

**FY 2014**

**CONGRESSIONAL BUDGET JUSTIFICATION**

**WAGE AND HOUR DIVISION**



# WAGE AND HOUR DIVISION

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# WAGE AND HOUR DIVISION

## APPROPRIATION LANGUAGE

### WAGE AND HOUR DIVISION

#### SALARIES AND EXPENSES

*For necessary expenses for the Wage and Hour Division, including reimbursement to State, Federal, and local agencies and their employees for inspection services rendered, \$243,254,000. (Department of Labor Appropriations Act, 2012.)*

*[Note.—A full-year 2013 appropriation for this account was not enacted at the time the budget was prepared; therefore, this account is operating under a continuing resolution (P.L. 112–175). The amounts included for 2013 reflect the annualized level provided by the continuing resolution.]*

# WAGE AND HOUR DIVISION

## WAGE AND HOUR DIVISION

<b>AMOUNTS AVAILABLE FOR OBLIGATION</b>						
(Dollars in Thousands)						
	FY 2012 Revised Enacted		FY 2013 Full Year C.R.		FY 2014 Request	
	FTE	Amount	FTE	Amount	FTE	Amount
<b>A. Appropriation</b>	<b>1,460</b>	<b>\$227,491</b>	<b>1,510</b>	<b>\$228,451</b>	<b>1,573</b>	<b>\$243,254</b>
Reduction pursuant to (P.L. 112-74) for FY 2012	0	-\$430	0	\$0	0	\$0
<i>Subtotal Appropriation</i>	<i>1,460</i>	<i>\$227,061</i>	<i>1,510</i>	<i>\$228,451</i>	<i>1,573</i>	<i>\$243,254</i>
Non-Expenditure Transfer to DM for Program Evaluation.	0	-\$600	0	\$0	0	\$0
Reimbursements (CMP's)	0	\$2,800	0	\$2,800	0	\$2,800
H-1B L Fraud Fees (Collected)	299	\$35,000	299	\$35,000	299	\$35,000
H-2B Fees	0	\$3,827	0	\$0	0	\$0
<i>Subtotal</i>	<i>1,759</i>	<i>\$268,088</i>	<i>1,809</i>	<i>\$266,251</i>	<i>1,872</i>	<i>\$281,054</i>
<b>B. Gross Budget Authority</b>	<b>1,759</b>	<b>\$268,088</b>	<b>1,809</b>	<b>\$266,251</b>	<b>1,872</b>	<b>\$281,054</b>
Non-Expenditure Transfer to DM for Program Evaluation.	0	\$600	0	\$0	0	\$0
Reimbursements (CMP's)	0	-\$2,800	0	-\$2,800	0	-\$2,800
H-1B L Fraud Fees (Collected)	-299	-\$35,000	-299	-\$35,000	-299	-\$35,000
H-2B Fees	0	-\$3,827	0	\$0	0	\$0
<b>C. Budget Authority Before Committee</b>	<b>1,460</b>	<b>\$227,061</b>	<b>1,510</b>	<b>\$228,451</b>	<b>1,573</b>	<b>\$243,254</b>
Non-Expenditure Transfer to DM for Program Evaluation.	0	-\$600	0	\$0	0	\$0
Reimbursements (CMP's)	0	\$2,800	0	\$2,800	0	\$2,800
H-1B L Fraud Fees Actual	299	\$45,150	299	\$45,150	299	\$45,150
H-2B Fees Actual	0	\$3,827	0	\$0	0	\$0
<b>D. Total Budgetary Resources</b>	<b>1,759</b>	<b>\$278,238</b>	<b>1,809</b>	<b>\$276,401</b>	<b>1,872</b>	<b>\$291,204</b>
Unobligated Balance Expiring	0	-\$1,116	0	\$0	0	\$0
Additional FTE Usage	50	\$0	0	\$0	0	\$0
<b>E. Total, Estimated Obligations</b>	<b>1,809</b>	<b>\$277,122</b>	<b>1,809</b>	<b>\$276,401</b>	<b>1,872</b>	<b>\$291,204</b>

# WAGE AND HOUR DIVISION

## SUMMARY OF CHANGES

(Dollars in Thousands)

	FY 2012 Revised Enacted	FY 2014 Request	Net Change
<b>Budget Authority</b>			
General Funds	\$227,061	\$243,254	+\$16,193
<b>Total</b>	<b>\$227,061</b>	<b>\$243,254</b>	<b>+\$16,193</b>
<b>Full Time Equivalents</b>			
General Funds	1,809	1,872	63
<b>Total</b>	<b>1,809</b>	<b>1,872</b>	<b>63</b>

Explanation of Change	FY 2012 Base		Trust Funds		FY 2014 Change General Funds		Total	
	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
<b>Increases:</b>								
<b>A. Built-Ins:</b>								
To Provide For:								
Costs of pay adjustments	1,809	\$110,469	0	\$0	0	\$1,155	0	\$1,155
Personnel benefits	0	\$22,929	0	\$0	0	\$140	0	\$140
Employee health benefits	0	\$8,002	0	\$0	0	\$0	0	\$0
Moving allowance	0	\$0	0	\$0	0	\$0	0	\$0
One day more of pay	0	\$0	0	\$0	0	\$0	0	\$0
Federal Employees' Compensation Act (FECA)	0	\$1,601	0	\$0	0	\$0	0	\$0
Benefits for former personnel	0	\$0	0	\$0	0	\$0	0	\$0
Travel and transportation of persons	0	\$7,716	0	\$0	0	\$0	0	\$0
Transportation of things	0	\$28	0	\$0	0	\$0	0	\$0
Rental payments to GSA	0	\$10,569	0	\$0	0	\$299	0	\$299
Rental payments to others	0	\$28	0	\$0	0	\$0	0	\$0
Communications, utilities, and miscellaneous charges	0	\$3,597	0	\$0	0	\$0	0	\$0
Printing and reproduction	0	\$620	0	\$0	0	\$0	0	\$0
Advisory and assistance services	0	\$4,250	0	\$0	0	\$0	0	\$0
Other services from non-Federal sources	0	\$6,788	0	\$0	0	\$0	0	\$0
Working Capital Fund	0	\$18,730	0	\$0	0	\$1,600	0	\$1,600
Other Federal sources (DHS Charges)	0	\$1,076	0	\$0	0	\$0	0	\$0
Other goods and services from Federal sources	0	\$3,269	0	\$0	0	\$0	0	\$0
Research & Development Contracts	0	\$0	0	\$0	0	\$0	0	\$0
Operation and maintenance of facilities	0	\$0	0	\$0	0	\$0	0	\$0
Operation and maintenance of equipment	0	\$24,032	0	\$0	0	\$0	0	\$0
Supplies and materials	0	\$1,100	0	\$0	0	\$0	0	\$0
Equipment	0	\$2,257	0	\$0	0	\$0	0	\$0
Grants, subsidies, and contributions	0	\$0	0	\$0	0	\$0	0	\$0



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Explanation of Change	FY 2012 Base		Trust Funds		FY 2014 Change General Funds		Total	
	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
Insurance claims and indemnities	0	\$0	0	\$0	0	\$0	0	\$0
<b>Built-Ins Subtotal</b>	<b>1,809</b>	<b>+\$227,061</b>	<b>0</b>	<b>\$0</b>	<b>0</b>	<b>+\$3,194</b>	<b>0</b>	<b>+\$3,194</b>
<b>B. Programs:</b>								
Strategic Enforcement Achieves Compliance System and Prevailing Wage System (SEACS-PWS)	22	\$10,110	0	\$0	0	\$5,800	0	\$5,800
To provide for increased efforts to deter and detect worker misclassification	0	\$0	0	\$0	35	\$3,800	35	\$3,800
To provide for increased compliance of FLSA Section 14 (c)	0	\$0	0	\$0	21	\$2,500	21	\$2,500
To provide for increased enforcement of FMLA and FLSA overtime	0	\$0	0	\$0	7	\$899	7	\$899
Amendment to FLSA to Support an Adjustment to the Administrator's Compensation	0	\$156	0	\$0	0	\$0	0	\$0
<b>Programs Subtotal</b>			<b>0</b>	<b>\$0</b>	<b>63</b>	<b>+\$12,999</b>	<b>63</b>	<b>+\$12,999</b>
<b>Total Increase</b>	<b>1,809</b>	<b>+\$227,061</b>	<b>0</b>	<b>\$0</b>	<b>63</b>	<b>+\$16,193</b>	<b>63</b>	<b>+\$16,193</b>
<b>Decreases:</b>								
<b>A. Built-Ins:</b>								
To Provide For:								
<b>Built-Ins Subtotal</b>	<b>0</b>	<b>\$0</b>	<b>0</b>	<b>\$0</b>	<b>0</b>	<b>\$0</b>	<b>0</b>	<b>\$0</b>
<b>B. Programs:</b>								
<b>Total Decrease</b>	<b>0</b>	<b>\$0</b>	<b>0</b>	<b>\$0</b>	<b>0</b>	<b>\$0</b>	<b>0</b>	<b>\$0</b>
<b>Total Change</b>	<b>1,809</b>	<b>+\$227,061</b>	<b>0</b>	<b>\$0</b>	<b>63</b>	<b>+\$16,193</b>	<b>63</b>	<b>+\$16,193</b>

NOTE: FY 2012 reflects actual FTE.

## WAGE AND HOUR DIVISION

<b>SUMMARY BUDGET AUTHORITY AND FTE BY ACTIVITY</b> (Dollars in Thousands)								
	<b>FY 2012 Revised Enacted</b>		<b>FY 2013<sup>1</sup> Full Year C.R.</b>		<b>FY 2014 Request</b>		<b>Diff. FY 14 Request / FY 12 Rev. Enacted</b>	
	<b>FTE</b>	<b>Amount</b>	<b>FTE</b>	<b>Amount</b>	<b>FTE</b>	<b>Amount</b>	<b>FTE</b>	<b>Amount</b>
<b>Wage and Hour Division</b>	<b>1,809</b>	<b>227,061</b>	<b>1,809</b>	<b>228,451</b>	<b>1,872</b>	<b>243,254</b>	<b>63</b>	<b>16,193</b>
General Funds	1,809	227,061	1,809	228,451	1,872	243,254	63	16,193
<b>Total</b>	<b>1,809</b>	<b>227,061</b>	<b>1,809</b>	<b>228,451</b>	<b>1,872</b>	<b>243,254</b>	<b>63</b>	<b>16,193</b>
<b>General Funds</b>	<b>1,809</b>	<b>227,061</b>	<b>1,809</b>	<b>228,451</b>	<b>1,872</b>	<b>243,254</b>	<b>63</b>	<b>16,193</b>

NOTE: FY 2012 reflects actual FTE.

<sup>1</sup> FY 2013 Full Year C.R. does not include \$1,002,000 transferred to WHD for Hurricane Sandy reconstruction and recovery activities, as provided in the Disaster Relief Appropriations Act, 2013, P.L. 113-2. This amount has been transferred from the Employment and Training Administration, Training and Employment Services account via a non-expenditure transfer.

## WAGE AND HOUR DIVISION

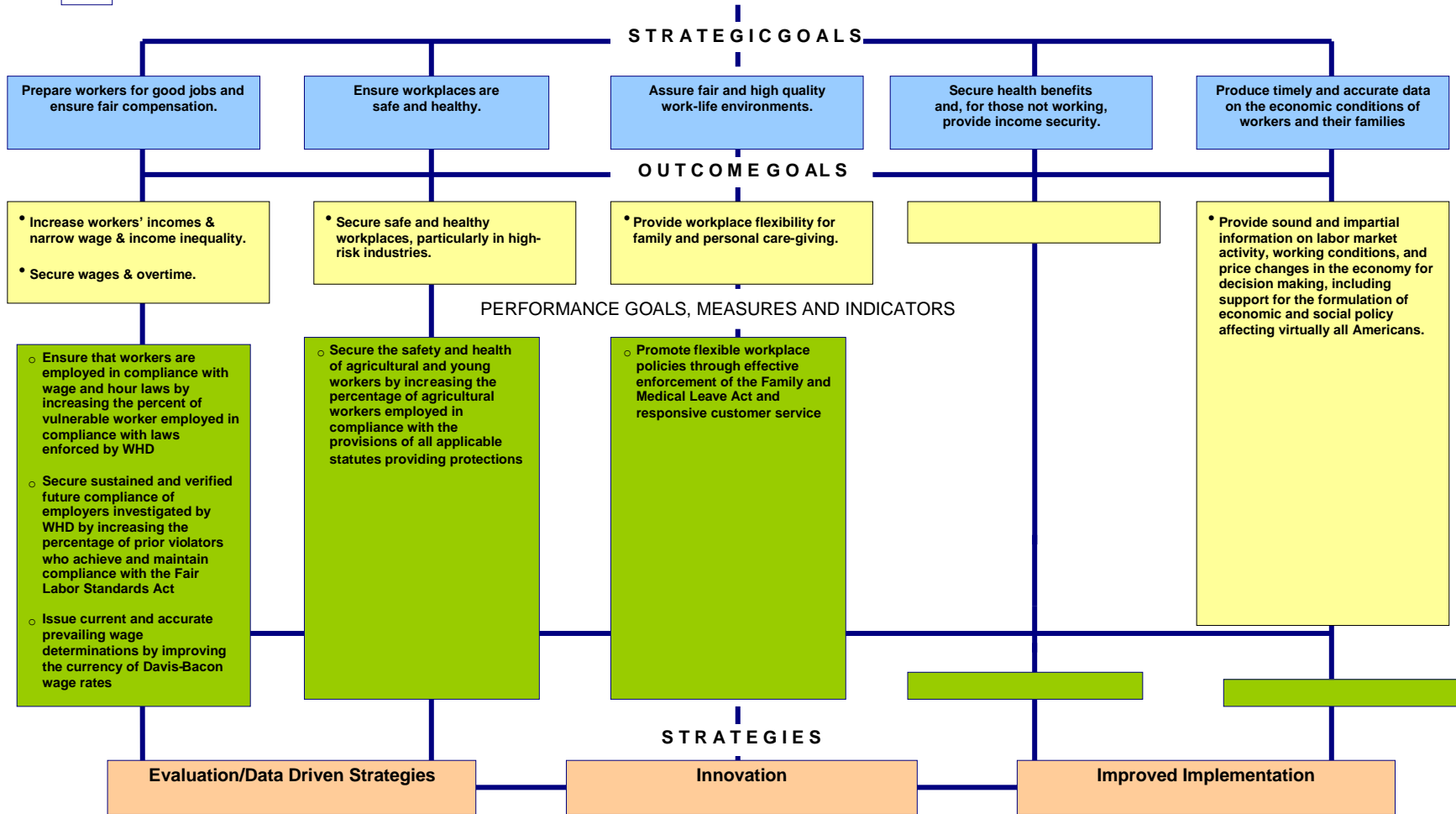
<b>BUDGET AUTHORITY BY OBJECT CLASS</b>					
(Dollars in Thousands)					
		<b>FY 2012 Revised Enacted</b>	<b>FY 2013 Full Year C.R.</b>	<b>FY 2014 Request</b>	<b>Diff. FY14 Request / FY 12 Rev. Enacted</b>
	Full-Time Equivalent				
	Full-time Permanent	1,809	1,809	1,872	113
	<b>Total</b>	<b>1,809</b>	<b>1,809</b>	<b>1,872</b>	<b>113</b>
	Average ES Salary	\$170,136	\$170,136	\$170,138	\$2
	Average GM/GS Grade	11/1	11/1	11/1	0
	Average GM/GS Salary	\$73,566	\$73,566	\$73,568	\$2
	Average Salary of Ungraded Positions	0	0	0	0
11.1	Full-time permanent	106,887	106,887	111,363	4,476
11.3	Other than full-time permanent	0	0	0	0
11.5	Other personnel compensation	3,582	3,582	3,582	0
11.9	<b>Total personnel compensation</b>	<b>110,469</b>	<b>110,469</b>	<b>114,945</b>	<b>4,476</b>
12.1	Civilian personnel benefits	32,532	32,532	33,503	971
13.0	Benefits for former personnel	0	0	0	0
21.0	Travel and transportation of persons	7,716	7,716	8,218	502
22.0	Transportation of things	28	28	28	0
23.0	Rent, Communications, and Utilities	0	0	0	0
23.1	Rental payments to GSA	10,569	10,569	11,312	743
23.2	Rental payments to others	28	28	28	0
23.3	Communications, utilities, and miscellaneous charges	3,597	3,597	3,833	236
24.0	Printing and reproduction	620	620	654	34
25.1	Advisory and assistance services	4,250	4,250	4,250	0
25.2	Other services from non-Federal sources	6,788	6,788	6,985	197
25.3	Other goods and services from Federal sources 1/	23,075	24,465	25,558	2,483
25.4	Operation and maintenance of facilities	0	0	0	0
25.5	Research and development contracts	0	0	0	0
25.7	Operation and maintenance of equipment	24,032	24,032	30,230	6,198
26.0	Supplies and materials	1,100	1,100	1,174	74
31.0	Equipment	2,257	2,257	2,536	279
41.0	Grants, subsidies, and contributions	0	0	0	0
42.0	Insurance claims and indemnities	0	0	0	0
	<b>Total</b>	<b>227,061</b>	<b>228,451</b>	<b>243,254</b>	<b>16,193</b>
	1/Other goods and services from Federal sources				
	CIGIE	0	0	883	883
	Working Capital Fund	18,730	19,287	20,330	1,600
	DHS Services	1,076	1,076	1,076	0
	GSA Services	181	181	181	0
	Services by Other Government Departments	3,088	3,921	3,088	0

NOTE: FY 2012 reflects actual FTE.

# WAGE AND HOUR DIVISION



## Department's Vision: "Good Jobs for Everyone"



# WAGE AND HOUR DIVISION

## PERFORMANCE STRUCTURE

<b>Strategic and Outcome Goals Supporting <i>Good Jobs for Everyone</i></b>	<b>Supporting Budget Activities</b>
<b>Strategic Goal 1 – Prepare Workers for Good Jobs and Ensure Fair Compensation</b>	
1.1 Increase workers’ incomes and narrowing wage and income inequality.	Enforcement of WHD Standards
1.2 Assure skills and knowledge that prepare workers to succeed in a knowledge-based economy, including in high-growth and emerging industry sectors like “green” jobs.	
1.3 Help workers who are in low-wage jobs or out of the labor market find a path into middle class jobs.	
1.4 Secure wages and overtime.	Enforcement of WHD Standards
1.5 Foster acceptable work conditions and respect for workers’ rights in the global economy to provide workers with a fair share of productivity and protect vulnerable people.	
<b>Strategic Goal 2 – Ensure Workplaces Are Safe and Healthy</b>	
2.1 Secure safe and healthy workplaces, particularly in high-risk industries.	Enforcement of WHD Standards
<b>Strategic Goal 3 – Assure Fair and High Quality Work-Life Environments</b>	
3.1 Break down barriers to fair and diverse work places so that every worker’s contribution is respected.	
3.2 Provide workplace flexibility for family and personal care-giving.	Enforcement of WHD Standards
3.3 Ensure worker voice in the workplace.	
<b>Strategic Goal 4 – Secure Health Benefits and, for Those Not Working, Provide Income Security</b>	
4.1 Facilitate return to work for workers experiencing workplace injuries or illnesses who are able to work.	
4.2 Ensure income support when work is impossible or unavailable.	
4.3 Improve health benefits and retirement security for all workers.	
<b>Strategic Goal 5 – Assure the Production of Timely and Accurate Data on Social and Economic Conditions of Workers and their Families</b>	
5.1 Provide sound and impartial information on labor market activity, working conditions, and price changes in the economy for decision making, including support for the formulation of economic and social policy affecting virtually all Americans.	

## WAGE AND HOUR DIVISION

### AUTHORIZING STATUTES

<b>Public Law / Act</b>	<b>Legislation</b>	<b>Statute No. / US Code</b>	<b>Volume No.</b>	<b>Page No.</b>	<b>Expiration Date</b>
PUB. L. 75-718	Fair Labor Standards Act of 1938, as amended.	29 U.S.C. 201-219			N/A
PUB. L. 74-846	Walsh-Healy Public Contracts Act, as amended.	41 U.S.C. 35-45			N/A
PUB. L. 90-321	Consumer Credit Protection Act (Title III – Restriction on Garnishment).	15 U.S.C. 1671-1677			N/A
PUB. L. 87-581	Contract Work Hours and Safety Standards Act, as amended.	40 U.S.C. 327-330			N/A
PUB. L. 89-286	McNamara-O’Hara Service Contract Act, as amended.	41 U.S.C. 351-357			N/A
PUB. L. 74-403	Davis-Bacon Act, as amended and related acts.	40 U.S.C. , Chapter 31, Subpart IV			N/A
PUB. L. 97-470	Migrant and Seasonal Agricultural Worker Protection Act.	29 U.S.C. 1801-1872			N/A
PUB. L. 99-603	Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986.	8 U.S.C. 1324, 8 U.S.C. 1101(a), 1184(c), 1824, 29 U.S.C. 1802, 1813(a)			N/A
PUB. L. 100-347	Employee Polygraph Protection Act of 1988.	29 U.S.C. 2001 et seq			N/A
PUB. L. 101-238	Immigration Nursing Relief Act of 1989.	8 U.S.C. 1101, et seq.			N/A
PUB. L. 101-649	Immigration Act of 1990.	8 U.S.C. 1101, et seq.			N/A
PUB. L. 103-3	Family and Medical Leave Act of 1993.	29 U.S.C. 2601, et. Seq.			N/A
PUB. L. 105-277	American Competitiveness and Workforce Improvement Act (ACWIA), Title IV of the Omnibus Consolidated and	414(b) and (c)			N/A

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	Emergency Supplemental Appropriation Act.				
PUB. L. 108-447	L-1 Visa and H-1B Visa Reform Act, Title IV of the Consolidated Appropriations Act, 2005.	401-430			N/A
PUB. L. 89-209	National Foundation for the Arts and Humanities Act, Sections 5(i) and 7(g).	20 U.S.C. 954 (i) and 956 (g)			N/A

## WAGE AND HOUR DIVISION

<b>APPROPRIATION HISTORY</b>					
(Dollars in Thousands)					
	<b>Budget Estimates to Congress</b>	<b>House Allowance</b>	<b>Senate Allowance</b>	<b>Appropriations</b>	<b>FTE</b>
2004					
Base Appropriation	\$161,294	\$0	\$0	\$160,096	1,442
2005					
Base Appropriation	\$165,933	\$0	\$0	\$164,494	1,346
2006					
Base Appropriation	\$167,359	\$0	\$0	\$165,685	1,300
2007					
Base Appropriation	\$177,578	\$0	\$0	\$170,220	1,200
2008					
Base Appropriation	\$182,365	\$0	\$0	\$175,658	1,208
Scorekeeping Adjustments	-\$50,000	\$0	\$0	\$0	0
2009					
Base Appropriation	\$193,092	\$0	\$0	\$193,092	1,367
Scorekeeping Adjustments	-\$30,000	\$0	\$0	\$0	0
2010					
Base Appropriation	\$227,656	\$0	\$0	\$227,606	1,676
Scorekeeping Adjustments	-\$30,000	\$0	\$0	\$0	0
2011					
Base Appropriation	\$244,240	\$0	\$0	\$227,491	1,697
2012					
Base Appropriation	\$240,937	\$0	\$227,491	\$227,061	1,759
2013 <sup>2</sup>					
Base Appropriation	\$237,730	\$0	\$0	\$0	0
2014					
Base Appropriation	\$243,254	\$0	\$0	\$0	0

<sup>2</sup> Does not reflect \$1,002,000 transferred to WHD for Hurricane Sandy reconstruction and recovery activities, as provided in the Disaster Relief Appropriations Act, 2013, P.L. 113-2. This amount has been transferred from the Employment and Training Administration, Training and Employment Services account via a non-expenditure transfer.

In the FY 2004 through FY 2010 budget estimate to congress, the Wage and Hour amount was included in the former Employment Standards Administration request.



# WAGE AND HOUR DIVISION

## OVERVIEW

### Introduction

The Wage and Hour Division (WHD) is authorized under 29 U.S.C. 207, *et seq.* to administer and enforce a variety of laws that establish the minimum standards for wages and working conditions in the United States. Collectively, these labor standards cover most private, state, and local government employment. They protect over 135,000,000 workers in more than 7,300,000 establishments throughout the United States and its territories. WHD's mission is to "*promote and achieve compliance with labor standards to protect and enhance the welfare of the Nation's workforce.*" The WHD mission and its performance outcomes directly support the vision of *good jobs for everyone* and support the Departmental budget themes of "*Enhancing worker safety and Fostering compliance through worker education and worker voice.*"

WHD is comprised of a nationwide staff of investigators, supervisors, analysts, technicians, and administrative employees who share responsibilities for enforcing and administering the minimum wage, overtime, and child labor provisions of the Fair Labor Standards Act (FLSA); the prevailing wage requirements and wage determination provisions of the Davis-Bacon and Related Acts (DBRA) and the McNamara-O'Hara Service Contract Act (SCA); the wages and working conditions under the Migrant and Seasonal Agricultural Worker Protection Act (MSPA); the job protections of the Family and Medical Leave Act (FMLA); and the Employee Polygraph Protection Act (EPPA). WHD also enforces the field sanitation and temporary labor camp standards in agriculture and certain employment standards and worker protections of the Immigration and Nationality Act (INA).

WHD's core compliance priorities are to protect the most vulnerable workers in the workplace, to promote continued compliance by reducing employer recidivism, and to provide customer-oriented and quality service to workers, to employers, and to the public. Compliance with this Nation's wage and workplace standards ensures the most basic protections for workers in the workplace and the greatest opportunities for them to advance to a higher paying job. It also ensures a level playing field for businesses. When employers understand that businesses must abide by the Nation's wage and workplace standards, all employers can anticipate and budget for those requirements. Goods and services are then priced based on innovation and competitive efficiencies rather than on lowering core labor standards. In the absence of an effective compliance program that couples enforcement and education with strategies to promote continued compliance, the most vulnerable workers in this country would never realize a stable income, and businesses that comply with the law would unfairly face a competitive disadvantage.

Vulnerable workers are employed most frequently in industries that have developed business models that by their structure contribute to the likelihood of labor standards violations. These business models include subcontracting, franchising, temporary employment, labor suppliers, independent contracting, and other contingent workforce characteristics. The splintered employment relationship, including the growing practice of misclassifying workers as independent contractors rather than employees, leaves workers subject to the dynamics of supply chain pressures in which those at the bottom of the chain are without an economic position to

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influence their own well-being. Workers who are misclassified as independent contractors are often left without critical benefits, legal protections, and the wages they are legally entitled to be paid. Vulnerable workers also include young workers, agricultural workers, workers with disabilities, and those workers employed in situations in which the applicable federal labor law does not provide them with opportunities to pursue remedies on their own accord. The common thread among all vulnerable workers is a reluctance to complain to authorities when they are the subject of illegal treatment. Many lack knowledge of or the opportunity to exercise their rights in the workplace. For these reasons, WHD has increasingly prioritized its enforcement on behalf of these most vulnerable workers.

Over the last several years, WHD's enforcement strategies have evolved in recognition of the changes in industries and the growth of new business models. The businesses that are covered by this Nation's labor standards laws are no longer the traditional brick and mortar companies that operated when these laws were first passed. Advances in technologies and transportation and increased globalization and specialization have influenced the structure of businesses and modified how those businesses view their labor force. Business relationships are more fluid. Companies outsource key aspects of their production. WHD has, by necessity, begun to adapt and respond to this new paradigm by introducing new enforcement strategies and applying new technologies to educate workers, employers, and the public.

In recognition of the changing environment, WHD undertook a series of evaluations and studies to better refine its ability to identify and remedy violations. These studies culminated in a series of recommendations in a report entitled, *"Improving Workplace Conditions through Strategic Enforcement,"*<sup>3</sup> many of which have informed the agency's targeting strategies and complaint investigation priorities. That report provided evidence that directed (i.e., non-complaint-based) investigations resulted in a geographic deterrence effect not seen following complaint-based investigations. As a result, WHD has established performance targets to increase the percent of its investigations resources in directed investigations. This is one of the performance measures that supports a more strategic approach to enforcement. Performance trends among strategic enforcement measures have demonstrated progress, and the FY 2014 budget request builds upon that success. Such trends include not only a higher performance efficiency among the field staff, which has seen an increase in the number of investigations per investigator, but also better strategies for selecting investigations, better prioritization of both complaints and directed investigations, and higher yields in terms of workers affected and back wages collected.

A second evaluation study, *"Reducing Recidivism: Evaluation of Goals, Measures, and Compliance Tools and Options for Improvement,"*<sup>4</sup> provides insight into the effect of penalties to promote continued compliance among investigated employers. WHD also takes advantage of evaluations and recommendations made by the Government Accountability Office and the Office of Inspector General to improve key processes, including the agency's complaint policy, back wage distribution system, and wage determination responsibilities. A frequent and abiding

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<sup>3</sup> Improving Workplace Conditions Through Strategic Enforcement: A Report to the Wage and Hour Division," David Weil, Boston University. May 2010.

<sup>4</sup> Reducing Recidivism: Evaluation of Goals, Measures, and Compliance Tools and Options for Improvement, Submitted by: Systems Research and Applications Corporation (SRA), January 2008.

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recommendation from various studies relates to the agency's data management systems. A recent WHD IT architecture assessment and analysis report<sup>5</sup> prepared by Noblis identified key vulnerabilities in WHD's case management system and suggested opportunities for improved efficiencies in productivity and in customer service and the integration of strategic enforcement strategies with a new agile integrated data system.

WHD is requesting funds to implement a new, integrated information technology system to replace the current outdated system, which impedes WHD's efforts to advance its strategic enforcement strategies. WHD's requested increase would allow the agency to make critical improvements that would fundamentally enhance the day-to-day operations of the agency and WHD's ability to provide effective customer service to both employees and employers. As new investigator productivity and effectiveness continues to increase and as the agency's targeting strategies increase in quality and ambition, the need for up-to-date technology and information resources proves critical to continued growth in these areas. Moreover, without such technology, investigators are obstructed in implementing new and innovative strategies due to technological limitations. Similarly, in order to meet the employer's and public's expectation that information about the laws enforced be easily accessible and understandable, WHD must invest in both more effective management of the information and policy guidance WHD develops and more effective methods of making that information readily available.

The requested IT system is also consistent with the Administration management priorities of effective management of information technology investments, including communications and content management, and strengthening IT foundations. As WHD continues to build its analytical and evaluation capacity, the agency-wide demand for a more robust, nimble, and reliable technology infrastructure has grown exponentially. In order to fully implement the strategic enforcement strategies, as well as the worker protection reforms of this Administration, WHD increasingly relies on data at every level of the organization as an indication of whether the organization is effectively implementing policy; undertaking strategies deemed effective either through studies or field experience; and targeting investigations where WHD can achieve a sustained, positive effect on industry compliance. Efforts to implement improvements to policies and procedures, such as the process for assessing civil monetary penalties and the certification of farm labor contractors, or opportunities to develop more comprehensive, interconnected profiles of violators in order to improve the effectiveness of the enforcement program, are hindered or postponed by the extremely limited capacity of the current IT infrastructure supporting WHD operations. The new system would also allow the agency to more fully participate in government-wide efforts to provide more and better information to the public and to exchange administrative data with other enforcement agencies for the purposes of strengthening targeting and developing a knowledge base around enforcement outcomes.

In FY 2014, WHD will build upon its FY 2013 focus on quality investigations and outcomes using evidence-based evaluations. The new integrated data management system is central to supporting the planning, execution, and evaluation of WHD enforcement activities, and satisfying the requirement to make public data more easily accessible by feeding into the

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<sup>5</sup> WHD Architecture Assessment and Analysis, Prepared for the Wage and Hour Division, Noblis, October 2011.

## **WAGE AND HOUR DIVISION**

publically available online enforcement database. Without such a system, WHD will be unable to implement process changes that will make the investigations and investigators more efficient and effective and give WHD the ability to evaluate its evidence for future initiatives, and could also lose decades' worth of data and enforcement history as the current system becomes unstable and at risk of failure. The request for improved record management will allow WHD to not only effectively manage and deploy policy guidance to the field, but also to expose high value information and data to the public in order to meet the expectations for a more open government that can adapt to the ever-changing digital landscape. The request to improve the automation of the wage determination system will ensure a more level playing field for government contractors by providing their requirements faster on a more user-friendly interface, and will also ensure that workers are being paid in compliance with DBA and SCA and free up resources to allow WHD to focus on completing the wage surveys in a more efficient and timely way.

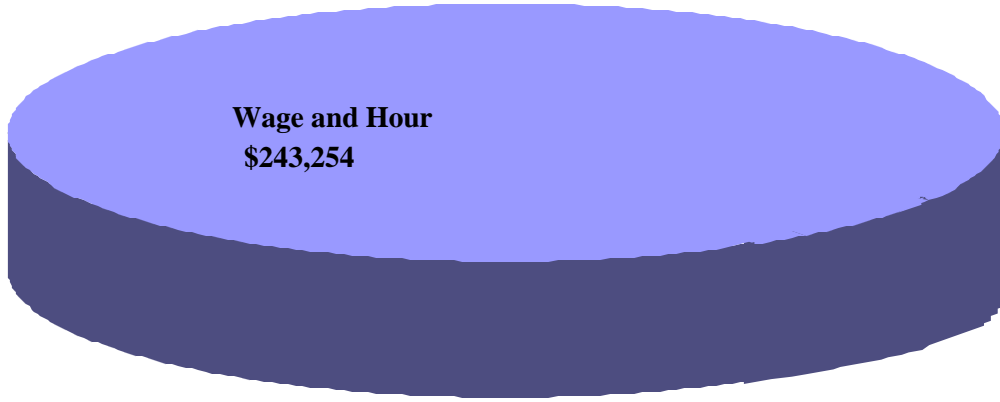
The FY 2014 budget request is designed to support the agency's commitment to ensuring WHD is a high-performing organization that supports the Department's priorities. As WHD has improved the effectiveness of its operations, it has recognized the value of decision-making and program planning based on evidence of what works and the importance of maximizing its enforcement resources. These requests are expected to significantly enhance operational effectiveness and efficiency and to provide resources for priority program areas. Building on positive performance trends to date, and as WHD enforcement efforts increase in sophistication and reach, a sound infrastructure and a continued emphasis on customer service will be essential to the agency's continued success.

### **Cost Model**

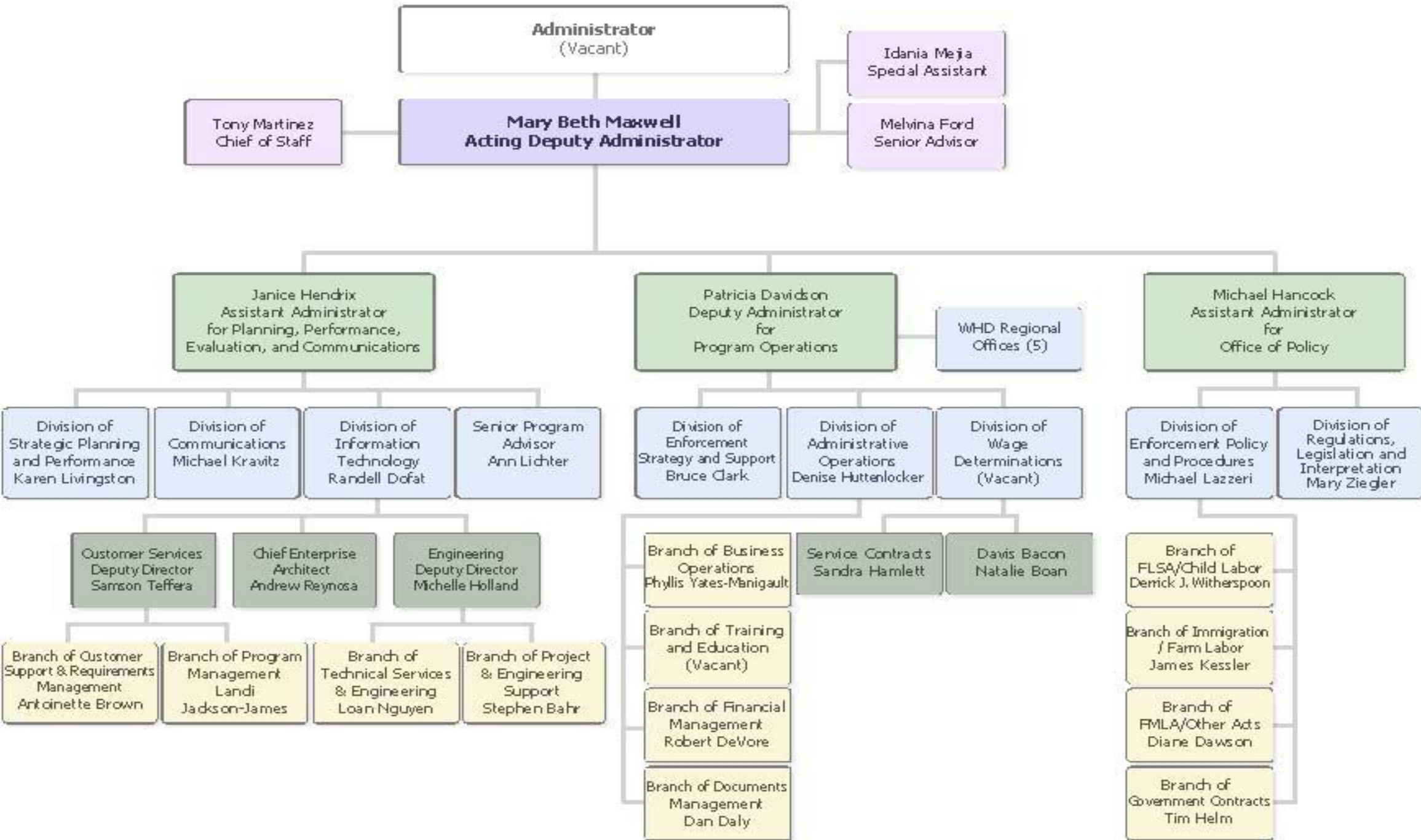
The Wage and Hour Division (WHD) requests a total of \$243,254,000, an increase of \$16,421,000 over the FY 2012 Revised Enacted level. This level of funding will enable WHD to enhance its operations and provide improved customer service. The FY 2014 agency request includes an increase for development of an integrated data management and enforcement case application to support its law enforcement and wage determination responsibilities.

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**FY 2014 Budget Request**  
**Wage and Hour Budget Request \$243,254**  
**(Dollars in Thousands)**



# WAGE AND HOUR DIVISION



## WAGE AND HOUR DIVISION

<b>BUDGET AUTHORITY BEFORE THE COMMITTEE</b>				
(Dollars in Thousands)				
	<b>FY 2012 Revised Enacted</b>	<b>FY 2013 Full Year C.R.</b>	<b>FY 2014 Request</b>	<b>Diff. FY 14 Request / FY 12 Rev. Enacted</b>
<b>Activity Appropriation</b>	<b>227,061</b>	<b>228,451</b>	<b>243,254</b>	<b>16,193</b>
FTE	1,809	1,809	1,872	63

NOTE: FY 2012 reflects actual FTE. Authorized FTE for FY 2012 was 1,759.

### **Introduction**

The labor standards statutes, for which WHD is responsible, provide basic protections for all workers in this country. Although they differ in scope, all of the statutes enforced by WHD are intended to protect and to promote the welfare of the nation's workforce, to provide opportunities for advancement, and to ensure fair compensation for work performed. The Fair Labor Standards Act (FLSA) minimum wage provisions and the prevailing wage laws provide a floor for the payment of fair wages, while the FLSA overtime provisions are intended to broaden work opportunities and promote employment. The Migrant and Seasonal Agricultural Protection Act (MSPA) and the immigration programs establish working conditions intended both to protect the wages and the safety and health of vulnerable workers and to ensure that the local labor force is not displaced by lower paid foreign or migrant labor. The prevailing wage programs provide protections to local middle-class workers who may be disadvantaged by competition from outside labor who offer their services at wages lower than those in the locality. The Family and Medical Leave Act (FMLA) was enacted to help workers balance family and work responsibilities by providing job protection; and the child labor provisions of the FLSA ensure the safe employment of young workers, encourage their educational endeavors, and provide a path to future employment.

**Vulnerable Workers:** By concentrating its enforcement resources on increasing the percent of vulnerable workers employed in compliance with the laws that the agency enforces, WHD can ensure that workplaces are *safe and healthy and that workers receive fair compensation*. Vulnerable workers are those who are at risk of exploitation at work and who are reluctant to complain when they are subject to violations for fear of retaliation. WHD's efforts to increase compliance in the agricultural industry and among agricultural and young worker populations to whom additional safety and health standards apply specifically contribute to this outcome. Migrant and seasonal agricultural workers are protected by MSPA, which establishes employment standards related to wages, housing, transportation, disclosures and recordkeeping.

Vulnerable workers also include those that are employed in industries with subcontracting, independent contracting, and other contingent workforce characteristics. Employers often fail to classify such workers as employees, leaving them subject to unfair treatment and disparate wages. In FY 2012, WHD focused on industries where independent contracting is just emerging as a business practice. The focus on independent contracting and the misclassification of employees as independent contractors will continue in FY 2014. Other vulnerable workers include individuals with disabilities and those employed in statutory programs for which there is

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no private right of action. The results of a FY 2010 survey of the compliance level of Community Rehabilitation Program certificate holders under Section 14(c) of the FLSA showed a low level of compliance necessitating a reenergized commitment by WHD to these vulnerable workers. WHD's focus on workers employed in these programs and in these industries contributes to the Department's outcome effort to *ensure fair compensation*.

Among employers investigated between FYs 2011 and 2012, WHD found an average of 19 percent compliance with all applicable laws among H-2A certified employers. WHD expects the use of the H-2A program to continue to grow, particularly since farm labor contractors—who have higher violations rates than growers—are now allowed to participate in the program. WHD's goal—consistent with the Department's goal of *securing safe and healthy workplaces particularly in high-risk industries* and of increasing compliance among H-2A certified employers will continue in FY 2014.

The emphasis on prevailing wage enforcement will *strengthen incomes for middle-class families*, who will receive not just a minimum wage but a prevailing wage. In addition, the residential segment of the construction industry is among several that are characterized by the prevalent use of independent contractors. WHD launched an initiative to establish a compliance baseline in this industry in the summer of FY 2011 from which it will measure improvements in compliance.

Under a delegation of authority from the Department of Homeland Security, WHD has assumed labor standards enforcement responsibility under the H-2B temporary guestworker program. Under this program, employers are certified by the Department of Labor to employ foreign temporary non-immigrants in a number of low-skilled occupations in industries such as construction, hospitality, eating and drinking, landscaping, reforestation, and food processing. The H-2B program is designed to protect basic rights of the foreign guestworkers who have been granted visas to meet a legitimate temporary need for labor, as well as ensure domestic worker's access to jobs.

**Worker Protection Strategies:** In FY 2014, WHD will continue to employ resource-leveraging strategies and technologies to affect compliance with the labor laws within its enforcement jurisdiction. The agency will continue to use its directed investigations to increase WHD presence in high risk industries, *i.e.*, those industries with high minimum wage and overtime violations and among vulnerable worker populations where complaints are not common. Obtaining corporate-wide compliance, securing future compliance, and deterring future violations in industry sectors and among employers also supports the Department's outcome goal of *securing fair compensation*. Complaint investigations will be managed strategically to increase WHD visibility among workers and community-based organizations to increase their involvement in identifying violations.

Penalties, sanctions, the FLSA hot goods provision, and similar strategies will be used as appropriate to ensure future compliance among violators and to deter violations among other employers. WHD will pursue corporate-wide compliance strategies designed to ensure that employers take responsibility for their compliance behavior. WHD will continue to make significant investments in the creation of extensive multi-lingual guidance to inform employees of their rights under federal wage and hour laws. The Division has translated more than 180



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publications into eleven different languages for dissemination through its website. Public awareness and outreach to workers will be targeted to worker populations and industries in which workers are reluctant to report violations. Outreach will be designed to reduce the perceived risk of filing a complaint with WHD and to increase the benefit to employees and their co-workers of reporting violations. Employees and the worker advocate groups will be encouraged to report violations of WHD laws through a variety of means. The ABA-referral system provides a valuable service to employees and allows WHD to shift resources to program areas that have no private right of action.

WHD will leverage its partnership arrangements with other federal, state and local agencies, and with worker and community-based organizations to satisfy the following criteria: the partnership should benefit the overall workforce, be a means for disseminating information on rights and/or obligations, and mitigate the fear of retaliation among workers who seek assistance in remedying violations. Stakeholder coordination will provide avenues for information gathering on compliance issues and will provide opportunities to develop meaningful compliance assistance tools. Public information releases, issued through various news media and new technologies will be used to inform the public of WHD laws, compliance actions taken, and penalties assessed. Press releases, in turn, have the potential of deterring violations among employers in a given geographic area.

**Customer Service:** The agency's complaint investigation program will be customer-service oriented with an aim of increasing the involvement of workers and community organizations in identifying and reporting alleged workplace violations and using new technologies to improve customer service, transparency, and openness. WHD's ability to provide timely and responsive service to workers and others who allege wage and hour violations support the Department's key worker protections outcomes.

**Accurate and Timely Wage Determinations:** WHD is implementing revised Davis-Bacon wage survey processes and examining its Service Contract Act wage determination processes to improve the quality and timeliness of wage determinations published by the agency. By publishing up-to-date and accurate wage rates in both the Service Contract Act and Davis-Bacon Act programs, WHD ensures that construction and service *workers are paid a fair wage*.

At the FY 2014 Congressional Request Level, WHD will increase its FTE level to 1,872. Approximately 60.5 percent or 1,132 FTE will be investigators. This level of enforcement staff will enable WHD to fully support its enforcement priorities in the three priority enforcement areas: protecting the most vulnerable workers in the workplace; promoting sustained compliance; and achieving industry-wide compliance among employers.

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## Five-Year Budget Activity History

<u>Fiscal Year</u>	<u>Funding</u> (Dollars in Thousands)	<u>FTE</u>
2009	\$193,092	1,367
2010	\$227,606	1,676
2011	\$227,491	1,697
2012	\$227,061	1,759
2013	\$228,451	1,809

## FY 2014

At the FY 2014 Request Level, WHD requests \$243,254,000 and 1,872 FTE. These resources will support a continued shift to greater directed and complaint enforcement activity in priority industries and will offer an improved customer service approach to complaint handling in lower priority industries. WHD will continue to increase its number of compliance actions, but anticipates that continued gains in compliance actions concluded will be incremental as WHD maintains its emphasis on conducting quality case work and concentrates on no-violation cases through effective compliance screening and investigation targeting. At the request level, WHD is increasing its percentage of directed investigations. WHD data show a higher number of employees affected and greater back wages on average for directed investigations. WHD proposed a program increase for \$5,800,000 and 0 FTE to enhance and modernize its existing IT systems that support its compliance and prevailing wage programs.

WHD's budget includes \$3,399,000 and 28 FTE to support additional FLSA and FMLA enforcement. WHD will use these resources to strengthen enforcement of both laws. This funding will be used to increase enforcement of FLSA violations, FLSA Section 14 (c), and FMLA complaint investigations. Also included are \$3,800,000 and 35 FTE for increased enforcement related to misclassified workers.

WHD concentrates its directed enforcement program towards increasing the percent of vulnerable workers employed in compliance with the laws that the agency enforces and towards securing the wages and overtime compensation that all workers are due. Vulnerable workers include workers who are reluctant to approach any Federal agency for any reason and who often will not file a complaint when their rights have been violated. They are frequently employed in industries where the employment relationship is splintered and the beneficiary of the labor is distanced from the workers who actually provide the labor. These industries typically have subcontracting, independent contracting, and other contingent workforce characteristics. Employers often fail to classify such workers as employees leaving them subject to unfair treatment and disparate wages. Vulnerable workers also include young workers, agricultural workers, disabled workers, and those workers employed in statutory programs for which there is no private right of action.

Individuals with disabilities are among the most vulnerable workers in the United States. If an employer is to pay a sub-minimum wage to a disabled worker, the requirements of 14(c) should

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be scrupulously followed. A recent evaluation of compliance found that compliance rates among Section 14(c) community rehabilitation program are low. WHD determined that the basis for the violations was centered on three factors: high staff turnover; inattention to the Section 14(c) requirements; and the complexity of the program's prevailing rate determination processes. WHD proposed several specific steps to promote greater compliance to include redesigning the certification process; integrating the certification process with on-line knowledge-based technologies; and greater training options for the community rehabilitation program staff; and more targeted enforcement. The additional FTE will be used for more targeted directed enforcement in this program area. Directed investigations in this program area will be targeted to the primary compliance issues identified in the FY 2010 evaluation. With additional investigators, training can be undertaken in the regions to increase the number of investigators with experience in the Section 14(c) program.

With the need to promote work and family balance, WHD is examining its FMLA enforcement policies to ensure a more comprehensive approach to compliance. WHD is developing strategies that will provide more in-depth review of the employer's business practices and leave policies. Additionally, WHD will maintain its customer service focus in the FMLA program. WHD's ability to resolve incoming FMLA complaints in a timely fashion and its ability to respond to requests for information is dependent on the both the number of and technical skill of its staff.

WHD will use its resources as part of an initiative to detect and deter the inappropriate misclassification of employees as independent contractors and strengthen and coordinate Federal and State efforts to enforce labor violations arising from misclassification. Individuals wrongly classified as independent contractors are denied access to critical benefits and protections — such as family and medical leave, overtime, civil rights laws, and unemployment insurance — to which they may be entitled as regular employees. Worker misclassification also generates substantial losses to the Treasury and the Social Security, Medicare and Unemployment Insurance Trust Funds.

### **FY 2013**

Figures shown for FY 2013 reflect the annualized Continuing Resolution (P.L. 112-175) as a full-year appropriation, which had not been replaced or amended at the time the budget was produced. In addition, these numbers do not reflect the impact of sequestration. The operating plans for Department of Labor programs for FY 2013 including sequestration are being provided to the Committee in a separate communication.

### **FY 2012**

In FY 2012, WHD increased the number and percentage of its directed investigations in order to be effective in securing compliance on behalf of the most vulnerable workers and often misclassified workers. WHD conducted a baseline investigative-based evaluation in the hotel/motel industry to determine compliance levels. The agency continued nation-wide directed investigations in agriculture, including H-2A employers, to determine their compliance with all applicable agricultural labor standards statutes and to work toward achieving a more sustainable impact in the compliance level with the industry.

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In support of work life and family priorities, in FY 2012, the Department conducted a survey of employers and employees on FMLA as an update to a FY 2000 survey. Updated data is providing insight into what has changed in the decade since the previous surveys.

To combat the problem of misclassification, WHD explored options for additional memoranda of understanding to increase the coordination and sharing of information between WHD and other stakeholders.

In addition, WHD is reengineering the process for determining SCA wage rates, including evaluating alternative data sources to ensure more accurate and timely SCA wage determinations.

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<b>DETAILED WORKLOAD AND PERFORMANCE</b>					
		<b>FY 2012 Revised Enacted</b>		<b>FY 2013 Full Year C.R.</b>	<b>FY 2014 Request</b>
		<b>Target</b>	<b>Result</b>	<b>Target</b>	<b>Target</b>
<b>Wage and Hour Division</b>					
<b>Strategic Goal 1 - Prepare workers for good jobs and ensure fair compensation.</b>					
<b>Outcome Goal 1.1 - Increase workers' incomes and narrow wage and income inequality.</b>					
WHD-DB-01b	Average age of Davis-Bacon wage rates for non-Residential Construction (in months)	36	39	36	34
<b>Outcome Goal 1.5 - Secure wages and overtime.</b>					
WHD-E-01	Number of compliance actions	34,533	34,139	36,301	37,558
WHD-E-02	Percent of directed investigations (excludes conciliations)	35.00%	40.63%	38.00%	40.00%
WHD-E-05	Percent of complaint no violation cases	22.80%	21.29%	22.00%	20.00%
WHD-E-04	Percent of directed no violation cases	25.00%	29.22%	23.00%	20.00%
WHD-PRIO-01	Percent of all investigations in priority industries (excludes conciliations)	72.00%	74.62%	75.00%	77.00%
WHD-PRIO-03	Percent of complaint investigations in priority industries (excludes conciliations)	66.00%	67.33%	68.00%	69.00%
WHD-MIS-01	Percent of Directed Investigations in Industries with a High Prevalence of Employees Misclassified as Independent Contractors	22.00%	19.98%	24.00%	25.00%

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<b>DETAILED WORKLOAD AND PERFORMANCE</b>					
		<b>FY 2012 Revised Enacted</b>		<b>FY 2013 Full Year C.R.</b>	<b>FY 2014 Request</b>
		<b>Target</b>	<b>Result</b>	<b>Target</b>	<b>Target</b>
WHD-14C-01	Percent of Directed No-Violation 14C Investigations	--	--	[base]	TBD
<b>Strategic Goal 2 - Ensure workplaces are safe and healthy.</b>					
<b>Outcome Goal 2.1 - Secure safe and healthy workplaces, particularly in high-risk industries.</b>					
WHD-AG-01	Percent of enforcement hours in agricultural industry	7.50%	7.72%	7.46%	8.00%
WHD-CL-01	Percent of investigations in which child labor compliance is examined (exclude conciliations)	95.00%	93.56%	95.00%	97.00%
<b>Strategic Goal 3 - Assure fair and high quality work-life environments.</b>					
<b>Outcome Goal 3.2 - Provide workplace flexibility for family and personal care-giving.</b>					
WHD-FMLA-01	Percent of FMLA incoming complaints resolved within the fiscal year	75.00%	76.47%	77.00%	78.00%

Legend: (r) Revised (e) Estimate (base) Baseline -- Not Applicable TBD - To Be Determined [p] - Projection

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## Workload and Performance Summary

WHD has organized its work processes into the following key goals:

- Ensuring that the most vulnerable workers are employed in compliance with wage and hour laws;
- Fostering a customer-oriented quality-driven culture within WHD; and
- Issuing prevailing wage determinations that are current and accurate;

WHD uses a balance of scorecard measures throughout its operating plan to evaluate whether the agency is effective, productive, and consistent in applying new policies and strategies. A subset of performance measures allows the agency to assess whether it is undertaking the activities and pursuing the strategies that logistically support the goals and outcomes that the agency hopes to achieve.

In addition to specific strategies designed to achieve individual outcomes, WHD has developed three priority strategies that aim to achieve increased compliance among priority industries and programs.

### WHD Priority Strategies: Obtain, Maintain, and Sustain Compliance

- Obtain compliance by conducting effective investigations that bring employers with violations into compliance,
- Maintain compliance by creating incentives for investigated employers to stay in compliance, and
- Sustain compliance by leveraging resources outside WHD.

These strategies organize the broad activities and individual strategies through which WHD seeks to increase compliance. Through these efforts—as well as with the ongoing emphasis on evaluation, innovation, and improved implementation—WHD is working to achieve broad compliance on behalf of vulnerable workers. The following priorities are supported by performance measures designed to monitor the organization's progress in achieving strategic enforcement and compliance outcomes.

WHD's strategic approach to enforcement is centered on two integrated priority goals: protecting the most vulnerable workers in the workplace and promoting good customer service. Many vulnerable workers are concentrated in certain high-risk industries—industries with characteristics of subcontracting, franchising, temporary employment, independent contracting, and other splintered employment relationships. Sustaining compliance in these industries presents unique enforcement challenges for WHD because the ultimate beneficiary of the workers' labor is distanced from the workers who actually provide the labor. Young workers, agricultural workers, workers with disabilities, and those workers employed in situations in which the applicable federal labor law does not provide a private right of action may also be among the more vulnerable workers.

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The goal of promoting customer service largely encompasses WHD complaint program and the agency's efforts to ensure complaint handling is timely, accurate, and responsive. In addition, many of the agency's outreach and education activities are intended to promote greater understanding and more transparency of WHD's laws and policies for all its customers.

WHD's ability to achieve compliance on behalf of workers in this county is dependent on a balance of enforcement, both complaint and directed investigations; outreach to workers, worker advocates, and community organizations; and compliance assistance to employers and businesses. To support the discussion of resource levels, it is important to first understand how WHD has prioritized these strategies based on these two goals.

### **Protecting Vulnerable Workers:**

WHD concentrates its directed enforcement program towards increasing the percentage of vulnerable workers employed in compliance with the laws that the agency enforces. The agency uses its directed investigations to increase WHD presence in high risk industries (*i.e.*, those industries with high minimum wage and overtime violations and among vulnerable worker populations) because complaints are simply not common. Too few vulnerable workers in high risk industries, too few young workers in dangerous working conditions, and almost no workers with disabilities will file complaints when they are the subject of a violation. WHD has demonstrated a broader effect on compliance within industries and geographic areas through the use of directed enforcement initiatives. Therefore, to continue to be effective in securing compliance on behalf of the most vulnerable workers and often misclassified workers, WHD must increase the number and percentage of its directed investigations. At the request level, WHD is maintaining a target of 40 percent directed investigations which is consistent with WHD's FY 2012 results.

WHD will also leverage its relationships with other federal, state, and local agencies and with worker, employer, and community organizations. Stakeholder coordination will provide avenues for information gathering on compliance issues and will provide opportunities to develop meaningful compliance assistance tools. Public information releases, issued through various news media and new technologies will help inform the public about WHD laws and compliance actions taken. By increasing public awareness through traditional methods such as press releases, as well as newer methods that take advantage of digital services and devices, WHD can help to sustain compliance by deterring violations among employers in a given geographic area.

### **Workers with Disabilities:**

Based on the results of the FY 2010 investigation-based evaluation of Community Rehabilitation Programs (CRPs), WHD is launching several key changes to the Section 14(c) program. In addition to increasing targeted enforcement, WHD is examining its certification processes and evaluating new technologies to promote employer compliance.

Individuals with disabilities are among the most vulnerable workers in the United States. If an employer is permitted to pay a sub-minimum wage to a disabled worker, it should scrupulously follow the requirements of 14(c). A recent evaluation found that compliance rates among Section 14(c) community rehabilitation programs are low. WHD determined that the basis for



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the violations was centered on three factors: (1) high staff turnover; (2) inattention to the Section 14(c) requirements; and (3) the complexity of the program's prevailing rate determination processes. WHD proposed several specific steps to promote greater compliance, including redesigning the certification process, integrating the certification process with online knowledge-based technologies, greater training options for the community rehabilitation program staff, and more targeted enforcement. The requested resources would allow WHD to develop a cadre of Section 14(c) specialists to promote compliance in this very technical program area. A trained and dedicated staff would bring flexibility to the agency's enforcement program. Currently, WHD has to retrain investigators to conduct these specialized investigations each time the agency undertakes a coordinated initiative to improve compliance on behalf of these workers.

**Misclassified Workers:** WHD will maintain an increased presence in those industries where the misclassification of employees as independent contractors is prevalent. More and more industries are moving to business models in which the beneficiaries of the labor are distanced by multiple layers from the individuals who actually perform the labor. Rather than add workers to their permanent payrolls and assume the obligations associated with employment relationships, companies are relying on various contingent workforce solutions to produce goods and services.

Individuals wrongly classified as independent contractors are denied access to critical benefits and protections — such as family and medical leave, overtime, unemployment insurance, workers' compensation insurance, and workplace civil rights — to which they may be entitled as regular employees. Worker misclassification also generates substantial losses to the Treasury and the Social Security, Medicare and Unemployment Insurance Trust Funds. In its last comprehensive estimate of the scope of the misclassification problem for tax year 1984, the Internal Revenue Service estimated that 15 percent of all employers misclassified a total of 3.4 million employees as independent contractors, resulting in an estimated annual revenue loss of \$1.6 billion (in 1984 dollars).

An August 2009 Government Accountability Office (GAO) report noted that the precise extent of misclassification is unknown, but studies suggest that it may involve 10 to 30 percent of firms. A number of recent studies conducted by non-profit organizations, by researchers on behalf of state governments, and by the Department's Employment and Training Administration, suggest that employee misclassification—while occurring in many industries—is prevalent in several industries: construction, janitorial, home health care, child care, transportation and warehousing, meat and poultry processing, and other professional and personnel service industries. To combat the growing problem of employee misclassification, in FY 2011, WHD signed Memoranda of Understanding (MOUs) with California, Colorado, Connecticut, Hawaii, Illinois, Iowa, Louisiana, Maryland, Massachusetts, Minnesota, Missouri, Montana, Utah, and Washington, as well as with the Internal Revenue Service (IRS). MOUs with additional states are being explored, which will increase the coordination and sharing of information between WHD and other stakeholders.

### **Agricultural Industry:**

Agricultural labor remains one of the most dangerous and difficult jobs performed in this country. Domestic and temporary non-immigrant agricultural workers endure low wages, unsafe housing and transportation, and harsh working conditions. In FY 2014, WHD will build upon

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the results of its FY 2013 directed enforcement plan targeting various crop supply chains, whose workers are likely to be subjected to especially poor conditions. WHD will continue to conduct coordinated investigations, including investigations of H-2A employers, to determine their compliance with all applicable agricultural labor standards statutes and to work towards achieving a more sustainable impact in the compliance level within the industry. Education and outreach to employers will concentrate on child labor requirements, employer responsibilities, and increased awareness of non-compliant farm labor contractors. Public awareness and outreach to workers will be designed to increase WHD visibility among agricultural worker populations. Penalties, sanctions, revocation, hot goods, debarment, and similar strategies will be used as appropriate to ensure future compliance among violators and to deter violations among other agricultural employers. Media releases will be used to inform the public of WHD agricultural laws, compliance actions taken, and penalties assessed.

### **Customer Service:**

Consistent with the standards established by Executive Order 13571— Streamlining Service Delivery and Improving Customer Service, WHD continuously evaluates ways it can improve customer service. As a WHD goal, customer service is largely encompassed by complaint handling, but also cuts across diverse program areas such as FMLA and wage determinations while also covering information technology that underpins core agency operations. Technology plays a critical role in furthering customer services goals, particularly in achieving increased efficiencies in the delivery of services to workers as well as businesses and governmental entities. The FY 2014 request seeks to streamline agency processes in order to reduce costs and accelerate delivery of information and services, while reducing the need for customer calls and inquiries. According to a 2009 survey of employees, respondents rated WHD's performance in conducting their case an average of 3.36 on a scale of 1-5. In FY 2013, WHD will have the results of a subsequent employee survey, which should demonstrate an increase in this performance rating.

### **Family and Medical Leave Act:**

In order to promote work and family balance, WHD is examining its FMLA enforcement policies to ensure a more comprehensive approach to compliance. These strategies will provide a more in-depth review of the employer's business practices and leave policies with the objective of making a broader impact on compliance, rather than resolving one individual complaint. For many middle and low wage workers, FMLA may be the only job protection that is available for these individuals. Their complaints are time sensitive, so WHD must likewise be timely in protecting the rights of these individuals who are dealing with their own or their family's serious health conditions. Additionally, marking the 20<sup>th</sup> anniversary of FMLA, WHD conducted a survey to collect updated information on employers and employees leave taking under FMLA, building upon the findings from prior surveys completed in 1995 and 2000.<sup>6</sup> WHD will use these survey results to refine and develop policies and enforcement strategies.

### **Wage Determinations:**

The McNamara-O'Hara Service Contract Act (SCA) and Davis-Bacon and Related Acts (DBRA) prevailing wage requirements provide a floor for the payment of wages. The prevailing

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<sup>6</sup> Available: <http://www.dol.gov/whd/fmla/survey/>.

## **WAGE AND HOUR DIVISION**

wage programs provide protections to local workers who may be disadvantaged by competition from outside labor offering their services at wages lower than those in the locality. Current and accurate prevailing wage rates provide a level of income consistent with local labor markets.

Workers in traditional low-wage industries, such as residential construction, janitorial, and guard services, receive the assurance of a prevailing wage when they are employed on federally-funded or assisted contracts. Workers benefit only if the wages issued by the Department are accurate, up-to-date, and truly reflective of what is prevailing in the locality. Increased automation will improve the quality and timeliness of the wage rates. Both systems need to be modernized and update to more agile systems that can be adapted to changes in procedures and policies.

## WAGE AND HOUR DIVISION

<b>BUDGET ACTIVITY BY OBJECT CLASS</b>					
(Dollars in Thousands)					
		<b>FY 2012 Revised Enacted</b>	<b>FY 2013 Full Year C.R.</b>	<b>FY 2014 Request</b>	<b>Diff. FY14 Request / FY 12 Rev. Enacted</b>
11.1	Full-time permanent	106,887	106,887	111,363	4,476
11.3	Other than full-time permanent	0	0	0	0
11.5	Other personnel compensation	3,582	3,582	3,582	0
11.9	<b>Total personnel compensation</b>	<b>110,469</b>	<b>110,469</b>	<b>114,945</b>	<b>4,476</b>
12.1	Civilian personnel benefits	32,532	32,532	33,503	971
13.0	Benefits for former personnel	0	0	0	0
21.0	Travel and transportation of persons	7,716	7,716	8,218	502
22.0	Transportation of things	28	28	28	0
23.1	Rental payments to GSA	10,569	10,569	11,312	743
23.2	Rental payments to others	28	28	28	0
23.3	Communications, utilities, and miscellaneous charges	3,597	3,597	3,833	236
24.0	Printing and reproduction	620	620	654	34
25.1	Advisory and assistance services	4,250	4,250	4,250	0
25.2	Other services from non-Federal sources	6,788	6,788	6,985	197
25.3	Other goods and services from Federal sources 1/	23,075	24,465	25,558	2,483
25.4	Operation and maintenance of facilities	0	0	0	0
25.5	Research and development contracts	0	0	0	0
25.7	Operation and maintenance of equipment	24,032	24,032	30,230	6,198
26.0	Supplies and materials	1,100	1,100	1,174	74
31.0	Equipment	2,257	2,257	2,536	279
41.0	Grants, subsidies, and contributions	0	0	0	0
42.0	Insurance claims and indemnities	0	0	0	0
	<b>Total</b>	<b>227,061</b>	<b>228,451</b>	<b>243,254</b>	<b>16,193</b>
1/Other goods and services from Federal sources					
	CIGIE	0	0	883	883
	Working Capital Fund	18,730	19,287	20,330	1,600
	DHS Services	1,076	1,076	1,076	0
	GSA Services	181	181	181	0
	Services by Other Government Departments	3,088	3,921	3,088	0

# WAGE AND HOUR DIVISION

## CHANGES IN FY 2014

(Dollars in Thousands)

### Activity Changes

#### Built-In

To Provide For:

Costs of pay adjustments	\$1,155
Personnel benefits	140
Employee health benefits	0
Moving allowance	0
One day more of pay	0
Federal Employees' Compensation Act (FECA)	0
Benefits for former personnel	0
Travel and transportation of persons	0
Transportation of things	0
Rental payments to GSA	299
Rental payments to others	0
Communications, utilities, and miscellaneous charges	0
Printing and reproduction	0
Advisory and assistance services	0
Other services from non-Federal sources	0
Working Capital Fund	1,600
Other Federal sources (DHS Charges)	0
Other goods and services from Federal sources	0
Research & Development Contracts	0
Operation and maintenance of facilities	0
Operation and maintenance of equipment	0
Supplies and materials	0
Equipment	0
Grants, subsidies, and contributions	0
Insurance claims and indemnities	0

**Built-Ins Subtotal** **\$3,194**

**Net Program** **\$12,999**

**Direct FTE** **63**

	Estimate	FTE
<b>Base</b>	<b>\$230,255</b>	<b>1,809</b>
<b>Program Increase</b>	<b>\$12,999</b>	<b>63</b>

NOTE: Base reflects actual FY 2012 FTE.