

**FY 2023**

**CONGRESSIONAL BUDGET JUSTIFICATION**

**WAGE AND HOUR DIVISION**

This page is intentionally left blank.

# WAGE AND HOUR DIVISION

## TABLE OF CONTENTS

Appropriation Language .....	1
Amounts Available for Obligation.....	2
Summary of Changes .....	3
Summary of Budget Authority and FTE by Activity.....	5
Budget Authority by Object Class .....	6
Authorizing Statutes.....	7
Appropriation History .....	9
Overview .....	10
Organization Chart.....	23
Budget Activities .....	25
Wage and Hour Division .....	25

This page is intentionally left blank.

## **WAGE AND HOUR DIVISION**

### **APPROPRIATION LANGUAGE**

#### **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, \$307,678,000.*

*Note.— A full-year 2022 appropriation for this account was not enacted at the time the budget was prepared; therefore, the budget assumes this account is operating under the Continuing Appropriations Act, 2022 (Division A of P.L.117-43, as amended). The amounts included for 2022 reflect the annualized level provided by the continuing resolution.*

## WAGE AND HOUR DIVISION

<b>AMOUNTS AVAILABLE FOR OBLIGATION</b>						
(Dollars in Thousands)						
	FY 2021 Revised Enacted		FY 2022 Full Year C.R.		FY 2023 Request	
	FTE	Amount	FTE	Amount	FTE	Amount
<b>A. Appropriation</b>	<b>1,340</b>	<b>\$246,000</b>	<b>1,267</b>	<b>\$246,000</b>	<b>1,556</b>	<b>\$307,678</b>
Reimbursements (CMP's)	0	\$2,800	0	\$2,800	0	\$2,800
H-1B L Fraud Fees (Collected)	170	\$40,000	170	\$49,000	170	\$50,000
USMCA Supplemental (P.L. 116-113)	1	\$3,937	0	\$0	0	\$0
CARES Act (P.L. 116-127)	0	\$0	0	\$0	0	\$0
American Rescue Plan Act Supplemental (P.L. 117-2)	248	\$21,275	0	\$0	0	\$0
Unexpired Unobligated Balances Carried Forward from Prior Year (P.L. 117-2)	0	\$0	179	\$13,358	0	\$0
<i>Subtotal</i>	<i>1,759</i>	<i>\$314,012</i>	<i>1,616</i>	<i>\$311,158</i>	<i>1,726</i>	<i>\$360,478</i>
<b>B. Gross Budget Authority</b>	<b>1,759</b>	<b>\$314,012</b>	<b>1,616</b>	<b>\$311,158</b>	<b>1,726</b>	<b>\$360,478</b>
Reimbursements (CMP's)	0	-\$2,800	0	-\$2,800	0	-\$2,800
H-1B L Fraud Fees (Collected)	-170	-\$40,000	-170	-\$49,000	-170	-\$50,000
USMCA Supplemental	-1	-\$3,937	0	\$0	0	\$0
CARES Act	0	\$0	0	\$0	0	\$0
American Rescue Plan Supplemental	-248	-\$21,275	0	\$0	0	\$0
Unexpired Unobligated Balances Carried Forward from Prior Year (P.L. 117-2)	0	\$0	-179	\$13,358	0	\$0
<i>Subtotal</i>	<i>1,340</i>	<i>\$246,000</i>	<i>1,267</i>	<i>\$272,716</i>	<i>1,556</i>	<i>\$307,678</i>
<b>C. Budget Authority Before Committee</b>	<b>1,340</b>	<b>\$246,000</b>	<b>1,267</b>	<b>\$272,716</b>	<b>1,556</b>	<b>\$307,678</b>
American Rescue Plan Supplemental Funding (P.L. 117-2)	248	\$21,275	0	\$0	0	\$0
Unexpired Unobligated Balances Carried Forward from Prior Year (P.L. 117-2)	0	\$0	179	\$13,358	0	\$0
Reimbursements (CMP's)	0	\$2,800	0	\$2,800	0	\$2,800
USMCA Supplemental	1	\$1,637	0	\$0	0	\$0
H-1B L Fraud Fees (Actual)	153	\$40,000	170	\$49,000	170	\$50,000
<i>Subtotal</i>	<i>1,742</i>	<i>\$311,712</i>	<i>1,616</i>	<i>\$337,874</i>	<i>1,726</i>	<i>\$360,478</i>
<b>D. Total Budgetary Resources</b>	<b>1,742</b>	<b>\$311,712</b>	<b>1,616</b>	<b>\$337,874</b>	<b>1,726</b>	<b>\$360,478</b>
FTE Lapsed and Unobligated Balance Expiring	-45	-\$11,599	0	\$0	0	\$0
FTE Lapsed and Unobligated Balance Unexpired (P.L. 117-2)	-200	-\$13,358	0	\$0	0	\$0
<i>Subtotal</i>	<i>1,497</i>	<i>\$286,755</i>	<i>1,616</i>	<i>\$337,874</i>	<i>1,726</i>	<i>\$360,478</i>
<b>E. Total Estimated Obligations</b>	<b>1,497</b>	<b>\$286,755</b>	<b>1,616</b>	<b>\$337,874</b>	<b>1,726</b>	<b>\$360,478</b>

# WAGE AND HOUR DIVISION

## SUMMARY OF CHANGES

(Dollars in Thousands)

	FY 2022 Full Year C.R.	FY 2023 Request	Net Change
<b>Budget Authority</b>			
General Funds	\$295,000	\$357,678	+\$62,678
<b>Total</b>	\$295,000	\$357,678	+\$62,678
<b>Full Time Equivalents</b>			
General Funds	1,437	1,726	289
<b>Total</b>	1,437	1,726	289

Explanation of Change	FY 2023 Change							
	FY 2022 Base		Trust Funds		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	1,437	\$151,131	0	\$0	0	\$8,777	0	\$8,777
Personnel benefits	0	\$47,054	0	\$0	0	\$4,522	0	\$4,522
Employee health benefits	0	\$7,875	0	\$0	0	\$0	0	\$0
Moving allowance	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	\$1,464	0	\$0	0	\$0	0	\$0
Transportation of things	0	\$6	0	\$0	0	\$0	0	\$0
Rental payments to GSA	0	\$13,500	0	\$0	0	\$0	0	\$0
Rental payments to others	0	\$8	0	\$0	0	\$0	0	\$0
Communications, utilities, and miscellaneous charges	0	\$1,800	0	\$0	0	\$0	0	\$0
Printing and reproduction	0	\$350	0	\$0	0	\$0	0	\$0
Advisory and assistance services	0	\$3,304	0	\$0	0	\$0	0	\$0
Other services from non-Federal sources	0	\$705	0	\$0	0	\$0	0	\$0
Working Capital Fund	0	\$50,219	0	\$0	0	\$1,909	0	\$1,909
Other Federal sources (DHS Charges)	0	\$2,801	0	\$0	0	\$0	0	\$0
Other goods and services from Federal sources	0	\$5,917	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	\$2,779	0	\$0	0	\$0	0	\$0
Supplies and materials	0	\$1,503	0	\$0	0	\$0	0	\$0
Equipment	0	\$3,000	0	\$0	0	\$0	0	\$0

# WAGE AND HOUR DIVISION

FY 2023 Change

Explanation of Change	FY 2022 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	\$500	0	\$0	0	\$0	0	\$0
<b>Built-Ins Subtotal</b>	<b>1,437</b>	<b>+\$293,916</b>	<b>0</b>	<b>\$0</b>	<b>0</b>	<b>+\$15,208</b>	<b>0</b>	<b>+\$15,208</b>
<b>B. Programs:</b>								
Enforcement FTE	175	\$25,028	0	\$0	175	\$25,028	175	\$25,028
Direct FTE	105	\$14,013	0	\$0	105	\$14,013	105	\$14,013
IT Modernization	0	\$5,197	0	\$0	0	\$5,197	0	\$5,197
Worker Protections for Workers								
Under Temporary Visas	9	\$2,500	0	\$0	9	\$2,500	9	\$2,500
Increase to Collections	0	\$1,000	0	\$0	0	\$1,000	0	\$1,000
<b>Programs Subtotal</b>			<b>0</b>	<b>\$0</b>	<b>289</b>	<b>+\$47,738</b>	<b>289</b>	<b>+\$47,738</b>
<b>Total Increase</b>	<b>1,437</b>	<b>+\$293,916</b>	<b>0</b>	<b>\$0</b>	<b>289</b>	<b>+\$62,946</b>	<b>289</b>	<b>+\$62,946</b>
<b>Decreases:</b>								
<b>A. Built-Ins:</b>								
To Provide For:								
Federal Employees' Compensation Act (FECA)	0	\$1,084	0	\$0	0	-\$268	0	-\$268
<b>Built-Ins Subtotal</b>	<b>0</b>	<b>+\$1,084</b>	<b>0</b>	<b>\$0</b>	<b>0</b>	<b>-\$268</b>	<b>0</b>	<b>-\$268</b>
<b>B. Programs:</b>								
<b>Total Decrease</b>	<b>0</b>	<b>+\$1,084</b>	<b>0</b>	<b>\$0</b>	<b>0</b>	<b>-\$268</b>	<b>0</b>	<b>-\$268</b>
<b>Total Change</b>	<b>1,437</b>	<b>+\$295,000</b>	<b>0</b>	<b>\$0</b>	<b>289</b>	<b>+\$62,678</b>	<b>289</b>	<b>+\$62,678</b>



## WAGE AND HOUR DIVISION

<b>SUMMARY BUDGET AUTHORITY AND FTE BY ACTIVITY<sup>1</sup></b>								
(Dollars in Thousands)								
	FY 2021 Revised Enacted		FY 2022 Full Year C.R.		FY 2023 Request		Diff. FY23 Request / FY22 Full Year C.R.	
	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
<b>Wage and Hour Division</b>	<b>1,295</b>	<b>246,000</b>	<b>1,267</b>	<b>246,000</b>	<b>1,556</b>	<b>307,678</b>	<b>289</b>	<b>61,678</b>
General Funds	1,295	246,000	1,267	246,000	1,556	307,678	289	61,678
<b>Wage Hour H-1B</b>	<b>153</b>	<b>40,000</b>	<b>170</b>	<b>49,000</b>	<b>170</b>	<b>50,000</b>	<b>0</b>	<b>1,000</b>
General Funds	153	40,000	170	49,000	170	50,000	0	1,000
<b>Total</b>	<b>1,448</b>	<b>286,000</b>	<b>1,437</b>	<b>295,000</b>	<b>1,726</b>	<b>357,678</b>	<b>289</b>	<b>62,678</b>
<b>General Funds</b>	<b>1,448</b>	<b>286,000</b>	<b>1,437</b>	<b>295,000</b>	<b>1,726</b>	<b>357,678</b>	<b>289</b>	<b>62,678</b>

NOTE: FY 2021 reflects actual FTE. FY 2022 reflects estimated FTE usage at the annualized level of the CR.

<sup>1</sup> Note: H-1B Fees - This account is not appropriated.

## WAGE AND HOUR DIVISION

<b>BUDGET AUTHORITY BY OBJECT CLASS</b>					
(Dollars in Thousands)					
		FY 2021 Revised Enacted	FY 2022 Full Year C.R.	FY 2023 Request	Diff. FY23 Request / FY22 Full Year C.R.
	Full-Time Equivalent				
	Full-time Permanent	1,601	1,685	1,695	10
	<b>Total</b>	<b>1,601</b>	<b>1,685</b>	<b>1,695</b>	<b>10</b>
	Average ES Salary	\$183,120	\$191,034	\$199,312	\$8,278
	Average GM/GS Grade	12	12	12	0
	Average GM/GS Salary	\$93,404	\$94,453	\$99,213	\$4,760
11.1	Full-time permanent	140,411	146,411	183,605	37,194
11.3	Other than full-time permanent	938	938	938	0
11.5	Other personnel compensation	3,782	3,782	3,782	0
11.8	Special personal services payments	0	0	0	0
11.9	<b>Total personnel compensation</b>	<b>145,131</b>	<b>151,131</b>	<b>188,325</b>	<b>37,194</b>
12.1	Civilian personnel benefits	53,013	56,013	74,391	18,378
13.0	Benefits for former personnel	0	0	0	0
21.0	Travel and transportation of persons	1,464	1,464	1,464	0
22.0	Transportation of things	6	6	6	0
23.0	Rent, Communications, and Utilities	0	0	0	0
23.1	Rental payments to GSA	13,500	13,500	13,500	0
23.2	Rental payments to others	8	8	8	0
23.3	Communications, utilities, and miscellaneous charges	1,800	1,800	1,800	0
24.0	Printing and reproduction	350	350	350	0
25.1	Advisory and assistance services	3,304	3,304	3,304	0
25.2	Other services from non-Federal sources	705	705	5,902	5,197
25.3	Other goods and services from Federal sources 1/	58,937	58,937	60,846	1,909
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	2,779	2,779	2,779	0
26.0	Supplies and materials	1,503	1,503	1,503	0
31.0	Equipment	3,000	3,000	3,000	0
41.0	Grants, subsidies, and contributions	0	0	0	0
42.0	Insurance claims and indemnities	500	500	500	0
	<b>Total</b>	<b>286,000</b>	<b>295,000</b>	<b>357,678</b>	<b>62,678</b>
	1/Other goods and services from Federal sources				
	Working Capital Fund	50,219	50,219	52,128	1,909
	DHS Services	2,801	2,801	2,801	0
	Services by DOL Agencies	5,917	5,917	5,917	0

## WAGE AND HOUR DIVISION

### AUTHORIZING STATUTES

Public Law / Act	Legislation	Statute No. / US Code	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 (1936).	41 U.S.C. 6501-6511	N/A
PUB. L. 90-321	Consumer Credit Protection Act (Title III – Restriction on Garnishment) (1968).	15 U.S.C. 1671-1677	N/A
PUB. L. 87-581	Contract Work Hours and Safety Standards Act, as amended (1962).	40 U.S.C. 3701-3708	N/A
PUB. L. 89-286	McNamara-O’Hara Service Contract Act, as amended (1965).	41 U.S.C. 351-357	N/A
PUB. L. 74-403	Davis-Bacon Act, as amended and related acts (1931).	40 U.S.C. , Chapter 31, Subpart IV	N/A
PUB. L. 97-470	Migrant and Seasonal Agricultural Worker Protection Act (1983).	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. 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 Emergency Supplemental Appropriation Act (1998).	Title IV, sec. 414(b) and (c)	N/A

## WAGE AND HOUR DIVISION

PUB. L. 108-447	L-1 Visa and H-1B Visa Reform Act, Title IV of the Consolidated Appropriations Act, (2005).	Title IV, sec. 401-430	N/A
PUB. L. 89-209	National Foundation for the Arts and Humanities Act, Sections 5(i) and 7(g) (1965).	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>
2013					
Base Appropriation...1/2/	\$237,730			\$215,184	1,420
2014					
Base Appropriation	\$243,254			\$224,330	1,446
2015					
Base Appropriation	\$265,766			\$227,500	1,332
2016					
Base Appropriation	\$277,100	\$215,500	\$210,000	\$227,500	1,376
2017					
Base Appropriation	\$276,599			\$227,500	1,404
2018					
Base Appropriation	\$230,068	\$217,500		\$227,500	1,355
2019					
Base Appropriation...3/	\$230,068		\$229,000	\$229,000	1,297
2020					
Base Appropriation...4/5/	\$232,568	\$298,131		\$242,000	1,382
2021					
Base Appropriation...5/	\$244,283			\$246,000	1,340
2022					
Base Appropriation...6/	\$276,500	\$300,000			
2023					
Base Appropriation	\$307,678				1,556

1/ Reflects a \$454 Rescission reduction and a \$11,423 Sequestration reduction pursuant to P.L 113-6.

2/ 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.

3/ This bill was passed by the Senate. It was passed out of the House Subcommittee but was not reported out of the House Committee or by the full House.

4/ This bill was passed by the House. It was not taken up by the Senate Appropriations Subcommittee or full Appropriations Committee.

5/ FTE for FY 2020 and FY 2021 reflect the Shared Services Realignment.

6/ This bill was passed by the House. It was not taken up by the Senate Appropriations Subcommittee or the full Senate Appropriations Committee.

The full-year FY 2022 appropriation was not enacted at the time the budget was prepared.

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

# WAGE AND HOUR DIVISION

## OVERVIEW

The mission of the Wage and Hour Division (WHD) is to promote and achieve compliance with labor standards to protect and enhance the welfare of the nation's workforce. WHD enforces wage protections and other labor standards and laws under 29 U.S.C. 201, et seq., so that America's workers receive the wages they earned as required by law and responsible businesses that comply with the law can fairly compete in the marketplace. Collectively, these laws cover most private, state, and local government employment and protect more than 148 million of America's workers in more than 10 million workplaces throughout the United States and its territories.

WHD enforces and administers:

- The minimum wage, overtime, child labor, recordkeeping, anti-retaliation, and break time for nursing mothers provisions of the Fair Labor Standards Act (FLSA);
- The prevailing wage requirements and wage determination provisions of the Davis Bacon Act (DBA) and Related Acts (DBRA), the Service Contract Act (SCA), the Contract Work Hours and Safety Standards Act (CWHSSA), the Walsh-Healey Act, and the Copeland Act, an anti-kickback law;
- The wages and working conditions provisions of the Migrant and Seasonal Agricultural Worker Protection Act (MSPA);
- The field sanitation and temporary labor camp standards in agriculture under the Occupational Safety and Health Act (OSH Act);
- The Family and Medical Leave Act (FMLA);
- The Employee Polygraph Protection Act (EPPA);
- The labor standards protections of the Immigration and Nationality Act (INA) for certain temporary nonimmigrant workers admitted to the U.S., including the labor standards of the H-1B, H-2A, and H-2B programs;
- The garnishment provisions of the Consumer Credit Protection Act (CCPA);
- The Labor Value Content (LVC) requirements of the United States-Mexico-Canada Implementation Act (USMCA);
- Executive Order 13658, Establishing a Minimum Wage for Contractors; and
- Executive Order 13706, Establishing Paid Sick Leave for Federal Contractors.

WHD prioritizes resources in order to achieve the greatest impact on compliance. Ample evidence shows enforcement strategies, particularly investigations, are effective in improving employer compliance with laws and regulations. WHD strengthens enforcement results through industry-based approaches, extensive outreach and worker education, stakeholder engagement, and strategic partnerships.

**The FY 2023 President's budget seeks an additional \$61,678,000 and 289 FTE to restore and strengthen enforcement capacity, thereby creating economic security for workers, including communities most vulnerable to economic exploitation.** Also importantly, the FY 2023 request includes critical funding for covering the pay and benefits built-in increases that are necessary to recruit and retain the staff necessary ensure the agency meets its worker protection mission. WHD will continue working closely with the Department to achieve hiring goals, building upon the tools and techniques developed from prior significant hiring and onboarding

## WAGE AND HOUR DIVISION

efforts; lessons learned and innovations in response to the pandemic; and comprehensive recruitment strategies focused on equity in hiring. WHD will implement a blended training model featuring in-person experiences and virtual training modules that will enhance the learning opportunities for both new and experienced staff and reduce costs.

### **Pilot New Approaches and Strengthen Effective Enforcement**

Increased resources will be used to pilot innovative approaches to enforcement and significantly strengthen tools with the greatest potential for achieving compliance and addressing violations. Additional funding will allow WHD to:

- **Increase strategic initiatives and develop the strongest investigations to ensure enforcement outcomes.** WHD is seeking additional resources to support the range of activities involved in developing high-impact investigations. WHD will prioritize those cases with the potential to influence employment practices across sectors and industries that too often result in wage theft and misclassification of employees as independent contractors. Building a strong evidentiary record requires a range of resource-intensive activities, including maximizing employee interviews, increased travel, data analytics tools, and enhanced document/evidence management throughout the process.
- **Rebuild a strong regulations development team to accomplish ongoing and new rulemaking, implementation of future Executive Orders, and to conduct retrospective reviews of current regulations.** Increased resources would support the staff needed to carry out the range of activities involved in rulemaking, including extensive coordination and review across teams and offices within DOL, overseeing robust data collection and outreach efforts, and facilitating significant research and economic analysis projects. Increased capacity would also support timely and comprehensive sub-regulatory guidance to the field, which ensures regulations are applied consistently and accurately.
- **Establish a pilot program in high minimum wage states.** WHD is seeking increased resources to develop and implement a pilot enforcement program in states where the minimum wages are higher than the federal minimum wage. The pilot program seeks to strengthen the impact of WHD strategic enforcement by fully leveraging the stronger protections and outreach opportunities available through States. The program would allow WHD to reach more workers and businesses and increase the deterrent effects of its investigations. The program would strengthen WHD collaboration with states and localities around effective enforcement of minimum wage and other labor standards protections. Additional resources would support WHD efforts to develop and formalize partnerships with those States and localities around ensuring workers have access to all available protections. The pilot would require developing and delivering training to WHD enforcement staff on the comparative worker protections relevant to their jurisdictions. Increased resources would also be needed to develop and implement the protocols, guidance, and training—as well as capturing lessons learned and promising practices—necessary for implementing collaborative and cooperative programs between federal, state and local authorities.

## WAGE AND HOUR DIVISION

- **Maximize wage collections to better protect workers, encourage compliance and deter violations.** WHD is seeking additional resources to maximize back wages collected and distributed to workers, particularly among those workers most vulnerable to wage violations and exploitive labor conditions. Additional resources would support the range of policies, practices, and guidance necessary to develop high impact cases with the greatest potential for specific and general deterrent effects. WHD can create strong incentives for employers to pay all back wages, damages, and penalties owed, including liquidated damages and civil money penalties (CMPs), through the consistent, strategic use of enforcement tools and media. Evidence suggests that by increasing awareness of the likelihood of detection and the assessment of penalties, WHD can further deter violations.<sup>2</sup> To that end, WHD would prioritize developing high impact cases through its initiatives focused on essential workers, incorporate strategies for ensuring all workers owed wages receive them, and strengthen outreach to employers and workers that fully leverages stakeholder resources.

In all of these areas, increased resources will also support a strong, collaborative relationship with the Office of the Solicitor (SOL) focused on ensuring litigation resources and advancing shared compliance goals. WHD will also use a data- and equity-informed analysis to determine where to increase capacity to support the mission effectively and advance priorities, and move towards a future of work model for the agency. Increased investments would support field enforcement and back wage staff as well as proportional increases in supervisors and regional office administrative and operational support. In the national office, WHD would prioritize hiring based on organization needs for policy, training, planning, and financial management and operational support.

### **Protect and Prioritize Essential Workers including Care Workers**

Increased investment in enforcement staff will directly support sector-based strategies serving low-wage workers who have also disproportionately been impacted by the pandemic. The crises created by COVID-19 highlighted the critical contributions of essential workers in fueling the country's economic recovery and growth, yet they continue to be at greatest risk of experiencing labor violations. For example, during the initial weeks of the pandemic, the most highly exposed industries employed more hourly workers and part-time workers and paid considerably lower wages and total earnings than other parts of the economy.<sup>3</sup> Essential workers include those in grocery stores, health care, delivery services, food preparation, agriculture, and other essential industries who remained on the job despite many potential risks to their own health or that of

---

<sup>2</sup> Dolfen, Sarah, Nan Maxwell, Alix Gould-Werth, Armando Yanez, Jonah Deutsch, Libby Hendrix, "Compliance Strategies Evaluation Literature and Database Review," Submitted to Chief Evaluation Office, U.S. Department of Labor, Mathematica, May 2020. [https://www.dol.gov/sites/dolgov/files/OASP/evaluation/pdf/WHD\\_ComplianceStrategies\\_LiteratureReview\\_Oct2020.pdf](https://www.dol.gov/sites/dolgov/files/OASP/evaluation/pdf/WHD_ComplianceStrategies_LiteratureReview_Oct2020.pdf), (visited September 2, 2021).

<sup>3</sup> Dey, Matthew, Mark A. Lowenstein, David S. Piccone Jr., Anne E. Polivka, "Demographics, earnings, and family characteristics of workers in sectors initially affected by COVID-19 shutdowns," *Monthly Labor Review*, U.S. Bureau of Labor Statistics, June 2020. [https://www.bls.gov/opub/mlr/2020/article/demographics-earnings-and-family-characteristics-of-workers-in-sectors-initially-affected-by-covid-19-shutdowns.htm#\\_edn7](https://www.bls.gov/opub/mlr/2020/article/demographics-earnings-and-family-characteristics-of-workers-in-sectors-initially-affected-by-covid-19-shutdowns.htm#_edn7) (visited April 19, 2021).



## WAGE AND HOUR DIVISION

their families.<sup>4</sup> WHD is committed to ensuring that these, and all workers, receive the workplace protections provided under the law.

### **Build Enforcement to Support Federal Investments in Infrastructure**

The Budget includes additional resources for WHD to ensure the unprecedented investment in our nation's infrastructure made possible by the Bipartisan Infrastructure Law is made with strong worker protections. These additional resources will allow WHD to increase the number of enforcement staff trained to coordinate investigations of large, complex federal construction projects. Federally funded construction projects vary geographically, and as a result, the number of investigators with experience conducting Davis Bacon Act investigations varies as well. Attrition without backfilling can further erode available trained, investigators, particularly attrition rates among seasoned investigators. The increased resources will allow WHD to better sustain the level of training and exposure to government contracts investigations, which better positions the agency to undertake government contracts investigations. Additional resources will support efforts to streamline and modernize the wage determinations survey process, which sets the prevailing wages for investigations. WHD will fully implement business process improvements expected to increase the timeliness and accuracy of published rates while also reducing the need for conformances. Additional staff will support the improved web-based survey design and a more transparent and predictable survey process overall.

### **Strengthen Enforcement under Visa Programs**

WHD is seeking additional funds to strengthen resources available for investigations of employers hiring H-visa workers. These cases may be complex and are frequently time-intensive due to a variety of factors, including the types of analysis required, the vulnerability of the workforce involved, and the obstacles to ensuring that wages are returned to migrant workers. As the number of visa workers continues to increase, WHD requires additional resources to ensure investigators are fully trained and that field offices can dedicate the necessary resources to these types of investigations. Between 2010 to 2018, the number of H-2B workers requested on employer applications increased from roughly 86,000 to 147,000. Seasonal workers in the H-2B program are employed in numerous industries, including landscaping, recreation, hotels, food processing, construction, and restaurants. WHD conducts strategic initiatives in each of these industries, all of which employ essential workers vulnerable to wage violations. In 2020, there were approximately 213,000 H-2A workers in the United States, representing an increase of 70,000 H-2A workers since 2016.<sup>5</sup> These workers suffer high rates of violations and are vulnerable to abuse due to their reliance on their employers for both their status in the country as well as housing and transportation—factors that also make it more difficult to complain about labor law violations for fear of retaliation.

---

<sup>4</sup> Elka Torpey, "Essential work: Employment and outlook in occupations that protect and provide," Career Outlook, U.S. Bureau of Labor Statistics, September 2020. <https://www.bls.gov/careeroutlook/2020/article/essential-work.htm> (visited April 19, 2021).

<sup>5</sup> <https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2020AnnualReport/FY20AnnualReport-TableXVB.pdf>

## WAGE AND HOUR DIVISION

**The increased FY 2023 resources will support the development and implementation of a comprehensive approach—including stakeholder engagement, worker outreach, and robust compliance assistance—to ensure the caregiving workforce receives the wages they are due.** The pandemic highlighted the critical role and contributions of care workers, and in FY 2022, WHD implemented an initiative focused on the rapidly increasing employment in that industry. Healthcare support occupations, which include home health and personal care aides, reached employment of 6.4 million in May 2020, representing 4.6 percent of total U.S. employment.<sup>6</sup> Five out of the 20 industries projected to grow the fastest from 2019 to 2029 are in healthcare and social assistance, the fastest growing sector in the economy. Factors contributing to the large increase include increased demand from caring for the aging baby-boom population, longer life expectancies, and continued growth in the number of patients with chronic conditions.<sup>7</sup>

**As the economy recovers and workers return to employment, WHD is implementing comprehensive strategies protecting care workers and caregivers.** Roughly 32 percent of the workforce has someone in their household under 14 years old, which equates to roughly 50 million Americans considering childcare obligations in order to return to work.<sup>8</sup> Yet childcare workers remain one of the lowest-paid occupations nationwide, are not organized as workforce, and more likely to be women of color. Researchers have linked additional wage disparities within the workforce to racial discrimination, the age of children, and funding source.<sup>9</sup>

**WHD will implement agency-wide initiatives focused on essential workers including agriculture, food services, residential construction, and building services workers.** The effects of COVID-19 on the economy were widespread, but disparate across economic sectors and demographic groups. During the pandemic, the leisure and hospitality sectors, which includes the food services, lost the largest number of jobs while unemployment and labor participation rates worsened particularly for persons identifying as Black or Hispanic, younger workers, and workers with lower educational attainment.<sup>10</sup> The pandemic was also particularly

---

<sup>6</sup> Bureau of Labor Statistics, U.S. Department of Labor, *The Economics Daily*, Healthcare support occupations had employment of 6.4 million in May 2020 at <https://www.bls.gov/opub/ted/2021/healthcare-support-occupations-had-employment-of-6-4-million-in-may-2020.htm> (visited April 20, 2021).

<sup>7</sup> Bureau of Labor Statistics, U.S. Department of Labor, *The Economics Daily*, 5 out of 20 fastest-growing industries from 2019 to 2029 are in healthcare and social assistance at <https://www.bls.gov/opub/ted/2020/5-out-of-20-fastest-growing-industries-from-2019-to-2029-are-in-healthcare-and-social-assistance.htm> (visited April 20, 2021).

<sup>8</sup> Dingel, Jonathan I., Christina Patterson, and Joseph Vavra, “Childcare Obligations Will Constrain Many Workers When Reopening the US Economy,” Working Paper No. 2020-46, Becker Friedman Institute for Economics at University of Chicago, April 2020. [https://bfi.uchicago.edu/wp-content/uploads/BFI\\_WP\\_202046.pdf](https://bfi.uchicago.edu/wp-content/uploads/BFI_WP_202046.pdf) (visited July 15, 2021).

<sup>9</sup> “The Early Childhood Educator Workforce, Early Childhood Workforce Index 2020,” Center for the Study of Child Care Employment, University of California Berkeley, <https://csce.berkeley.edu/workforce-index-2020/the-early-educator-workforce/early-educator-pay-economic-insecurity-across-the-states/> (visited July 15, 2021).

<sup>10</sup> Falk, Gene, Paul Romero, Jameson Carter, Isaac Nicchitta, and Emma Nyhof, “Unemployment Rates During the COVID-19 Pandemic,” Updated June 15, 2021, Congressional Research Service, <https://crsreports.congress.gov>, R46554. Linsey Ice, Michael J. Rieley, and Samuel Rinde, “Employment projections in a pandemic environment,” Monthly Labor Review, U.S. Bureau of Labor Statistics, February 2021, <https://doi.org/10.21916/mlr.2021.3>.

## WAGE AND HOUR DIVISION

hard on women in these industries, as disruptions to daycare centers, schools, and aftercare programs increased the childcare burden for women.<sup>11</sup>

**WHD will use the additional resources to revitalize efforts to combat misclassification of employees as independent contractors by targeting sectors where evidence and data suggest workers are misclassified.** WHD will use a multi-pronged approach covering enforcement guidance, planning, training, stakeholder engagement, and data collection to address the economic disparities created and perpetuated by employers who wrongfully classify employees as independent contractors. WHD is strengthening partnerships with States through Memorandums of Understanding and by working with States to develop training for their enforcement staff.

### **Advance Sector-based, Worker-focused Strategies**

Labor standards violations can occur in any sector of the economy, however, problems facing workers whose contributions to the economy are systematically undervalued—particularly women, people of color, and immigrants—are concentrated in a subset of industries that require focused attention by WHD. Sector-based strategies create impact beyond the individual establishments subject to investigations by strategically applying a mix of tools and resources—including industry partnerships and compliance assistance—throughout the industry. This approach recognizes the broader economic factors, complex industry structures, and business models within those structures that may be contributing to employer non-compliance as well as those parts of the industry that are best positioned to influence compliance behaviors broadly.<sup>12</sup> By taking a more comprehensive, multi-pronged approach to compliance, WHD is working to change employer behaviors in a lasting and systemic manner. WHD relies on evidence-based, data driven strategies to develop and implement sector-based strategies. Carrying out multi-faceted strategies within complex, rapidly evolving industries requires an adequate baseline level of enforcement staff, which the FY 2023 budget request will help restore.

**The FY 2023 request will directly support and significantly strengthen WHD’s worker-focused strategic enforcement program.** For more than a decade, WHD has refined and evolved its strategic planning model consistent with the agency’s increased capacity for developing and applying evidence-based strategies. During this time, WHD has also developed a pipeline of positions across the organization with the talent, skills, and abilities to plan and carry out effective strategic enforcement. WHD strategic enforcement initiatives are collaborative, agency-wide, worker-focused efforts designed to address compliance problems at the industry-level. Planned initiatives are best equipped to develop and execute enforcement, media, and stakeholder strategies that apply pressure to multiple points within an industry structure. WHD experience has shown that strategic enforcement requires dedicated resources to support researching industries and worker experiences; collecting and analyzing data using advanced techniques, including data visualization, large data statistical sets, and statistical modeling; coordinating stakeholder engagement strategies; developing effective media; and facilitating learning, information sharing, and coordination across offices.

---

<sup>11</sup> Zamarro, Gema, “Gender Differences in the Impact of COVID-19,” Center for Economic and Social Research, University of Southern California, June 18, 2020. <https://tinyurl.com/CESRGenderDiffs> (visited July 14, 2021).

<sup>12</sup> Weil, David, “Improving Workplace Conditions Through Strategic Enforcement,” (2010) A Report to the Wage and Hour Division, Boston University.

## WAGE AND HOUR DIVISION

### Strengthen Stakeholder Relationships and Pursue Strategic Partnerships

WHD relies on a vast network of stakeholders to strengthen and broaden the reach of its enforcement and outreach strategies. Research suggests that strategic partnerships are critical in furthering compliance with labor laws, which cannot be achieved through federal enforcement alone.<sup>13</sup> Working with diverse stakeholders allows the agency to develop comprehensive strategies grounded in worker experiences that can be implemented at multiple points within an industry. Worker-focused stakeholders, particularly those who serve as trusted intermediaries to vulnerable or underserved populations, provide critical access and information for strengthening strategies among workers that may be least knowledgeable of their rights and least likely to complain to government. Employer-focused stakeholders may be able to influence business practices based on their economic position or advocacy role within an industry. Partnering with other government agencies, particularly state and local licensing agencies, creates opportunities to deter violations and to educate businesses on WHD laws.

- **The increased resources in FY 2023 will support a renewed emphasis on cultivating and formalizing partnerships with stakeholders around shared goals of improved compliance.** WHD will develop and implement stakeholder engagement strategies designed to establish and strengthen strategic partnerships around the shared goal of ensuring that workers' rights are respected. WHD will strengthen outreach efforts to stakeholders that serve historically underserved, marginalized and adversely affected communities. These stakeholders can serve as an important validator for communities who are mistrustful of government services or who face barriers to filing a complaint with WHD. They can also be instrumental in developing cases, returning wages to workers, and ensuring sustainable compliance.
- **The FY 2023 request will bolster stakeholder and outreach strategies, which produce a variety of results, including enforcement referrals, opportunities to engage workers and employers directly and more effectively, and information on how WHD can better serve workers and businesses.** Community Outreach and Resource Planning Specialists (CORPS), located in every district office, work closely with enforcement staff to plan and conduct comprehensive sector-based strategies. Stakeholders include federal, state, and local agencies, associations representing industries and a range of services provided to those industries, and worker centers and community-based organizations serving worker populations.

---

<sup>13</sup> Janice Fine and others, "Maintaining Effective U.S. Labor Standards Enforcement through the Coronavirus Recession" (Washington: Washington Center for Equitable Growth, 2020), available at <https://equitablegrowth.org/research-paper/maintaining-effective-u-s-labor-standards-enforcement-through-the-coronavirus-recession/>, (visited July 14, 2021); Janice Fine, "New Approaches to Enforcing Labor Standards: How Co-Enforcement Partnerships Between Government and Civil Society Are Showing the Way Forward," The University of Chicago Legal Forum 2017 (7) (2017), p. 145, available at <https://chicagounbound.uchicago.edu/uclf/vol2017/iss1/7> (visited, July 14, 2021).

## WAGE AND HOUR DIVISION

- **WHD will undertake a systematic review of State agency partnerships that could be solidified through Memorandums of Understanding (MOUs) addressing shared compliance goals.** This will include updating existing MOUs that have expired and developing new MOUs with new partners critical to reaching essential workers. WHD will also continue to amplify external messaging around the value and importance of these relationships, thereby paving the way for additional partners to sign on and enter agreements themselves. WHD will improve how the agency maintains and cultivates its stakeholder directory, both nationally and locally. WHD will pilot new tools for tracking and analyzing outreach and stakeholder data, including the new outreach module in the WISE system. WHD will develop guidance and resources to help offices develop their stakeholder directories.

### **Strengthen Worker-Focused Outreach**

Outreach, and particularly listening sessions, are helping the agency understand how to ensure underserved communities and workers have access to worker protections. WHD is collecting information on barriers to accessing WHD resources or obstacles faced when contacting WHD, including those faced by women, immigrant workers, workers of color, low-wage workers.

- **WHD will significantly enhance and expand information resources available to workers.** WHD will use a range of materials to educate workers and raise public awareness, including: convenience store posters, audio public service announcements, and digital advertising banners. WHD will enhance and promote the Workers Owed Wages online resource and WHD's Timesheet application (compatible with both iOS and Android) for workers and employers. WHD will continue to develop easily understandable materials like FAQs, infographics, and short public service announcements that are accessible to workers and that help them understand their rights. WHD will make all of these materials available in multiple languages.
- **WHD will work to ensure all workers receive wages they are due, particularly the most vulnerable workers that may not be easy to locate.** WHD will also emphasize ensuring all workers receive the wages they are due. In most WHD investigations, the vast majority of back wages due to workers are paid directly by the employers. However, the subset of unlocated workers due back wages may represent some of the most vulnerable workers, and in total, unclaimed back wages amount to roughly \$100 million. WHD will develop approaches to reduce that total amount and reach more workers due back wages. Additional resources will support back wage follow-up positions in the regional and district offices. WHD will expand the use of techniques during and following an investigation to ensure all workers receive the wages they are due.

## WAGE AND HOUR DIVISION

### Protect Worker Access to Needed Leave

During times of crisis, the protections provided by the Family and Medical Leave Act (FMLA) prove all the more crucial to workers and their families. In March 2018, 17 percent of all civilian workers had access to paid family leave, and 89 percent had access to unpaid family leave.<sup>14</sup> According to a 2018 national survey of employees, overall, 56 percent of U.S. employees are eligible for FMLA, but only 10 percent of worksites in the private sector, which employ 59 percent of private sector employees, are part of firms covered by FMLA.

WHD also sees the effects of leave policies on low-wage workers, who experience different consequences for taking leave despite using leave at similar rates as other workers. About one third of low-wage workers are eligible for FMLA (38 percent) versus about two thirds of non-low-wage workers (63 percent). For those low-wage workers who did take leave, they faced greater challenges in covering expenses compared to non-low-wage workers. They were also at greater risk of job loss (18 vs. 5 percent) or cited fear of job loss at a higher rate than non-low-wage workers (64 percent versus one third).<sup>15</sup>

- **WHD will use the increased FY 2023 resources to ensure enforcement and outreach strategies to ensure workers understand their rights under the FMLA.** WHD will continue developing resources, such as employer toolkits, and educational initiatives, such as the Essential Workers Essential Protections Initiative, to address the gaps in workers' understanding of FMLA.<sup>16</sup> Rapid changes in the workplace surface even more questions for workers, their advocates, and employers about wages, hours worked, and time off for their personal health care or to care for their family members dealing with serious illness.

### Increase Access to WHD Protections

The increased resources in FY 2023 will help reduce the administrative burden to workers seeking help from WHD. To start, WHD has taken great strides to modernize its compliance assistance program, including implementation of a virtual call center (VCC), compliance assistance toolkits and videos, and a dedicated outreach staff member in each office (CORPS).

---

<sup>14</sup> Bureau of Labor Statistics, U.S. Department of Labor, The Economics Daily, Access to paid and unpaid family leave in 2018 at <https://www.bls.gov/opub/ted/2019/access-to-paid-and-unpaid-family-leave-in-2018.htm> (visited April 19, 2021).

<sup>15</sup> A higher percentage of low-wage workers reported borrowing money (41 vs. 26 percent) or going on public assistance (26 vs. 7 percent) to cover lost wages. More than three-quarters (76 percent) report limiting their spending. About two-fifths (43 percent) report using money saved in anticipation of needing leave. They also report using savings intended for something else (34 percent), borrowing money (31 percent), putting off paying bills (27 percent), cutting leave short (27 percent), and going on public assistance (17 percent). Brown, S., Roy, R., & Klerman, J. A. (November 2020). Leave Experiences of Low-Wage Workers. Produced for the U.S. Department of Labor, Chief Evaluation Office. Rockville, MD: Abt Associates Inc., [https://www.dol.gov/sites/dolgov/files/OASP/evaluation/pdf/WHD\\_FMLA\\_LowWageWorkers\\_January2021.pdf](https://www.dol.gov/sites/dolgov/files/OASP/evaluation/pdf/WHD_FMLA_LowWageWorkers_January2021.pdf) (visited April 19, 2021).

<sup>16</sup> More than three-quarters of U.S. employees have heard of FMLA, but many have gaps in their understanding of its policies. Source: Scott, Brown, Jane Herr, Radha Roy, Jacob Alex Klerman, "Employee and Worksite Perspectives of the Family and Medical Leave Act: Results from the 2018 Surveys," (2020), Produced for the U.S. Department of Labor, Chief Evaluation Office. Rockville, MD: Abt Associates Inc. [https://www.dol.gov/sites/dolgov/files/OASP/evaluation/pdf/WHD\\_FMLA2018SurveyResults\\_FinalReport\\_Aug2020.pdf](https://www.dol.gov/sites/dolgov/files/OASP/evaluation/pdf/WHD_FMLA2018SurveyResults_FinalReport_Aug2020.pdf) (visited April 19, 2021).

## WAGE AND HOUR DIVISION

However, continued development of web-based tools and increased local presence in rural areas or areas with a higher proportion of persons of color could improve the equitable access and delivery of WHD programs. For example, business hours are typically Monday – Friday from approximately 8am – 4:30pm. Vulnerable workers are less likely to be able to take time off from work to file a complaint or ask important questions about their wages or working conditions.

- **WHD will expand access and options for workers to file complaints.** In FY 2022, WHD will extend VCC hours to provide around the clock access (24 hours, seven days a week) so that more workers reach a live person when they are able to call. The increased resources in FY 2023 will sustain this service improvement.
- **WHD will launch development of an online complaint intake module.** The module will incorporate information on options for filing a complaint to vulnerable, underserved populations.
- **WHD will improve the quality and range of translations of materials.** WHD will increase in-house Spanish-language fluency capacity to more timely and effectively translate to key worker populations. WHD is working to improve the agency’s efficiency in translating materials on a day-to-day basis. WHD will also launch a new translation contract with an outside vendor, enabling greater efficiencies and abilities to develop compliance assistance and other worker-focused materials in up to 50 languages.

### **Protect and Promote the Middle Class**

Additional resources will allow WHD to fully implement critical business process improvements that aim to improve the accuracy and timeliness of prevailing wage surveys and increase the number of enforcement staff trained to coordinate investigations of large, complex federal projects. WHD will ensure workers on federally funded construction projects and services contracts receive no less than the prevailing wage. The Davis Bacon Act and Service Contracts Act ensure that government purchases do not drive down labor standards for workers and provide high road employers with fair opportunities to bid for contracts. Research has shown that prevailing wages contribute to creating a middle-class through higher wages, expanded health insurance coverage, an increased share of workers with pension plans, and by helping to reduce racial pay gaps.<sup>17</sup> Paired with recruitment strategies targeting underserved communities, employers paying prevailing wages contribute quality jobs to the economy that can also benefit workers and communities. Prevailing wage requirements also importantly prevent low-road businesses from undercutting high-road employers that compete fairly during the bidding process.<sup>18</sup>

---

<sup>17</sup> Weil, David, “Improving Workplace Conditions Through Strategic Enforcement,” (2010) A Report to the Wage and Hour Division, Boston University.

<sup>18</sup> Wall, Malkie, David Madland, and Karla Walter, “Prevailing Wages: Frequently Asked Questions,” Center for American Progress, December 22, 2020. <https://www.americanprogress.org/issues/economy/reports/2020/12/22/494144/prevailing-wages-frequently-asked-questions/> (visited April 21, 2021).

# WAGE AND HOUR DIVISION

## Equity in Budgeting

Advancing equal opportunity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality requires a holistic approach as outlined by the President's Executive Order.<sup>19</sup> Absent intervention, public services and government resources can replicate the systemic racism and inequality they are intended to address. WHD aims to serve low-wage workers and ensure that they are receiving a fair day's pay for a fair day's work. WHD cannot fully advance its mission without addressing the impact of institutionalized systemic inequities on the policies and programs of the agency. WHD's commitment builds on the agency's core values and tradition of prioritizing resources around low-wage vulnerable workers in priority industries.

**WHD will work to remove barriers and increase equitable access to WHD services.** WHD enforcement affects a wide variety of the U.S. workforce on broad issues such as minimum wage, overtime, family and medical leave, and government contracting. Equitable access and delivery means improved complaint intake and referrals, robust outreach and compliance assistance in targeted areas, and prompt handling of complaint investigations to ensure workers may exercise a private right of action where applicable. Current barriers include WHD's lack of physical presence in large sections of the country, insufficient number of staff with the range of language skills necessary to serve non-English speaking populations in their areas, and lack of an online complaint self-service tool for WHD enforcement. Budgeting, performance management, and communication are three key areas where WHD will improve the equity of access and delivery of WHD policies and programs. Hiring staff in specific geographic areas with the ability to communicate to populations in those areas, aligning WHD's performance framework with external data on underserved communities, and improving access to WHD compliance assistance activities in both rural areas and areas with underserved minority populations would all contribute to more equitable access and delivery.

**WHD will fully implement a comprehensive internal equity training program.** The training will provide guidance, resources, and support to managers and staff for discussing equity as a team and in applying equity to their work and interactions with workers. The training would support WHD efforts to better define what equity-informed strategies look like and how the agency can effectively integrate equity objectives into the development and execution of strategies. Staff will be trained on topics such as unconscious bias, administrative burden, cultural competence and trauma-informed delivery of services, and the historical underpinnings of inequality and occupational segregation.

**WHD will integrate equity goals into the strategic planning framework.** WHD's focus, both for complaint and directed work, is low-wage workers in industries with high prevalence of Fair Labor Standards Act (FLSA) violations. These industries include construction, food services, and retail among others. WHD also directs work in other program areas with vulnerable workers,

---

<sup>19</sup> Executive Order On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, January 20, 2021. <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>.



## WAGE AND HOUR DIVISION

such as Migrant and Seasonal Farmworker Protection Act (MSPA), H-2A, and government contracts. Agricultural workers, particularly those who hand-harvest crops, must remain at the forefront of equity analysis due to the wages and working conditions typical of this industry, including housing and field sanitation. Employees subject to government contracts regulations do not have a private right of action and WHD must maintain a robust enforcement presence for both Davis-Bacon and Related Acts (DBRA) and Service Contracts Act (SCA) projects to protect workers' rights. While analysis of the previous external data and WHD's enforcement history indicates that WHD is finding significant violations for persons of color, both by area and industry, WHD expends significantly less resources in rural geographies compared to urban geographies across all program areas.

**Increased resources in FY 2023 will support a robust outreach effort, including listening sessions designed to inform all aspects of WHD planning and operations.** WHD CORPS in each District Office maintain a stakeholder directory specific to their geographic areas. WHD could engage specific stakeholders, and develop new partnerships, to ensure that underserved populations in both rural and metro areas can access WHD programs in an equitable manner.

### **Modernization of Mission-Critical IT Infrastructure**

WHD is requesting \$5,197,000 to complete development of the data collection and case management components of modernization and to develop the data analytics platform. This FY2023 budget request includes additional funds to complete the Wage Determinations System (WDS). In collaboration with the Office of the Chief Information Officer (OCIO), WHD has made significant progress and is leveraging the enterprise-shared services and platforms to create systems that can adapt to evolving business processes, capabilities, and needs. The fully modernized infrastructure will mitigate risks associated with the legacy systems, eliminate operational inefficiencies, and improve customer service for all stakeholders. WHD's modernization plans directly align with external objectives, specifically: the 21st Century Integrated Digital Experience Act (P.L. 115-336); OMB directives to accelerate adoption and utilization of electronic signatures (OMB Memos M-19-17 and M-00-15); digitization of forms and government services frequently used by the public; and prioritization of modernization of IT systems associated with electronic consent and access to individuals' records.

WHD has calculated a savings of approximately \$4.3 million dollars in FY 2021 and FY 2022 by modernizing business processes and IT systems. The migration to the Cloud reduced operating and maintenance expenses by \$3 million per year; elimination of paper records and associated costs reduced office expenses by \$500,000 per year; and elimination of data entry and paper processing activities reduced staffing costs by \$300,000 per year. These annual savings will continue to escalate as case and survey work is migrated to more improved business and electronic solutions.

### **Wage Determinations System**

This FY 2023 request will fund the replacement of the Wage Determination Systems (WDS), which support the Davis-Bacon Act (DBA) and the Service Contract Act (SCA). The effort expands WHD's capacity for data analytics and its online presence to support external users. The effort will also address audit findings from the Office of the Inspector General (OIG) 2019 audit of WHD's Davis-Bacon Act (DBA) survey and wage rate publication processes.

## WAGE AND HOUR DIVISION

The agency will continue performance improvements in FY 2023 for WDS. WHD will renovate all aspects of WDS processes, resulting in efficiencies for both internal and external stakeholders. Planned improvements include re-inventing how and when WHD conducts surveys; streamlining the process and timing of surveys; expanding the use of existing data and data analysis; increasing survey participants' ability to respond to surveys, provide information, and communicate with the agency; and increasing the timeliness to publish updated wage determinations. WHD's planned improvements for SCA include process re-engineering, re-invention of IT systems, and improved timeliness to publish yearly rates.

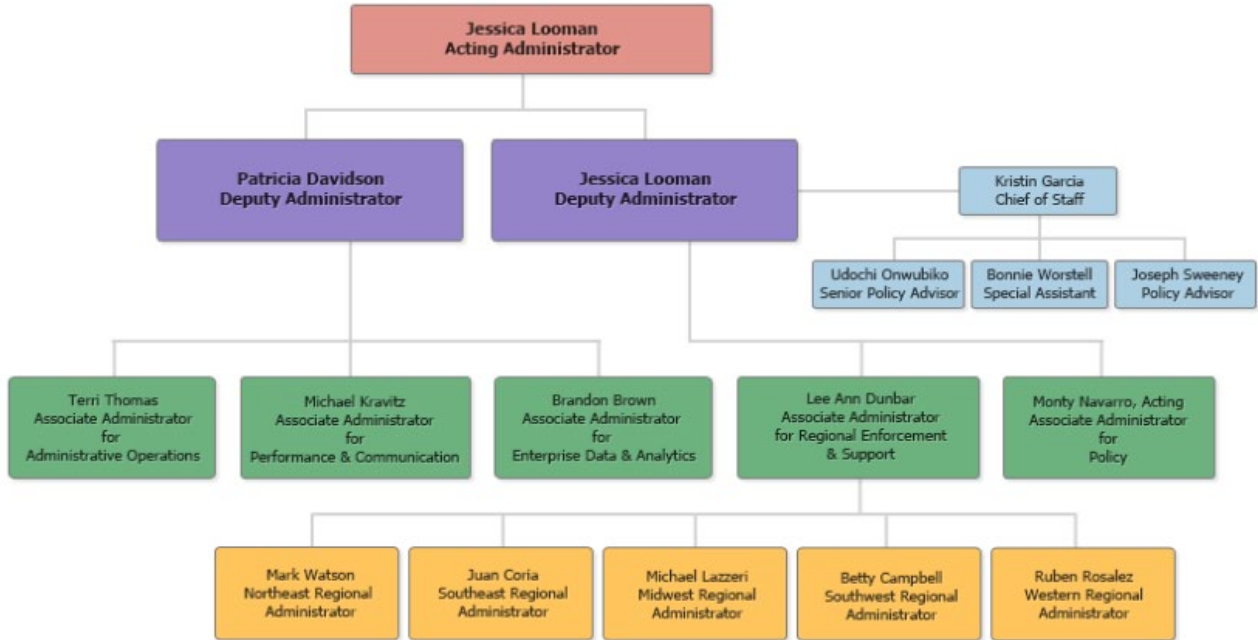
### **Data Analytics Platform**

WHD is seeking additional resources to develop and implement the data analytics platform (DAP)—another key component in building a web-based system capable of adapting to evolving business needs. In contrast, any modifications to the current legacy system have the potential to disrupt the entire system, and in large part, the vast and growing demand for data analytics is driving the demand for modifications. The DAP is also advancing WHD efforts to meeting federal data strategy goals, including open data and machine readable data available to the public.

Integrated modular architecture, and specifically implementation of the DAP, will transform the agency's ability to develop and deliver analytics for all aspects of the agency, including day-to-day workload management, administrative operations, resource allocation and hiring, strategic planning, wage surveys, and financial management of back wages. The DAP will allow WHD to ingest, integrate and analyze a wide range of internal and external datasets in new and innovative ways. Increased resources will allow WHD to purchase large data sets and subscribe to data providers, which will significantly enhance the agency's ability to develop case selection strategies, conduct industry research, map industry and employer business structures, and supplement data collected as part of the investigation process. Current practices, which largely rely on manual data collection and individual research, are resource-intensive and inadequate given the size, complexity, and constantly changing nature of industries.

WHD is continuously evolving its strategic enforcement program, and the current suite of data tools limit the extent of data processing and analytics available to answer critical strategic planning questions. Field offices and strategic planners are increasingly looking to statistical data to understand and assess local economic conditions, labor markets, business models and practices that show patterns of non-compliance. These analytical practices allow the agency to design, implement, and evaluate initiatives that are targeting enforcement and outreach resources to the communities most in need of WHD services, including those identified by the Executive Order On Advancing Racial Equity and Support for Underserved Communities through Federal Government.

# WAGE AND HOUR DIVISION





## WAGE AND HOUR DIVISION

<b>BUDGET AUTHORITY BEFORE THE COMMITTEE</b>				
(Dollars in Thousands)				
	<b>FY 2021 Revised Enacted</b>	<b>FY 2022 Full Year C.R.</b>	<b>FY 2023 Request</b>	<b>Diff. FY23 Request / FY22 Full Year C.R.</b>
<b>Activity Appropriation</b>	<b>246,000</b>	<b>246,000</b>	<b>307,678</b>	<b>61,678</b>
FTE	1,295	1,267	1,556	289

NOTE: FY 2021 reflects actual FTE. Authorized FTE for FY 2021 was 1,340. FY 2022 reflects estimated FTE usage at the annualized level of the CR.

### **Introduction**

WHD prioritizes evidence-based strategies in high-violation industries employing essential workers; outreach and education to workers, particularly those in underserved communities; and developing strategic partnerships around the shared goal of protecting workers and improving compliance.

The FY 2023 budget request provides for a total increase of \$61,678,000 and 289 FTE to support WHD’s role in protecting essential workers and access to economic equity, ensuring federal infrastructure investments create quality jobs, and to advance progress on the agency’s information technology roadmap.

### **Five-Year Budget Activity History**

<b><u>Fiscal Year</u></b>	<b><u>Funding</u></b> (Dollars in Thousands)	<b><u>FTE</u></b>
2018	\$227,500	1,355
2019	\$229,000	1,297
2020	\$242,000	1,382
2021	\$246,000	1,340
2022	\$0	0

NOTE: A full-year 2022 appropriation for this account was not enacted at the time the budget was prepared.

### **FY 2023**

The FY 2023 budget request seeks \$61,678,000 and 289 FTE to conduct worker-focused, evidence-based strategic enforcement. The FY 2023 request will support efforts focused on addressing barriers faced by underserved communities, including developing stakeholder partnerships and worker-focused resources to reach those communities. WHD will further strengthen national initiatives focused on protecting essential workers, including care workers, farm laborers, restaurant workers, residential construction workers, and the range of workers providing support services to building operations. WHD will develop and implement stakeholder engagement strategies designed to establish and strengthen strategic partnerships around the shared goal of ensuring that workers’ rights are respected. WHD will continue strengthening outreach efforts to stakeholders that serve historically underserved, marginalized and adversely affected communities. WHD is also seeking additional resources in order to maximize back

## WAGE AND HOUR DIVISION

wages collected and distributed to those workers, particularly among those workers most vulnerable to wage violations and exploitive labor conditions.

The increased resources will also support targeted efforts to develop high impact cases and to meet emerging regulatory and enforcement challenges. WHD will continue revitalizing efforts to combat misclassification by targeting sectors where evidence and data suggest misuse of the independent contractor status by employers. WHD will use the additional resources to support the range of activities involved in developing high-impact litigation cases. WHD will also continue rebuilding its in-house expertise and capacity to fully staff a robust, forward-looking regulatory program. WHD is seeking increased resources to develop and implement a pilot enforcement program in high minimum wage states. The increase in resources will put WHD in the best position to respond to the anticipated increase in Davis Bacon enforcement and prevailing wage determination work resulting from the Bipartisan Infrastructure Law. Increased resources in enforcement and outreach will also bolster the agency's ability to respond to the growth in worker visa programs. The additional funds will strengthen resources available for investigations of employers hiring H-visa workers. These cases are often complex and time-intensive due to a variety of factors, including the types of analysis required, the vulnerability of the workforce involved, and the obstacles to ensuring that wages are returned to migrant workers. As the demand for visa workers continues to increase, WHD requires additional resources to ensure investigators are fully trained and that field offices can dedicate the necessary resources to these types of investigations.

WHD is requesting \$5,197,000 to complete development of the data collection and case management components of modernization and to develop the data analytics platform. This request includes additional funds to complete the Wage Determinations System (WDS). Increased resources will significantly advance efforts to modernize the technology that underpins mission-critical enforcement and outreach and to establish enhanced reporting capabilities on those activities—all of which will significantly improve overall organizational efficiency and effectiveness. Investments in modernizing WDS are critical to fully implementing business process improvements with the potential to transform the survey program and significantly improve performance results.

### **FY 2022**

In FY 2022, WHD is expanding and strengthening strategic initiatives protecting essential workers, including care workers and workers from underserved communities. WHD has increased the focus on stakeholder partnerships who can serve as trusted intermediaries to workers most vulnerable to labor violations and can broaden the reach of WHD education efforts. WHD is continuing the Essential Workers Essential Protections program—a robust outreach effort that is providing valuable information on ways to address barriers experienced by underserved communities. WHD is also prioritizing cases involving misclassification of workers as independent contractors, retaliation, and potential human trafficking. To that end, WHD is conducting extensive training with its enforcement staff and developing strategies in those industries where violations are most likely to occur. WHD is also maintaining progress on efforts to modernize the prevailing wage survey process and strengthen enforcement of Davis Bacon and Related Acts—all of which will further WHD's ability to address the increased scope of

## WAGE AND HOUR DIVISION

federal contract projects resulting from the Bipartisan Infrastructure Law. WHD continues to make incremental progress on its IT modernization roadmap.

### **FY 2021**

The FY 2021 Enacted level provided \$246,000,000 and 1,343 FTE to WHD. WHD focused on rebuilding relationships with key stakeholders and using a variety of communications tools to reach a broader audience. WHD worked to restore and revive relationships with labor and worker stakeholders who help amplify the WHD message. Understanding the importance of protecting workers, WHD's strategic planning and enforcement procedures incorporated remote and hybrid approaches to conducting investigations during the pandemic. On-site investigations remained crucial to WHD's enforcement efforts, especially in areas like child labor (which saw a resurgence in light of school closures) and enforcement of laws regulating the agriculture industry. Working conditions during the pandemic continued to raise novel questions about the proper application of worker protection laws, and WHD delivered compliance assistance to employers whose operations were significantly impacted by the pandemic.

## WAGE AND HOUR DIVISION

<b>WORKLOAD AND PERFORMANCE SUMMARY</b>				
	<b>FY 2021 Revised Enacted</b>		<b>FY 2022 Full Year C.R.</b>	<b>FY 2023 Request</b>
	<b>Target</b>	<b>Result</b>	<b>Target</b>	<b>Target</b>
<b>Wage and Hour Division</b>				
<b>Strategic Goal 2 - Ensure Safe Jobs, Essential Protections, and Fair Workplaces</b>				
<b>Strategic Objective 2.2 - Protect workers' rights.</b>				
WHD-IMP-01	Percent of back wages paid to workers		79%	82%
WHD-EQ-01	Percent of compliance actions in industries with a high proportion of workers in underserved communities		33%	35%
WHD-E-07	Percent of compliance actions associated to a strategic initiative		65%	66%
WHD-CA-04	Percent of initiative outreach events		50%	52%
WHD-BW-01	Percent of compliance actions with Back Wages or Civil Monetary Penalties Assessed*		63.5%	N/A
WHD-SEV-01	Percent of FLSA compliance actions (excluding conciliations) with severity score of 30 or more		21%	22%
WHD-E-01	Number of compliance actions concluded		25,500	25,500

\* Excludes Fair Labor Standards Nursing Mothers, Family and Medical Leave Act, FFCRA, and conciliations.

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



# WAGE AND HOUR DIVISION

## **Workload and Performance**

WHD relies on several types of measures to advance evidence-based strategies and to promote effective and efficient enforcement. In FY 2023, WHD is phasing out several measures and introducing an updated balance of measures, consistent with the FY 2022-2026 DOL Strategic Plan. Continuing and new performance measures will emphasize protecting essential workers through strategic enforcement and high impact cases. These evidence-based strategies are how the agency believes it can most effectively advance equity goals, detect and address misclassification, and improve compliance for essential workers.

## **Protecting Essential Workers**

Until about 2010, almost 75 percent of all WHD investigations were initiated by worker complaints. Today, WHD plans nearly 50 percent of its investigations based on extensive research, data, and experience. This balanced approach ensures that WHD does not rely on worker complaints to identify violations, but is working with a range of information to ensure investigations and outreach serve the workers who need the agency most. As the agency systematically increased the percent of directed investigations, WHD reported the percent of complaint and directed cases. WHD also tracked “no violation” rates, a measure of how well-targeted directed cases were.

During this time, WHD also significantly changed how investigations are planned using strategic initiatives. With increased capacity for data analytics, research, stakeholder engagement, and coordination, WHD has developed a collaborative, dynamic planning model coordinating agency-wide, industry-level initiatives. In FY 2022, WHD will aim for 65 percent of all compliance actions to be associated with strategic initiatives with an incremental increase to 66 percent in FY2023 (WHD-E-07). This approach, combined with the increased resources, will strengthen overall compliance actions in the following ways.

## **Strengthened Outcomes through Strategic Initiatives**

WHD is further integrating complaint and directed investigation activity around strategic initiative goals. WHD will do that by measuring all compliance actions associated with a strategic initiative—both complaint and directed cases. This approach will encourage finding ways to fully leverage high impact complaint cases as part of broader industry efforts. For example, media strategies around cases with significant findings can deter violations broadly.<sup>20</sup> Further, strategic initiatives allow WHD to focus on advancing equity, addressing the misclassification of employees as independent contractors and recovering wages for workers.

Strategic initiatives allow the agency to surface promising practices, creatively problem-solve, apply enforcement tools consistently and effectively, and determine how to adapt industry and sector based strategies at the local level. WHD will leverage the gains from modernization and increased capacity for data analytics to better understand differences across case outcomes and to improve agency-wide case coordination around industry structures. WHD relies on a range of statistical, open source, and propriety data to understand local economic conditions, business

---

<sup>20</sup> Johnson, Matthew, “Regulation by Shaming: Deterrence Effects of Publicizing Violations of Workplace Safety and Health Laws,” *American Economic Review*, Vol. 110, No. 6, June 2020 (pp. 1866-1904), <https://www.aeaweb.org/articles?id=10.1257/aer.20180501>.

## WAGE AND HOUR DIVISION

characteristics, and industry structures. WHD also relies on a range of stakeholders to provide information on compliance problems and that have an interest in exploring different avenues for addressing those problems. This level of coordination, planning, analysis, and relationship building requires increased resources, and WHD expects the investment will lead to a higher proportion of cases with far-reaching impacts and sustained deterrent effects.

### **Increase in High Impact Cases**

Strategic initiatives also support the development of higher impact cases. WHD will continue to measure cases with a severity index, which captures violation data describing different dimensions of case findings (WHD-SEV-01). The measure aims to increase the proportion of cases meeting a certain severity threshold. With increased resources to support enforcement, WHD anticipates the proportion of cases meeting that threshold will increase over time, as offices are better equipped with the time, expertise, and resources to pursue and develop significant cases, including litigation cases. By increasing the proportion of cases that are high impact, WHD estimates an additional \$10 million in back wages would be recovered for more workers, an amount that is expected to further increase over time.

### **Increase in Strategic Outreach**

By increasing the proportion of outreach events associated with initiatives (WHD-CA-04), WHD will also ensure that the majority of its outreach is focused on essential workers and underserved communities. Those activities will provide critical information for improving enforcement strategies and case selection. Outreach as part of strategic initiatives aims to increase the use of strategic partnerships focused on the shared goal of improving compliance. Increased investments in outreach, compliance and enforcement staff will allow WHD to develop and sustain a broader range of strategic partnerships and determine how those partnerships can improve WHD outcomes. WHD will no longer report on a total number of outreach events, which tends to overemphasize quantity as a measure of success.

### **Advance Equity-Informed Strategies**

WHD has incorporated equity goals into strategic initiatives in FY 2022. Those initiatives are expected to continue in FY 2023 with an even greater emphasis on equity. Increased resources will support the additional engagement required to break down barriers to underserved communities and develop cases involving worker populations that are least likely to complain or to know their rights. WHD will have more data, hands-on experiences, and stakeholder relationships to draw upon in carrying out equity-informed strategies. As a result, WHD expects a higher percentage of enforcement to occur in those industries employing a high percent of individuals from underserved communities, including persons of color (WHD-EQ-01).

### **Increase Back Wages to Workers**

WHD is taking steps to ensure every worker due wages receives them, and to that end, will measure the percent of back wages actually paid to workers (WHD-IMP-01). The vast majority of back wages due to employees are paid directly by the employers. WHD receives those wages due to a worker that the employer was unable to locate, and those workers may be among the most vulnerable to violations. These workers may be highly mobile, and as a result, may be difficult to find if no longer employed by the business in violation. Increased resources will support agency efforts to reduce the amount of unclaimed wages. WHD will use those resources

## WAGE AND HOUR DIVISION

to implement steps on the front-end of the investigative process to ensure workers will be locatable and to strengthen back wage follow-up by increasing the number of specialists dedicated to those activities.

### **Recalibrate Compliance Actions**

The performance measure tracking compliance actions covers all types of enforcement, including investigations, conciliations, and self-audits. In FY 2021, WHD undertook a rigorous analysis of compliance actions data to understand the effects of productivity goals on performance. The analysis revealed that cases involving more hours—and more expertise—vastly outperformed the larger subset of cases with shorter-timeframes, both in terms of back wages collected and workers impacted (WHD-BW-01). Further statistical analysis suggested that productivity—defined as the number of cases concluded—explained a smaller portion of results than might be expected (WHD-E-01). In other words, pressing for increasing numbers of cases does not appear to be the most effective way to improve overall compliance outcomes. Based on this analysis, WHD is prioritizing case quality and creating opportunities for the development of high impact cases, including those involving particularly vulnerable populations and egregious working conditions, over a continued emphasis on an ever-increasing number of compliance actions. WHD will continue to emphasize efficiency by closing out cases quickly where appropriate, in order to redirect resources to higher impact cases.

Also importantly, given the time required to train and develop a new investigator, compliance actions may not increase for two to three years after onboarding large numbers of additional investigators—particularly following a period of significant attrition. WHD continues to invest in new approaches and technology to support its professional development training programs, including a hybrid of online and in-person training. Over time, WHD will cautiously recalibrate the targeted level of compliance actions in order to maintain the emphasis on quality and high impact cases among new and seasoned investigators.

## WAGE AND HOUR DIVISION

<b>BUDGET ACTIVITY BY OBJECT CLASS</b>					
(Dollars in Thousands)					
		<b>FY 2021 Revised Enacted</b>	<b>FY 2022 Full Year C.R.</b>	<b>FY 2023 Request</b>	<b>Diff. FY23 Request / FY22 Full Year C.R.</b>
11.1	Full-time permanent	124,461	124,461	160,655	36,194
11.3	Other than full-time permanent	702	702	702	0
11.5	Other personnel compensation	3,000	3,000	3,000	0
11.8	Special personal services payments	0	0	0	0
11.9	<b>Total personnel compensation</b>	<b>128,163</b>	<b>128,163</b>	<b>164,357</b>	<b>36,194</b>
12.1	Civilian personnel benefits	48,138	48,138	66,516	18,378
13.0	Benefits for former personnel	0	0	0	0
21.0	Travel and transportation of persons	1,464	1,464	1,464	0
22.0	Transportation of things	6	6	6	0
23.0	Rent, Communications, and Utilities	0	0	0	0
23.1	Rental payments to GSA	13,500	13,500	13,500	0
23.2	Rental payments to others	8	8	8	0
23.3	Communications, utilities, and miscellaneous charges	1,800	1,800	1,800	0
24.0	Printing and reproduction	350	350	350	0
25.1	Advisory and assistance services	2,900	2,900	2,900	0
25.2	Other services from non-Federal sources	705	705	5,902	5,197
25.3	Other goods and services from Federal sources 1/	41,187	41,187	43,096	1,909
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	2,779	2,779	2,779	0
26.0	Supplies and materials	1,500	1,500	1,500	0
31.0	Equipment	3,000	3,000	3,000	0
41.0	Grants, subsidies, and contributions	0	0	0	0
42.0	Insurance claims and indemnities	500	500	500	0
	<b>Total</b>	<b>246,000</b>	<b>246,000</b>	<b>307,678</b>	<b>61,678</b>
	1/Other goods and services from Federal sources				
	Working Capital Fund	38,519	38,519	40,428	1,909
	DHS Services	2,801	2,801	2,801	0
	Services by DOL Agencies	-133	-133	-133	0

# WAGE AND HOUR DIVISION

## CHANGES IN FY 2023

(Dollars in Thousands)

### Activity Changes

#### Built-In

To Provide For:

Costs of pay adjustments	\$8,777
Personnel benefits	4,522
Employee health benefits	0
Moving allowance	0
Federal Employees' Compensation Act (FECA)	-268
Benefits for former personnel	0
Travel and transportation of persons	0
Transportation of things	0
Rental payments to GSA	0
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	1,909
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** **\$14,940**

**Net Program** **\$46,738**

**Direct FTE** **289**

	Estimate	FTE
<b>Base</b>	<b>\$260,940</b>	<b>1,267</b>
<b>Program Increase</b>	<b>\$46,738</b>	<b>289</b>
<b>Program Decrease</b>	<b>\$0</b>	<b>0</b>