

**FY 2013**

**CONGRESSIONAL BUDGET JUSTIFICATION**

**WAGE AND HOUR DIVISION**



# WAGE AND HOUR DIVISION

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# **WAGE AND HOUR DIVISION**

## **APPROPRIATION LANGUAGE**

### *WAGE AND HOUR DIVISION*

#### *SALARIES AND EXPENSES*

For necessary expenses for the Wage and Hour Division, including reimbursement to State, Federal, and local agencies and their employees for inspection services rendered, [\$227,491,000] \$237,730,000. (Department of Labor Appropriations Act, 2012)

## WAGE AND HOUR DIVISION

<b>AMOUNTS AVAILABLE FOR OBLIGATION</b>						
(Dollars in Thousands)						
	FY 2011 Enacted		FY 2012 Enacted		FY 2013 Request	
	FTE	Amount	FTE	Amount	FTE	Amount
<b>A. Appropriation</b>	<b>1,697</b>	<b>\$225,256</b>	<b>1,418</b>	<b>\$227,491</b>	<b>1,498</b>	<b>\$237,730</b>
Reduction pursuant to (P.L.112-10) in FY 2011	0	-\$451	0	\$0	0	\$0
Reduction pursuant to (P.L. 112-74) for FY 2012	0	\$0	0	-\$430	0	\$0
<i>Subtotal Appropriation</i>	<i>1,697</i>	<i>\$224,805</i>	<i>1,418</i>	<i>\$227,061</i>	<i>1,498</i>	<i>\$237,730</i>
Non-Expenditure Transfer from DM to Restore the FY 2011 Rescission amount.	0	\$451	0	\$0	0	\$0
Non-Expenditure Transfer from DM to Restore FY 2011 to FY 2010 Levels	0	\$2,235	0	\$0	0	\$0
Reimbursements (CMP's)	0	\$2,800	0	\$2,800	0	\$2,800
H-1B L Fraud Fees (Collected)	0	\$39,150	341	\$35,000	341	\$35,000
H-2B Fees	0	\$4,675	0	\$3,827	0	\$0
<i>Subtotal</i>	<i>1,697</i>	<i>\$274,116</i>	<i>1,759</i>	<i>\$268,688</i>	<i>1,839</i>	<i>\$275,530</i>
<b>B. Gross Budget Authority</b>	<b>1,697</b>	<b>\$274,116</b>	<b>1,759</b>	<b>\$268,688</b>	<b>1,839</b>	<b>\$275,530</b>
Non-Expenditure Transfer from DM to Restore the FY 2011 Rescission amount.	0	-\$451	0	\$0	0	\$0
Non-Expenditure Transfer from DM to Restore FY 2011 to FY 2010 Levels	0	-\$2,235	0	\$0	0	\$0
Reimbursements (CMP's)	0	-\$2,800	0	-\$2,800	0	-\$2,800
H-1B L Fraud Fees (Collected)	0	-\$39,150	-341	-\$35,000	-341	-\$35,000
H-2B Fees	0	-\$4,675	0	-\$3,827	0	\$0
<b>C. Budget Authority Before Committee</b>	<b>1,697</b>	<b>\$224,805</b>	<b>1,781</b>	<b>\$227,061</b>	<b>1,498</b>	<b>\$237,730</b>
Non-Expenditure Transfer from DM to Restore the FY 2011 Rescission amount	0	\$451	0	\$0	0	\$0
Non-Expenditure Transfer from DM to Restore FY 2011 to FY 2010 Levels	0	\$2,235	0	\$0	0	\$0
Reimbursements (CMP's)	0	\$2,800	0	\$2,800	0	\$2,800
H-1B L Fraud Fees Actual	0	\$39,150	31	\$45,150	341	\$45,150
H-2B Fees Actual	0	\$4,675	0	\$3,827	0	\$0
<b>D. Total Budgetary Resources</b>	<b>1,697</b>	<b>\$274,116</b>	<b>1,759</b>	<b>\$278,838</b>	<b>1,839</b>	<b>\$285,680</b>
FTE Lapse and Unobligated Balance Expiring	-39	\$0	0	\$0	0	\$0
<b>E. Total, Estimated Obligations</b>	<b>1,658</b>	<b>\$274,116</b>	<b>1,759</b>	<b>\$278,838</b>	<b>1,839</b>	<b>\$285,680</b>

# WAGE AND HOUR DIVISION

## SUMMARY OF CHANGES

(Dollars in Thousands)

	FY 2012 Enacted	FY 2013 Request	Net Change
<b>Budget Authority</b>			
General Funds	\$227,061	\$237,730	+\$10,669
<b>Total</b>	<b>\$227,061</b>	<b>\$237,730</b>	<b>+\$10,669</b>
<b>Full Time Equivalents</b>			
General Funds	1,759	1,839	80
<b>Total</b>	<b>1,759</b>	<b>1,839</b>	<b>80</b>

Explanation of Change	FY 2012 Base		Trust Funds		FY 2013 Change General Funds		Total	
	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
<b>Increases:</b>								
<b>A. Built-Ins:</b>								
To Provide For:								
Costs of pay adjustments	1,759	\$112,187	0	\$0	0	\$421	0	\$421
Personnel benefits	0	\$22,929	0	\$0	0	\$86	0	\$86
Employee health benefits	0	\$8,002	0	\$0	0	\$30	0	\$30
Moving allowance	0	\$1,800	0	\$0	0	\$7	0	\$7
One day more of pay	0	\$0	0	\$0	0	\$592	0	\$592
Federal Employees Compensation Act (FECA)	0	\$1,601	0	\$0	0	\$0	0	\$0
Benefits for former personnel	0	\$0	0	\$0	0	\$0	0	\$0
Travel and transportation of persons	0	\$8,036	0	\$0	0	\$0	0	\$0
Transportation of things	0	\$285	0	\$0	0	\$0	0	\$0
Rental payments to GSA	0	\$10,569	0	\$0	0	\$1,362	0	\$1,362
All Other Rental	0	\$528	0	\$0	0	\$0	0	\$0
Communications, utilities, and miscellaneous charges	0	\$3,097	0	\$0	0	\$0	0	\$0
Printing and reproduction	0	\$620	0	\$0	0	\$0	0	\$0
Advisory and assistance services	0	\$4,250	0	\$0	0	\$0	0	\$0
Other services	0	\$4,788	0	\$0	0	\$0	0	\$0
Working Capital Fund	0	\$21,297	0	\$0	0	\$0	0	\$0
Other government accounts (DHS Charges)	0	\$1,076	0	\$0	0	\$0	0	\$0
Other purchases of goods and services from Government accounts	0	\$4,102	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	\$18,537	0	\$0	0	\$0	0	\$0
Supplies and materials	0	\$1,100	0	\$0	0	\$0	0	\$0
Equipment	0	\$2,257	0	\$0	0	\$0	0	\$0
Grants, subsidies, and contributions	0	\$0	0	\$0	0	\$0	0	\$0

## WAGE AND HOUR DIVISION

Explanation of Change	FY 2012 Base		Trust Funds		FY 2013 Change General Funds		Total	
	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
Insurance claims and indemnities	0	\$0	0	\$0	0	\$0	0	\$0
<b>Built-Ins Subtotal</b>	<b>1,759</b>	<b>+\$227,061</b>	<b>0</b>	<b>\$0</b>	<b>0</b>	<b>+\$2,498</b>	<b>0</b>	<b>+\$2,498</b>
<b>B. Programs:</b>								
To provide for increased enforcement of FLSA Overtime and FLSA 14 (c)	0	\$0	0	\$0	36	\$3,900	36	\$3,900
To provide for increased efforts to deter and detect worker misclassification	0	\$0	0	\$0	35	\$3,800	35	\$3,800
Reallocation of Funds from Women's Bureau for FLSA and FMLA	0	\$0	0	\$0	21	\$2,500	21	\$2,500
<b>Programs Subtotal</b>			<b>0</b>	<b>\$0</b>	<b>92</b>	<b>+\$10,200</b>	<b>92</b>	<b>+\$10,200</b>
<b>Total Increase</b>	<b>1,759</b>	<b>+\$227,061</b>	<b>0</b>	<b>\$0</b>	<b>92</b>	<b>+\$12,698</b>	<b>92</b>	<b>+\$12,698</b>
<b>Decreases:</b>								
<b>A. Built-Ins:</b>								
To Provide For:								
<b>Built-Ins Subtotal</b>	<b>0</b>	<b>\$0</b>	<b>0</b>	<b>\$0</b>	<b>0</b>	<b>\$0</b>	<b>0</b>	<b>\$0</b>
<b>B. Programs:</b>								
To Eliminate Employer Compliance Assistance and the Toll-free Call Center	0	\$0	0	\$0	-12	-\$2,029	-12	-\$2,029
<b>Programs Subtotal</b>			<b>0</b>	<b>\$0</b>	<b>-12</b>	<b>-\$2,029</b>	<b>-12</b>	<b>-\$2,029</b>
<b>Total Decrease</b>	<b>0</b>	<b>\$0</b>	<b>0</b>	<b>\$0</b>	<b>-12</b>	<b>-\$2,029</b>	<b>-12</b>	<b>-\$2,029</b>
<b>Total Change</b>	<b>1,759</b>	<b>+\$227,061</b>	<b>0</b>	<b>\$0</b>	<b>80</b>	<b>+\$10,669</b>	<b>80</b>	<b>+\$10,669</b>

## WAGE AND HOUR DIVISION

<b>SUMMARY BUDGET AUTHORITY AND FTE BY ACTIVITY</b>								
(Dollars in Thousands)								
	FY 2011 Enacted		FY 2012 Enacted		FY 2013 Request		Diff. FY13 Req. / FY12 Enacted	
	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
<b>Wage and Hour Division</b>	<b>1,658</b>	<b>227,491</b>	<b>1,759</b>	<b>227,061</b>	<b>1,839</b>	<b>237,730</b>	<b>80</b>	<b>10,669</b>
General Funds	1,658	227,491	1,759	227,061	1,839	237,730	80	10,669
<b>Total</b>	<b>1,658</b>	<b>227,491</b>	<b>1,759</b>	<b>227,061</b>	<b>1,839</b>	<b>237,730</b>	<b>80</b>	<b>10,669</b>
<b>General Funds</b>	<b>1,658</b>	<b>227,491</b>	<b>1,759</b>	<b>227,061</b>	<b>1,839</b>	<b>237,730</b>	<b>80</b>	<b>10,669</b>

NOTE: FY 2011 reflects actual FTE.

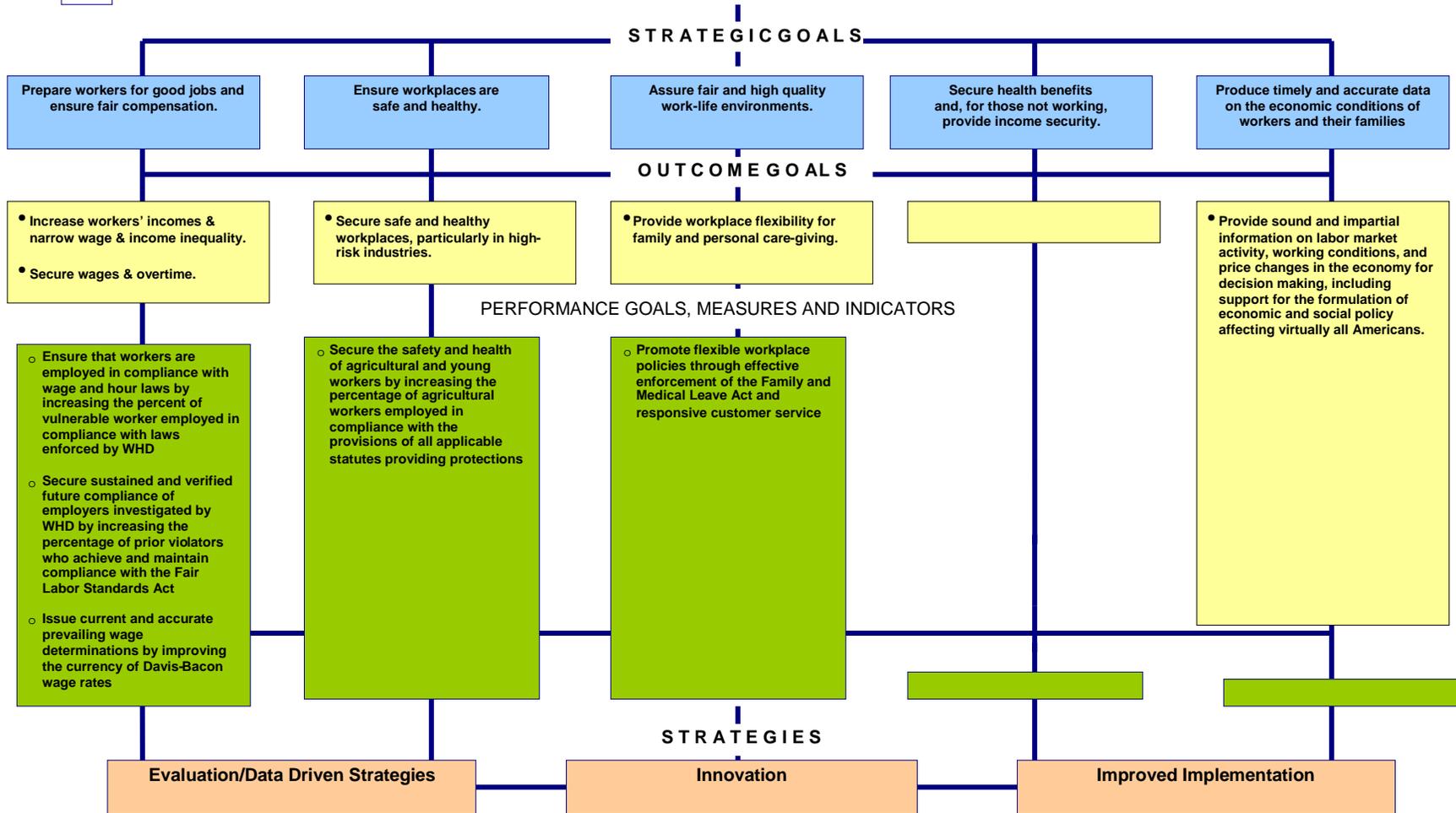
## WAGE AND HOUR DIVISION

<b>BUDGET AUTHORITY BY OBJECT CLASS</b>					
(Dollars in Thousands)					
		<b>FY 2011 Enacted</b>	<b>FY 2012 Enacted</b>	<b>FY 2013 Request</b>	<b>Diff. FY13 Req./ FY12 Enacted</b>
	Full-Time Equivalent				
	Full-time Permanent	1,697	1,759	1,839	80
	<b>Total</b>	<b>1,697</b>	<b>1,759</b>	<b>1,839</b>	<b>80</b>
	Average ES Salary	\$170,136	\$170,136	\$170,136	\$0
	Average GM/GS Grade	11/1	11/1	11/1	0
	Average GM/GS Salary	\$73,566	\$73,566	\$73,566	\$0
	Average Salary of Ungraded Positions	0	0	0	0
11.1	Full-time permanent	113,466	109,687	114,704	5,017
11.3	Other than full-time permanent	0	0	0	0
11.5	Other personnel compensation	2,916	2,500	2,509	9
<b>11.9</b>	<b>Total personnel compensation</b>	<b>116,382</b>	<b>112,187</b>	<b>117,213</b>	<b>5,026</b>
12.1	Civilian personnel benefits	32,558	34,332	35,607	1,275
13.0	Benefits for former personnel	0	0	0	0
21.0	Travel and transportation of persons	7,720	8,036	8,732	696
22.0	Transportation of things	385	285	285	0
23.1	Rental payments to GSA	10,828	10,569	12,484	1,915
23.2	Rental payments to others	146	528	528	0
23.3	Communications, utilities, and miscellaneous charges	3,272	3,097	3,428	331
24.0	Printing and reproduction	593	620	663	43
25.1	Advisory and assistance services	2,851	4,250	4,250	0
25.2	Other services from non-Federal sources	6,002	4,788	4,162	-626
25.3	Other goods and services from Federal sources 1/	27,906	26,475	27,574	1,099
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	15,105	18,537	18,943	406
26.0	Supplies and materials	1,054	1,100	1,191	91
31.0	Equipment	2,689	2,257	2,670	413
41.0	Grants, subsidies, and contributions	0	0	0	0
42.0	Insurance claims and indemnities	0	0	0	0
	<b>Total</b>	<b>227,491</b>	<b>227,061</b>	<b>237,730</b>	<b>10,669</b>
1/Other goods and services from Federal sources					
	Working Capital Fund	22,330	21,297	21,297	0
	DHS Services	1,114	1,076	1,076	0
	Services by DOL Agencies	371	0	0	0
	GSA Services	52	181	181	0
	Services by Other Government Departments	4,039	3,921	3,921	0
	CIGIE	0	0	1,099	1,099

# WAGE AND HOUR DIVISION



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



# WAGE AND HOUR DIVISION

## PERFORMANCE STRUCTURE

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

## WAGE AND HOUR DIVISION

### SIGNIFICANT ITEMS IN APPROPRIATION COMMITTEES' REPORTS

S. Report 112-84 page, 24: The Committee strongly urges WHD to increase its oversight of organizations participating in the special minimum wage program for individuals with disabilities authorized under section 14(c) of the Fair Labor Standards Act, in order to protect the rights of workers with disabilities.

*Response: WHD has included a request in its FY 2013 congressional budget justification for an additional \$2,500,000 and 21 FTE to increase compliance with the Fair Labor Standards Act Section 14(c). The additional FTE will be used for more directed investigations in this program area.*

S. Report 112-84, page 25: The Committee notes that WHD is taking steps to provide better and timelier services to the public at a lower cost. The Committee requests that WHD include in its fiscal year 2013 congressional budget justification information on additional steps it will take to carry out its responsibilities more cost effectively.

*Response: WHD's congressional budget justification includes lengthy discussions on its strategic enforcement approach for targeting industries and employers most likely to have violations. This data-based approach to enforcement is intended to ensure that the agency's investigation resources are well spent—that WHD investigators are not conducting directed investigations absent a strategic data-driven basis for the investigations. The budget also includes information on WHD's efforts to improve its service to those individuals who believe their rights under the Family and Medical Leave Act were denied. Finally, the budget justification includes the agency's plan to improve the efficiencies in its Davis-Bacon wage determination program.*

## WAGE AND HOUR DIVISION

### AUTHORIZING STATUTES

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

## WAGE AND HOUR DIVISION

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

## 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>
2003	\$0	\$0	\$0	\$155,626	1,392
2004	0	0	0	160,096	1,442
2005	0	0	0	164,495	1,346
2006	0	0	0	165,685	1,300
2007	0	0	0	170,220	1,200
2008	0	1	0	175,658	1,208
2009	0	0	0	193,092	1,283
2010	0	0	0	227,606	1,582
2011	244,240	0	0	227,491	1,697
2012	240,937	0	227,491	227,061	1,759
2013	237,730	0	0	0	0

In the FY 2003 through FY 2010 budget estimate to congress, the Wage and Hour amount was included in the former Employment Standards Administration request.

# WAGE AND HOUR DIVISION

## OVERVIEW

### Introduction

The Wage and Hour Division (WHD) is authorized under 29 U.S.C. 207, *et seq.* to administer and enforce a variety of laws that establish the minimum standards for wages and working conditions in the United States. Collectively, these labor standards cover most private, state, and local government employment. They protect over 135,000,000 workers in more than 7,300,000 establishments throughout the United States and its territories. These labor laws range from some of the earliest labor protections passed by Congress to some of the most recent. 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 vision of *good jobs for everyone* and support the Departmental budget themes of "*Enhancing worker safety, Fostering compliance through worker education and worker voice, and Promoting workplace flexibility and work-family balance.*"

WHD is comprised of a nationwide staff of investigators, supervisors, analysts, technicians, and administrative employees who share responsibilities for enforcing 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).

Compliance with this Nation's wage and workplace standards ensures the most basic protections for workers in the workplace and the greatest opportunities for them to advance. In the absence of an effective compliance program that couples targeted enforcement with strategies to promote sustained compliance, the most vulnerable workers in this country will not realize a secure income. They will be even more reluctant to voice concerns in the workplace, and they will never be able to fully balance their work and family obligations. WHD's enforcement priorities are to ensure that the most vulnerable workers are employed in compliance with wage and hour laws.

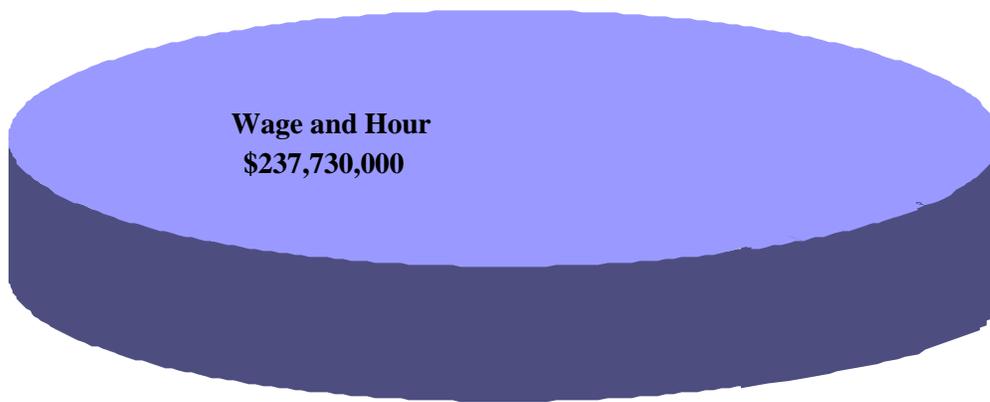
Vulnerable workers are most frequently employed in high-risk industries, specifically industries with subcontracting, franchising, temporary employment, independent contracting, and other contingent workforce characteristics. The employment relationship in these industries is often splintered and the beneficiary of the labor is distanced from the workers who actually provide the labor by multiple layers of contracting. Vulnerable workers also include young workers, agricultural workers, workers with disabilities, and those workers employed in statutory programs for which there is no private right of action. Employers fail to classify such workers as employees leaving them without critical benefits, protections and disparate wages. The common thread among vulnerable workers is a reluctance to complain of unfair or illegal treatment and the lack of opportunities to or knowledge about exercising their rights in the workplace.

# WAGE AND HOUR DIVISION

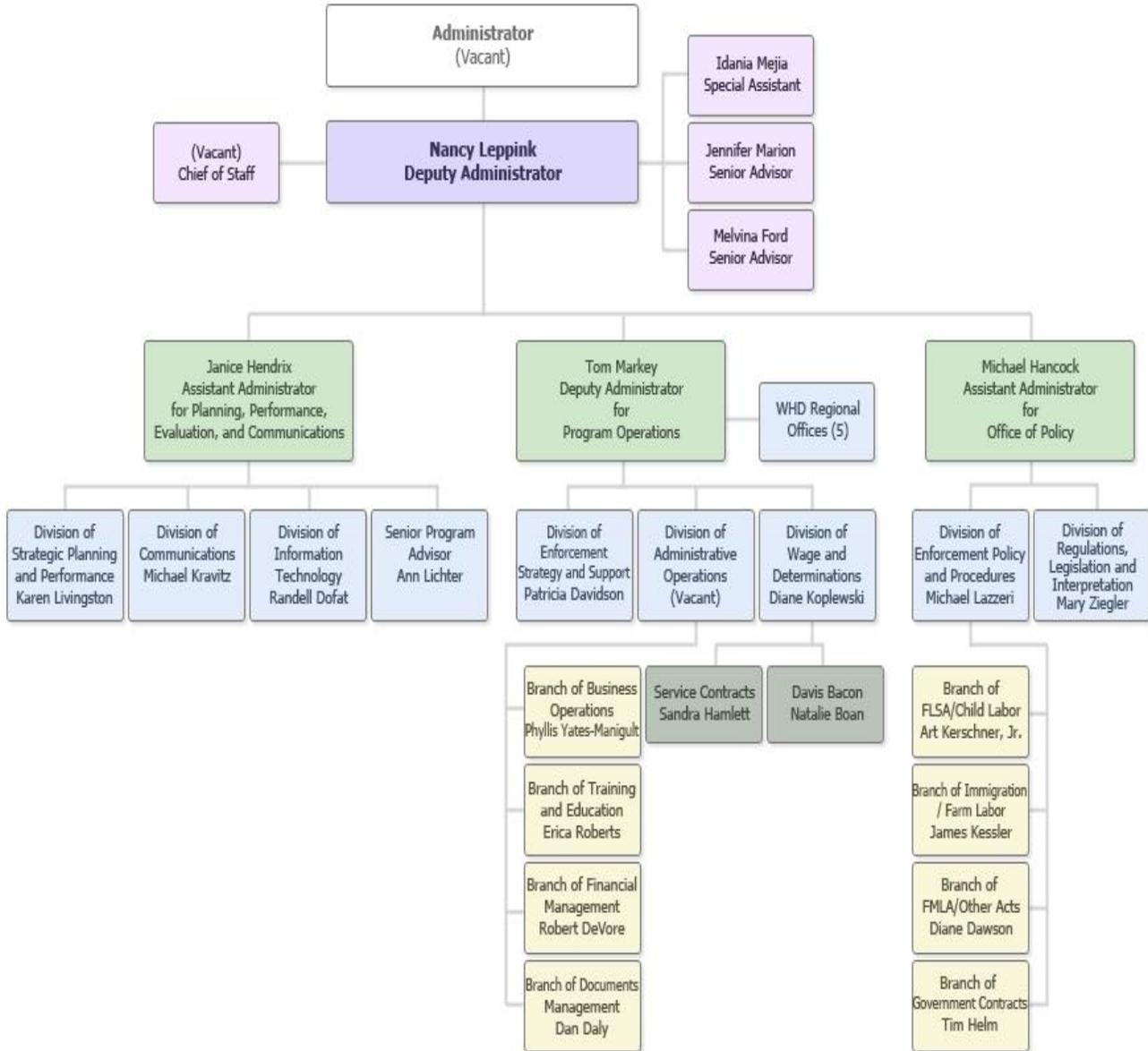
## Cost Model

Total new budget authority requested for Wage and Hour Division FY 2013 is \$237,730,000.

**FY 2013 Budget Request**  
**Wage and Hour Budget Request \$237,730**  
**(Dollars in Thousands)**



# WAGE AND HOUR DIVISION





## WAGE AND HOUR DIVISION

<b>BUDGET AUTHORITY BEFORE THE COMMITTEE</b>				
(Dollars in Thousands)				
	<b>FY 2011 Enacted</b>	<b>FY 2012 Enacted</b>	<b>FY 2013 Request</b>	<b>Diff. FY 13 Req. / FY 12 Enacted</b>
Budget Authority	227,491	227,061	237,730	10,669
FTE	1,658	1,759	1,839	80

NOTE: FY 2011 reflects actual FTE. Authorized FTE for FY 2011 was 1,697.

### **Introduction**

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

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

Vulnerable workers also include those that are employed in industries with subcontracting, independent contracting, and other contingent workforce characteristics. Employers often fail to classify such workers as employees leaving them subject to unfair treatment and disparate wages. In FY 2012, WHD is focusing on industries where independent contracting is just emerging as a business practice. The focus on independent contracting and the misclassification of employees as independent contractors will continue in FY 2013. Other vulnerable workers include individuals with disabilities and those employed in statutory programs for which there is no private right of action. The results of a FY 2010 survey of the compliance level of Community Rehabilitation Program certificate holders under Section 14(c) of the FLSA showed a low level of compliance necessitating a reenergized commitment by WHD to these vulnerable workers.

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WHD's focus on workers employed in these programs and in these industries contributes to the Department's outcome effort to *ensure fair compensation*.

Compliance levels with the statutes enforced by Wage and Hour in agriculture have fallen short of desired levels. WHD expects the use of the H-2A program to continue to grow, particularly since farm labor contractors—who have higher violations rates than growers—are now allowed to participate in the program. WHD's goal—consistent with the Department's goal of *securing safe and healthy workplaces particularly in high-risk industries* of increasing compliance among H-2A certified employers will continue in FY 2012.

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

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

**Worker Protection Strategies:** In FY 2013, WHD will continue to employ resource-leveraging strategies and technologies to affect compliance with the labor laws within its enforcement jurisdiction. The agency will continue to use its directed investigations to increase WHD presence in high risk industries, *i.e.*, those industries with high minimum wage and overtime violations and among vulnerable worker populations where complaints are not common. Obtaining corporate-wide compliance, securing future compliance, and deterring future violations in industry sectors and among employers also supports the Department's outcome goal of *securing fair compensation*. Complaint investigations will be managed strategically to increase WHD visibility among workers and community-based organizations to increase their involvement in identifying violations, and protect the work life balance of employees through strategic FMLA investigations.

Penalties, sanctions, the FLSA hot goods provision, and similar strategies will be used as appropriate to ensure future compliance among violators and to deter violations among other employers. WHD will pursue corporate-wide compliance strategies designed to ensure that employers take responsibility for their compliance behavior. Public awareness and outreach to workers will be targeted to worker populations and industries in which workers are reluctant to report violations. Outreach will be designed to reduce the perceived risk of filing a complaint with WHD and to increase the benefit to employees and their co-workers of reporting violations. Employees and the worker advocate groups will be encouraged to report violations of WHD laws through a variety of means. The newly-implemented ABA-referral system provides

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a valuable service to employees and allows WHD to shift resources to program areas that have no private right of action.

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

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

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

At the FY 2013 Agency Request Level, WHD will increase its FTE level to 1,839. Approximately 60.5 percent or 1,112 FTE will be investigators. This level of enforcement staff will enable WHD to fully support its enforcement priorities in the three priority enforcement areas: protecting the most vulnerable workers in the workplace; promoting sustained compliance; and industry-wide compliance among employers.

### Five-Year Budget Activity History

<u>Fiscal Year</u>	<u>Funding</u> (Dollars in Thousands)	<u>FTE</u>
2008	\$175,658	1,208
2009	\$193,092	1,283
2010	\$227,606	1,582
2011	\$227,491	1,697
2012	\$227,061	1,759

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### FY 2013

At the FY 2013 Request Level, WHD is requesting \$237,730,000 and 1,839 FTE. These resources will support a continued shift to greater directed and complaint enforcement activity in priority industries and will offer an improved customer service approach to complaint handling in non-priority industries. WHD seeks an increase of \$6,400,000 and 57 FTE to support greater enforcement of the FLSA overtime provisions and FMLA enforcement. This increase will be accomplished partially from a program increase of \$3,900,000 and 37 FTE and partially through a reallocation of funds of \$2,500,000 and 21 FTE from the Women's Bureau. This funding will be used to increase enforcement of entities likely to have FLSA overtime violations and to increase enforcement of the FLSA section 14 (c), and to increase response time for FMLA complaint investigations. Also requested are \$3,800,000 and 35 FTE for increased enforcement related to misclassified workers. These requests are offset by a proposed decrease of \$2,029,000 and 12 FTE for the elimination of employer compliance assistance requiring investigator resources and the toll-free call center.

WHD will use the additional \$6,400,000 and 57 FTE to support greater enforcement of the FLSA overtime provisions and FMLA enforcement. Both FMLA and FLSA benefit working women, and WHD will use these additional resources to strengthen enforcement of both laws. FMLA ensures that all workers receive job-protected leave to take time off work to attend their own or their family's medical needs. FLSA enforcement helps to ensure that women are securing equal pay and fair work opportunities. Overtime violations continue to be the most common cause of employee underpayments. Expanded investigations of overtime complaints, particularly in key high-risk industries, would allow WHD to pursue corporate and enterprise-wide settlements and litigation when the agency identifies patterns of "off-the-clock" and "misclassified 541" violations, which represent the most common reasons for overtime violations.

Similarly, WHD also seeks additional resources in support of greater FMLA enforcement. New legislation and regulations are expected to result in an increase workload as more individuals exercise their rights under the 2010 National Defense Authorization Act and the Airline Flight Crew Technical Corrections Act. In addition, WHD Administrator Interpretations that clarify the FMLA's application in varying circumstances will increase complaints to WHD when FMLA leave is denied or leave takers are discriminated against. WHD needs to respond expeditiously to allegations that individuals are losing their jobs or being denied critical leave. FMLA is the primary enforcement statute providing individuals with work and family balance when family members require care. In addition, as a result of a FY 2011 customer survey, WHD is reengineering its FMLA enforcement policies to ensure a more comprehensive approach to compliance. WHD is developing strategies that ensure a more in-depth review of the employer's business practices.

Part of the \$6,400,000 request would also address the FLSA Section 14 (c) program. Individuals with disabilities are among the most vulnerable workers in the United States. If an employer is to pay a sub-minimum wage to a disabled worker, the requirements of 14(c) should be scrupulously followed. A recent evaluation of compliance found that compliance rates among Section 14(c) community rehabilitation program are low. WHD determined that the basis for the

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violations was centered on three factors: high staff turnover; inattention to the Section 14(c) requirements; and the complexity of the program's prevailing rate determination processes. WHD proposed several specific steps to promote greater compliance to include redesigning the certification process; integrating the certification process with on-line knowledge-based technologies; and greater training options for the community rehabilitation program staff; and more targeted enforcement.

The additional FTE will be used for more targeted directed enforcement in this program area. Directed investigations in this program area will be targeted to the primary compliance issues identified in the FY 2010 evaluation. With additional investigators, training can be undertaken in the regions to increase the number of investigators with experience in the Section 14(c) program.

In addition, the current certification data management system needs to be reengineered to promote consistencies in tracking and evaluating requestors. The current data system is inflexible and does not allow for tracking changes in ownership or certification histories. There are also inconsistencies in how business names are entered into the system—legal or trade. An improved data system linked to an on-line self-assessment or training module would help WHD ensure that certification applicants are making an effort to comply with the program requirements. This will enable greater oversight over the approval of certification requests.

WHD seeks an additional \$3,800,000 and 35 FTE as part of an initiative to detect and deter the inappropriate misclassification of employees as independent contractors and strengthen and coordinate Federal and State efforts to enforce labor violations arising from misclassification. Individuals wrongly classified as independent contractors are denied access to critical benefits and protections — such as family and medical leave, overtime, civil rights laws, and unemployment insurance — to which they may be entitled as regular employees. Worker misclassification also generates substantial losses to the Treasury and the Social Security, Medicare and Unemployment Insurance Trust Funds.

As a partial offset to proposed program increase requests for worker misclassification, WHD proposes a reduction of \$2,029,000 and 12 FTE for employer compliance assistance and for its toll-free call center. Over the last two years WHD has hired additional in-house technicians who can answer calls more effectively and accurately and WHD is already in the process of upgrading its own telephone infrastructure in order to improve the ability to provide timely and accurate customer service at each of the more than 200 offices nationwide. WHD will use technology to help improve compliance assistance provided to workers and employers.

### **FY 2012**

In FY 2012, WHD will increase the number and percentage of its directed investigations to be effective in securing compliance on behalf of the most vulnerable workers and often misclassified workers. WHD will conduct baseline investigative-based evaluations in the hotel/motel industry to determine compliance levels. The agency will also continue nation-wide directed investigations in agriculture, including of H2-A employers, to determine their

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compliance with all applicable agricultural labor standards statutes and to work toward achieving a more sustainable impact in the compliance level with the industry.

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

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

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

### **FY 2011**

WHD began to realize significant positive results from the implementations of its strategic enforcement initiative. WHD concluded FY 2011 with strong results, including collecting over \$224 million in back wages for over 275,000 workers. While WHD maintains compliance as the true measure of success, this record level of back wages was in large part achieved through effective targeting in priority industries. No one case disproportionately increased the outcome, but rather, it is the sum total of many cases. WHD concluded 33,295 compliance actions in FY 2011 a 26 percent increase from FY 2010. The percentage of directed investigations continued to increase from 22 percent in the first quarter to 35.7 percent in the fourth quarter. WHD continued to narrow the gap between no violation directed versus no violation complaint investigations. Enforcement hours in agriculture exceeded both the quarterly and annual results. These successes can be attributed to continued discussions with regional management in their meetings, the emphasis on strategic production, the use of mobile investigative kits, revisions to performance standards, and the training and increased productivity of new investigators.

In FY 2010, the Wage and Hour Division (WHD) reengineered its Davis-Bacon wage survey process to begin improving the timeliness of its wage determinations rates. Through the use of this new methodology, WHD was able to increase the number of highway wage rates that were three years old or less to 90% by the end of FY 2011. In FY 2011, WHD published the results of 28 new wage surveys reducing the average age of building, heavy, and highway wage rates to less than 40 months.

During FY 2011, WHD investigators completed the field work in 157 investigations of employers utilizing H-2A immigration programs in order to establish a baseline. While the investigations were primarily conducted to determine the level of compliance with H-2A, compliance with the Fair Labor Standards Act (FLSA), the Migrant Seasonal Protection Act (MSPA) and the Field Sanitation standards of the Occupational Safety and Health Act (OSHA/FS) was also addressed. Preliminary analysis found that 40 out of 157 employers are in compliance, resulting in a compliance rate of 25.5 percent. WHD's compliance strategies will

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center on the identifying crops, geographic locations, and employer types, i.e., growers or contractors that are most likely to be in violation.

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<b>DETAILED WORKLOAD AND PERFORMANCE</b>				
	<b>FY 2011 Enacted</b>		<b>FY 2012 Enacted</b>	<b>FY 2013 Request</b>
	<b>Target</b>	<b>Result</b>	<b>Target</b>	<b>Target</b>
<b>Wage and Hour Division</b>				
<b>Strategic Goal 1 - Prepare Workers for Good Jobs and ensure fair compensation</b>	--	--	--	--
<b>Outcome Goal 1.1- Increase workers' incomes and narrowing wage and income inequality</b>	--	--	--	--
Average age of Davis-Bacon wage rates for non-Residential Construction (in months)	40	39	36	34
Number of Davis-Bacon wage surveys published	26	28	7	13
<b>Strategic Goal 1 - Prepare Workers for Good Jobs and ensure fair compensations</b>	--		--	--
<b>Outcome Goal 1.5 - Secure wages and overtime<sup>1</sup></b>	--		--	--
Percent of firms in the janitorial industry in compliance with applicable statutes	.00% (base)	38.00%	--	40.00%
Percent of firms in the hotel/motel industry in compliance with applicable statutes	--	--	(base)	--
Percent of construction companies in compliance with applicable statutes	--	--	(base)	--
Number of compliance actions	31,897	33,295	34,533	36,220
Percent of directed investigations (excludes conciliations)	32.00%	29.00%	35.00%	38.00%
Percent of complaint no violation cases	15.00%	20.00%	17.00%	14.00%
Percent of directed no violation cases	28.00%	30.00%	25.00%	23.00%
Percent of all investigations in priority industries (excludes conciliations)	68.00%	70.00%	72.00%	74.00%
Percent of complaint investigations in priority industries (excludes conciliations)	63.00%	66.00%	66.00%	68.00%
<b>Strategic Goal 2 - Ensure Workplaces are Safe and Healthy</b>	--		--	--
<b>Outcome Goal 2.1 - Secure safe and healthy workplaces, particularly in high-risk industries</b>	--		--	--
Percent of H-2A certified employers in compliance with applicable statutes	25.00%	25.50%	30.00%	32.00%
Percent of enforcement hours in agricultural industry	7.00%	7.00%	7.50%	8.00%
Percent of investigations in which child	95.00%	94.00%	95.00%	96.00%

<sup>1</sup> WHD will evaluate compliance in these three targeted industries (janitorial, construction, and hotel/motel) on a two to three year rotational basis. The interim period between measures will provide the agency the opportunity to implement compliance strategies to affect industry behavior. Annual measures do not provide sufficient time to determine if strategies are having the desired effect on compliance. The percent of directed and full investigations are subsets of all investigations or compliance actions (excluding the customer service conciliations).

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<b>DETAILED WORKLOAD AND PERFORMANCE</b>				
	<b>FY 2011 Enacted</b>		<b>FY 2012 Enacted</b>	<b>FY 2013 Request</b>
	<b>Target</b>	<b>Result</b>	<b>Target</b>	<b>Target</b>
labor compliance is examined (exclude conciliations)				
<b>Strategic Goal 3 - Assure fair and high quality work-life environments</b>	--		--	--
<b>Outcome Goal 3.2 - Provide workplace flexibility for family and personal care-giving</b>	--		--	--
Percent of FMLA incoming complaints resolved within the fiscal year	74.00%	74.00%	75.00%	78.00%

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

### Workload Summary

WHD has worked to restore its enforcement presence to promote long-term sustainable compliance with the basic labor standards statutes. WHD also monitors a combination of outputs designed to assess production levels and the organization's movement towards a more strategic approach to enforcement.

WHD has developed three priority strategies that aim to achieve increased compliance among priority industries and programs.

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

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

These priority strategies represent activities through which WHD will pursue increased compliance in its FY 2013 priorities. In those cases where employers and other regulated entities practice a culture of compliance, no government intervention in their workplaces is required to achieve compliance. Meanwhile, some employers and workers have difficulty understanding the laws and regulations that govern America's workplaces. For these enterprises and individuals, WHD provides extensive compliance assistance materials on its web site and in printed form, many of which are available in several languages.

The following enforcement priorities are focused on those industries where WHD typically finds violations. Through the above compliance strategies—as well as the ongoing emphasis on evaluation, innovation, and improved implementation—WHD is working to achieve broad compliance in those industries where vulnerable workers are employed. The following enforcement priorities, which are supported by performance measures designed to monitor the

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organization's progress in achieving strategic enforcement and compliance outcomes, are central to these strategies.

### **Strategic Enforcement: Vulnerable Workers and Priority Industries**

WHD's strategic approach to enforcement is centered on two integrated priority goals: protecting vulnerable workers and achieving compliance in priority industries. As explained in the introduction, vulnerable workers are typically concentrated in certain industries, which represent unique enforcement challenges that WHD is working to address. To support the discussion of resource levels, it is important to first understand how WHD has prioritized its enforcement strategies based on these two goals.

**Protecting Vulnerable Workers:** WHD concentrates its directed enforcement program towards increasing the percent of vulnerable workers employed in compliance with the laws that the agency enforces and towards securing the wages and overtime compensation that all workers are due.

To be effective in securing compliance on behalf of the most vulnerable workers and often misclassified workers, WHD must increase the number and percentage of its directed investigations. The agency must ensure a noticeable and highly visible presence in the industries in which these workers are employed. WHD has identified workers in several industries as being particularly vulnerable because of the splintered nature of the employment relationship. Workers with disabilities are also particularly vulnerable. Based on the results of the FY 2010 investigation-based evaluation of Community Rehabilitation Programs (CRPs), WHD is launching several key changes to the Section 14(c) program. In addition to targeted enforcement, WHD will examine its certification processes, and evaluate new technologies to promote employer compliance.

WHD will increase investigator hours dedicated to directed enforcement and enhancements to the certification process of the Section 14(c) program as well as strengthening its directed enforcement strategies protecting vulnerable workers. The added resources would allow WHD to promote compliance in this program area in a more efficient manner while still maintaining its enforcement focus. More directed investigations supports the Department's outcome goal of securing wages and overtime. Section 14(c) investigations that are strategically targeted will ensure wage compliance on behalf of workers, like workers with disabilities, who do not complain.

**Industry-Wide Compliance:** WHD enforcement activities, both complaint and directed, will be oriented towards ensuring sustained employer compliance by targeting the most persistent violators, by pursuing industry-wide compliance strategies, and by imposing penalties and sanctions as appropriate to maximize the deterrent effect of the agency's enforcement program. Increased monitoring arrangements, enhanced litigation, and greater attention to joint liability and responsibility among employers will promote system-wide behavioral changes within industries.

In FY 2013, WHD will continue to employ resource-leveraging strategies and technologies to affect compliance with the labor laws within its enforcement jurisdiction. The agency will

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continue to use and increase its directed investigations to expand WHD's presence in those industries with high minimum wage and overtime violations and among vulnerable worker populations where workers are reluctant to complain. Complaint investigations will be managed strategically to focus on priority industries and program areas.

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

Within these broader enforcement strategies, WHD will be working to increase compliance in the following industries and on behalf of the workers in those industries.

**Janitorial Industry:** In FY 2013, WHD will conduct a second investigation-based evaluation of the janitorial industry, which will build upon lessons learned from the baseline study in FY 2011. The goals of the study were to 1) determine a baseline of compliance; 2) determine the prevalence of employees misclassified as independent contractors; 3) learn more about the impacts of franchising, if any, on the incidence and severity of violations in the industry; 4) begin laying the groundwork for mapping industry structure to enable the agency to influence the behavior of the beneficiaries of the labor to take responsibility for labor standards compliance, and 5) promote the deterrence, sustainability and system-wide effect principles of achieving compliance. WHD is currently evaluating the FY 2011 results, which will inform the follow-up investigations in FY 2013.

**Hotel Industry:** In FY 2012, WHD will conduct a baseline investigative-based evaluation in the hotel/motel industry. The industry employs more than 1.8 million employees in over 56,000 establishments and accounts for a disproportionate share of low-wage workers relative to its share of employment.

**Agricultural Industry:** Agricultural labor remains one of the most dangerous and difficult jobs performed in this country. Domestic and temporary non-immigrant agricultural workers endure low wages, unsafe housing and transportation, and harsh working conditions. MSPA protects migrant and seasonal agricultural workers by establishing employment standards related to wages, housing, transportation, disclosures, and recordkeeping. MSPA also requires farm labor contractors and farm labor contractor employees to register with the Department and to obtain special authorization before housing, transporting, or driving covered workers. The H-2A non-immigrant guestworker program establishes standards related to recruitment, wages, housing, transportation, and recordkeeping for employers of temporary non-immigrant agricultural workers admitted to the country under section 218 of the Immigration and Nationality Act. The OSHAct's Field Sanitation provisions establish minimum standards for covered agricultural

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settings for toilets, potable drinking water, hand-washing facilities, and for providing information regarding good hygiene practices.

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

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

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

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

WHD is requesting \$3.8 million and 35 FTE to support these efforts, which includes coordination with state agencies to identify and address misclassification. The added resources

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would allow WHD to promote compliance in this program area in a more efficient manner while still maintaining its enforcement focus. More directed investigations in areas where worker misclassification are prevalent supports the Department's outcome goal of securing wages and overtime.

### **Workplace Flexibility**

The Family and Medical Leave Act (FMLA) provides job-protected leave for workers who must take time off work to attend to their own or their family's medical needs. WHD is responsible for ensuring that eligible workers covered under FMLA are afforded the protections specified in the law. Through this program, WHD contributes to the Department's goal of *providing workplace flexibility for family and personal care-giving*. FMLA is primarily a complaint-based program under which workers seek the agency's assistance in securing their job-protected leave, in ensuring that their benefits are maintained or in restoring them to the same or an equivalent position when their family leave has been exhausted.

In FY 2012, the Department is updating the 2000 survey of employers and employees, entitled "Balancing the Needs of Families". Information obtained from that survey and the 1995 Commission on Leave report was utilized by policymakers and researchers to analyze special topics regarding FMLA or family and medical leave issues generally. Updated data will provide insight into what has changed in the decade since the previous surveys and will inform enforcement policy decisions.

With the need to promote work and family balance, WHD is examining its FMLA enforcement policies to ensure a more comprehensive approach to compliance. WHD is developing strategies that will provide more in-depth review of the employer's business practices and leave policies. Additionally, WHD will maintain its customer service focus in the FMLA program. WHD's ability to resolve incoming FMLA complaints in a timely fashion and its ability to respond to requests for information is dependent on the both the number of and technical skill of its staff. FMLA complaints typically involve individuals who are losing their jobs or being denied critical leave. For many middle and low wage workers, FMLA is typically the only job protection that is available for these individuals. They are time sensitive, so WHD must likewise be timely in protecting the rights of these individuals who are dealing with their own or their family's serious health conditions.

WHD is requesting \$6.3 million increase to implement a more strategic approach to FMLA enforcement, to increase enforcement of FLSA overtime and to ensure continued improvements in customer service. With the resources requested WHD will complete approximately 700 additional compliance actions in the first year that new staff is brought on board. The added resources would allow WHD to increase the percentage of directed investigations in industries with a high likelihood of overtime violations by one percentage point because the additional investigations would be geared toward directed work. Moreover, with additional resources WHD could ensure that 80 percent of FMLA complaints are timely resolved. More importantly, the additional resources would allow WHD to conduct more substantive FMLA investigations when corporate or systemic violations are suggested.

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### **Customer Service**

WHD's budget request includes a reduction of \$2,029,000 and 12 FTE for employer compliance assistance and for its toll-free call center. Over the last two years WHD has hired additional in-house technicians who can answer calls more effectively and accurately. With this increase in direct assistance resources and new customer service technologies, WHD believes it can provide improved compliance information to both workers and employers. Trained WHD technicians can more accurately and timely respond to customers that need assistance. Currently, most calls are referred back to WHD offices. Moreover, WHD believes the internet and social media provide efficient avenues for providing information for employers and employees.

### **Accurate and Timely Wage Determinations**

The McNamara-O'Hara Service Contract Act (SCA) and Davis-Bacon and Related Acts (DBRA) prevailing wage requirements provide a floor for the payment of wages. The prevailing wage programs provide protections to local middle-class workers who may be disadvantaged by competition from outside labor offering their services at wages lower than those in the locality.

Current and accurate prevailing wage rates provide a level of income consistent with local labor markets. Workers in traditional low-wage industries, such as residential construction, janitorial, and guard services; receive the assurance of a prevailing wage when they are employed on federally-funded or assisted contracts. Workers benefit only if the wages issued by the Department are accurate, up-to-date, and truly reflective of what is prevailing in the locality.

WHD will continue to promote efficiencies in its Davis-Bacon wage survey program to improve both the accuracy and timeliness of wage determinations by implementing new wage survey strategies and by closely monitoring the average age of existing wage rates. The agency's goal is to increase the percentage of Davis-Bacon wage rates that are three years old or less. By improving the quality of wage rates, WHD provides employers and workers with better information on prevailing wages. WHD also works to ensure workers are paid at those rates.

In addition, SCA wage determinations have historically been based on BLS wage data. Changes in BLS survey methodology have indicated the need to evaluate the SCA wage determination data sources. As a result, WHD is reengineering the process for determining SCA wage rates, including evaluating alternative BLS data sources.

### **Plan/Protect/Prevent Regulations**

Consistent with Department's plan/protect/prevent strategy of promulgating regulations to require employers to address compliance problems before a workplace investigation; WHD's regulatory initiatives will be undertaken with an objective of shifting the burden of compliance to the employer, promoting openness and transparency to achieve compliance, and providing workers with the information and tools to identify and remedy violations.

## WAGE AND HOUR DIVISION

<b>BUDGET ACTIVITY BY OBJECT CLASS</b>					
(Dollars in Thousands)					
		<b>FY 2011 Enacted</b>	<b>FY 2012 Enacted</b>	<b>FY 2013 Request</b>	<b>Diff. FY13 Req./ FY12 Enacted</b>
11.1	Full-time permanent	113,466	109,687	114,704	5,017
11.3	Other than full-time permanent	0	0	0	0
11.5	Other personnel compensation	2,916	2,500	2,509	9
11.9	<b>Total personnel compensation</b>	<b>116,382</b>	<b>112,187</b>	<b>117,213</b>	<b>5,026</b>
12.1	Civilian personnel benefits	32,558	34,332	35,607	1,275
13.0	Benefits for former personnel	0	0	0	0
21.0	Travel and transportation of persons	7,720	8,036	8,732	696
22.0	Transportation of things	385	285	285	0
23.1	Rental payments to GSA	10,828	10,569	12,484	1,915
23.2	Rental payments to others	146	528	528	0
23.3	Communications, utilities, and miscellaneous charges	3,272	3,097	3,428	331
24.0	Printing and reproduction	593	620	663	43
25.1	Advisory and assistance services	2,851	4,250	4,250	0
25.2	Other services from non-Federal sources	6,002	4,788	4,162	-626
25.3	Other goods and services from Federal sources 1/	27,906	26,475	27,574	1,099
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	15,105	18,537	18,943	406
26.0	Supplies and materials	1,054	1,100	1,191	91
31.0	Equipment	2,689	2,257	2,670	413
41.0	Grants, subsidies, and contributions	0	0	0	0
42.0	Insurance claims and indemnities	0	0	0	0
	<b>Total</b>	<b>227,491</b>	<b>227,061</b>	<b>237,730</b>	<b>10,669</b>
	1/Other goods and services from Federal sources				
	Working Capital Fund	22,330	21,297	21,297	0
	DHS Services	1,114	1,076	1,076	0
	Services by DOL Agencies	371	0	0	0
	GSA Services	52	181	181	0
	Services by Other Government Departments	4,039	3,921	3,921	0
	CIGIE	0	0	1,099	1,099

# WAGE AND HOUR DIVISION

## CHANGES IN FY 2013

(Dollars in Thousands)

### Activity Changes

#### Built-In

To Provide For:

Costs of pay adjustments	\$421
Personnel benefits	86
Employee health benefits	30
Moving allowance	7
One day more of pay	592
Federal Employees Compensation Act (FECA)	0
Benefits for former personnel	0
Travel and transportation of persons	0
Transportation of things	0
Rental payments to GSA	1,362
All Other Rental	0
Communications, utilities, and miscellaneous charges	0
Printing and reproduction	0
Advisory and assistance services	0
Other services	0
Working Capital Fund	0
Other government accounts (DHS Charges)	0
Other purchases of goods and services from Government accounts	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** **\$2,498**

**Net Program** **\$8,171**

**Direct FTE** **80**

	Estimate	FTE
<b>Base</b>	<b>\$229,559</b>	<b>1,759</b>
<b>Program Increase</b>	<b>\$10,200</b>	<b>92</b>
<b>Program Decrease</b>	<b>-\$2,029</b>	<b>-12</b>