

FY 2016

CONGRESSIONAL BUDGET JUSTIFICATION

WAGE AND HOUR DIVISION

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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, [\$227,500,000] \$277,100,000. (*Department of Labor Appropriations Act, 2015.*)

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AMOUNTS AVAILABLE FOR OBLIGATION						
(Dollars in Thousands)						
	2014		2015		2016	
	FTE	Amount	FTE	Amount	FTE	Amount
A. Appropriation	1,446	\$224,330	1,332	\$227,500	1,649	\$277,100
<i>Subtotal Appropriation</i>	<i>1,446</i>	<i>\$224,330</i>	<i>1,332</i>	<i>\$227,500</i>	<i>1,649</i>	<i>\$277,100</i>
Reimbursements (CMP's)	0	\$2,800	0	\$2,800	0	\$2,800
H-1B L Fraud Fees (Collected)	363	\$55,443	395	\$55,443	395	\$55,443
<i>Subtotal</i>	<i>0</i>	<i>\$282,573</i>	<i>1,727</i>	<i>\$285,743</i>	<i>0</i>	<i>\$335,343</i>
B. Gross Budget Authority	1,809	\$282,573	1,727	\$285,743	2,044	\$335,343
Reimbursements (CMP's)	0	-\$2,800	0	-\$2,800	0	-\$2,800
H-1B L Fraud Fees (Collected)	-363	-\$55,443	-395	-\$55,443	-395	-\$55,443
C. Budget Authority Before Committee	1,446	\$224,330	1,332	\$227,500	1,649	\$277,100
Reimbursements (CMP's)	0	\$2,800	0	\$2,800	0	\$2,800
H-1B L Fraud Fees Actual	363	\$55,443	395	\$55,443	395	\$55,443
D. Total Budgetary Resources	1,809	\$282,573	1,727	\$285,743	2,044	\$335,343
FTE Lapse and Unobligated Balance Expiring	82	\$2,471	0	\$0	0	\$0
E. Total, Estimated Obligations	1,727	\$280,102	1,727	\$285,743	2,044	\$335,343

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SUMMARY OF CHANGES

(Dollars in Thousands)

	2015	2016	Net Change
Budget Authority			
General Funds	\$282,943	\$332,543	+\$49,600
Total	\$282,943	\$332,543	+\$49,600
Full Time Equivalents			
General Funds	1,727	2,044	317
Total	1,727	2,044	317

2016 Change

Explanation of Change	2015 Base		Trust Funds		General Funds		Total	
	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
Increases:								
A. Built-Ins:								
To Provide For:								
Costs of pay adjustments	1,727	\$164,361	0	\$0	0	\$3,722	0	\$3,722
Personnel benefits	0	\$23,458	0	\$0	0	\$0	0	\$0
Employee health benefits	0	\$7,854	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	\$0	0	\$0	0	\$0	0	\$0
Benefits for former personnel	0	\$0	0	\$0	0	\$0	0	\$0
Travel and transportation of persons	0	\$6,000	0	\$0	0	\$0	0	\$0
Transportation of things	0	\$15	0	\$0	0	\$0	0	\$0
Rental payments to GSA	0	\$11,000	0	\$0	0	\$283	0	\$283
Rental payments to others	0	\$20	0	\$0	0	\$0	0	\$0
Communications, utilities, and miscellaneous charges	0	\$4,184	0	\$0	0	\$0	0	\$0
Printing and reproduction	0	\$540	0	\$0	0	\$0	0	\$0
Advisory and assistance services	0	\$3,946	0	\$0	0	\$0	0	\$0
Other services from non-Federal sources	0	\$3,750	0	\$0	0	\$0	0	\$0
Working Capital Fund	0	\$25,614	0	\$0	0	\$2,324	0	\$2,324
Other Federal sources (DHS Charges)	0	\$1,076	0	\$0	0	\$0	0	\$0
Other goods and services from Federal sources	0	\$4,123	0	\$0	0	\$0	0	\$0
Research & Development Contracts	0	\$0	0	\$0	0	\$0	0	\$0
Operation and maintenance of facilities	0	\$800	0	\$0	0	\$0	0	\$0
Operation and maintenance of equipment	0	\$22,365	0	\$0	0	\$0	0	\$0
Supplies and materials	0	\$1,260	0	\$0	0	\$0	0	\$0
Equipment	0	\$1,290	0	\$0	0	\$0	0	\$0

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Explanation of Change	2016 Change							
	2015 Base		Trust Funds		General Funds		Total	
	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
Grants, subsidies, and contributions	0	\$0	0	\$0	0	\$0	0	\$0
Insurance claims and indemnities	0	\$0	0	\$0	0	\$0	0	\$0
Built-Ins Subtotal	1,727	+\$281,656	0	\$0	0	+\$6,329	0	+\$6,329
B. Programs:								
Strategic Vision for the 21st Century	0	\$0	0	\$0	300	\$31,666	300	\$31,666
Infrastructure and Training Support	0	\$0	0	\$0	5	\$6,600	5	\$6,600
Support for DOL Enterprise								
Architecture	0	\$0	0	\$0	0	\$3,622	0	\$3,622
Support for Data Analysis	0	\$0	0	\$0	12	\$1,502	12	\$1,502
Programs Subtotal			0	\$0	317	+\$43,390	317	+\$43,390
Total Increase	1,727	+\$281,656	0	\$0	317	+\$49,719	317	+\$49,719
Decreases:								
A. Built-Ins:								
To Provide For:								
Federal Employees' Compensation Act (FECA)	0	\$1,287	0	\$0	0	-\$119	0	-\$119
Built-Ins Subtotal	0	+\$1,287	0	\$0	0	-\$119	0	-\$119
B. Programs:								
Total Decrease	0	+\$1,287	0	\$0	0	-\$119	0	-\$119
Total Change	1,727	+\$282,943	0	\$0	317	+\$49,600	317	+\$49,600

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SUMMARY BUDGET AUTHORITY AND FTE BY ACTIVITY (Dollars in Thousands)								
	2014		2015		2016		Diff. 2016 / 2015	
	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
Wage and Hour Division	1,332	224,330	1,332	227,500	1,649	277,100	317	49,600
General Funds	1,332	224,330	1,332	227,500	1,649	277,100	317	49,600
Wage Hour H-1B Revenue¹	395	55,443	395	55,443	395	55,443	0	0
General Funds	395	55,443	395	55,443	395	55,443	0	0
Total	1,727	279,773	1,727	282,943	2,044	332,543	317	49,600
General Funds	1,727	279,773	1,727	282,943	2,044	332,543	317	49,600

NOTE: FY 2014 reflects actual FTE.

¹ H-1B Fees - This account is not appropriated.

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BUDGET AUTHORITY BY OBJECT CLASS					
(Dollars in Thousands)					
		2014	2015	2016	Diff. 2016 / 2015
	Full-Time Equivalent				
	Full-time Permanent	1,809	1,727	2,044	317
	Total	1,809	1,727	2,044	317
	Average ES Salary	\$170,138	\$170,138	\$171,839	\$1,701
	Average GM/GS Grade	11/1	11/1	11/1	0
	Average GM/GS Salary	\$74,301	\$75,045	\$75,795	\$750
11.1	Full-time permanent	145,094	145,094	166,182	21,088
11.3	Other than full-time permanent	1,450	1,450	1,450	0
11.5	Other personnel compensation	2,472	2,472	2,472	0
11.9	Total personnel compensation	149,016	149,016	170,104	21,088
12.1	Civilian personnel benefits	42,345	42,345	47,408	5,063
13.0	Benefits for former personnel	0	0	0	0
21.0	Travel and transportation of persons	6,867	6,867	8,590	1,723
22.0	Transportation of things	15	15	15	0
23.0	Rent, Communications, and Utilities	0	0	0	0
23.1	Rental payments to GSA	13,100	13,100	15,605	2,505
23.2	Rental payments to others	20	20	20	0
23.3	Communications, utilities, and miscellaneous charges	4,184	4,184	4,927	743
24.0	Printing and reproduction	690	690	791	101
25.1	Advisory and assistance services	3,946	3,946	3,946	0
25.2	Other services from non-Federal sources	3,796	3,796	6,091	2,295
25.3	Other goods and services from Federal sources 1/	26,755	33,249	39,121	5,872
25.4	Operation and maintenance of facilities	800	800	800	0
25.5	Research and development contracts	0	0	0	0
25.7	Operation and maintenance of equipment	25,689	22,365	31,791	9,426
26.0	Supplies and materials	1,260	1,260	1,476	216
31.0	Equipment	1,290	1,290	1,858	568
41.0	Grants, subsidies, and contributions	0	0	0	0
42.0	Insurance claims and indemnities	0	0	0	0
	Total	279,773	282,943	332,543	49,600
	1/Other goods and services from Federal sources				
	Working Capital Fund	19,120	25,614	31,486	5,872
	DHS Services	1,076	1,076	1,076	0
	GSA Services	181	181	181	0
	Services by Other Government Departments	6,378	6,378	6,378	0

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SIGNIFICANT ITEMS IN APPROPRIATIONS COMMITTEES' REPORT

The Committee requests the Wage and Hour Division to submit a report to the House and Senate Committees on Appropriations within 180 days of enactment of the FY 2015 Department of Labor Appropriations Act on the steps taken to improve the process for wage determinations for public works projects and correct the deficiencies found in the 2004 OIG report titled ``Concerns Persist with the Integrity of Davis- Bacon Act Prevailing Wage Determinations."

WHD Response:

The Wage and Hour Division expects to provide the report within the 180 day timeframe.

The Committee requests the Wage and Hour Division to submit a report to the House and Senate Committees on Appropriations within 120 days of enactment of the FY 2015 Department of Labor Appropriations Act on the methodology and accuracy of the Adverse Effect Wage Rates (AEWR).

WHD Response:

While WHD is not directly involved in formulating the methodology used by the United States Department of Agriculture during its quarterly Farm Labor Survey nor in ensuring the accuracy of the AEWR, WHD will coordinate with other relevant DOL agencies and expects to provide the report within the 120 day timeframe.

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AUTHORIZING STATUTES

Public Law / Act	Legislation	Statute No. / US Code	Volume No.	Page No.	Expiration Date
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

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Public Law / Act	Legislation	Statute No. / US Code	Volume No.	Page No.	Expiration Date
PUB. L. 105-277	American Competitiveness and Workforce Improvement Act (ACWIA), Title IV of the Omnibus Consolidated and Emergency Supplemental Appropriation Act.	414(b) and (c)			N/A
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

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APPROPRIATION HISTORY					
(Dollars in Thousands)					
	Budget Estimates to Congress	House Allowance	Senate Allowance	Appropriations	FTE
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
2009					
Base Appropriation	\$193,092	\$0	\$0	\$193,092	1,283
2010					
Base Appropriation	\$227,656	\$0	\$0	\$227,262	1,466
2011					
Base Appropriation	\$244,240	\$0	\$0	\$227,491	1,022
2012					
Base Appropriation	\$240,937	\$0	\$227,491	\$227,061	1,418
2013					
Base Appropriation	\$237,730	\$0	\$0	\$215,184	1,420
2014					
Base Appropriation	\$243,254	\$0	\$0	\$224,330	1,446
2015					
Base Appropriation	\$265,766	\$0	\$0	\$227,500	1,332
2016					
Base Appropriation	\$277,100	\$0	\$0	\$0	1,649

In the FY 2005 through FY 2010 budget estimate to congress, the Wage and Hour amount was included in the former Employment Standards Administration request.

FTE shown only includes FTE funded from the WHD annual appropriation.

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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 Secretary's strategic objectives of *securing wages and overtime* and *protecting workers' rights* and the Secretary's vision of *promoting and protecting opportunity* for all workers and their employers. WHD's success in achieving its outcomes is instrumental in promoting access for everyone to opportunities—opportunities for workers to move into the middle class; opportunities for employers to compete on a level playing field; and opportunities for workers to balance their family and work obligations.

WHD comprises 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).

The 2016 Budget request for Wage and Hour is \$277,100,000, an increase of \$49,600,000. Specific program increases include:

- \$31,666,000 and 300 FTE for additional enforcement staff and support. Additional resources dedicated to planned enforcement—as opposed to reactive—would allow the agency to address systemic compliance problems more strategically.
- \$3,622,000 for the WHD modernization program, providing new capabilities and tools made available by the DOL enterprise architecture.
- \$1,502,000 for 12 FTE economists/statisticians to develop and expand the analytical and statistical capacity of the agency.
- \$5,800,000 for a new, integrated case management system to replace the current outdated system, which impedes WHD's efforts to advance its strategic enforcement strategies.
- \$800,000 and 5 FTE to support WHD's training and development program.

These additional tools and resources continue the agency's transformation into a 21st Century law enforcement organization—an organization that is strategic in its approach to resolving

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compliance challenges, efficient in its use of resources, flexible in responding to critical and emerging compliance issues, and effective in promoting and achieving compliance.

WHD's core enforcement priorities promote workers employed in compliance with wage and hour laws, employers sustaining compliance with those laws, and the agency providing customer-oriented and quality service to workers, employers, and the public. Compliance with this Nation's wage and workplace standards provides the most basic protections for workers and the greatest opportunity for them to advance to higher-paying jobs. Labor standards compliance also levels the playing field for businesses. When employers understand that all businesses must abide by the Nation's wage and workplace standards, they can anticipate and plan for those requirements. Goods and services can then be produced through innovation and competitive efficiencies rather than through strategies that lower core labor standards. An effective compliance program that couples enforcement and education with strategies to promote continued compliance means that all workers in this country can realize the potential of a stable and secure income and those responsible businesses can succeed through the ingenuity of their workforce and not at its expense.

WHD's enforcement strategies have evolved over the last several years as industries have adopted new business models. The businesses that are covered by this Nation's labor standards laws are no longer confined to 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. In recent years, the employment relationship between workers and businesses receiving the benefit of their labor has fissured apart as companies have contracted out or otherwise shed activities to be performed by other businesses. Often those secondary companies deepen the fissures, breaking those activities apart and shifting work even further out from the primary business. As a result, employees may be unaware for whom they actually work. 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 this changing environment, WHD conducted a series of evaluations and studies to 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*,"² many of which have informed the agency's enforcement strategies and complaint investigation priorities. That report provided evidence that directed (i.e., non-complaint-based) investigations resulted in a deterrence effect not seen following complaint-based investigations.

The *Family and Medical Leave in 2012: Final Report*,³ provided information on worker and employer experiences with FMLA, building on two prior surveys.

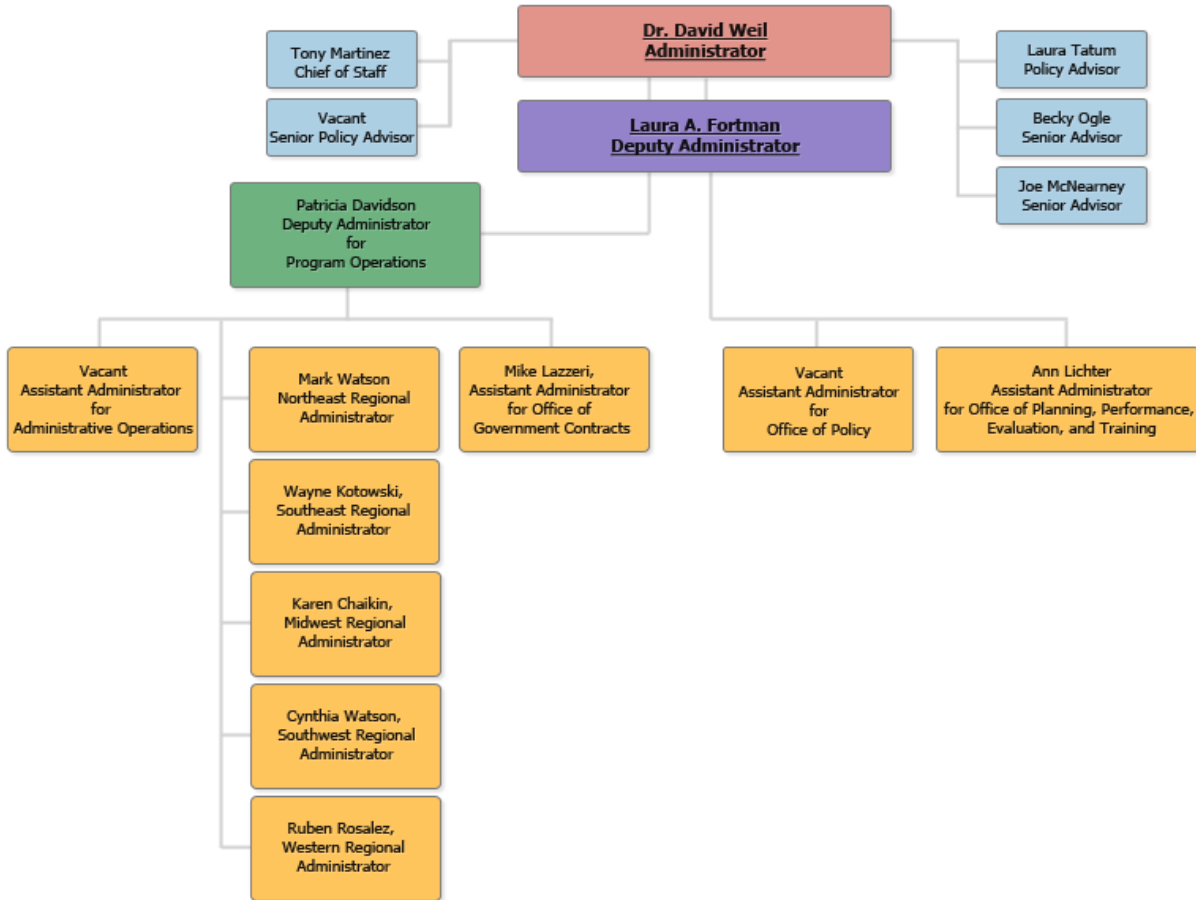
² *Improving Workplace Conditions Through Strategic Enforcement: A Report to the Wage and Hour Division*, David Weil, Boston University. May 2010. Available: <http://www.dol.gov/whd/resources/strategicEnforcement.pdf>.

³ *Family and Medical Leave in 2012: Technical Report*, Abt Associates Inc., September 2012. Available: <http://www.dol.gov/asp/evaluation/fmla/FMLA-2012-Technical-Report.pdf>.

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WHD has also taken 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. Performance trends demonstrate strategies are increasingly accurate in selecting employers with violations for investigations, are allowing for better prioritization of both complaint and directed investigations, and are reaching more workers with back wages agreed to pay. The FY 2016 budget request builds upon these successes.

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BUDGET AUTHORITY BEFORE THE COMMITTEE				
(Dollars in Thousands)				
	2014	2015	2016	Diff. 2016 / 2015
Activity Appropriation	224,330	227,500	277,100	49,600
FTE	1,332	1,332	1,649	317

NOTE: FY 2014 reflects actual FTE. Authorized FTE for FY 2014 was 1,446.

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 promote 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 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 promotes the safe employment of young workers, encourage their educational endeavors, and provide a path to future employment.

Strategic Priorities: WHD has developed a set of three strategic priorities:

1. Ensuring that the regulatory agenda of providing a fair day’s pay for a hard day’s work is fully and properly implemented;
2. Building a strategic enforcement system that supports the agency’s mission, vision, and values; and
3. Providing support for key initiatives such as government contracts, addressing the fissured workplace, and modernizing WHD’s approach in program enforcement areas.

Building a Structure to Support Strategies

WHD has laid the groundwork for strategic enforcement by restoring investigator levels above historic lows; implementing performance measures and evidence-based strategies that aim for compliance for the greatest number of vulnerable workers in priority industries; and updating policies and procedures to support strategic enforcement. Various types of outreach and coordination positions in regional and district offices are helping the agency plan and carry out investigations more strategically. Relationships with State agencies are furthering the agency’s commitment to addressing violations resulting from misclassifying employees as independent contractors.

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WHD will continue to 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, including employers, 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 will aim to deter violations among employers within high-risk industries.

Updating a Fair Day's Pay

The mission of WHD, simply stated, means a fair day's work deserves a fair day's pay. In FY 2016, WHD will continue implementing an ambitious regulatory agenda that aims to ensure workers remain adequately protected by current federal law. Since 2010, WHD has reinvigorated its regulatory program, focusing efforts on salient issues requiring reexamination in light of changes to the economy, industry, and employment relationships. DOL has also focused on the implementation of its regulations, striving to ensure that WHD investigators are well-trained and the regulated community is well-informed.

In FY 2016, pending the outcome of litigation, the agency will focus on implementing two regulatory actions that became effective on January 1, 2015: Minimum Wage and Overtime Pay Rule for Direct Care Workers and Executive Order 13658 — Minimum Wage for Contractors which raised the minimum wage for work performed by parties who contract with the Federal Government to \$10.10. In addition, WHD will continue refining the requirements and implementation strategies for Executive Order 13673 — Fair and Pay and Safe Workplaces which provides that applicants seeking government contracts must disclose any "administrative merits determination, arbitral award or decision, or civil judgment," arising from the violation of certain federal and state labor laws, rendered against the applicant during the previous three years. WHD is also charged with updating and modernizing overtime regulations.

Civil Monetary Penalties

WHD aims to prioritize increasing civil monetary penalties for minimum wage and overtime violations under the FLSA, FLSA recordkeeping provisions, FLSA notice posting provisions, FMLA provisions, and FMLA notice posting provisions. Aside from penalties for child labor violations, the FLSA currently provides for the availability of civil monetary penalties only for repeat and willful violations of the Act, greatly restricting the availability of penalties for the vast majority of FLSA cases. Unscrupulous employers treat FLSA penalties as the cost of doing business, putting employers who play by the rules at a competitive disadvantage.

Another distinct deficiency in the current FLSA penalty regime is the unavailability of penalties for recordkeeping violations. Misclassification cases often result in findings of recordkeeping violations with little or no back wages owed. Accordingly, unscrupulous employers who pay below the minimum wage or who do not pay overtime have very little incentive to properly classify their workers as employees. The availability of a civil monetary penalty for recordkeeping violations would create a much broader deterrent to misclassification.

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Employers are required to post a notice informing their employees of their rights under the FLSA and FMLA. The FLSA's civil monetary penalty provisions, however, do not apply to violations that arise from the failure to post a notice, and the penalty for failure to post under the FMLA is too low to provide a deterrent effect – only \$110. The Administration has created a strong record of supporting employees' voice in the workplace, but employees must know their rights in order to speak up for them. Expanding the FLSA civil monetary penalty provisions to include the failure to post a notice, as well as increasing the penalty under the FMLA, would create a more meaningful deterrent.

Finally, while general equitable and liquidated damages are available for employees whose employers violate their FMLA rights, unlike for violations of the FLSA, no civil monetary penalties are available for violations of the FMLA – even repeated or willful violations. It can be difficult for employees subjected to FMLA violations to demonstrate significant damages – especially in cases where employers interfere with an employee's right to take leave so the employee forgoes taking leave. Thus, FMLA damages provisions do not provide a robust deterrent to violations; the creation of civil monetary penalties for the denial of FMLA rights would be a stronger deterrent.

Key Enforcement Initiatives

WHD will continue refining and strengthening its strategies in priority industries with an emphasis on detecting the various forms of misclassification found among those fissured business models.

Addressing the Fissured Workplace: WHD is modernizing its approach in all of its key enforcement areas in industries where complex employment relationships exist. In FY 2016, WHD 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. Directed investigations are most often centered on employer and industry business models that function to obscure, or eliminate entirely, the link between the worker and the business. This results in a growing population of vulnerable workers with reduced protections and less opportunity to address the lack of protections. WHD also conducts directed investigations to secure compliance for other workers at a higher risk of exploitation: workers with disabilities, young workers, agricultural workers, and workers with no private right to pursue remedies on their own behalf.

Agriculture: Domestic and temporary non-immigrant agricultural workers endure low wages, unsafe housing and transportation, and harsh working conditions. In FY 2016, WHD will continue refining enforcement and outreach strategies focused on the supply chains for hand-harvested crops, where workers may be subjected to especially poor conditions.

FMLA: WHD has reengineered its approach in FMLA. In order to promote work and family balance, WHD is implementing its FMLA enforcement policies to promote a more comprehensive approach to compliance. Since FMLA compliance at the establishment level is often driven by corporate policies, WHD is developing strategies to provide a more in-depth

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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.

Section 14(c): WHD is also developing strategic enforcement and outreach approaches in its Section 14(c) program. 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). WHD is pursuing 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.

Five-Year Budget Activity History

<u>Fiscal Year</u>	<u>Funding</u> (Dollars in Thousands)	<u>FTE</u>
2011	\$227,491	1,022
2012	\$227,061	1,418
2013	\$215,184	1,420
2014	\$224,330	1,446
2015	\$227,500	1,332

FY 2016

At the FY 2016 Request Level, WHD requests \$277,100,000 and 1,649 FTE, which is \$49,600,000 and 317 FTE above the FY 2015 Enacted level. WHD's budget includes:

- \$31,666,000 and 300 FTE for additional enforcement staff and support. Additional resources dedicated to planned enforcement—as opposed to reactive—would allow the agency to address systemic compliance problems more strategically.
- \$3,622,000 for the WHD modernization program, providing new capabilities and tools made available by the DOL enterprise architecture.
- \$1,502,000 for 12 FTE economists/statisticians to develop and expand the analytical and statistical capacity of the agency.
- \$5,800,000 for a new, integrated case management system to replace the current outdated system, which impedes WHD's efforts to advance its strategic enforcement strategies.
- \$800,000 and 5 FTE to support WHD's training and development program.

Enhanced Enforcement

Building a Strategic Enforcement Agency

Since FY 2010, WHD has undertaken an ambitious change management agenda based on the findings and recommendations from a series of studies on the effectiveness of enforcement strategies in priority industries. Consistent with overarching strategies for worker protection agencies at the Department of Labor, WHD began laying the groundwork for protecting the most vulnerable populations while assuring broad-based compliance; establishing a regular process for evaluating the success of enforcement and regulatory priorities in helping to achieve desired

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outcomes; fostering a culture of continuous improvement; and improving the overall implementation of its strategies. WHD has carried out these reforms through an ongoing performance planning process that prioritizes, measures, and evaluates progress towards these ends.

Evidence to date demonstrates significant agency progress in carrying out these strategies. WHD relies on a balance of measures to evaluate progress in advancing a more strategic approach to enforcement. In FY 2014, WHD maintained increases in the percent of directed investigations with 44 percent directed investigations—a 27 percentage point increase from FY 2010. Meanwhile, WHD reduced the no violation rate for directed cases from 35 percent in FY 2009 to 22 percent in FY 2014, demonstrating that the agency's increased directed investigations have been carried out through careful selection of workplaces with the greatest problems. Furthermore, the gap between the no violation rates for directed versus complaint cases continues to narrow. In FY 2014, the no violation rate for complaint cases was 19 percent versus 22 percent for directed cases, demonstrating that directed investigations are nearly as accurate as a complaint in finding employers with violations.

Building on that track record, this request seeks a total of 300 additional enforcement FTE to continue restoring and strengthening the investigative workforce in areas where additional capacity is needed to meet pressing compliance, customer service, and organizational goals; and for developing a diverse and highly skilled workforce equipped with the range of management, analytical, coordination, and planning skills necessary to address important, systemic compliance issues.

Building the Front-Lines Workforce

Additional investigators will be placed in offices based on analysis of several factors that include economic trends, such as employment and population growth; volume of complaint cases, which is generally attributed to limited state-level labor laws or enforcement; current staffing ratios and office composition; and WHD workforce trends, including attrition. The additional resources will significantly advance the agency's directed enforcement program to a level where the agency can more consistently and broadly stem violations before they occur. Additional resources dedicated to planned—as opposed to reactive—enforcement would allow the agency to develop corporate and enterprise-wide solutions to systemic compliance problems. Resources will also be dedicated to developing the agency's talent management and training capacities, which are critical for ensuring the WHD front-lines workforce is equipped with the right skills for conducting effective enforcement and engaging stakeholders.

WHD is also requesting \$800,000 and 5 FTE to support the agency's talent management and training strategy. To drive optimal levels of success, WHD needs engaged, high-performing employees. WHD seeks to create a workplace that allows for continuous learning and professional development, which is a key factor in driving a workforce towards excellence. These FTE will provide WHD with expertise in professional development, adult learning techniques, instructional design, advanced technology applications, and course evaluation.

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21st Century Enforcement

Without sufficient staff to support these strategies, WHD offices are forced to allocate limited resources at the cost of longer-term, systemic solutions. These activities include coordination of investigations across offices, planning strategic enforcement initiatives to change employer behavior within priority industries, managing a growing and increasingly complex caseload, and evaluating the effectiveness of strategies using data and research. These activities play an increasingly important role in addressing compliance issues broadly. Establishment-by-establishment investigations do not bring about system-wide changes.

Across the organization, WHD has established and developed positions dedicated to conducting more coordinated, industry-level enforcement that engages stakeholders in long-term solutions to compliance problems. The establishment of these positions reflects WHD's commitment to developing best practices from the field and embedding the use of data, evaluations and research into its enforcement strategies. These strategies also require a commitment to developing and maintaining relationships with stakeholders, the regulated community and workers. These strategies include leveraging stakeholder resources to address compliance issues in ways outside the investigative process. Those efforts are particularly critical when introducing changes in regulations.

Carrying Out Increased Regulatory Responsibilities

This request also supports the FTE necessary to fully implement the DOL regulatory agenda, including implementing final regulations and fulfilling responsibilities in three Executive Orders.

- On February 12, 2014, the President signed an Executive Order raising the minimum wage for work performed by parties who contract with the Federal Government to \$10.10 effective January 1, 2015. WHD is responsible for implementing the Executive Order and enforcing its terms.
- On March 13, 2014, the President announced that he was directing the Secretary of Labor to begin the process of addressing overtime pay protections to help make sure millions of workers are paid a fair wage for a hard day's work and rules are simplified for employers and workers alike. The last time the overtime regulations were changed was in 2004 when the salary threshold was raised to \$455 per week. Having conducted extensive outreach to employers and workers, WHD is drafting an NPRM to fulfill the President's direction.
- On July 31, 2014, the President signed the Fair Pay and Safe Workplaces Executive Order, which requires that federal agencies consider a contractors' history of compliance with labor and employment laws when making responsibility determinations for the purpose of awarding government contracts and that agencies seek to help contractors come into compliance prior to the award of contracts. WHD is part of the Department's implementation efforts.
- On October 1, 2013, DOL published a final rule extending minimum wage and overtime pay protections under the Fair Labor Standards Act to many direct care workers (such as home health aides, personal care assistants, and workers in similar occupations) who provide essential home care assistance to people with disabilities and older adults. The WHD has engaged in extensive compliance assistance for States and other parties

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covered by the final rule and will continue that outreach, as appropriate, given the outcome of pending litigation.

Infrastructure to Support Strategies

WHD is requesting \$3.622 million for enterprise architecture. WHD must continue to stay in step with the Department of Labor IT initiatives while undertaking its modernization efforts. Given increasing public demand for greater Digital Government capabilities, DOL is committed to embedding the principles of the Digital Government strategy into its enterprise architecture. This will ensure that the model is one of “build once, reuse many” and it is an effective driver for the use of shared platforms for service delivery. WHD’s investment in its IT systems will be consistent with the DOL Digital Government strategy.

WHD will need to invest in new tools to support its modernization efforts in FY 2016, along with the continued effort to provide a more robust network connection via the Department’s wide area network. These new tools will ultimately assist with WHD’s enforcement efforts and thereby lead to increased compliance with the laws enforced by WHD and better service delivery through data and technology.

WHD is also requesting \$5,800,000 to implement a new, integrated case management 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.

Data-Driven and Evidence-Based Strategies

As a data-driven and evidence-based agency seeking to continuously improve program performance, WHD is requesting 12 FTE economists/statisticians. These FTE will develop the analytical and statistical capacity of the agency, including expanding the use of data, analysis, and evaluations in strengthening the effectiveness of the agency’s enforcement, regulatory and wage determination programs. These analytical tools are particularly important as the scope of WHD enforcement continues to evolve and the number of workers covered by minimum wage and overtime laws has outpaced the available resources of the agency. In FY 1978, WHD maintained an investigative staff of 1,232 to support over 57 million workers covered by minimum wage laws and over 53 million workers covered by overtime laws. In FY 2012, WHD employed an investigative staff of 1,067 to support the wage and hour rights of over 93 million workers covered by minimum wage laws and over 87 million workers covered by overtime laws.

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In order to meet the increased demand for worker protection and ensuring a level playing field for all employers in a constrained resource environment, WHD necessarily has to conduct its business smarter and more effectively by assessing existing evidence and generating new knowledge to achieve agency priority goals. For WHD's analytical capabilities to keep pace with its enforcement program, the agency requires more analysts equipped with specialized statistical and economic skills to fully leverage the significant volume of enforcement data collected; to conduct timelier, comprehensive analyses of administrative data to support performance management and executive decision-making; to conduct economic and statistical studies to improve the agency's understanding of the regulated community; and to facilitate studies that will inform enforcement, outreach, and policy making. The expanded capacity will ensure that the agency allocates a larger share of resources to programs and enforcement strategies backed by strong evidence of effectiveness while moving away from activities that evidence shows are not effective. The added resources will also help to provide evidence-based analyses of the agency's ongoing regulatory program and inform the efficacy of the implementation process. WHD has a track record of coordinating and conducting evaluations through evaluation funds available through the Department. These internal studies by third-parties have demonstrated effective enforcement strategies, highlighted compliance challenges impacting workers and industries, and recommended ways to address compliance broadly. WHD relies on these studies and analysis to continually improve its effectiveness.

FY 2015

Figures shown for FY 2015 reflect the FY 2015 full-year enacted appropriation of \$227,500,000.

In FY 2015, WHD 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. Vulnerable workers, include those at a higher risk of exploitation: workers with disabilities, young workers, agricultural workers, and workers with no private right to pursue remedies on their own behalf. WHD is also focused on industries with business models that obscure, or eliminate entirely, the link between the worker and the business, including the misclassification of workers. These practices result in a growing population of vulnerable workers with reduced protections and less opportunity to address the lack of protections. In FY 2015, WHD continues to work towards building a stronger, more effective WHD based on a track record of results since the agency began dedicating greater enforcement hours to directed investigations that are strategically targeted toward solving the most important compliance challenges. To that end, strategic directed enforcement continues to provide WHD with the ability to prioritize resources, plan for sustained compliance, evaluate how strategies can deter violations beyond the investigated employers, and measure the extent to which individual investigations can address system-wide compliance problems.

FY 2014

Figures shown for FY 2014 reflect the FY 2014 full-year enacted appropriation of \$224,330,000. In FY 2014, WHD continued its strategic enforcement approach to compliance with emphasis

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placed on directed enforcement and 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. In FY 2014, WHD maintained its increases in the percentage of directed investigations from the past few years while simultaneously lowered the no violation rate to historic lows and only three percentage points higher than the no violation rate of complaint investigations.

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DETAILED WORKLOAD AND PERFORMANCE					
		2014		2015	2016
		Target	Result	Target	Target
Wage and Hour Division⁴					
Strategic Goal 3 - Promote fair and high quality work-life environments					
Strategic Objective 3.2 - Protect workers' rights					
Strategic Objective 3.3 - Secure wages and overtime					
WHD-E-01	Number of compliance actions	33,635	29,483	30,500	31,411
WHD-E-02	Percent of directed investigations (excludes conciliations)	40.00%	43.51%	43.00%	43.00%
WHD-E-04	Percent of directed no violation cases	22.00%	21.96%	25.00%	20.00%
WHD-E-05	Percent of complaint no violation cases	20.00%	19.46%	21.00%	20.00%
WHD-PRIO-02	Percent of Directed Investigations in Priority Industries	86.00%	81.82%	84.00%	86.00%
WHD-PRIO-03	Percent of complaint investigations in priority industries (excludes conciliations)	68.00%	66.74%	69.00%	70.00%
WHD-CL-01	Percent of investigations in which child labor compliance is examined (exclude conciliations)	95.00%	94.77%	94.00%	97.00%
WHD-14C-01	Percent of Directed No-Violation 14C Investigations	23.00%	18.15%	23.00%	20.00%

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

⁴ Strategic Objective 3.2 - Protect workers' rights: WHD is currently exploring new measures that will better reflect its priorities in FMLA that better align with corporate wide compliance for protecting employee family leave.

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Workload and Performance Summary

The agency's priorities are supported by performance measures designed to monitor the organization's progress in achieving strategic enforcement and compliance outcomes. WHD has used a balance of measures to evaluate whether the agency is effective, productive, and consistent in applying new policies and strategies. These performance measures allow 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. The agency has evolved significantly in an effort to become more strategic and outcome-focused. As results demonstrate the agency's increasing capacity for conducting strategic enforcement, the agency is also evaluating new performance measures to continue driving this ongoing evolution.

In the past, the structure of the organization supported enforcement focused on one workplace establishment and driven by incoming complaints brought to the agency. By narrowly defining success in terms of complaint resolution and addressing compliance at the establishment-level, enforcement strategies failed to recognize significant, dynamic changes occurring in the way industries are structured and changes to the composition of the workforce. Based on recognition that this approach was no longer adequate given the changing nature of the workplace and the limitations of traditional approaches to enforcement, WHD underwent a comprehensive effort to realign its goals, strategies, workforce, and business processes to meet the challenges of a 21st Century economy.

Since undertaking this strategic approach, WHD has increased productivity and performance results. To start, the agency worked to increase the number and percent of directed investigations, and in FY 2014, WHD maintained increases in the percent of directed investigations with 44 percent—a 27 percentage point increase from FY 2010. Meanwhile, WHD reduced the no violation rate for directed cases from 35 percent in FY 2009 to 22 percent in FY 2014, suggesting that the quality of case selection has not suffered as a result of conducting more directed investigations. Furthermore, the gap between the no violation rates for directed versus complaint cases continues to narrow. In FY 2014, the no violation rate for complaint cases was 20 percent versus 22 percent for directed cases, suggesting that directed investigations are nearly as accurate as a complaint in finding employers with violations. To drive the agency's emphasis on case quality and case outcomes, the agency will target a level of compliance actions that strikes a balance between productivity and quality. The FY 2016 target also reflects that any increases in production resulting from newly hired investigators are not typically realized in the same fiscal year that they are hired.

WHD has consistently prioritized enforcement resources in those industries defined by their fissured structures, resulting in tenuous employment relationships for some of the most vulnerable workers. The increased level of directed investigations, as well as prioritization of complaints, has increased the agency's presence in those priority industries. The majority of WHD investigations occur in these priority industries. Since FY 2010, the agency has maintained a high percent of overall investigations in priority industries with a result of 73 percent in FY 2014. Some portion of investigations will always be necessary to respond to compliance issues in non-priority industries, such as immediate responses to health and safety issues or investigating non-compliance with FMLA.

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By focusing on priority industries, WHD also increases the likelihood of detecting instances of misclassification. WHD continues to increase its presence in those industries that have evolved business practices to avoid classifying and treating workers as employees, including those in which employees are misclassified as independent contractors. WHD's priority industries are those industries where the relationship between the workers and the beneficiaries of the labor are more and more attenuated and fissured. 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. WHD's emphasis on conducting investigations priority industries is consistent with the goal of detecting instances of misclassification.

Since FMLA compliance at the establishment level is often driven by corporate policies, WHD is developing strategies to 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. As a result, cases may require additional time to develop as part of this corporate-wide approach, which is reflected in the FY 2016 performance target.

Too few 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 established a baseline no violation rate for investigations of Community Rehabilitation Programs in the Section 14 (c) program, which is consistent with the no violation rate for overall investigations.

WHD is developing the next generation of performance measures to drive continued growth and improvement. The current measures have driven targeted performance improvements since FY 2010; however, they are no longer the right combination to carry the agency forward. While WHD will continue to collect and monitor these measures as part of its administrative data, by FY 2016, the balance of performance measures will reflect the agency's evolving strategic priorities. Changes to measures will also inform the agency's approach to target-setting, which also aims for an appropriate balance. As a result, targets may also be adjusted to reflect the agency's new measurement framework.

As noted, the increase in FTE is expected to increase the number of cases concluded. However, from a performance perspective, the goal is not strictly to increase production, but to develop a workforce that also conducts investigations with greater impact. The measures developed will allow the agency to gauge the extent to which strategic and directed investigations are leading to stronger outcomes.

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BUDGET ACTIVITY BY OBJECT CLASS					
(Dollars in Thousands)					
		2014	2015	2016	Diff. 2016 / 2015
11.1	Full-time permanent	105,342	105,342	126,430	21,088
11.3	Other than full-time permanent	1,450	1,450	1,450	0
11.5	Other personnel compensation	2,126	2,126	2,126	0
11.9	Total personnel compensation	108,918	108,918	130,006	21,088
12.1	Civilian personnel benefits	32,599	32,599	37,662	5,063
13.0	Benefits for former personnel	0	0	0	0
21.0	Travel and transportation of persons	6,000	6,000	7,723	1,723
22.0	Transportation of things	15	15	15	0
23.1	Rental payments to GSA	11,000	11,000	13,505	2,505
23.2	Rental payments to others	20	20	20	0
23.3	Communications, utilities, and miscellaneous charges	4,184	4,184	4,927	743
24.0	Printing and reproduction	540	540	641	101
25.1	Advisory and assistance services	3,946	3,946	3,946	0
25.2	Other services from non-Federal sources	3,750	3,750	6,045	2,295
25.3	Other goods and services from Federal sources 1/	24,319	30,813	36,685	5,872
25.4	Operation and maintenance of facilities	800	800	800	0
25.5	Research and development contracts	0	0	0	0
25.7	Operation and maintenance of equipment	25,689	22,365	31,791	9,426
26.0	Supplies and materials	1,260	1,260	1,476	216
31.0	Equipment	1,290	1,290	1,858	568
41.0	Grants, subsidies, and contributions	0	0	0	0
42.0	Insurance claims and indemnities	0	0	0	0
	Total	224,330	227,500	277,100	49,600
	1/Other goods and services from Federal sources				
	Working Capital Fund	19,120	25,614	31,486	5,872
	DHS Services	1,076	1,076	1,076	0
	GSA Services	181	181	181	0
	Services by Other Government Departments	3,942	3,942	3,942	0

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CHANGES IN FY 2016

(Dollars in Thousands)

Activity Changes

Built-In

To Provide For:

Costs of pay adjustments	\$3,722
Personnel benefits	0
Employee health benefits	0
Moving allowance	0
One day more of pay	0
Federal Employees' Compensation Act (FECA)	-119
Benefits for former personnel	0
Travel and transportation of persons	0
Transportation of things	0
Rental payments to GSA	283
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	2,324
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 **\$6,210**

Net Program **\$43,390**

Direct FTE **317**

	Estimate	FTE
Base	\$233,710	1,332
Program Increase	\$43,390	317
Program Decrease	\$0	0