

FY 2017

CONGRESSIONAL BUDGET JUSTIFICATION

WAGE AND HOUR DIVISION

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WAGE AND HOUR DIVISION

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WAGE AND HOUR DIVISION

APPROPRIATION LANGUAGE

WAGE AND HOUR DIVISION

SALARIES AND EXPENSES

For necessary expenses for the Wage and Hour Division, including reimbursement to State, Federal, and local agencies and their employees for inspection services rendered, [\$227,500,000] \$276,599,000. (*Department of Labor Appropriations Act, 2016.*)

WAGE AND HOUR DIVISION

AMOUNTS AVAILABLE FOR OBLIGATION						
(Dollars in Thousands)						
	FY 2015 Enacted		FY 2016 Enacted		FY 2017 Request	
	FTE	Amount	FTE	Amount	FTE	Amount
A. Appropriation	1,332	\$227,500	1,376	\$227,500	1,694	\$276,599
<i>Subtotal Appropriation</i>	<i>1,332</i>	<i>\$227,500</i>	<i>1,376</i>	<i>\$227,500</i>	<i>1,694</i>	<i>\$276,599</i>
Reimbursements (CMP's)	0	\$2,800	0	\$2,800	0	\$2,800
H-1B L Fraud Fees (Collected)	395	\$55,443	367	\$58,000	367	\$58,000
<i>Subtotal</i>	<i>1,727</i>	<i>\$285,743</i>	<i>1,743</i>	<i>\$288,300</i>	<i>2,061</i>	<i>\$337,399</i>
B. Gross Budget Authority	1,727	\$285,743	1,743	\$288,300	2,061	\$337,399
Reimbursements (CMP's)	0	-\$2,800	0	-\$2,800	0	-\$2,800
H-1B L Fraud Fees (Collected)	-395	-\$55,443	-367	-\$58,000	-367	-\$58,000
C. Budget Authority Before Committee	1,332	\$227,500	1,376	\$227,500	1,694	\$276,599
Reimbursements (CMP's)	0	\$2,800	0	\$2,800	0	\$2,800
H-1B L Fraud Fees Actual	395	\$55,443	367	\$58,000	367	\$58,000
D. Total Budgetary Resources	1,727	\$285,743	1,743	\$288,300	2,061	\$337,399
Additional FTE used and Unobligated Balance Expiring	16	-\$431	0	\$0	0	\$0
E. Total, Estimated Obligations	1,743	\$285,312	1,743	\$288,300	2,061	\$337,399

WAGE AND HOUR DIVISION

SUMMARY OF CHANGES

(Dollars in Thousands)

	FY 2016 Enacted	FY 2017 Request	Net Change
Budget Authority			
General Funds	\$285,500	\$334,599	+\$49,099
Total	\$285,500	\$334,599	+\$49,099
Full Time Equivalents			
General Funds	1,743	2,061	318
Total	1,743	2,061	318

FY 2017 Change

Explanation of Change	FY 2016 Base		Trust Funds		General Funds		Total	
	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
Increases:								
A. Built-Ins:								
To Provide For:								
Costs of pay adjustments	1,743	\$144,231	0	\$0	0	\$2,276	0	\$2,276
Personnel benefits	0	\$48,862	0	\$0	0	\$947	0	\$947
Employee health benefits	0	\$0	0	\$0	0	\$0	0	\$0
Moving allowance	0	\$0	0	\$0	0	\$0	0	\$0
Two days less of Pay	0	\$0	0	\$0	0	\$0	0	\$0
Federal Employees' Compensation Act (FECA)	0	\$0	0	\$0	0	\$0	0	\$0
Benefits for former personnel	0	\$52	0	\$0	0	\$0	0	\$0
Travel and transportation of persons	0	\$6,307	0	\$0	0	\$0	0	\$0
Transportation of things	0	\$2	0	\$0	0	\$0	0	\$0
Rental payments to GSA	0	\$13,433	0	\$0	0	\$581	0	\$581
Rental payments to others	0	\$13	0	\$0	0	\$0	0	\$0
Communications, utilities, and miscellaneous charges	0	\$3,817	0	\$0	0	\$0	0	\$0
Printing and reproduction	0	\$387	0	\$0	0	\$0	0	\$0
Advisory and assistance services	0	\$4,292	0	\$0	0	\$0	0	\$0
Other services from non-Federal sources	0	\$7,068	0	\$0	0	\$0	0	\$0
Working Capital Fund	0	\$31,160	0	\$0	0	\$1,500	0	\$1,500
Other Federal sources (DHS Charges)	0	\$1,100	0	\$0	0	\$0	0	\$0
Other goods and services from Federal sources	0	\$11,668	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	\$11,006	0	\$0	0	\$0	0	\$0
Supplies and materials	0	\$1,037	0	\$0	0	\$0	0	\$0
Equipment	0	\$1,049	0	\$0	0	\$0	0	\$0

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FY 2017 Change

Explanation of Change	FY 2016 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	\$16	0	\$0	0	\$0	0	\$0
Built-Ins Subtotal	1,743	+\$285,500	0	\$0	0	+\$5,304	0	+\$5,304
B. Programs:								
Increases to Enforcement FTE and Training and Support	0	\$0	0	\$0	300	\$29,419	300	\$29,419
Integrated Case Management System	0	\$0	0	\$0	0	\$5,800	0	\$5,800
Restoration of Inflationary Built-ins Not Provided in FY 2016 Omnibus	0	\$0	0	\$0	0	\$4,868	0	\$4,868
Advancing Strategic Enforcement	0	\$0	0	\$0	12	\$3,000	12	\$3,000
Back Wage Collection and Payments	0	\$0	0	\$0	6	\$2,200	6	\$2,200
Programs Subtotal			0	\$0	318	+\$45,287	318	+\$45,287
Total Increase	1,743	+\$285,500	0	\$0	318	+\$50,591	318	+\$50,591
Decreases:								
A. Built-Ins:								
To Provide For:								
Two days less of Pay	0	\$0	0	\$0	0	-\$1,426	0	-\$1,426
Federal Employees' Compensation Act (FECA)	0	\$0	0	\$0	0	-\$66	0	-\$66
Built-Ins Subtotal	0	\$0	0	\$0	0	-\$1,492	0	-\$1,492
B. Programs:								
Total Decrease	0	\$0	0	\$0	0	-\$1,492	0	-\$1,492
Total Change	1,743	+\$285,500	0	\$0	318	+\$49,099	318	+\$49,099

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SUMMARY BUDGET AUTHORITY AND FTE BY ACTIVITY¹								
(Dollars in Thousands)								
	FY 2015 Enacted		FY 2016 Enacted		FY 2017 Request		Diff. FY17 Request / FY16 Enacted	
	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
Wage and Hour Division	1,367	227,500	1,376	227,500	1,694	276,599	318	49,099
General Funds	1,367	227,500	1,376	227,500	1,694	276,599	318	49,099
Wage Hour H-1B	376	55,443	367	58,000	367	58,000	0	0
General Funds	376	55,443	367	58,000	367	58,000	0	0
Total	1,743	282,943	1,743	285,500	2,061	334,599	318	49,099
General Funds	1,743	282,943	1,743	285,500	2,061	334,599	318	49,099

NOTE: 2015 reflects actual FTE.

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

WAGE AND HOUR DIVISION

BUDGET AUTHORITY BY OBJECT CLASS					
(Dollars in Thousands)					
		FY 2015 Enacted	FY 2016 Enacted	FY 2017 Request	Diff. FY17 Request / FY16 Enacted
	Full-Time Equivalent				
	Full-time Permanent	1,727	1,743	2,061	318
	Total	1,727	1,743	2,061	318
	Average ES Salary	\$170,138	\$171,839	\$174,839	\$3,000
	Average GM/GS Grade	11/1	11/1	11/1	0
	Average GM/GS Salary	\$75,045	\$75,795	\$80,375	\$4,580
11.1	Full-time permanent	145,094	141,190	160,716	19,526
11.3	Other than full-time permanent	1,450	814	814	0
11.5	Other personnel compensation	2,472	2,217	2,217	0
11.8	Special personal services payments	0	10	10	0
11.9	Total personnel compensation	149,016	144,231	163,757	19,526
12.1	Civilian personnel benefits	42,345	48,862	56,006	7,144
13.0	Benefits for former personnel	0	52	52	0
21.0	Travel and transportation of persons	6,867	6,307	7,916	1,609
22.0	Transportation of things	15	2	2	0
23.0	Rent, Communications, and Utilities	0	0	0	0
23.1	Rental payments to GSA	13,100	13,433	17,754	4,321
23.2	Rental payments to others	20	13	13	0
23.3	Communications, utilities, and miscellaneous charges	4,184	3,817	4,594	777
24.0	Printing and reproduction	690	387	476	89
25.1	Advisory and assistance services	3,946	4,292	4,292	0
25.2	Other services from non-Federal sources	3,796	7,068	9,271	2,203
25.3	Other goods and services from Federal sources 1/	33,249	43,928	48,646	4,718
25.4	Operation and maintenance of facilities	800	0	0	0
25.5	Research and development contracts	0	0	0	0
25.7	Operation and maintenance of equipment	22,365	11,006	18,979	7,973
26.0	Supplies and materials	1,260	1,037	1,241	204
31.0	Equipment	1,290	1,049	1,584	535
41.0	Grants, subsidies, and contributions	0	0	0	0
42.0	Insurance claims and indemnities	0	16	16	0
	Total	282,943	285,500	334,599	49,099
	1/Other goods and services from Federal sources				
	Working Capital Fund	25,614	31,160	32,660	1,500
	DHS Services	1,076	1,100	1,100	0
	Services by DOL Agencies	0	7,323	7,323	0
	GSA Services	181	200	200	0
	Services by Other Government Departments	6,378	4,145	7,363	3,218

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SIGNIFICANT ITEMS IN FY 2016 APPROPRIATIONS' REPORTS

WAGE AND HOUR OFFICE OF GOVERNMENT CONTRACTS

House: Wage determinations for public works projects: The Committee directs the Wage and Hour Division to submit a report to the House and Senate Committee on Appropriations within 120 days of enactment of this Act on the steps taken to correct deficiencies, address recommendations, and improve the process for wage determinations for public works projects cited in OIG report No. 04-04-003-04-420, (Mar. 30, 2004) and in GAO testimony GAO-11-486T (April 14, 2011).

Response: The Wage and Hour Division expects to provide the report within the 120 day timeframe.

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AUTHORIZING STATUTES

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

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Public Law / Act	Legislation	Statute No. / US Code	Volume No.	Page No.	Expiration Date
PUB. L. 105-277	American Competitiveness and Workforce Improvement Act (ACWIA), Title IV of the Omnibus Consolidated and Emergency Supplemental Appropriation Act.	414(b) and (c)			N/A
PUB. L. 108-447	L-1 Visa and H-1B Visa Reform Act, Title IV of the Consolidated Appropriations Act, 2005.	401-430			N/A
PUB. L. 89-209	National Foundation for the Arts and Humanities Act, Sections 5(i) and 7(g).	20 U.S.C. 954 (i) and 956 (g)			N/A

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APPROPRIATION HISTORY					
(Dollars in Thousands)					
	Budget Estimates to Congress	House Allowance	Senate Allowance	Appropriations	FTE
2007					
Base Appropriation	\$177,578			\$170,220	1,200
2008					
Base Appropriation	\$182,365			\$175,658	1,208
2009					
Base Appropriation	\$193,092			\$193,092	1,283
2010					
Base Appropriation	\$227,656			\$227,262	1,466
2011					
Base Appropriation	\$244,240			\$227,491	1,022
2012					
Base Appropriation	\$240,937		\$227,491	\$227,061	1,418
2013					
Base Appropriation	\$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				1,694

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

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

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. WHD's mission is to "*promote and achieve compliance with labor standards to protect and enhance the welfare of the Nation's workforce.*" The WHD mission and its performance outcomes directly support the Secretary's strategic objectives of *securing wages and overtime* and *protecting workers' rights* and the Secretary's vision of *promoting and protecting opportunity for all workers and their employers*. WHD is instrumental in promoting access to opportunities—opportunities for workers to move into the middle class; opportunities for employers to compete on a level playing field; and opportunities for workers to balance their family and work obligations.

WHD comprises a nationwide staff of investigators, supervisors, analysts, technicians, and administrative employees who share responsibilities for enforcing and administering the minimum wage, overtime, child labor, 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 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). These laws protect over 135,000,000 workers in more than 7,300,000 establishments throughout the United States and its territories.

Given the scope of the agency's responsibilities, WHD focuses resources in industries where evidence shows a history of violations and where large numbers of vulnerable workers are found. WHD prioritizes enforcement in areas where issues can be addressed systemically. Data show that agency-initiated investigations and the strategic use of enforcement resources have particularly positive results for low-wage workers. In FY 2015, WHD maintained increases in the percent of agency-initiated investigations with 42 percent directed investigations—a 25 percentage point increase from FY 2010. The agency found violations in 79% of these agency-initiated investigations in FY 2015, demonstrating that the agency is focusing on the right industries and the right workplaces within those industries. Even with the focus on low-wage workers, in fiscal year 2015, compliance actions in low-wage industries resulted in more than \$1,000 in back wages per employee paid in violation. To continue moving the agency in this strategic direction, WHD's FY 2017 Budget builds on past successes and strives toward greater data-driven decision-making.

The FY 2017 Budget's proposed investments in investigative staff, case management, back wage collection and payments, and data analytics would allow WHD to reach more workplaces to achieve compliance with the laws WHD enforces on an industry-wide basis while leveling the

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playing field for employers who are in compliance. The additional resources will increase WHD's efficiency and effectiveness in detecting and deterring violations, focus enforcement and compliance assistance resources on priority industries, and ensure that workers are receiving a fair day's pay for a hard day's work. To this end, the 2017 Budget request for Wage and Hour is \$276,599,000, an increase of \$49,099,000. Specific program increases include:

- \$29,419,000 and 300 FTE for additional enforcement and training staff and support. Additional resources that are focused on planned enforcement will allow the agency to address systemic compliance problems more strategically. Data show that using resources toward those planned activities achieves better results for low-wage workers who are less likely to complain.
- \$5,800,000 for a new, integrated case management system to replace the current outdated system, which impedes WHD's ability to conduct strategic enforcement.
- \$2,200,000 and 6 FTE for Back Wage Collection and Payments, including 4 forensic accountants and 2 FTE to assist with improvements to the back wage collection process.
- \$3,000,000 and 12 FTE to build data analytic capabilities for strategic enforcement and the creation of data tools and products to allow WHD to take a data-driven informed approach, leveraging internal and publicly available data sources for enforcement priorities.

In addition, due to inflationary cost increases related to compensation, benefits, and rent, the FY 2016 request included resources for built-ins in these areas. Funding for these costs was not provided for WHD in FY 2016 appropriations. The FY 2017 request includes resources to cover these personnel and rent costs as a program increase.

These resources and investments are necessary for the development of WHD as a modern and efficient enforcement organization—an organization that is strategic in its approach to resolving compliance challenges, efficient in its use of resources, flexible in responding to critical and emerging compliance issues, and effective in promoting and achieving compliance. WHD's requests are focused on increasing WHD's effectiveness at ensuring that workers are fully paid and receive protections in compliance with the law. Since 2009, WHD has put nearly \$1.6 billion in back wages into the pockets of workers. In FY 2015, each agency-initiated investigation found an average of \$8,900 – a 21 percent increase over FY 2009. Yet more can be done to increase the ability of WHD to detect, deter, and remedy these violations of the law.

WHD is committed to maximizing all available resources to achieve the greatest impact on compliance. The agency is using better strategies to not only plan where investigative resources are best deployed, but also to resolve cases in ways that reach a greater number of workers. Integral to that process is the development of modernized systems. This includes enhanced back wage collection and distribution systems to ensure prompt payment of back wages to workers, and a commitment to strategic enforcement which allows WHD to focus its resources where the need and the opportunity to affect compliance is the greatest.

Compliance with this Nation's wage and workplace standards provides the most basic protections for workers and allows opportunity for advancement to higher-paying jobs. Labor standards compliance also levels the playing field for businesses. When employers understand

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that all businesses must abide by the Nation's wage and workplace standards, they can anticipate and plan for those requirements. Employers and employees benefit when businesses manage costs through innovation and efficiencies rather than by violating the law, undercutting workers and other businesses. An effective compliance program that couples enforcement and education with strategies to promote continued compliance means that more workers in this country can obtain stable and secure income and those responsible businesses can succeed through the ingenuity of their workforce and not at its expense.

WHD has undergone a significant change in how the agency carries out the mission since FY 2009. Fragmentation of employment relationships and the scope and complexity of industry structures (i.e., fissuring) combined with the contingent workforce present complex enforcement challenges that require new levels of coordination and strategy. The businesses that are covered by this Nation's labor standards laws are no longer confined to the traditional brick and mortar companies that operated when the laws enforced by WHD were first enacted. Advances in technologies and transportation and increased globalization and specialization have influenced the structure of businesses. As businesses have contracted out work, sometimes through several layers of contractors, more parties have a role to play in ensuring compliance with labor standards. Given the evolving business landscape, in FY 2010, WHD adopted a strategic enforcement approach to achieving compliance. WHD prioritizes efforts in industries where the problems are greatest, where workers are least likely to complain, and where WHD can have the greatest impact on compliance. WHD has also shifted its approach from one that focused on single establishments and resolving complaints, to one that proactively seeks to improve compliance across industries for greater numbers of workers. In order to expand its impact, WHD has strategically engaged stakeholders and used communications to promote compliance.

In recognition of this changing environment, WHD conducted a series of evaluations and studies to refine its ability to identify and remedy violations. These studies culminated in a series of recommendations in a report entitled, "*Improving Workplace Conditions through Strategic Enforcement*,"² many of which have informed the agency's enforcement strategies and complaint investigation priorities. That report provided evidence that directed (i.e., non-complaint-based) investigations resulted in a deterrence effect not seen following complaint-based investigations.

The *Family and Medical Leave in 2012: Final Report*,³ provided information on worker and employer experiences with FMLA, building on two prior surveys which has led to a more strategic look at FMLA enforcement and compliance assistance with a focus on corporate-wide compliance. WHD is also pursuing improvements based on recommendations from the Government Accountability Office and the Office of Inspector General to improve key processes, including the agency's complaint policy, back wage distribution system, and wage determination responsibilities.

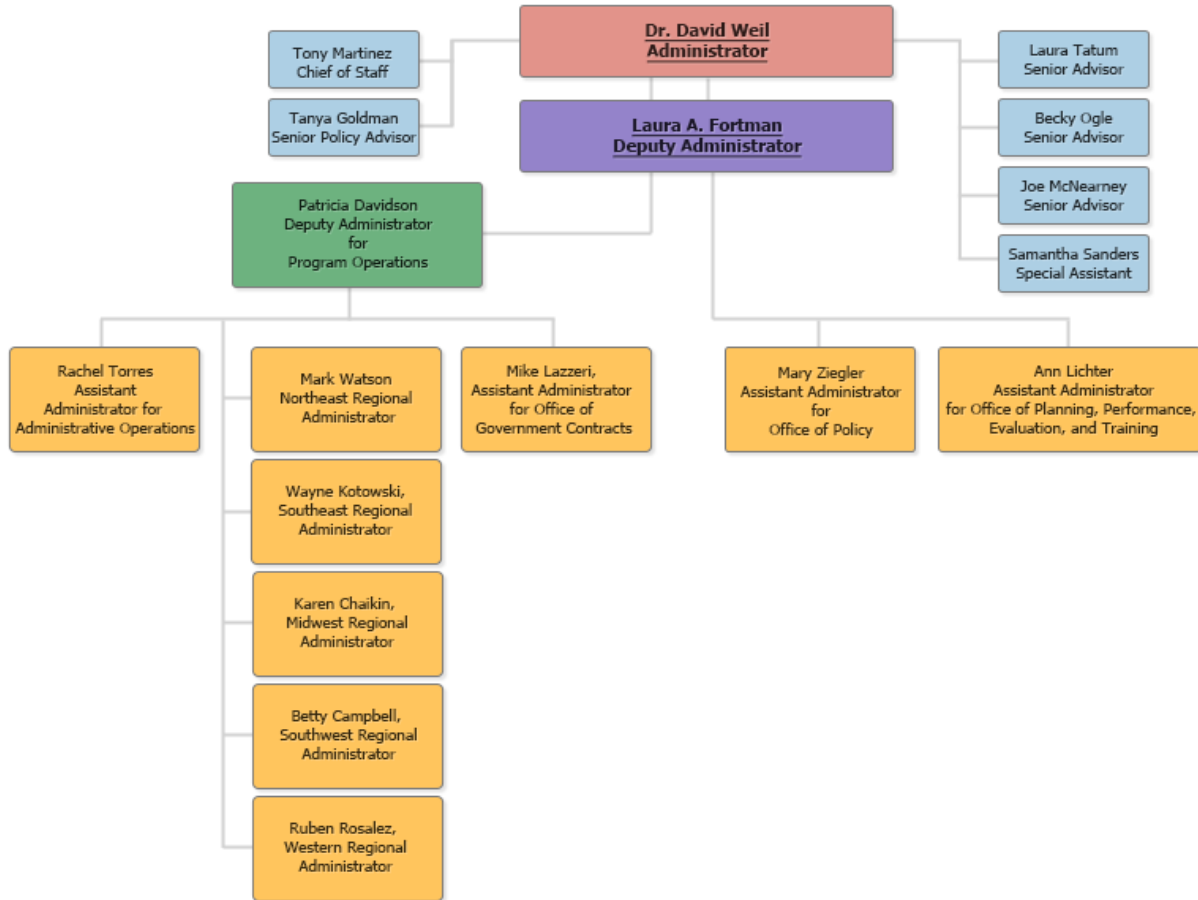
² Weil, David. *Improving Workplace Conditions through Strategic Enforcement. A Report to the Wage and Hour Division*. May 2010. Boston University. Available: <http://www.dol.gov/whd/resources/strategicEnforcement.pdf>.

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

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The infrastructure and strategies presented in this budget are designed to address the workplaces and workers of the 21st Century. The FY 2017 budget request will allow WHD to fully institutionalize these transformative efforts to make WHD a modern, data-driven enforcement agency.

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BUDGET AUTHORITY BEFORE THE COMMITTEE				
(Dollars in Thousands)				
	FY 2015 Enacted	FY 2016 Enacted	FY 2017 Request	Diff. FY17 Request / FY16 Enacted
Activity Appropriation	227,500	227,500	276,599	49,099
FTE	1,367	1,376	1,694	318

NOTE: FY 2015 reflects actual FTE. Authorized FTE for FY 2015 was 1,332.

Introduction

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

Strategic Priorities

WHD has adopted a strategic enforcement approach to achieving compliance, seeking to use its resources to secure the maximum impact. WHD prioritizes efforts in industries where the problems are greatest, where workers are least likely to exercise their rights, and where WHD can have an impact on compliance. WHD has sought to expand its impact through investigations in priority industries, strategic engagement of stakeholders, and strategic use of media and communications. With the adoption of strategic enforcement, WHD started its transformation into a 21st Century enforcement agency. The agency is using better strategies to not only plan where investigative resources are best deployed, but also to resolve cases in ways that reach a greater number of workers through systemic changes. Integral to that process is the development of modernized systems and effective operations that support the mission.

WHD has adapted its strategies to address compliance issues systemically and to deter violations; however, significant structural issues need to be addressed in order for the agency to fully realize the goals of strategic enforcement. To address these issues, WHD has developed a set of three strategic priorities:

- 1. Updating a fair day's pay** by ensuring that the regulatory agenda of providing a fair day's pay for a hard day's work is fully and properly implemented.
- 2. Building a strategic enforcement structure** to support the agency's mission, vision, and values; and

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- 3. Modernizing key enforcement initiatives**, such as government contracts and WHD's approach in program enforcement, including addressing the fissured workplace.

1. Updating a Fair Day's Pay

The mission of WHD, simply stated, means a fair day's work deserves a fair day's pay. As wages have stagnated and labor standards have eroded, WHD is updating those labor standards through regulations to ensure that workers in today's economy are receiving their fair day's pay. Since 2010, WHD has reinvigorated its regulatory program, focusing efforts on salient issues requiring reexamination in light of changes to the economy, industry, and employment relationships. DOL has also focused on the implementation of its regulations, striving to ensure that WHD investigators are well-trained and the regulated community is well-informed.

In FY 2017, WHD will continue implementing an ambitious regulatory agenda that aims to ensure workers remain adequately protected by current federal law.

In FY 2017, WHD will focus on implementing two regulatory actions that had an effective date of January 1, 2015 -- the Minimum Wage and Overtime Pay Rule for Direct Care Workers (the Home Care Final Rule); and the Minimum Wage for Contractors Final Rule which implemented Executive Order 13658 and raised the minimum wage for work performed by parties who contract with the Federal Government to \$10.10. In addition, WHD will continue refining the requirements and implementation strategies for Executive Order 13673 — Fair and Pay and Safe Workplaces which creates a system for taking into account a prospective contractor's labor law compliance record in making contract decisions.

In FY 2017, WHD will be focused on carrying through and implementing additional regulatory initiatives. In July 2015, WHD issued a Notice of Proposed Rulemaking to update and revise the regulations issued under the FLSA implementing the exemption from minimum wage and overtime pay for executive, administrative, professional, outside sales, and computer employees. This exemption is referred to as the FLSA's "EAP" or "white collar" exemption. To be considered exempt, employees must meet certain minimum tests related to their primary job duties and be paid on a salary basis at not less than a specified minimum amount. The standard salary level required for exemption is currently \$455 a week (\$23,660 for a full-year worker) and was last updated in 2004. In 2016, WHD will issue a proposed rule to establish the ability of employees of federal contractors to earn seven days of paid sick leave per year, implementing Executive Order 13706, enabling these workers to use leave to care for themselves, family members, or loved ones without fear of losing their paychecks or their jobs.

2. Building a Strategic Enforcement Structure

WHD conducts the majority of investigations in priority industries that employ workers vulnerable to being subject to illegal labor practices. A growing percentage of investigations are directed, *i.e.*, agency-initiated, which allows the agency to carry out strategies that aim for industry-level compliance. Whereas before WHD was more reactive and focused on resolving individual complaints, through strategic enforcement WHD proactively directs resources to where the evidence shows labor law violations are greatest. WHD also seeks to impact compliance beyond the investigated employer, so that enforcement actions resonate throughout

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a particular sector and influence the behaviors of employers across the entire industry, leveling the playing field for law-abiding businesses. This approach has required WHD to adapt its enforcement strategy. For example, instead of just focusing on recovering back wages owed to workers at a particular establishment, WHD now also works to understand the business models that are more likely to lead to violations and through its investigations to identify the players that are in a position to influence compliance. By identifying the contracting streams or supply chains as part of its enforcement efforts, and by publicizing the results of its enforcement, WHD increases the likelihood that those at the top of the chain will evaluate the compliance practices of those below them and encourage compliance.

While the strategy is efficient and deliberate, WHD's tools based on prior enforcement models, which generally involved resolutions at the employee level only, are out of date. WHD's focus is to achieve system-wide impacts on employers that go beyond a single investigated establishment. This requires a more in-depth understanding of industries, business models, and a more coordinated approach to conducting enforcement across networks of businesses, supply chains, or contracting relationships. As a result, the agency confronts the limitations of working with technology, operations, and systems built for a different era. In FY 2017, WHD will prioritize the alignment of this infrastructure to current strategies, significantly advancing the agency's ability to achieve the goals of strategic enforcement.

Enforcement alone is not the answer to the nation's compliance challenges. While WHD is committed to targeted strategic enforcement, the agency must also update and modernize its approach to compliance assistance. Employers who are aware of their legal responsibilities (and the consequences of breaking the law) and workers who are aware of their rights are better positioned to identify and remedy violations, or to prevent them from occurring in the first place. While the agency continues to improve its public-facing website and enforcement database, WHD is also identifying ways to make its administrative data and information more accessible and usable to the public, employers, employees, journalists, developers, stakeholders, and the research community. Results of all of WHD investigations are available in an online database, allowing, for instance, businesses to monitor the compliance of those in their supply chains, and consumers to make more informed decisions about where to spend their dollars. This type of transparency increases the incentive for employers to maintain compliance.

3. Modernizing Key Enforcement Initiatives

WHD will continue refining and strengthening its strategies in priority industries with an emphasis on detecting the various forms of misclassification found in today's workplaces, where workplace arrangements and business structures are more complex.

Addressing the Fissured Workplace: WHD is modernizing its approach in key enforcement areas in industries where complex employment relationships exist. In FY 2017, WHD will continue to use its directed investigations to increase WHD presence in high risk industries, such as those industries with high minimum wage and overtime violations that employ vulnerable worker populations particularly those who do not typically report violations, either because they fear retaliation or because they do not understand the law and complaint process. WHD will

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continue to focus on industries characterized by a high degree of subcontracting, use of temporary labor providers, and other third-party managers. These industries are often fiercely competitive and, unfortunately, that can lead some unscrupulous employers to cut corners in an effort to gain a competitive advantage over employers who follow the law and protect their workers. If laws are not vigorously enforced, more and more employers can start to violate worker protection laws in an effort not to be under-bid. This results in a growing population of workers subject to illegal practices, including workers who are misclassified or who do not receive the wages they earned and were required to be paid by law. WHD will continue to use its directed investigations to make an impact on not just the investigated employer, but on the behaviors of employers across an entire industry and promote compliance across networks of business organizations.

WHD also conducts directed investigations to secure compliance for other workers at a higher risk of exploitation such as: workers with disabilities, young workers, agricultural workers, and workers with no private right to pursue remedies on their own behalf.

Enforcing the law is key to protecting workers who deserve a fair day's pay for a day's work, but these actions also protect fair and vigorous competition that is the cornerstone of a strong economy.

Agriculture: Domestic and temporary non-immigrant agricultural workers too often endure low wages, unsafe housing and transportation, and harsh working conditions that do not comply with the law. WHD will continue to develop the supply-chain based approach to enforcement, creating incentives higher up in the chain to compel compliance and change behaviors at all of the levels below. To support these efforts, WHD is developing an approach that accounts for the severity of the violations in its enforcement decision-making. By enabling the use of more nuanced data that represents the severity of violations, WHD will be better situated to make data-driven decisions to inform where to put our investigation resources and the development of strategies around supply chains and crops. By focusing on more severe violations, WHD will level the playing field within the industry to ensure that the worst violators are not gaining unfair and unwarranted advantages by their unlawful behavior. WHD is also committed to making its agriculture enforcement data, including data related to Farm Labor Contractors, more accessible and usable online so that it can be more effectively used by employers, buyers, and stakeholders seeking to ensure compliance within particular crops and supply chains.

FMLA: In order to promote work and family balance, WHD will continue implementing its FMLA enforcement strategy to promote a more comprehensive approach to compliance. Since FMLA compliance at the establishment level is often driven by corporate policies, WHD is developing strategies to provide a more in-depth review of the employer's business practices and leave policies with the objective of making a broader impact on compliance, rather than resolving one individual complaint.

Section 14(c): WHD is also developing strategic enforcement and outreach approaches in its Section 14(c) program, which provides protections for individuals with disabilities. On July 22, 2014, the President signed the Workforce Innovation and Opportunity Act (WIOA) which provides for comprehensive changes to employment for trainees and workers with disabilities.

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Among other items, WIOA amends the Rehabilitation Act of 1973 by establishing further requirements on conditions where workers with disabilities can be employed at subminimum wages. WIOA created an advisory committee to look broadly at increasing opportunities for competitive, integrated employment, as well as to examine the Section 14(c) program under the FLSA. Prior to the enactment of WIOA, WHD had begun to shift its approach to administration of the Section 14(c) program. Under the new vision as articulated in WIOA, the program is designed to make employment under Section 14(c) an option of last resort. WHD is aligning its regulatory, policy, certification, enforcement, and outreach efforts with these goals.

Five-Year Budget Activity History

<u>Fiscal Year</u>	<u>Funding</u> (Dollars in Thousands)	<u>FTE</u>
2012	\$227,061	1,418
2013	\$215,184	1,420
2014	\$224,330	1,446
2015	\$227,500	1,332
2016	\$227,500	1,376

FY 2017

At the FY 2017 Request Level, WHD requests \$276,599,000 and 1,694 FTE, which is \$49,099,000 and 318 FTE above the FY 2016 Enacted level. WHD's budget includes:

- \$29,419,000 and 300 FTE for additional enforcement and training staff and support. Additional resources with a focus on planned enforcement would allow the agency to address systemic compliance problems more strategically. Data show that using resources toward those planned activities achieves better results for low-wage workers who are less likely to complain.
- \$5,800,000 for a new, integrated case management system to replace the current outdated system, which impedes WHD's efforts to advance its strategic enforcement strategies.
- \$2,200,000 and 6 FTE for Back Wage Collection and Payments, including 4 forensic accountants with the remaining 2 FTE to assist with improvements to the back wage collection process.
- \$3,000,000 and 12 FTE to build data analytic capabilities for strategic enforcement and the creation of data tools and products to allow WHD to take a data-driven informed approach, leveraging internal and publicly available data sources for enforcement priorities.
- \$4,868,000 for restoration of inflationary built-ins not provided in FY 2016.

Enhanced Enforcement

Building a Strategic Enforcement Agency

Since FY 2010, WHD has undertaken an ambitious change management agenda based on the findings and recommendations from a series of studies on the effectiveness of enforcement

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strategies in priority industries.⁴ Consistent with overarching strategies for worker protection agencies at the Department of Labor, WHD began laying the groundwork for protecting workers most vulnerable to illegal labor practices while assuring broad-based compliance; establishing a regular process for evaluating the success of enforcement and regulatory priorities in helping to achieve desired outcomes; fostering a culture of continuous improvement; and improving the overall implementation of its strategies. WHD has carried out these reforms through an ongoing performance planning process that prioritizes, measures, and evaluates progress towards these ends.

Evidence to date demonstrates significant agency progress in carrying out these strategies. WHD relies on a balance of measures to evaluate progress in advancing a more strategic approach to enforcement. In FY 2015, WHD maintained increases in the percent of directed investigations with 42 percent directed investigations—a 25 percentage point increase from FY 2010. Meanwhile, WHD reduced the “no violation” rate for directed cases from 35 percent in FY 2009 to 21 percent in FY 2015, demonstrating that the agency’s increased directed investigations have been carried out through careful selection of workplaces with the greatest problems. Furthermore, the gap between the no violation rates for directed versus complaint cases continues to narrow. In FY 2015, the no violation rate for complaint cases was 18 percent versus 21 percent for directed cases, demonstrating that directed investigations are nearly as accurate as a complaint in finding employers with violations, but they have the advantage of often targeting employers and industries with more serious or systemic violations. This can increase the number of workers who receive relief from past violations and who are protected going forward through better compliance.

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

Building the Front-Lines Workforce

Additional investigators will be placed in offices based on analysis of several factors that include economic trends, such as employment and population growth; volume of complaint cases, which is generally attributed to limited state-level labor laws or enforcement; current staffing ratios and office composition; and WHD workforce trends, including attrition. The additional resources will significantly advance the agency’s directed enforcement program to a level where the agency can deter violations across priority industries before they occur. Resources will also be dedicated to developing the agency’s talent management and training capacities, which are critical for ensuring the WHD front-lines workforce is equipped with the right skills for conducting effective enforcement and compliance assistance, and engaging stakeholders. WHD seeks to create a workplace that allows for continuous learning and professional development,

⁴ See, e.g., Weil, David. *Improving Workplace Conditions through Strategic Enforcement. A Report to the Wage and Hour Division*. May 2010. Boston University. Available: <http://www.dol.gov/whd/resources/strategicEnforcement.pdf>.

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which is a key factor in driving a workforce towards excellence. These FTE will provide WHD with expertise in professional development, adult learning techniques, instructional design, advanced technology applications, and course evaluation.

Modernized Enforcement

With additional resources, WHD can build capacity for the full range of activities necessary for achieving systemic compliance. Establishment-by-establishment investigations do not bring about system-wide compliance. Enforcement that aims for systemic industry-level impact requires greater coordination across the agency. These activities include coordination of investigations across offices, planning strategic enforcement initiatives to change employer behavior within priority industries, managing a growing and increasingly complex caseload, and evaluating the effectiveness of strategies using data and research. These activities play an increasingly important role in addressing compliance issues broadly.

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

Carrying Out Regulatory Responsibilities

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

- On February 12, 2014, the President signed an Executive Order raising the minimum wage for work performed by parties who contract with the Federal Government to \$10.10 effective January 1, 2015. WHD is responsible for implementing the Executive Order and enforcing its terms.
- On March 13, 2014, the President announced that he was directing the Secretary of Labor to begin the process of addressing overtime pay protections to help make sure millions of workers are paid a fair wage for a hard day's work and rules are simplified for employers and workers alike. The last time the overtime regulations were changed was in 2004 when the salary threshold was raised to \$455 per week. In FY 2016, WHD also undertook a new rulemaking effort extending overtime protections to nearly five million workers within the first year of implementation.⁵
- On July 31, 2014, the President signed the Fair Pay and Safe Workplaces Executive Order, which requires that federal agencies consider a contractors' history of compliance with labor and employment laws when making responsibility determinations for the purpose of awarding government contracts and that agencies seek to help contractors

⁵ Available: <http://www.dol.gov/whd/overtime/nprm2015/>

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come into compliance prior to the award of contracts. WHD is part of the Department's implementation efforts.

- With an effective date of January 1, 2015, DOL's final rule extended minimum wage and overtime pay protections under the Fair Labor Standards Act to 2 million direct care workers (such as home health aides, personal care assistants, and workers in similar occupations) who provide essential home care assistance to people with disabilities and older adults. The WHD has engaged in extensive compliance assistance for States and other parties covered by the final rule and will continue that outreach as well as begin enforcement as appropriate.
- On September 7, 2015, the President signed Executive Order 13706, which establishes the ability of employees of federal contractors to earn seven days of paid sick leave per year, enabling these workers to use leave to care for themselves, family members, or loved ones without fear of losing their paychecks or their jobs. WHD is responsible for developing and implementing the regulations to carry out the Executive Order.

Infrastructure to Support Strategies

WHD needs to invest in new infrastructure, tools and analytics to adequately support and strengthen the mission by aligning its modernized strategies and its infrastructure. The FY 2017 requests builds on a multi-year effort which pivoted the agency towards strategic enforcement. The agency relied on a range of tools in driving this change—evaluations of WHD enforcement strategies, performance measures, internal guidance, and a robust year-round planning process. As evidenced throughout this budget, results to date demonstrate the agency's shift towards directed enforcement and the positive results for low-wage workers in priority industries. The FY 2017 budget request prioritizes key investments in WHD operations and infrastructure, which includes building skills, knowledge and capacity in areas that can significantly advance the work of the agency.

Modernizing Business Processes

WHD is requesting \$5,800,000 to implement a new, integrated case management system to replace the current outdated system, which impedes WHD's efforts to advance its strategies. WHD's requested increase would allow the agency to make critical improvements that would fundamentally enhance the day-to-day operations of the agency and WHD's ability to provide effective customer service to both employees and employers. As new investigator productivity and effectiveness continues to increase and as the agency's targeting strategies increase in quality and ambition, the need for up-to-date technology and information resources proves critical to continued growth in these areas. Efforts to implement improvements to policies and procedures, or opportunities to develop more comprehensive, interconnected profiles of violators in order to improve the effectiveness of the enforcement program, are hindered or postponed by the extremely limited capacity of the current data system supporting WHD operations. Similarly, in order to meet the employer's and public's expectation that information about the laws enforced be easily accessible and understandable, WHD must invest in both more effective management of the information and policy guidance WHD develops and more effective methods of making that information readily available.

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Strengthening Back Wage Collections

Ensuring that workers get the pay they are due is critical not only to protecting workers and their families, but also to ensuring that competition among businesses is fair. The FY 2017 request of \$2,200,000 aims to mitigate the risk of workers not timely receiving back pay through several critical investments.

Building a Forensic Accounting Program: Timely and complete back wage payments aim to minimize the economic harm from wage violations—for the workers and broader business community. In FY 2015, WHD launched an effort to build systems for assessing the financial viability of employers. WHD is reviewing a pipeline of cases where employers assert an inability to pay and may be pursuing installment plans where the employer may otherwise be able to promptly return wages to workers. While the efforts in this area are in their early stages, the initial results are very promising and the field is seeing positive outcomes. These cases are informing the development of training, guidance, and protocols around leveraging analytical tools to secure resolution of cases that result in prompt payment of back wages to workers. To fully develop this program capacity, WHD requires FTE skilled with the necessary accounting background to evaluate complex cases, to continually identify and refine available tools and techniques, and to administer the program across regional offices.

Strengthening Financial Management and Back Wage Distribution: While the vast majority of back wage payments in typical FLSA cases (which comprise 75 percent of all WHD cases) are disbursed directly by the employer in a process administratively supervised by the investigating WHD office, certain workers are difficult to locate due to the transient nature of workers in these fissured industries. If employees cannot be located, the employer sends a lump sum payment to the WHD regional office where a secondary disbursement process begins. In a 2015 OIG report, the OIG found that between 2010 and 2014, WHD transferred to the U.S. Department of the Treasury (Treasury) \$60 million of back wages owed to employees unable to be located. Current staffing levels are insufficient for more rigorous oversight and timely processing of back wage payments. With additional support, WHD can implement improvements to the collection and disbursement process and fully implement the OIG recommendations from an audit of the back wage disbursement process, including increased oversight. The six FTE will provide the staffing necessary to properly account for and report back wages due in accordance with the OIG recommendations.

A portion of this request will also fund technology to automate, streamline, and bring greater consistency in the collection and disbursement process, as well as to employ new tools to locate workers. As WHD maintains its focus on priority industries that employ vulnerable workers, the number of difficult to locate workers will also increase. Finding these workers requires investing in new research tools and fostering relationships with stakeholders who can also locate workers. Strengthening back wage follow-up activities will allow WHD to find more of these workers. WHD has already made advancements in this area that show promise, such as the establishment of a new web-based tool called [“Workers Owed Wages”](#) which allows workers to look up in Spanish or English whether they are owed back wages. Since launching WOW in 2015, WHD has returned over \$1

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million in back wages to hundreds of workers. With increased awareness of this tool combined with more powerful research tools for locating workers, more workers will receive the wages they have earned so that they will be able to support themselves and their families, while also contributing more to their local economies.

Data-Driven and Evidence-Based Strategies

As a data-driven and evidence-based agency seeking to continuously improve program performance, WHD is requesting \$3,000,000 and 12 FTE for economists and data scientists. These FTE will develop the analytical and statistical capacity of the agency, including expanding the use of data, analysis, and evaluations in strengthening the effectiveness of the agency's enforcement, regulatory and wage determination programs. These analytical tools are particularly important as the scope of WHD enforcement continues to evolve and the number of workers covered by minimum wage and overtime laws has outpaced the available resources of the agency.

In order to meet the increased demand for worker protection and ensuring a level playing field for all employers in a constrained resource environment, WHD necessarily has to conduct its business smarter and more effectively by assessing existing evidence and generating new knowledge to achieve agency priority goals. For WHD's analytical capabilities to keep pace with its enforcement program, the agency requires more analysts equipped with specialized statistical and economic skills to fully leverage the significant volume of enforcement data collected as well as the expansive external data resources that now exist; to conduct timelier, comprehensive analyses of administrative data to support performance management and executive decision-making; to conduct economic and statistical studies to improve the agency's understanding of the regulated community; to present data in more accessible ways for use by employers, workers, researchers, and other stakeholders, and to facilitate studies that will inform enforcement, outreach, and policy making.

The expanded capacity will ensure that the agency allocates a larger share of resources to programs and enforcement strategies backed by strong evidence of effectiveness while moving away from activities that evidence shows are not effective. The added resources will also help to provide evidence-based analyses of the agency's ongoing regulatory program and inform the efficacy of the implementation process. WHD has a track record of coordinating and conducting evaluations through evaluation funds available through the Department. These internal studies by third-parties have demonstrated effective enforcement strategies, highlighted compliance challenges impacting workers and industries, and recommended ways to address compliance broadly. WHD relies on these studies and analysis to continually improve its effectiveness.

FY 2016

In FY 2016, WHD will continue to improve its investigation strategies to achieve greater impact with each investigation. Given limited resources to effectively achieve the mission in this evolving landscape, WHD adopted a strategic enforcement approach to achieving compliance. WHD prioritizes efforts in industries where the problems are greatest, where workers are least likely to exercise their rights, and where WHD can have an impact on compliance. WHD has

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sought to expand its impact through investigations in priority industries; strategic engagement of stakeholders as well as strategic use of media and communications.

In FY 2016, WHD is charting a course for further aligning the operational structure and strategies, prioritizing resources for the greatest effect on compliance, and developing evidence-based strategies to address the complicated, changing regulated environment that the agency's statutes cover. WHD will continue to conduct the majority of investigations in priority industries that employ vulnerable workers, and will continue to increase the percentage of investigations which are agency-initiated. Agency-initiated investigations allow WHD to carry out strategies that aim for industry-level compliance. Since FY 2010, WHD has increased the percent of directed investigations while reducing the no violation rates for both complaint and directed investigations to nearly identical levels. However, in adopting these new strategies, WHD continues to draw on organizational structures and practices based on prior enforcement models. As a result, the agency confronts the limitations of working with technology, operations, and systems built for a different era. In FY 2016, by prioritizing the alignment of this infrastructure to current strategies, WHD will significantly advance the agency's ability to achieve the goals of strategic enforcement.

FY 2015

In FY 2015, WHD continued to use its directed investigations to increase WHD presence in high risk industries, *i.e.*, those industries with high minimum wage and overtime violations and among vulnerable worker populations where complaints are not common. Vulnerable workers include those at a higher risk of exploitation: workers with disabilities, young workers, agricultural workers, and workers with no private right to pursue remedies on their own behalf. WHD is also focused on industries with business models that obscure, or eliminate entirely, the link between the worker and the benefitting business, including the misclassification of employees as independent contractors. These practices result in a growing population of vulnerable workers with reduced protections and less opportunity to address the lack of protections. In FY 2015, WHD lowered its no violation rate to 21 and 18 percent in agency-initiated and complaint-initiated investigations, respectively. While WHD maintained its percent of investigations in priority industries, the agency increased its collection of back wages per case, especially for agency-initiated cases.

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DETAILED WORKLOAD AND PERFORMANCE						
	FY 2015 Enacted		FY 2016 Enacted	FY 2017 Request		
	Target	Result	Target	Target		
Wage and Hour Division⁶						
Strategic Goal 3 - Promote fair and high quality work-life environments						
Strategic Objective 3.2 - Protect workers' rights						
WHD-FMLA-01	Percent of FMLA incoming complaints resolved within the fiscal year		73%	72%	73%	75%
Strategic Objective 3.3 - Secure wages and overtime						
WHD-E-01	Number of compliance actions		30,500	27,915	30,500	31,411 ⁷
WHD-E-02	Percent of directed investigations (excludes conciliations)		43%	42%	45%	46%
WHD-E-04	Percent of directed no violation cases		25%	21%	24%	22%
WHD-E-05	Percent of complaint no violation cases		21%	18%	21%	21%
WHD-PRIO-02	Percent of Directed Investigations in Priority Industries		84%	84%	84%	86%
WHD-PRIO-03	Percent of complaint investigations in priority industries (excludes conciliations)		69%	67%	69%	70%
WHD-CL-01	Percent of investigations in which child labor compliance is examined (exclude conciliations)		94%	95%	94%	97%

⁶ Strategic Objective 3.2 - Protect workers' rights: WHD is currently exploring new measures that will better reflect its priorities in FMLA that better align with corporate wide compliance for protecting employee family leave.

⁷ WHD expects the compliance action target and results will increase in the out-years as newly hired investigators become fully trained and productive.

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DETAILED WORKLOAD AND PERFORMANCE				
	FY 2015 Enacted		FY 2016 Enacted	FY 2017 Request
	Target	Result	Target	Target
WHD-14C-01 Percent of Directed No-Violation 14C Investigations	23%	20%	20%	20%
WHD-DB-01b Average age of Davis-Bacon wage rates for non-Residential Construction (in months)	--	46	45[p]	45[p]

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

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Workload and Performance Summary

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

Prior to this focus on strategic enforcement, WHD enforcement relied on complaints and focused on outcomes at the establishment level. By limiting success to complaint resolution and addressing compliance at the establishment-level, enforcement strategies failed to recognize the broader mandate of improving compliance. Strategies focused on single employers also missed the significant, dynamic changes occurring in the way industries are structured, the impact on employment relationships, and changes to the composition of the workforce. Based on recognition that this approach was no longer adequate given the limitations of traditional approaches to enforcement, WHD underwent a comprehensive effort to realign its goals, strategies, workforce, and business processes to meet the challenges of a today's economy.

Since undertaking this strategic approach, WHD has increased its performance results. To start, the agency worked to increase the number and percent of directed investigations, and in FY 2015, WHD maintained increases in the percent of directed investigations with 42 percent—a significant increase from FY 2010. Evidence that WHD has improved its ability to identify violators is that the no violation rate for directed cases declined from 35 percent in FY 2009 to 21 percent in FY 2015. This suggests that the quality of case selection has improved as a result of conducting more directed investigations. Furthermore, the gap between the no violation rates for directed versus complaint cases continues to narrow. In FY 2015, the no violation rate for complaint cases was 18 percent versus 21 percent for directed cases, suggesting that directed investigations, despite the absence of on-the-ground information from complainants, are nearly as accurate as a complaint in finding employers with violations.

To drive the agency's emphasis on case quality and case outcomes, the agency will target a level of compliance actions that strikes a balance between productivity and quality. The agency will increase its percent of directed investigations to ensure that the strategic direction continues and agency resources are dedicated to, where data show, investigations can have greater impact. In FY 2015, the agency's overall compliance actions dropped to just under 28,000—consistent with a decrease in investigators to below 1,000. The increase in back wages collected based on fewer compliance actions demonstrates the commitment to strategic enforcement.

The increased investigator FTE will restore historic WHD investigator levels and allow current and new investigators to focus on those strategic cases. Increases in production resulting from newly hired investigators are not typically realized in the same fiscal year that they are hired, which is reflected in the FY 2017 target. The no violation rates reflect the continued emphasis on

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directed investigations in the agency's enforcement work. WHD is carefully balancing optimal, agency-wide no violation rates against the goal of continuing to increase directed investigations. The interaction across these measures ensures a balanced approach to advancing strategic enforcement. As the agency continues to use better and more nuanced data and data analytics, WHD can further focus investigations on employers with severe and systemic violations.

WHD has consistently prioritized enforcement resources in those industries defined by their fissured structures, resulting in tenuous employment relationships for some of the most vulnerable workers. The increased level of directed investigations, as well as prioritization of complaints, has increased the agency's presence in those priority industries. The majority of WHD investigations occur in these priority industries. Since FY 2010, the agency has maintained a high percent of overall investigations in priority industries with a result of 74 percent in FY 2015. For agency-initiated investigations, WHD has increased the investigations in priority industries to 84 percent. While focusing on priority industries that employ low-wage workers, the amount of back wages collected continues to increase. Since 2009, WHD has put nearly \$1.6 billion in back wages into the pockets of workers. In FY 2015, each agency-initiated investigation found an average of \$8,900 – a 21 percent increase over FY 2009. Some portion of investigations will always be necessary to respond to compliance issues in non-priority industries, such as immediate responses to health and safety issues or investigating non-compliance with FMLA.

By focusing on priority industries, WHD also increases the likelihood of detecting instances of misclassification. WHD continues its multi-year effort to increase its presence in those industries that have evolved business practices to avoid classifying and treating workers as employees, including those in which employees are misclassified as independent contractors. WHD's priority industries are those industries where the relationship between the workers and the beneficiaries of the labor are more and more attenuated. Rather than add workers to their permanent payrolls and assume the obligations associated with employment relationships, companies are relying on various contingent workforce solutions to produce goods and services. WHD's emphasis on conducting investigations priority industries is consistent with the goal of detecting instances of misclassification.

WHD is applying strategic enforcement approaches across other statutes. Since FMLA compliance at the establishment level is often driven by corporate policies, WHD is piloting strategies to provide a more in-depth review of the employer's business practices and leave policies with the objective of making a broader impact on compliance, rather than resolving one individual complaint. Too few workers in high risk industries, too few young workers in dangerous working conditions, and almost no workers with disabilities will file complaints when they are the subject of a violation. WHD established a baseline no violation rate for investigations of Community Rehabilitation Programs in the Section 14 (c) program, which is consistent with the no violation rate for overall investigations. WHD is focusing its Section 14(c) program to ensure that only those entities that are in full compliance with the FLSA requirements receive and maintain section 14(c) certificates.

Sustaining and evolving these strategies requires critical investments in the agency's infrastructure—the development of modernized systems and effective operations that support the

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mission. Establishing strategic enforcement focused on (1) prioritizing industries with the greatest compliance problems and (2) developing strategies that focus on how industries are structured and how that impacts employment relationships and compliance. WHD has significantly changed its methods and procedures for enforcement reflecting this approach. However, in adopting these new strategies, WHD continues to draw on organizational structures and practices based on prior enforcement models. As a result, the agency confronts the limitations of working with technology, operations, and systems built for a different era.

To start, WHD is developing next generation performance measures to drive continued growth and improvement. The current measures have driven targeted performance improvements since FY 2010; however, they need to be augmented with measures of strategies, violation severity, and impact to carry the agency forward. Changes to measures and the addition of contextual measures will inform the agency's approach to target-setting, which also aims for an appropriate balance.

Over the past three fiscal years, WHD has requested as part of the President's Budget, a significant increase in FTE and dedicated funds for modernizing its IT systems. WHD's existing applications and the supporting IT architecture have approached the end of their life cycle, and they are difficult and costly to maintain and update. The agency's case management system is an obsolete relational database, which negatively impacts the agency's ability to fully leverage its administrative data for evaluations, decision-making, and reporting. WHD investigators and managers rely on outdated workflows that hinder their productivity, a problem which is exacerbated by the system's often slow operation, cumbersome interfaces, and its inability to support Web-based features.

WHD is committed to ensuring the workforce is equipped with the right tools and information to conduct quality, strategic investigations in ways that are professional, even-handed, and based on current data. Important progress has been made in developing potential new modules and a digital guidance to support field personnel, and these efforts will continue. WHD is focusing on enhancing its data environment and equipping WHD personnel to operate in a data-informed manner. WHD views these efforts as critical to achieving the type of data analysis and linking that strategic enforcement requires. WHD is also establishing a data governance structure for managing data as a business asset, which will further the government-wide goals of using data to inform decision-making, planning, and evaluation activities. These actions demonstrate WHD's commitment; however, greater investment in modernization efforts is necessary to fully support the evidence-based, data-driven enforcement strategies. Through enhanced IT capabilities, increased data analytics, and a more robust enforcement staff, WHD can significantly increase the impact of each compliance action.

WAGE AND HOUR DIVISION

BUDGET ACTIVITY BY OBJECT CLASS					
(Dollars in Thousands)					
		FY 2015 Enacted	FY 2016 Enacted	FY 2017 Request	Diff. FY17 Request / FY16 Enacted
11.1	Full-time permanent	105,342	107,994	127,520	19,526
11.3	Other than full-time permanent	1,450	735	735	0
11.5	Other personnel compensation	2,126	1,507	1,507	0
11.8	Special personal services payments	0	10	10	0
11.9	Total personnel compensation	108,918	110,246	129,772	19,526
12.1	Civilian personnel benefits	32,599	37,647	44,791	7,144
13.0	Benefits for former personnel	0	52	52	0
21.0	Travel and transportation of persons	6,000	5,607	7,216	1,609
22.0	Transportation of things	15	2	2	0
23.1	Rental payments to GSA	11,000	13,433	17,754	4,321
23.2	Rental payments to others	20	13	13	0
23.3	Communications, utilities, and miscellaneous charges	4,184	3,817	4,594	777
24.0	Printing and reproduction	540	387	476	89
25.1	Advisory and assistance services	3,946	4,292	4,292	0
25.2	Other services from non-Federal sources	3,750	7,068	9,271	2,203
25.3	Other goods and services from Federal sources 1/	30,813	31,883	36,601	4,718
25.4	Operation and maintenance of facilities	800	0	0	0
25.5	Research and development contracts	0	0	0	0
25.7	Operation and maintenance of equipment	22,365	10,951	18,924	7,973
26.0	Supplies and materials	1,260	1,037	1,241	204
31.0	Equipment	1,290	1,049	1,584	535
41.0	Grants, subsidies, and contributions	0	0	0	0
42.0	Insurance claims and indemnities	0	16	16	0
	Total	227,500	227,500	276,599	49,099
	1/Other goods and services from Federal sources				
	Working Capital Fund	25,614	26,438	27,938	1,500
	DHS Services	1,076	1,100	1,100	0
	GSA Services	181	200	200	0
	Services by Other Government Departments	3,942	4,145	7,363	3,218

WAGE AND HOUR DIVISION

CHANGES IN FY 2017

(Dollars in Thousands)

Activity Changes

Built-In

To Provide For:

Costs of pay adjustments	\$2,033
Personnel benefits	868
Employee health benefits	0
Moving allowance	0
Two days less of Pay	-1,104
Federal Employees' Compensation Act (FECA)	-66
Benefits for former personnel	0
Travel and transportation of persons	0
Transportation of things	0
Rental payments to GSA	581
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	1,500
Other Federal sources (DHS Charges)	0
Other goods and services from Federal sources	0
Research & Development Contracts	0
Operation and maintenance of facilities	0
Operation and maintenance of equipment	0
Supplies and materials	0
Equipment	0
Grants, subsidies, and contributions	0
Insurance claims and indemnities	0

Built-Ins Subtotal **\$3,812**

Net Program **\$45,287**

Direct FTE **318**

	Estimate	FTE
Base	\$231,312	1,376
Program Increase	\$45,287	318
Program Decrease	\$0	0