Metropolitan Statistical Area; (II) None of the contract work is performed inside the Washington Standard Metropolitan Statistical Area; (III) The beneficiary published each job opening or part-time work needed for 7 calendar days in a District newspaper of city-wide circulation; and (IV) The Department of Employment Services certifies that there are insufficient eligible applicants from the First Source	DOES indicated they use the requirements in the law to implement this provision, however our analysis in our audit report found that there were no written policies and procedures to document their process or to maintain records of actions taken. According to DOES written policies and procedures will be part of the new SOPs.	NEI

Appendix C: Analysis of the Implementation Status of First Source Law Provisions

	D.C. Code Requirement	Auditor's Analysis	Status ¹
	Register that possess the skills required by the positions, or the eligible applicants are not available for part-time work or do not have a means to travel to the onsite job; or (iii) The beneficiary enters into a special workforce development training or placement arrangement with the Department of Employment Services.		

Appendix C: Analysis of the Implementation Status of First Source Law Provisions

	D.C. Code Requirement	Auditor's Analysis	Status ¹
30	D.C. Code § 2-219.03 Employment Agreements required. (e)(3)(B) The Department of Employment Services shall consider the following when making a determination of a good-faith effort to comply: (i) Whether the Department of Employment Services has certified that there is an insufficient number of District residents in the labor market who possess the skills required to fill the positions that were created as a result of the project or contract; (ii) Whether the beneficiary posted the jobs on the Department of Employment Services job website for a minimum of 10 calendar days; (iii) Whether the beneficiary posted each job opening or part-time work needed in a District newspaper with city-wide circulation for a minimum of 7 calendar days; (iv) Whether the beneficiary has substantially complied with the relevant monthly reporting requirements set forth in this section; (v) For government-assisted projects or contracts covered by paragraph (1A) or (1C) of this subsection, whether the beneficiary has submitted and substantially complied with its most recent employment plan that has been approved by the Department	DOES indicated they use the requirements in the law to implement this provision. Our analysis found that there were no written policies and procedures to document their process or to maintain records of actions taken. According to DOES written policies and procedures will be part of the new SOPs.	NEI

Appendix C: Analysis of the Implementation Status of First Source Law Provisions

	D.C. Code Requirement	Auditor's Analysis	Status ¹
	of Employment Services; and (vi) Any additional documented efforts.		
31	D.C. Code § 2-219.03 Employment Agreements required. (e)(4)(A) Willful breach of the employment agreement, or failure to submit the required hiring compliance report pursuant to paragraph (1), (1A), (1B), or (1C) of this subsection, or deliberate submission of falsified data, shall be enforced by the Mayor through the imposition of a monetary fine of 5% of the total amount of the direct and indirect labor costs of the project or contract, in addition to other penalties provided by law.	DOES indicated they use the requirements in the law to implement this provision. Our analysis found that there were no written policies and procedures to document their process or to maintain records of actions taken. According to DOES written policies and procedures will be part of the new SOPs.	NEI

Appendix C: Analysis of the Implementation Status of First Source Law Provisions

	D.C. Code Requirement	Auditor's Analysis	Status ¹
32	D.C. Code § 2-219.03 Employment Agreements required. (e)(4)(B) Failure to meet the required hiring requirements pursuant to paragraph (1), (1A), (1B), or (1C) of this subsection or failure to receive a good-faith waiver pursuant to paragraph (3) of this subsection may result in the Mayor imposing a penalty equal to 1/8 of 1% of the total amount of the direct and indirect labor costs of the project or contract for each percentage by which the beneficiary fails to meet the hiring requirements.	We found that this was not being implemented and DOES was not tracking direct or indirect labor costs in LCP tracker, a key element of assessment of fines. DOES indicates this will be done in the future. DOES indicated that direct and indirect labor costs are being tracked at end of project.	NEI
33	D.C. § Code 2-219.03 Employment Agreements required. (e)(4)(C) Upon a second violation within a 10-year time frame of the required hiring or reporting requirements set forth within paragraphs (1), (1A), (1B), or (1C) of this subsection or failure to receive a good-faith waiver pursuant to paragraph (3) of this subsection, the Mayor shall debar a person or entity from consideration for award of contracts or subcontracts with the District of Columbia for a period of not more than 5 years. (D) Upon a second violation within a 10-year time frame of the required hiring or reporting requirements set forth within paragraphs (1), (1A), (1B), or	We found that DOES issued the first penalty in FY 2017 and indicated that they be developing a database to capture this information.	NEI

Appendix C: Analysis of the Implementation Status of First Source Law Provisions

	D.C. Code Requirement	Auditor's Analysis	Status ¹
	(1C) of this subsection or failure to receive a good-faith waiver pursuant to paragraph (3) of this subsection, the Mayor may deem a person or entity ineligible of consideration for government-assisted projects with the District of Columbia for a period of not more than 5 years.		
34	D.C. § Code 2-219.03 Employment Agreements required. The beneficiary may appeal any decision of the Mayor regarding a contract pursuant to paragraph (4) of this subsection to the Contract Appeals Board. For those projects that are not awarded through the contracting process, the Mayor shall establish by rule an administrative appeals process that allows the beneficiary to appeal any decision of the Mayor pursuant to paragraph (4) of this subsection.	Because DOES just issued their first penalty in FY 2017, there was not enough information to evaluate any appeal processes.	U
35	D.C. § Code 2-219.03 Employment Agreements required. The provisions of this subsection shall not apply to government-assisted projects or contracts entered into prior to September 6, 2001.		I
36	D.C. § Code 2-219.03 Employment Agreements required. Nonprofit organizations with 50 employees or		I

Appendix C: Analysis of the Implementation Status of First Source Law Provisions

	D.C. Code Requirement	Auditor's Analysis	Status ¹
	less shall be exempt from subsection (e) of this section.		
37	D.C. Code § 2-219.03a Special Hiring Agreements. (a) Whenever the Mayor determines that the goal of increasing employment opportunities for District residents may be better served by establishing hiring goals in specific job categories for specific government-assisted projects or contracts, the Mayor may enter into agreements with beneficiaries or their contractors and subcontractors to provide for increased hiring in specific job categories. Compliance with this agreement shall be deemed compliance with the requirements of this part. Non-compliance with this agreement shall be treated in the same manner as a violation of any other requirement of this part.	As stated above, DOES maintains that there are still issues with obtaining relevant information from contracting agencies, although they indicate this has improved. We provided recommendations in our audit report that, if implemented, could further improve this process.	NEI
38	D.C. Code § 2-219.03a Employment Agreements required. (b) The Mayor may direct the Director of each District agency, the Chief Procurement Officer, or each District contracting officer to develop and report on performance goals for each District agency in furtherance of the objectives of this part.		NI

Appendix C: Analysis of the Implementation Status of First Source Law Provisions

	D.C. Code Requirement	Auditor's Analysis	Status ¹
39	D.C. Code § 2-219.04 Reports. The Mayor shall submit a semiannual report to the Council of the District of Columbia on January 31st and July 31st of each year. The report shall include, for each preceding 6-month period: (1) The number of government-assisted projects or contracts for which employment agreements were executed; (2) The number of jobs that result from employment agreements; (3) The number of District residents actually employed in government-assisted projects or contracts; and (4) The number of names of unemployed District residents on the First Source Register.		NEI
40	D.C. Code § 2-219.04a. Modernization of First Source recordkeeping. Within 120 days of February 24, 2012, the Department of Employment Services shall provide public access on its website to all employment agreements entered into in 2009 through the present and shall make available online all future employment agreements, their status of compliance, and the project or contract's assigned Contracting Officer or First Source Compliance Officer and their contact information.	This has been set up on the DOES website.	I

Appendix C: Analysis of the Implementation Status of First Source Law Provisions

	D.C. Code Requirement	Auditor's Analysis	Status ¹
41	D.C. Code § 2-219.04b Establishment of a workforce intermediary pilot program. (a)(1) By April 1, 2012, the Mayor shall establish a workforce intermediary pilot program for Fiscal Year 2012 based on Council and Mayor-approved recommendations made by the Workforce Intermediary Task Force established by the Workforce Intermediary Task Force Establishment Second Emergency Act of 2011, effective October 18, 2011 (D.C. Act 19-167; 58 DCR 8900), or succeeding legislation. (2) The workforce intermediary pilot program shall act as an intermediary between employers and training providers to provide employers with qualified District resident job applicants. (3) The workforce intermediary pilot program shall have a start-up budget not to exceed \$2 million, which shall be funded by all funds deposited in the District of Columbia Jobs Trust Fund ("Fund"), established in § 2-219.04c, and other existing local funds.		I

Appendix C: Analysis of the Implementation Status of First Source Law Provisions

	D.C. Code Requirement	Auditor's Analysis	Status ¹
42	D.C. Code § 2-219.04b Establishment of a workforce intermediary pilot program. (a)(4) Thirty days before the end of the pilot program, the Deputy Mayor for Planning and Economic Development, in consultation with the Department of Employment Services and the workforce intermediary, shall develop a progress report and recommendations for continued operations of the workforce intermediary that take into account the Council and Mayor-approved recommendations made by the Workforce Intermediary Task Force.	This has not been implemented, and DOES indicated that planning is underway to produce this report, but could not provide a date for production.	NI
43	D.C. Code § 2-219.04c Establishment of the District of Columbia Jobs Trust Fund. (a) There is established as a non-lapsing fund the District of Columbia Jobs Trust Fund, which shall be administered by the Deputy Mayor for Planning and Economic Development. The funds in the Fund shall be used solely for the purpose of establishing and operating the workforce intermediary pilot program, established in § 2-219.04b, or any succeeding program. The following shall be deposited into the Fund: (1) Voluntary and negotiated contributions and donations, including past	DOES has indicated that this Fund has been recently established and penalties are not being deposited into the Fund.	I

Appendix C: Analysis of the Implementation Status of First Source Law Provisions

	D.C. Code Requirement	Auditor's Analysis	Status ¹
	contributions for similar purposes that have yet to be collected or expended; and (2) All outstanding monetary fines for breach of this part. (b) All funds deposited into the Fund, and any interest earned on those funds, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in subsection (a) of this section without regard to fiscal year limitation, subject to authorization by Congress.		
44	D.C. Code § 2-219.05 Rules. (a)(1) Except as provided in § 2-219.03(e)(1B) and (1C), within 180 days of February 24, 2012, the Mayor, pursuant to subchapter I of Chapter 5 of this title [§ 2-501 et seq.], shall issue rules to implement the provisions of the Workforce Act. (2) The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the rules shall be deemed approved. (b) Any	This has not been implemented, DOES has indicated that it is in progress, but could not give a date for completion.	NI

Appendix C: Analysis of the Implementation Status of First Source Law Provisions

	D.C. Code Requirement	Auditor's Analysis	Status ¹
	subsequent rules issued by the Mayor to implement the provisions of this part shall be submitted to the Council for a 45-day period of review in accordance with subsection (a)(2) of this section.		
45	D.C. Code § 2-219.33 Establishment of the Office of First Source Compliance. Pursuant to § 1-204.04(b), the Council establishes, as of October 1, 2008, the Office of First Source Compliance, as a single administrative unit within the Department of Employment Services, to enforce, monitor, and ensure compliance with part A of this subchapter [§ 2-219.01 et seq.], by each beneficiary of government-assisted projects in the District of Columbia.	Until FY 2017 this office was previously housed within the DOES Department of Employment Services. Now it is a standing office under the Office of Wage and Hours Standards Bureau.	I
46	D.C. Code § 2-219.34 Functions and Duties. (a) The Office shall: (1) Monitor and track each beneficiary of government-assisted projects in the District to ensure compliance with the First Source Employment Agreement; (2) Ensure that each beneficiary who is presently working on a governmental-assisted project or is bidding on a governmental-assisted project is in compliance with the First Source Employment Agreement; (3) Require the	As indicated in our audit report, the OFSC lacked written policies and procedures which led to inconsistencies in monitoring efforts making it difficult to evaluate the effectiveness of the program in providing employment to District residents.	NEI

Appendix C: Analysis of the Implementation Status of First Source Law Provisions

	D.C. Code Requirement	Auditor's Analysis	Status ¹
	beneficiary to submit to the Office a report on the 15th of each month on a form proposed by the Mayor; and (4) Submit to the Council and the Mayor a quarterly report on a form proposed by the Mayor.		
47	D.C. Code § 2-219.34 Functions and Duties. (b) The Department of Employment Services shall meet with the Council's Committee on Workforce Development and Government Operations and the members of the affected business community. Based on such meetings, the Department of Employment Services shall prepare recommendations regarding additional proposed functions and duties of the Office and shall submit the recommendations to the Mayor.	DOES indicated that this is in progress and they plan to have meetings with the Council committees and members of the affected business community. When the SOPs and rules are finalized they will move forward. They were, however, unable to provide a target date for completion.	NEI
48	D.C. Code § 2-219.34 Functions and Duties. (c) Based upon the recommendations submitted to the Mayor pursuant to subsection (b) of this section, on or before October 31, 2008, the Mayor shall submit an act to the Council: (1) Establishing any additional functions and duties of the Office; (2)(A) Proposing penalties under § 2-219.03(e)(4), for beneficiaries of government-assisted projects who do not comply with the requirements of part A of this subchapter [§ 2-219.01 et seq.].	DOES indicated that this is in progress and they plan to have meetings with the Council committees and members of the affected business community. When the SOPs and rules are finalized they will move forward. They were, however, unable to provide a target date for completion.	NEI

Appendix C: Analysis of the Implementation Status of First Source Law Provisions

	D.C. Code Requirement	Auditor's Analysis	Status ¹
	(B) Any monetary penalties proposed shall be used for job-training programs; and (3) Proposing an appeal process, which may include the Contract Appeals Board appellate process, including its scope, under § 2-219.03(e)(5).		
49	D.C. Code § 2-219.35 Executive Director. The Office shall be headed by an Executive Director appointed by the Mayor. The Executive Director shall be a resident of the District of Columbia or agree to become a resident of the District of Columbia within 180 days of appointment by the Mayor. The Executive Director shall employ staff as needed, in accordance with annual appropriations.		

Appendix D
**Areas to Address During SOP Implementation to
Strengthen Their Effectiveness**

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services



TRANSMITTAL LETTER

Subject	Date
Office of First Source Compliance <i>Standard Operating Procedure</i>	<i>March 14, 2018</i>

Purpose: This Standard Operating Procedure (SOP) establishes procedures to be used by the Office of First Source Compliance (OFSC) within the Department of Employment Services, Office of Wage-Hour (OWH).

Applicability: This SOP shall apply to all employees in OFSC and OWH.

Implementation of this SOP shall begin as soon as possible. Full implementation of this SOP shall be completed within 30 days after the date of issuance of this SOP.

Policy Dissemination and Filing Instructions: Managers of OWH/OFSC must ensure that staff is informed of this SOP. All Contractors must ensure that this SOP is maintained in accordance with their internal procedures.

Standard Operating Procedures
Office of First Source Compliance
Revised: March 14, 2018

DIRECTOR,

SIGN _____

A handwritten signature in black ink, appearing to read "Odie Donald II", is written over a horizontal line.

ODIE DONALD II



District of Columbia Department of Employment Services Standard Operating Procedures (SOPs)	
Division: Office of Wage-Hour	Subject: Office of First Source Compliance
Associate Director: Michael I. Watts, Jr.	Date of Issuance: March 14, 2018
<u>Note:</u> <i>This Standard Operating Procedure, including any attachments, is intended only for internal use by staff at the Department of Employment Services, and is not to be distributed. It contains information which may be confidential, legally privileged, and proprietary in nature.</i>	

APPROVAL



MICHAEL I. WATTS JR., Associate Director



Date

PURPOSE

This SOP is an instructional reference guide for the procedures and activities relevant to the Office of First Source Compliance (OFSC) within the Office of Wage-Hour (OWH). Essential tasks covered by this SOP include: 1) education of Employers regarding the First Source Law (the Law), 2) processing of First Source Employment Agreements (FSEAs), 3) monitoring of First Source Employment Agreements (FSEAs), 4) necessary decision making pursuant to the Law, 5) enforcement of the Law, and, 6) the keeping and maintenance of records necessary to the administration and enforcement of the Law.

APPLICABILITY

This SOP shall apply to all staff of OWH and OFSC.

AUTHORITIES

- D.C. Official Code § 2-219.01 *et seq.*, as amended
- D.C. Official Code § 32-1431
- Mayor's Order dated: January 10, 2018

SCOPE AND BACKGROUND

OFSC processes and monitors all First Source Employment FSEAs (FSEA) for entities awarded government assisted projects or contracts totaling \$300,000 or more to ensure that 51% of all project new hires are District residents for non-construction and construction. OFSC also monitors all government assisted construction projects totaling \$5 million or more, verifying that the hours worked by District residents on the project represent 20% of all journey worker hours, 60% of all apprenticeship hours, 51% of all skilled laborer hours and 70% of all common laborer hours.

The major tasks performed by the OFSC are:

- Processing and maintaining records of DC Government First Source FSEAs which include the Employment Plan
- Reviewing Employment Plans of entities
- Educating Beneficiaries and Employers on compliance with First Source law.
- Conduct round table, train-the-trainer and information sessions with Contracting Agencies and General Contractors
- Reviewing Subcontractor List of all contracts awarded on the project (Company Name, Contract Amount, Estimated Start-Date and End-Date)
- Verifying Employees as DC residents
- Performing desk review and site visit of Employers contract compliance data and records
- Auditing employer records that may include certified payrolls, employee addresses, and type of labor provided by employees for hours worked percentages
- Processing and recording all information (Account Maintenance)
- Issuing compliance failure notices, compliance status updates, and compliance

Regarding reviewing the subcontractor list of all contracts awarded on the project, DOES should further define this process and how this information will be obtained.

closeout letters

- Assessing Employers good faith efforts to hire DC residents or meet hours worked percentages of journey workers, apprentices, skilled laborers, and common laborers
- Process fines or penalties
- Participating in appeals as appropriate

Scope of Records Reviewed

OFSC reviews employer records and plans for compliance with the law. The records and documentation reviewed and searched may include:

- Funding Source
- The period of funding
- Contract amount of funds from the District of Columbia Government
- Contract
- Hires
- DC New Hires
- Transfers
- Total Journey Worker Hours
- DC Resident Journey Worker Hours
- Total Apprentice Hours
- DC Resident Apprentice Hours
- Total Skilled Laborer Hours
- DC Resident Skilled Laborer Hours
- Total Common Laborer Hours
- DC Resident Common Laborer Hours
- Payroll Records
- Unemployment Insurance or any other records which may reflect paid services and residential information
- Job Descriptions
- Employment Plans

Regarding non-construction projects, how will IDIQ contracts be monitored and hiring requirements tracked?

Non-Construction vs. Construction Employees

Non-Construction – Requirement is based on Contract Value

- Employers with contracts valued at \$300,000 or more must enter into a FSEA and shall hire DC residents for at least 51% of all new jobs created by the contract.

Construction – Requirement is based on the value of the DC Government funding or benefit

- Employers with contracts valued at \$300,000 - \$4,999,999 must enter into a FSEA and shall hire DC residents for at least 51% of all new jobs created by the project.
- Construction – An Employer with a contract valued at \$100,000 on any projects of any size which falls under the old law, must enter into a First Source Employment FSEA and shall hire DC residents for at least fifty one percent (51%) of all new jobs created by the project.
- Employers on Construction projects with government funding or benefits valued at \$5,000,000 or more must enter into a FSEA and shall meet the following hours worked percentages for the project:
 1. At least 20% of all journey worker hours by trade shall be performed by DC residents;
 2. At least 60% of all apprentice hours by trade shall be performed by DC residents;

3. At least 51% of all skilled laborer hours by trade shall be performed by DC residents; and
4. At least 70% of all common laborer hours shall be performed by DC residents.

PROCEDURES

Completed FSEAs

Regarding procedure #2 under completed FSEA, how will General Contractor submissions be verified and reconciled for accuracy? DOES has indicated the current process has significant breakdowns.

1. The Office of Contracting and Procurement (OCP) and District of Columbia agencies with independent contracting authority (CA) are responsible for ensuring that the Employer is aware of their First Source hiring or worked hours percentage requirements based upon the amount of the government assistance received. After the OCP/CA's receive a completed and signed First Source FSEA from an Employer, the OCP/CA's will transmit the FSEA to the OFSC at least 7 days prior to the start date of the contract or project.
2. OCP, CA, Developer and the General Contractor are all responsible for sending the FSEA to the First Source Mailbox at (firstsource@dc.gov). The General Contractor must submit the FSEAs of its subcontractors. The First Source Mailbox is checked daily.
3. Upon receipt of the FSEA, OFSC staff shall print and date stamp the FSEA, log information onto the First Source FSEA Tracker spreadsheet, and review the FSEA for completeness and accuracy.

Incomplete FSEAs

4. The incomplete FSEA is entered on the First Source FSEA Tracker spreadsheet as "Incomplete".
5. All incomplete FSEAs will be forwarded to the OCP or CA or Developer or General Contractor with an explanation of why First Source is unable to proceed with processing.
6. Once the FSEA is corrected, the completed FSEA should be forwarded to the First Source Mailbox (firstsource@dc.gov)

Processing FSEAs

7. OFSC staff will place a coversheet on the FSEA and forward it to First Source monitor assigned to project or contract for review. After review is completed, OFSC staff submits to Associate Director of the Office of Wage-Hour for final review and approval signature.
 - a. Once the FSEA is approved, the OFSC Supervisor will assign an OFSC member to monitor the FSEA for compliance. The program support assistant will scan and forward the FSEA to the appropriate contracting agency, developer, or General contractor and copy the OFSC compliance monitor, indicating the approval.
 - b. Within 3 days, OFSC staff shall enter the FSEA into the First Source On-Line Registration & Reporting System (FORRS) which is an application that First Source uses to setup projects, organize, manage, and update all First Source information.
 - c. After the FSEAs are entered into the system, Employers can register and report contract compliance data.
 - d. DOES forward a copy of the signed FSEA and a cover letter to the OCP or CA or Developer or General Contractor. The cover letter provides the employer with instructions on registering and listing job openings with DOES and submitting the monthly compliance report.
 - e. The Beneficiary (prime contractor) receiving government assistance shall choose whether the 51% of the new employees hired or hours worked percentages shall be cumulative of all new hires or hours worked percentages including those made by all subcontractors at any tier who worked on the project or contract; or met by each subcontractor, individually, at any tier who work on the project.
 - f. A copy of each FSEA is maintained onsite at DOES' Headquarters in a hardcopy and soft copy file, on the First Source's shared drive, and in FORRS.
 - g. First Source will provide the Office of Apprenticeship with the Developer/General Contractor FSEAs to provide any updates on upcoming projects.

Special FSEA (Modification)

1. The content of the FSEA may be modified under the following circumstances:
 - a) The First Source Associate Director requests a change.
 - b) The Council of the District of Columbia has passed legislation amending the First Source requirements or special legislation applicable to a single or series of projects.
 - c) A negotiated special FSEA that enhances the FSEA with additional employment opportunities for District residents.
2. All modifications must be approved by the OFSC Associate Director prior to approval of the FSEA.
3. The following actions will be taken when a modified FSEA is approved by the First Source Associates Director:
 - a) DOES comments shall include a statement regarding approval or disapproval of the FSEA.
 - b) DOES forwards its comments and the signed original FSEA to OCP, CA, and the Developer or General Contractors and subcontractors within five business days of approval by the Associate Director.
3. OFSC enters the FSEA into the FORRS system.

Employment Plan

All Employers that are subject to the First Source Employment FSEA must submit an Employment Plan indicating all new positions that will be created as a result of the project or contract. If the company is not creating any new employment opportunities, they must complete the justification sheet with an explanation. The OFSC staff will adhere to the following procedures:

1. Pull the Employment Plan from the First Source Employment FSEA with job creation projections;
2. Maintain an electronic Employment Plan and New Job Creation Projection Tracker spreadsheet containing all the job creation projections from the Employment Plans; and
3. Forward Employment Plan which includes Employer's new job creation projection to the Business Services Group and American Job Center;
4. OFSC staff to follow-up with BSG regarding Employment Plan new job creation projection to see if referrals were made.
5. Enter referrals onto Employment Plan/New Job Creation Projection Tracker.
6. If there are no candidates matching the supplied qualifications, OFSC and the Employer may agree to develop specific skills training program as approved by DOES.
7. The training specifications and cost for such training will be made by OFSC with input from the Employer.
8. Upon award of contract all Employers must submit a revised Employment Plan to OFSC.
9. Review new job creation projections and hour worked percentages.
10. If there are no new job creation projections or hours worked percentages, review with General Contractor and Subcontractor an alternative plan.
11. Associate Director to approve Alternative Plan.
12. Track the success of Alternative Plan.

Office of First Source Compliance Monitoring

1. As a part of monitoring and enforcement, the FSEA shall require the Employer to grant DOES access to worksites, employees, and documents for reporting verification.
2. An Employer's noncompliance with the provisions of this FSEA may result in a recommendation of fines and penalties.

Regarding procedure #2 under Office of First Source Compliance Monitoring, what are these specific fines and penalties for failure to grant DOES access?

3. All Employer information reviewed or gathered as a result of DOES' monitoring and enforcement activities will be treated confidentially and stored in a secure location in accordance with all District and federal confidentiality and privacy laws.

Office of First Source Compliance Activities:

1. Monitor and track each beneficiary of government-assisted projects in the District to ensure compliance with the First Source Employment FSEA.
2. Review all contract controls to determine if Employer is subject to Law 19-84 and DC Law 14-24.
3. Notify stakeholders and company officials regarding compliance updates and schedule meetings, training and provide technical assistance involving the FSEA requirements and First Source Reporting Process.
4. Educate Employers about additional services offered by DOES such as tax incentives for Employers who hire from certain categories and Business Services Group for referrals, recruitment and placement.
5. Instruct Employers/Contractors to register in DC Networks, and posting positions in DCNetworks.
6. OFSC to research DCNetworks to ensure Employers and Contractors are registering and are posting positions into the DCNetworks.
7. Participate in the Contract Agencies vendor workshops, training sessions and meetings.
8. Correspond with BSG and Employers regarding Employment Plan Job Creation Projections to ensure qualified District candidates are being referred and hired.
9. Review the percentages of hours worked via the LCP Tracker which totals the hours worked percentages per classification from the weekly upload of certified payrolls by Employer. Review payroll records to ensure all payrolls are uploaded to receive accurate reporting data.
Note: OFSC staff will confirm whether an employee listed as "Hard to Employ" is certified under the "Hard to Employ" categories through review of the Automated Client Eligibility Determination System (ACEDS) and Department of Human Services. Employers are able to double count hires or hours worked up to 15% of total hires or hours worked by District Residents.
10. Reviews hiring of District Resident requirement through the First Source On-Line Registration & Reporting System to assure all Employers subject to the First Source FSEA are meeting the 51% new hiring of District resident requirement.
11. Conduct desk reviews of the First Source on-line reporting data and LCP Tracker data submitted and certified by the Employers, to ensure compliance with the First Source Employment FSEA requirements. Review payroll data and identifications to ensure employees are working onsite and are District Residents as required.
12. Conduct site visits to meet with the Employer (non-construction)/General Contractor (construction) to review the Employer/subcontractor's compliance with the FSEA requirements.
13. Meet with individual subcontractors as needed to discuss compliance issues or good faith efforts to comply.
14. Follow-up with Contract Agencies to request notice of award information.
15. Review Procure Automated Support System (PASS) notices of award and enter contract award information into First Source Online Registration and Reporting System.
16. Notify Employers of standard failures which will result in a determination of non-compliance. (See Table 1 below)

Regarding 17b, how will this goal be established? Will these goals be documented?

Table 1

First Source Desk Review	Letters Submitted to Employer
Employers did not submit their reports by the 15 th of the month.	Failure to Submit Monthly Reports
Employers are below the 51% New DC Hire goal.	Status Update sent to Employer
Employers that are not meeting hours worked percentages.	Status Update sent to Employer
Employer did not meet hiring or hours worked percentages by the end of their contract or project.	Non-compliance letter sent to Employer

17. Within **SEVEN** (7) days of discovery a compliance issue with the FSEA requirement, provide formal written notification of non-compliance with the required hiring or hours worked percentages, or any alleged breach of the First Source Law to contracting agencies, general contractors, and Employers.
 - a. If Employer has not submitted monthly FSEA compliance report data, Employer has **SEVEN** (7) days from the receipt of written notification to submit data.
 - b. If Employer is below the hiring and hours worked percentages goal, the Employer has **THIRTY** (30) days to correct any alleged deficiencies, such as misclassified workers, stated in the notification.
18. For an immediate response, if the Employer does not reply within **SEVEN** (7) days, correspondence regarding the non-compliance will be forwarded to the president or owner of the company.
 - a. If the president or owner fails to reply, the general contractor or Developer is contacted for immediate response to the compliance issue.
19. Require 501(c) (3) non-profit organizations with 50 or less employees to submit three (3) months payroll to verify number of employees to be exempt from First Source requirements.

First Source Final Report

1. Before final payment, at the end of the Employers/Contractors scope of work, the final workforce statistics are requested.
2. Employers with the 51% hiring requirement submits their final Contract Compliance report data through the First Source Online Registration and Reporting System. Employers with the hours worked percentages requirement will submit their final contract compliance report data through the LCP tracker or subsequent reporting system. The OFSC staff reviews the final workforce statistics to see if Employer(s) has met the First Source hiring or hours worked percentages requirement. OFSC staff enters case notes into the Employer FSEA, finalizes the hiring statistics, enters the final workforce statistics, and then changes the FSEA from active to complete.
3. If Employer is below the workforce requirement, a Notice of Determination letter is sent to the Employer, and the Employer has **FIVE** (5) days of receipt of letter to request a good faith waiver.
4. Employer may also appeal the imposition of the fine to the Contracts Appeals Board within **NINETY** (90) days. (*See Penalty Process*)

Process to Determine Good Faith Effort Compliance:

DOES may waive the hiring or hours worked percentage requirements for all jobs created by the Project, and/or the required percentages of DC residents in all Job Classification areas on the Project, if DOES finds that:

1. Employer demonstrated good faith efforts to comply, as set forth in Section C of the First Source Employment FSEA.
2. Employer is located outside the Washington Metropolitan Statistical Area and none of the contract work is performed inside the Washington Metropolitan Statistical Area.
3. Employer entered into a special workforce development training or placement arrangement with DOES or with the District of Columbia Workforce Intermediary; or
4. There are insufficient numbers of DC residents in the labor market possessing the skills required by the Employer for the positions created as a result of the Project. No failure by Employer to request a waiver under any other provision hereunder shall be considered relevant to a requested waiver under this Subsection.
5. Measures of Good Faith Effort will also be applied to Alternative Employment Plans
6. The First Source Compliance Monitor must determine whether the following good faith efforts are being performed by the Employer, which include but are not limited to:
 - a) DOES has certified that there are insufficient numbers of District residents in the labor market possessing the skills required by the EMPLOYER for the positions created as a result of the Project.
 - b) Whether the EMPLOYER posted the jobs on the DOES job website for a minimum of 10 calendar days;
 - Employer must register and post all job vacancies for First Source Project or Contract into DOES DC Networks at www.dcnetworks.org.
 - Employer must keep job opening posted on website for **TEN (10)** calendar days.
 - Employer, if you require assistance with posting job vacancies contact job bank at (202) 698-5765.
 - c) Whether the EMPLOYER advertised each job opening in a District newspaper with city-wide circulation for a minimum of **SEVEN (7)** calendar days;
 - Employer advertised job opening of position (s) needed in District of Columbia newspaper with citywide circulations for more than **SEVEN (7)** calendar days. The position must be advertised near the timeframe the position is required to begin the work. Must keep copies of tear sheet (*page cut from publication to prove the date and advertisement published*) with date of advertisement.
 - Employer can post job opening positions in a web base search engine that have a city-wide circulation.
 - Employer must maintain copies of advertisements to include name of search engine or publication and date of advertisement on file.
 - d) Whether the EMPLOYER advertised each job opening in special interest publications and on special interest media for a minimum of **SEVEN (7)** calendar days;
 - Employer must advertise each job opening in an industry related publications or electronic media for a minimum of **SEVEN (7)** calendar days.
 - Employer must maintain copy of tear sheet (*page cut from publication to prove the date and advertisement published*)
 - e) Whether the EMPLOYER hosted informational/recruiting or hiring fairs;

- Employer hosted informational/ recruiting in hiring fair(s), specifically for a First Source project/contract. *(Must have copy of sign-in sheet with date of event, name and address of attendees, and the position applied for or applying for).*
- f) Whether the EMPLOYER contacted churches, unions, and/or additional Workforce Development Organizations;
 - Employer shall provide documentation of their correspondences, hiring activities with churches, unions, and workforce development organizations.
 - Must maintain copies of correspondence, dates of hiring activities, and sign-in sheets with persons that participated and results.
- g) Whether the EMPLOYER interviewed employable candidates;
 - Employer shall provide job descriptions and resumes.
 - Employer shall provide records of their job fair sign-in sheet, date, name of DC Residents invited, those that attended, and hiring actions (hired or if not hired reason).
- h) Whether the EMPLOYER created or participated in a workforce development program approved by DOES;
 - Pre-Apprenticeship training program.
 - Employer partner with DOES to get referrals of training program.
 - Employer partner with a workforce development organization to create a training program approved by DOES.
- i) Whether the EMPLOYER created or participated in a workforce development program approved by the District of Columbia Workforce Intermediary;
 - Partner with Workforce Intermediary as an intermediary between employers and training providers to provide employers with qualification District resident job applicants and qualified training provided.
- j) Whether the EMPLOYER substantially complied with the relevant monthly reporting requirements set forth in this section;
 - Employer must report 51% hiring or hours worked percentages on a monthly basis.
 - Employer report 51% hiring requirement in the First Source On-line Registration and Reporting System (FORRS) <http://firstsource.dc.gov>.
 - Employer report hours worked percentages in the LCP tracker. Contact General Contractor for instructions.
 - Employer must upload their certified payrolls on a weekly basis until completion of scope of work (projects with hours worked percentages requirement).
 - For any questions, issues or concerns contact First Source assigned project monitor.
- k) Whether the EMPLOYER has submitted and substantially complied with its most recent employment plan that has been approved by DOES; and
 - Employment Plan shall list the new job creation (new hiring) projections to meet the requirement of the First Source 51% hiring or projections of hours worked percentages of District residents hours worked percentages requirement.
 - First Source FSEA 51% Hiring or Hours Worked Percentages will be measured at the end of project.
 - Employer must adhere to the Good Faith Efforts.
 - Employer must maintain materials supporting good faith efforts.
- l) Any additional documented efforts.
 - Employer to maintain on file the results from DOES referrals. If there were no available candidates with the necessary skills to refer from the District of Columbia, maintain correspondence and/or response from DC Networks.
 - Employer to hire graduates of District of Columbia Public Schools, District of Columbia Public Charter Schools, community based job training providers Jointly Funded Apprenticeship Programs, the District of Columbia Workforce

Intermediary, or other government-approved, community-based job training providers.

- Employer to partner with Phelps, Architecture, Construction and Engineering High Schools to hire graduates, place into apprenticeship program or training program developed by the contractor.

7. Waiver Request Process:

Steps First Source performs when an Employer requests a waiver:

- a) First Source Monitor will review Employer's justification for waiver and appropriate documentation;
- b) First Source Monitor will schedule a meeting or conference call with the Employer and Contracting Agency;
- c) First Source Monitor will confirm with BSG, when necessary, recruitment efforts of the employer; registration in DCNetworks (Virtual One Stop), postings and participation in hiring fairs;
- d) First Source Compliance Monitor will make recommendation to the Associate Director;
- e) Prior to granting the waiver, a committee consisting of the Director, the Chief of Staff, and the Associate Director, or their respective designees, will review the requested waiver and make a final determination.
- f) Once the final determination is made, Associate Director will forward the final determination to the Mayor or their delegate;
- g) All waiver request documentation is to be filed electronically on the First Source shared drive in the OFSC/Document/Waiver Request Folder and a hard copy will be placed into the project folder.

8. Penalty and Appeal Process:

1. OFSC will request the direct and indirect labor costs from the Employer.
2. OFSC will produce a Final Contract Compliance Data Report.
3. OFSC will review the certified payrolls as relates to any failure to meet the resident hiring requirement or the resident percentage of hourly work requirement.
4. OFSC will use the penalty calculation spreadsheet to calculate the fine.
5. The penalty will be equal to 1/8 of 1% of the total amount of the direct and indirect costs of the project or contract for each percentage point by which the beneficiary fails to meet the hiring or percentage of hours worked requirements.
6. Employer's willful breach of the FSEA, failure to submit the contract compliance reports or deliberate submission of falsified data will result in DOES imposing a fine totaling 5% of the direct and indirect labor costs of the project or contract.
7. OFSC will meet with the General Contractor/Subcontractor/Employer, regarding Employer's efforts toward good faith compliance, in advance of penalty assessment.
8. OFSC will provide the Associate Director with its recommendation concerning the good faith waiver request. The Associate Director shall communicate with the Employer in attempt to remediate the failure to comply.
9. If the attempt to remediate should fail, the Associate Director will provide notice of the OFSC Final Determination to the Employer.
10. OFSC will save the Final Determination on the shared drive, in the "Notice of Determination" file and in the Employer file. A hard copy will then be placed in the "Potential Penalty Binder". Additionally, a note will be made in the "FORRS FSEA" case note section.

11. Employer has 90 days to request an appeal with the Contract Appeals Board.
12. If the Employer does not appeal the final determination, they will be instructed to make payment by business check, cashier's check or money order. The check or money order should be made payable to the DC Treasurer.
13. All payments should be mailed via first class mail to the Department of Employment Services, Office of Wage-Hour, and Attn: Mr. Michael I Watts, Jr. at 4058 Minnesota Avenue, NE, Washington, DC 20019. OFSC shall seek to establish a standing arrangement with the Contract Appeals Board whereby the Board will provide OFSC notice of all appeals filed before it stemming from an OFSC final determination. The Office of Attorney General will represent DOES on appeal.
14. OFSC will strictly comply with any OAG Notice of Litigation and Data Preservation.
15. OFSC will provide OAG with any documents requested in preparation for appeal, or, in response to valid discovery demand.
16. OFSC will seek periodic updates from OAG with regard to any pending appeal. In addition, OFSC will make appropriate staff available to OAG for meetings, conference calls and appeal preparation as required. OFSC will maintain a record of all potential penalty assessment.
17. OFSC will maintain a record of all final penalty assessments, whether imposed subsequent to, or without, appeal.

Semi-Annual Reports

- OFSC will be responsible for preparing, reviewing, validating and submitting a Semi Annual Report to the Council of the District of Columbia on January 31st and July 31st of each year pursuant to D.C. Code § 2-219.04.

The Job Trust Fund

The First Source Compliance Act (D.C. Official Code § 2-219.04c) establishes a Job Trust Fund (the Fund) to be administered by the Department of Employment Services. The Fund consists of the revenue generated by penalty assessments made pursuant to the Act.

The Fund shall be used to enforce the provisions of this Act. The money deposited into the Fund, nor the interest earned therefrom, shall at any time revert to the General Fund of the District of Columbia. The Job Trust Fund is subject to authorization as part of an approved budget and financial plan; any money available in the Fund shall remain available without regard to fiscal year limitations.

Actions Required

- 1.) The First Source Monitor shall make an initial determination on whether the Employer has successfully fulfilled the requirements of their First Source Agreement. If the FSEA requirements have not been met, the First Source Monitor will assess whether Employer made a "good faith" effort to comply. The monitor will then advise the Associate Director of their determination. Pursuant to the Act, the First Source Monitor shall record the penalty amount on the required progress report. The monitor shall also provide the Employer with notice of the determination.
- 2.) The Associate Director has the authority to negotiate settlement of FSEA violations. The final penalty assessment must be approved by both the Associate Director for the Office of Wage-Hour and the Deputy Director of the Labor Standards Bureau or the DOES Director's designee.

Refunds and Adjustments

Request for refunds must be received within TEN (10) days of OWH's receipt of payment. Final Determinations shall be made based on consideration of all relevant evidence, including, but not limited to, payroll records, timesheets and witness statements¹, etc. Final Determination will be issued within THIRTY (30) days of receipt of a request for "Good Faith" waiver.

Payments Received

- All checks and money orders must be made payable to the D.C. Treasurer.
- All checks and money orders must be deposited within 48 hours of receipt by OWH.
- OWH will not accept payment by cash or personal check.

Deposits:

- 1.) The Job Trust Fund binder shall be properly labeled and located in a secure location accessible to OFSC staff members. An electronic copy shall be created and maintained on a secure network server. The Associate Director, or their designee, shall update and maintain all records within the Job Trust Fund Binder.
- 2.) OWH will create and maintain a *Revenue Cash Receipt* file to be located on S: drive. Each receipt shall include, or be logged into the file with the following information identified:
 - a. Document Number – Job Trust Fund: This number should be the next consecutive number: i.e. (1 or 2). The Act under which that the payment is received should be clearly noted.
 - b. Fund Code (XXX)
 - c. AGY (CFO)
 - d. Index (this code is based on the Act used to determine the penalty)
 - e. Description – To include the words "Administrative Penalty Due (OFSC) by (employer/business' name)"
 - f. Dollar amount of checks
 - g. A "Prepared by" section containing 1) the name of the First Source Monitor, 2) the Date and 3) the OFSC main telephone number.
- 3.) Print the *Revenue Cash Receipt* and attach the live check; take the check to the Associate Director for authorization and signature.
- 4.) The *Revenue Cash Receipt* must be accompanied by a "*Penalty Assessment (PA)*." The PA must show the Act administered, date penalty assessed, employer, employee(s), amount levied, amount waived, amount received, date payment received by OWH and the outstanding balance, if any.
- 5.) Once signed by Associate Director, make two (2) copies of the *Revenue Cash Receipt* and the check(s).
- 6.) Take the original *Revenue Cash Receipt*, with corresponding live checks, and a copy of the PA to the CFO on the 5th floor. The OWH copy of the *Revenue Cash Receipt* must be date stamped and signed by the CFO.
 - a. The original signed receipt must be placed in the "OFSC Penalty Binder."
 - b. Copy of signed receipt must be placed in the case file.

¹ As used here, the term "witness statement" is not limited to statements made under oath, but, may include any information obtained by OFSC, from any individual with personal knowledge of the subject matter, through any lawful means.

- c. The information from Revenue Cash Receipt will be recorded electronically on the "S" drive.

*If any errors or blanks exist on the receipt, it will be returned to the preparer by the CFO for corrections and will need to be resubmitted.

Failure to Pay Procedures

Process for employers who fail to pay: Employers who fail to pay their penalty to the Job Trust Fund will be provided a second notice of their infraction and provided a date for payment. If no payment is received, OFSC shall forward notice of nonpayment to the appropriate District agencies to ensure that, pursuant to law, "the District government shall not issue or reissue a license or permit to any applicant for a license or permit if the applicant owes the District any past due fines, penalties, or past due restitution."

Once OFSC has confirmed payment and/or payment arrangements with the business, all appropriate files shall be immediately updated.

Process for employers who close their business: Upon notice that a business operating under a FSEA has closed, OFSC shall diligently investigate whether the entity has, in fact, closed. The investigation may include: 1) visit to the physical site of the business, 2) communication with company owners, executives and agents, and, 3) consultation with other government entities to determine whether the business has been closed.

Process for bankrupt employers: The United States Bankruptcy Court will be contacted for verification. Once verified, OFSC staff will forward the matter to the OAG which will file whatever legal document or pleading, if any, deemed appropriate in its estimation.

The money deposited into the Fund, and the interest earned therefrom, shall not revert to the District of Columbia's General Fund at the end of a fiscal year or at any other time.

It will be necessary that the records of the Job Trust Fund be reconciled with the OCFO monthly, quarterly or bi-annually as determined by the District.

Freedom of Information Act (FOIA) Requests

- a) All Freedom of Information Act requests are to be submitted to the DOES General Counsel with copies forwarded to the Associate Director of the Office of Wage-Hour, and OFSC Supervisor, for response. The OFSC Supervisor will forward the FOIA request to an assigned compliance monitor to retrieve the requested information. The compliance monitor will submit the requested information to the OFSC Supervisor for review.
- b) The final response will be forwarded to the General Counsel with a copy to the Associate Director of the Office of Wage-Hour.

Review of Completed Work

Completed work will be reviewed using a random sampling of OFSC files. Review will be conducted both monthly and quarterly. While review will evaluate internal performance, it will also focus on evaluating overall compliance with the Law. When indicated, DOES will modify OFSC's Standard Operating Procedure in order to ensure both internal efficiency and overall compliance with the First Source Law.