

FY 2011

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, \$244,240,000.

WAGE AND HOUR DIVISION

EXPLANATION OF LANGUAGE CHANGE

In FY 2010, the Department implemented a plan to realign and streamline the former Employment Standards Administration (ESA). As a result, ESA was abolished and funding that previously was requested for the component agencies and offices under the heading “Employment Standards Administration Salaries and Expenses” is requested separately in FY 2011

WAGE AND HOUR DIVISION

AMOUNTS AVAILABLE FOR OBLIGATION								
(Dollars in Thousands)								
	FY 2009 Comparable		Recovery Act		FY 2010 Estimate		FY 2011 Request	
	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
A. Appropriation	1,283	193,092	0	15,119	1,571	225,256	1,672	244,240
Reduction pursuant to (P.L. 111-8) in FY 2009	0	0	0	0	0	0	0	0
Other Supplementals and Rescissions	0	0	0	0	0	0	0	0
Appropriation, Revised	1,283	193,092	0	15,119	1,571	225,256	1,672	244,240
<i>Subtotal Appropriation</i>	<i>1,283</i>	<i>193,092</i>	<i>0</i>	<i>15,119</i>	<i>1,571</i>	<i>225,256</i>	<i>1,672</i>	<i>244,240</i>
(adjusted)	0	0	0	0	0	0	0	0
Comparative Transfer To:	0	0	0	0	0	0	0	0
Comparative Transfer From:								
ESA/PDS	12	2,924	0	0	11	2,350	0	0
Offsetting Collections From:	0	0	0	0	0	0	0	0
Reimbursements (CMP's)	0	2,800	0	0	0	2,800	0	2,800
Trust Funds	0	0	0	0	0	0	0	0
H-1B L Fraud Fees	0	10,504	0	0	0	12,500	0	33,150
Non-Expenditure Transfers from DM	0	0	87	15,119	0	0	0	0
<i>Subtotal</i>	<i>1,295</i>	<i>209,320</i>	<i>87</i>	<i>15,119</i>	<i>1,582</i>	<i>242,906</i>	<i>1,672</i>	<i>280,190</i>
B. Gross Budget Authority	1,295	209,320	87	15,119	1,582	242,906	1,672	280,190
Offsetting Collections	0	0	0	0	0	0	0	0
Deduction:	0	0	0	0	0	0	0	0
Reimbursements	0	-2,800	0	0	0	-2,800	0	-2,800
H-1B L Fraud Fees	0	-10,504	0	0	0	-12,500	0	-33,150
Non-Expenditure Transfers from DM	0	0	0	0	0	0	0	0
<i>Subtotal</i>	<i>0</i>	<i>-13,304</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>-15,300</i>	<i>0</i>	<i>-35,950</i>
C. Budget Authority	1,295	196,016	87	15,119	1,582	227,606	1,672	244,240
Before Committee	0	0	0	0	0	0	0	0
Offsetting Collections From:	0	0	0	0	0	0	0	0
Reimbursements	0	2,800	0	0	0	2,800	0	2,800
H-1B L Fraud Fees	0	10,504	0	0	0	12,500	0	33,150
IT Crosscut	0	0	0	0	0	0	0	0
Legal Services	0	0	0	0	0	0	0	0
Non-Expenditure Transfers from DM	0	0	0	0	0	0	0	0
<i>Subtotal</i>	<i>0</i>	<i>13,304</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>15,300</i>	<i>0</i>	<i>35,950</i>
D. Total Budgetary Resources	1,295	209,320	87	15,119	1,582	242,906	1,672	280,190
Other Unobligated Balances	0	0	0	0	0	0	0	0
Unobligated Balance Expiring	-36	-177	0	0	0	0	0	0
Unobligated Balance Permanently Reduced	0	0	0	0	0	0	0	0
E. Total, Estimated Obligations	1,259	209,143	87	15,119	1,582	242,906	1,672	280,190

WAGE AND HOUR DIVISION

SUMMARY OF CHANGES

(Dollars in Thousands)

	FY 2010 Estimate	FY 2011 Request	Net Change
Budget Authority			
General Funds	227,606	244,240	+16,634
Total	227,606	244,240	+16,634
Full Time Equivalents			
General Funds	1,582	1,672	+90
Total	1,582	1,672	+90

Explanation of Change	FY 2010 Base		Trust Funds		FY 2011 Change General Funds		Total	
	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
Increases:								
A. Built-Ins:								
To Provide For:								
Costs of pay adjustments	1,582	116,382	0	0	0	1,671	0	1,671
Personnel benefits	0	21,676	0	0	0	554	0	554
Employee health benefits	0	7,756	0	0	0	0	0	0
Moving allowance	0	1,783	0	0	0	0	0	0
Federal Employees Compensation Act (FECA)	0	1,343	0	0	0	0	0	0
Travel and transportation of persons	0	7,720	0	0	0	0	0	0
Transportation of things	0	385	0	0	0	0	0	0
Rental payments to GSA	0	10,828	0	0	0	159	0	159
All Other Rental	0	146	0	0	0	0	0	0
Communications, utilities, and miscellaneous charges	0	3,272	0	0	0	0	0	0
Printing and reproduction	0	593	0	0	0	0	0	0
Advisory and assistance services	0	2,851	0	0	0	0	0	0
Other services	0	6,117	0	0	0	0	0	0
Homeland Security	0	1,114	0	0	0	0	0	0
Other purchases of goods and services from Government accounts	0	4,462	0	0	0	0	0	0
Operation and maintenance of equipment	0	15,105	0	0	0	0	0	0
Supplies and materials	0	1,054	0	0	0	0	0	0
Equipment	0	2,689	0	0	0	0	0	0
Built-Ins Subtotal	1,582	205,276	0	0	0	2,384	0	2,384
B. Programs:								
Employee Misclassification Initiative	0	0	0	0	90	12,000	90	12,000
Restoration of FY 2010 Funding	0	0	0	0	0	2,400	0	2,400
Programs Subtotal			0	0	+90	+14,400	+90	+14,400
C. Financing:								
Total Increase	+1,582	+205,276	0	0	+90	+16,784	+90	+16,784

Decreases:

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Explanation of Change	FY 2010 Base		FY 2011 Change				Total	
			Trust Funds		General Funds			
A. Built-Ins:								
To Provide For:								
Working Capital Fund	0	22,330	0	0	0	-150	0	-150
Built-Ins Subtotal		22,330	0	0	0	-150	0	-150
B. Programs:								
C. Financing:								
Total Decrease	0	+22,330	0	0	0	-150	0	-150
Total Change	+1,582	+227,606	0	0	+90	+16,634	+90	+16,634

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SUMMARY BUDGET AUTHORITY AND FTE BY ACTIVITY								
(Dollars in Thousands)								
	FY 2009 Comparable		Recovery Act		FY 2010 Estimate		FY 2011 Request	
	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
Enforcement of Wage and Hour Standards	1,259	196,016	87	15,119	1,582	227,606	1,672	244,240
General Funds	1,259	196,016	87	15,119	1,582	227,606	1,672	244,240
Total	1,259	196,016	87	15,119	1,582	227,606	1,672	244,240
General Funds	1,259	196,016¹	87	15,119	1,582	227,606	1,672	244,240

NOTE: FY 2009 reflects actual FTE.

¹ FY 2009 and FY 2010 amounts reflect reallocated funds from the dissolution of ESA's Program Direction and Support office.

WAGE AND HOUR DIVISION

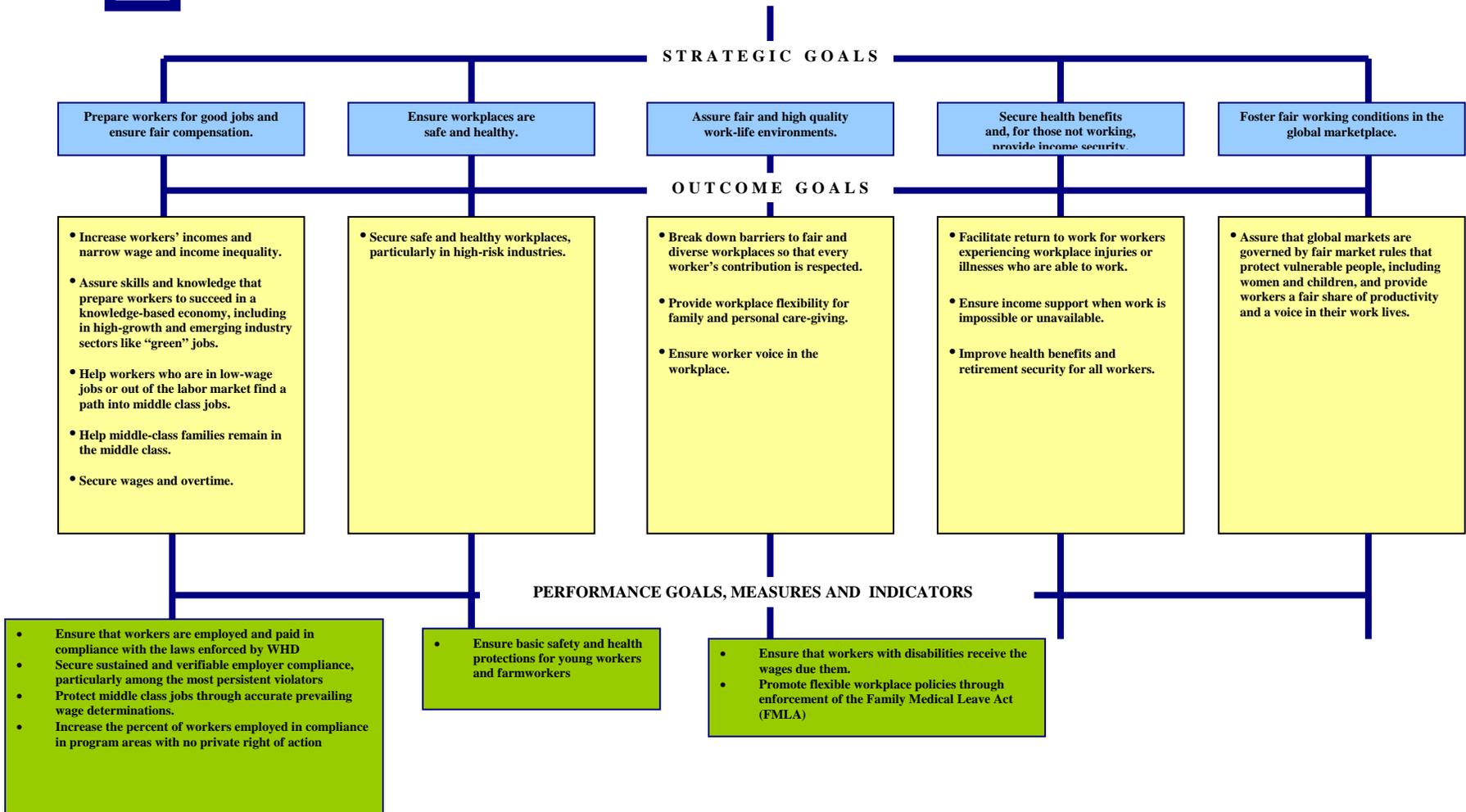
BUDGET AUTHORITY BY OBJECT CLASS						
(Dollars in Thousands)						
		FY 2009 Comparable	Recovery Act	FY 2010 Estimate	FY 2011 Request	Change FY 11 Req. / FY 10 Est.
	Full-Time Equivalent					
	Full-time Permanent	1,295	116	1,582	1,672	90
	Total	1,295	116	1,582	1,672	90
	Total Number of Full-time Permanent Positions	1,295	116	1,582	1,672	90
	Average ES Salary	175,363	0	170,136	172,518	2382
	Average GM/GS Grade	12.3	0	11.6	11.6	0
	Average GM/GS Salary	78,440	0	73,566	73,447	-119
11.1	Full-time permanent	98,714	7,151	113,466	119,887	6421
11.5	Other Personnel Compensation	2,866	75	2,916	2,916	0
11.9	Total personnel compensation	101,580	7,226	116,382	122,803	6421
12.1	Civilian personnel benefits	28,216	1,753	32,558	34,283	1725
21.0	Travel and transportation of persons	5,763	1,444	7,720	8,436	716
22.0	Transportation of things	384	0	385	385	0
23.1	Rental payments to GSA	9,114	0	10,828	13,184	2356
23.2	Rental payments to others	145	0	146	528	382
23.3	Communications, utilities, and miscellaneous charges	2,819	124	3,272	3,272	0
24.0	Printing and reproduction	507	70	593	620	27
25.1	Advisory and assistance services	1,602	862	2,851	3,277	426
25.2	Other services	1,730	1,348	6,117	6,420	303
25.3	Other purchases of goods and services from Government accounts 1/	26,596	501	27,906	27,837	-69
25.5	Research and development contracts	0	0	0	1,000	1000
25.7	Operation and maintenance of equipment	15,387	1,090	15,105	17,562	2457
26.0	Supplies and materials	753	55	1,054	1,109	55
31.0	Equipment	1,420	646	2,689	3,524	835
	Total	196,016	15,119	227,606	244,240	16,634
	1/Other Purchases of Goods and Services From Government Accounts					
	Working Capital Fund	21,344	0	22,330	22,180	-150
	Services by DOL Agencies	312	0	371	371	0
	GSA Services	17	0	52	70	18
	Services by Other Government Departments	4,002	501	4,039	4,039	0
	DHS Services	921	0	1,114	1,177	63

NOTE: FY 2009 reflects actual FTE.

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Secretary's Vision: "Good Jobs for Everyone"



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TOTAL BUDGETARY RESOURCES													
FY 2009 - 2011													
(Dollars in Thousands)													
	FY 2009 Comparable				Recovery Act	FY 2010 Estimate				FY 2011 Request			
	Activity Approp.	Other Approp. ^{1/}	Other Resrcs. ^{2/}	Total		Activity Approp.	Other Approp. ^{1/}	Other Resrcs. ^{2/}	Total	Activity Approp.	Other Approp. ^{1/}	Other Resrcs. ^{2/}	Total
Enforcement of Wage and Hour Standards	196,016	0	13,304	209,320	15,119	227,606	0	15,300	242,906	244,240	0	35,950	280,190
Enforcement of Wage and Hour Standards	196,016	0	13,304	209,320	15,119	227,606	0	15,300	242,906	244,240	0	35,950	280,190
Total	196,016	0	13,304	209,320	15,119	227,606	0	15,300	242,906	244,240	0	35,950	280,190

^{1/} "Other Appropriation" is comprised of resources appropriated elsewhere, but for which the benefits accrue toward the operation of the budget activities. (Executive Direction, and IT Crosscut)

^{2/} "Other Resources" include funds that are available for a budget activity, but not appropriated such as, reimbursements and fees

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SUMMARY OF PERFORMANCE Performance Goal — Wage and Hour Division										
WHD supports the Secretary’s vision of “ <i>good jobs for everyone</i> ” and the following Outcome Goals: <ul style="list-style-type: none"> • Increasing workers’ incomes and narrowing wage and income inequality. • Securing wages and overtime. • Securing safe and healthy workplaces, particularly in high-risk industries. • Breaking down barriers to fair and diverse work places so that every worker’s contribution is respected. • Providing workplace flexibility for family and personal care-giving. • Helping workers who are in low-wage jobs or out of the labor market find a path into middle class jobs. • Voice in the workplace. • Helping middle class families remain in the middle class. 										
	FY 2006		FY 2007		FY 2008		FY 2009		FY 2010	FY 2011
	Goal Achieved		Goal Not Achieved		Goal Not Achieved		Goal Achieved			
Performance Indicator	Target	Result	Target	Result	Target	Result	Target	Result	Target	
Percent H-2A employers in compliance with applicable statutes									Baseline	+30% over baseline
Percent of construction workers employed in compliance										Baseline
Percent of janitorial workers employed in compliance									Baseline	
Percent of prior violators who achieved and maintained FLSA compliance following a full FLSA investigation	73%	76%	77%	66%	67%	56%	63%	66%	70%	75%
Percent of Davis-Bacon wage rates based on survey data that are three years old or less									Baseline	+10%
Percent of FMLA complaints who rate WHD’s services as “good” or “very good”									Baseline	+10%

WAGE AND HOUR DIVISION

SIGNIFICANT ITEMS IN APPROPRIATION COMMITTEES' REPORTS

Salaries and Expenses

House:	The Committee requests that the Department submit a report on the feasibility of tracking the following information: the source of complaints on misclassification of workers and the number of investigations; the number of workers covered by those investigations; descriptive data on the employer practices that form the basis of the complaint; and the findings and actions taken, including recovery of back pay, other compensatory measures, and cross-referral of complaints to the Internal Revenue Service. The Secretary should submit the report to the Committees on Appropriations of the House of Representatives and the Senate by May 1, 2010.
Response:	The Wage and Hour Division will submit a report, pursuant to House Report 111-220.
House	The Committee request an updated report on ESA's human capital strategy to be submitted to the Committees on Appropriations of the House of Representatives and the Senate within 90 days of the enactment of this Act. The report should include the number of staff hired with funds from the Recovery Act and the Omnibus Appropriations Act, 2009, respectively; and a detailed hiring plan for the additional full-time equivalents the agency plans to hire in fiscal year 2010.
Response:	The Wage and Hour Division will submit a report, pursuant to House Report 111-220.

WAGE AND HOUR DIVISION

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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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

APPROPRIATION HISTORY (Dollars in Thousands)					
	Budget Estimates to Congress	House Allowance	Senate Allowance	Appropriations	FTE
2001	0	0	0	0	0
2002	0	0	0	0	0
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	0	0	175,658	1,208
2009	0	0	0	193,092	1,283
2010	227,656	0	0	225,256	1,582
2011	244,240	0	0	0	1,672

WAGE AND HOUR DIVISION

OVERVIEW

Introduction – Enforcement of Wage and Hour Standards

The Wage and Hour Division (WHD) is responsible for administering and enforcing a number 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.”*

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 Act (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 is also responsible for the enforcement of field sanitation and temporary labor camp standards in agriculture and certain employment standards and worker protections of the Immigration and Nationality Act (INA).

WHD’s enforcement responsibilities directly support the Secretary’s vision of *“good jobs for everyone”* and contribute to the following eight Departmental outcomes:

- Increasing workers’ incomes and narrowing wage and income inequality.
- Securing wages and overtime.
- Securing safe and healthy workplaces, particularly in high-risk industries.
- Breaking down barriers to fair and diverse work places so that every worker’s contribution is respected.
- Providing workplace flexibility for family and personal care-giving.
- Helping workers who are in low-wage jobs or out of the labor market find a path into middle class jobs.
- Voice in the workplace.
- Helping middle class families remain in the middle class.

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 these minimum labor standards too many workers would be poorly positioned to improve their economic status. Young workers and farmworkers would be without safe and healthy working conditions. Contingent workers would be relegated to independent contractor status, and the beneficiary of their labor would be able to avoid responsibility for providing a fair wage and safe

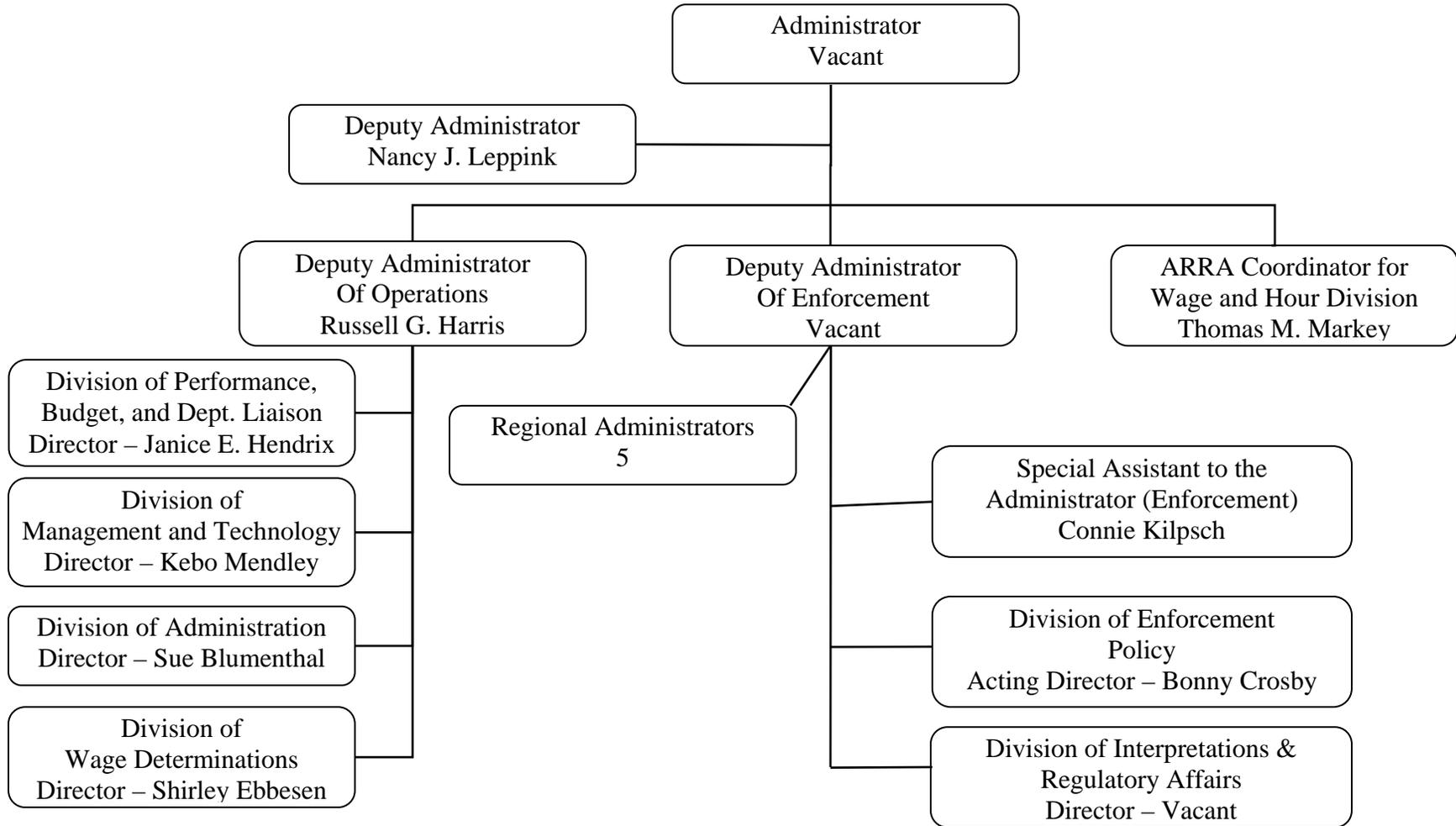
WAGE AND HOUR DIVISION

working place. Working men and women would be faced with choosing between their family responsibilities and their jobs. Workers in many low-wage jobs would never earn enough to support themselves and their families. Vulnerable workers would be left without the time or the opportunity to secure and maintain middle class jobs.

In conforming WHD's core regulatory and enforcement processes into the Department's strategic framework, WHD is guided by several key strategic principles. WHD's directed investigations will be concentrated in high risk industries that employ vulnerable workers or in program areas in which workers are at a higher risk of exploitation. 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. WHD enforcement activities, both complaint and directed, will be oriented towards ensuring long-term employer compliance by targeting the most persistent violators, by pursuing corporate-wide compliance strategies, and by imposing penalties and sanctions as appropriate. WHD's regulatory initiatives will be undertaken with an objective of determining where there are opportunities to shift the burden of compliance to the employer, to promote openness and transparency to achieve compliance with the regulatory requirements, and to provide workers with the information and tools to identify and remedy violations.

WAGE AND HOUR DIVISION

Wage and Hour Division Organization Chart



WAGE AND HOUR DIVISION

BUDGET AUTHORITY BEFORE THE COMMITTEE							
(Dollars in Thousands)							
	FY 2009 Comparable	Recovery Act	FY 2010 Enacted	FY 2010 Estimate	Diff. FY 09 Comp. / FY 10 Est	FY 2011 Request	Diff. FY 10 Est. / FY 11 Req.
Activity Appropriation²	196,016	15,119	225,256	227,606	31,590	244,240	16,634
FTE	1,259	87	1,571	1,582	323	1,672	90

² Excludes H-1B and FLSA funding

NOTE: FY 2009 reflects actual FTE. Authorized FTE for FY 2009 was 1,283

Introduction

The Wage and Hour Division (WHD) is authorized under 29 U.S.C. 201, *et seq.* and is responsible for administering and enforcing a variety of laws that establish the minimum standards for wages and working conditions in the United States. 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 offering 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*. WHD's efforts to increase compliance in the agricultural industry and among agricultural and young worker populations where 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. Other vulnerable workers include individuals with disabilities and those employed in statutory programs for which there is no private right of action. WHD's focus on workers employed in these programs and in these industries contributes to the Department's outcomes efforts to *ensure fair compensation*.

WAGE AND HOUR DIVISION

Several significant developments will impact WHD's operations in FY 2010 and carry over into FY 2011. The first, a regulatory effort related to the Immigration and Nationality Act's H-2A program, will result in increased enforcement to ensure compliance with applicable labor standards statutes in the agricultural industry. Compliance levels with the statutes enforced by Wage and Hour in agricultural fall short of desired levels. WHD expects the use of the H-2A program to grow, particularly since farm labor contractors—who have higher violations rates than growers—are now allowed to participate in the program. As a matter of policy, WHD has not conducted targeted investigations of H-2A employers in the last eight years. WHD has developed a 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.

The second development, the multi-billion dollar Federal investment in infrastructure construction through the Recovery Act, will result in increased resources to enforce applicable labor laws in the construction industry. 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 plans to establish a compliance baseline in this industry in FY 2011 from which it can measure improvements in compliance.

The third development also relates to the Immigration and Nationality Act. 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. By effectively securing compliance with this new program, WHD helps *increase workers' incomes and narrows wage and income inequality* and *promotes fair workplaces where every worker's contribution is respected*.

In the FY 2010 Omnibus Appropriation amended section 426(b) of division J of the Consolidated Appropriations Act, 2005 (Public Law 108-447) to authorize the Department of Labor to use one-third of the amounts deposited into the Fraud Prevention and Detection Account for wage and hour enforcement programs and activities that focus on industries likely to employ nonimmigrants. This will allow WHD to use these resources for a broader range of enforcement programs and activities as well.

Persistent Violators: WHD's resources will be used to implement strategies for deterring recidivist behavior among employers and for targeting worst violators in all program areas for which the agency has responsibility. Obtaining corporate-wide compliance, securing future compliance, and deterring future violations in industry sectors and among employers also supports the Department's outcome goals of *securing fair compensation*.

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WHD has established a goal of increasing compliance among prior violators. WHD will evaluate its success in reducing recidivism in FY 2010 and FY 2011 and will focus on recidivism in the janitorial industry in FY 2011.

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 seven of the Department's key worker protections outcomes. FMLA, which is primarily a complaint-based program, contributes directly to the goal of *providing workplace flexibility for family and personal care-giving* and helping *middle-class families remain in the middle class*.

Accurate and Timely Wage Determinations: WHD is implementing revised Davis-Bacon wage survey 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, construction and service *workers who are in low-wage jobs can find a path into better paying middle class jobs*

At the FY 2011 Agency Request Level, WHD will maintain its FTE level at 1,582. Approximately 64 percent, or 1,006, 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 and corporate-wide compliance among employers; and boosting customer satisfaction among workers seeking our services and other entities that share the goals of improving the lives of working men, women, and children.

Finally, WHD's FY 2011 budget proposes a statutory change to increase the salary level of the WHD Administrator consistent with that of other Department of Labor Presidential Appointees that require Senate confirmation. Under the current Executive Schedule, Department of Labor Assistant Secretaries are compensated at a level IV. The WHD Administrator is compensated at a level V. The pay levels should be equivalent.

Worker Protection Strategies

In FY 2011, WHD will 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. Complaint investigations will be managed strategically to increase WHD visibility among workers and community-based organizations to increase their involvement in identifying violations.

Penalties, sanctions, the FLSA hot goods provision, and similar strategies will be used as appropriate to ensure future compliance among violators and to deter violations among other employers. WHD will pursue corporate-wide compliance strategies designed to ensure that

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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. WHD will explore avenues for ensuring that complainants who cannot be served by the agency are referred to entities that can provide appropriate assistance to workers.

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 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.

Five-Year Budget Activity History

<u>Fiscal Year</u>	<u>Funding</u> (Dollars in Thousands)	<u>FTE</u>
2006	165,685	1,300
2007	170,220	1,200
2008	175,658	1,208
2009	193,092	1,283
2010	227,606 ³	1,582

NOTE: Excludes Recovery Act Funding. See budget activity head table.

³ PDS in FY 2009 and FY 2010.

FY 2011

For FY 2011, WHD is requesting a total of \$244,240,000 and 1,672 FTE. This funding includes an inflationary increase of \$2,234,000 and a program increase of \$14,400,000; which includes \$12,000,000 and 90 FTE to address violations related to the misclassification of workers as independent contractors and \$2,400,000 to restore the FY 2010 Request level funding. In FY 2010 WHD is committed to hiring the 288 FTE requested in the FY 2010 budget. However WHD will use a staggered hiring approach and the restoration of the \$2,400,000 in FY 2011 will allow the program to retain its staffing goal and transition approximately 50 FTE from American Recovery and Reinvestment Act back to S&E funded positions. The WHD is also requesting \$33,150,000 in Fraud Prevention and Detection Account fees to be used for enforcement

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programs and activities described in Section 416(b) of Division J of the Consolidated Appropriations Act, 2005 (Public Law 108-447) and \$2,800,000 in civil money penalty reimbursements authorized under Section 16(e) of the FLSA. This funding will be distributed across the agency's performance outcomes to directly support the strategic vision for "*good jobs for everyone.*"

The 2011 Budget for WHD includes \$12 million and 90 FTE as part of a joint Treasury-Labor 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. 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 the National Employment Law Project, Brennan Center, researchers on behalf of state governments, and the Department's Employment and Training Administration, suggest that misclassification—while occurring in many industries—is prevalent in several high-risk industries: construction, janitorial, home health care, child care, transportation and warehousing, meat and poultry processing, and other professional and personnel service industries. The construction industry, in particular, is cited in each of the studies as rife with employee misclassification.

WHD will use the requested resources to raise its directed investigation level and increase its presence in these key industries and to target employers who are identified as having misclassified employees or groups of employees.

FY 2010

The FY 2010 Omnibus Bill provides WHD with \$227,606,000 and 1,582 FTE. This funding includes an increase of \$28,462,000 and 288 FTE. WHD also received \$2,350,000 in reallocated funds from the dissolution of ESA's Program Direction and Support Office. WHD expect to use \$12,500,000 in Fraud Prevention and Detection Account fees for enforcement programs and activities described in Section 416(b) of Division J of the Consolidated Appropriations Act, 2005 (Public Law 108-447)⁴ and \$2,800,000 in civil money penalty reimbursements authorized under Section 16(e) of the FLSA.

⁴ WHD's original estimate of \$18,500,000 was predicated on the availability of such fund for a full fiscal year. The authority to use the Fraud Prevention and Detection Account fees for enforcement activities related to the H-2B program was not granted until the end of the first quarter of FY 2010. As a result, WHD's current estimate is \$12,500,000. This may also be revised as WHD gains experience in implementing the program.

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To meet the challenge of ensuring “*good jobs for everyone*,” within the framework of its regulatory responsibilities and in support of the Department’s strategic goals, WHD has realigned its FY 2010 work processes into the following key objectives:

- Ensuring that the most vulnerable workers are employed in compliance with wage and hour laws;
- Making certain that employers, including the most persistent violators, are brought into and maintain compliance with laws enforced by WHD;
- Fostering a customer-oriented quality-driven culture within WHD;
- Issuing prevailing wage determinations that are current and accurate;
- Pursuing regulatory initiatives that broadly support and advance the Secretary’s vision.

These new performance outcomes more closely align with WHD’s mission to promote and achieve compliance. In FY 2010, WHD will transition from the three efficiency indicators used in prior years to performance measures that reflect the agency’s emphasis on quality-driven customer service and on its strategies to change compliance levels in high-risk industries that employ the most vulnerable workers. To this end, in FY 2010, WHD will begin measuring compliance levels in industries and program areas by conducting baseline investigation-based compliance surveys. These surveys, in addition to providing measures of compliance, inform WHD on the likely causes of violative behavior and point to strategies for addressing high violations rates industry-wide. WHD will continue to conduct investigation-based compliance surveys to determine the percent of prior violators who come into and stay in compliance with the provisions of the Fair Labor Standards Act. An evaluation of WHD enforcement efforts targeting recidivism will help WHD refine its strategies for securing long-term sustained compliance.

Despite the agency’s past successes on complaint handling, the prior focus on efficiency in responding to complaints has also contributed, in part, to the deficiencies noted in the Government Accountability Office’s audit entitled *Wage and Hour Division Needs Improved Investigative Processes and Ability to Suspend Statute of Limitations to Better Protect Workers Against Wage Theft*. As a result, WHD’s complaint investigation program has shifted to a customer-service oriented program 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 will implement several customer service goals to promote improved responsiveness to complainants who seek WHD services and to increase the agency’s visibility and accessibility among vulnerable worker populations.

With the demands for accurate and timely wage determinations fueled by the American Recovery and Reinvestment Act of 2009 (Recovery Act) funding, WHD is implementing revised Davis-Bacon wage survey processes to improve the quality and timeliness of wage determinations.

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FY 2009

Available funding for FY 2009 totals \$196,016,000. For FY 2009, WHD requested and the enacted Omnibus Bill provided a total of \$193,092,000 and 1,283 FTEs. Added to this amount is \$2,924,000 associated with the reallocated funds from the dissolution of ESA's Program Direction and Support Office. WHD's enacted FY 2009 budget represents a \$17,434,000 increase over the FY 2008 enacted level and increased the FTE ceiling from 1,208 to 1,283. In order to reach the 1,283 FTE ceiling, WHD hired approximately 170 new staff which includes 162 new investigators. As the experience and productivity of the new investigators increases, WHD expects investigation levels will improve.

In FY 2009, WHD achieved its performance goals. WHD exceeded its target of 305 workers assisted in low-wage industries per 1,000 targeted enforcement hours by 72 workers. The number of directed investigations with violations increased by nearly nine percentage points.

The number of workers assisted per 1,000 enforcement hours in complaint cases improved to 288 in FY 2009 from 272 in FY 2008. WHD attributes this increase in efficiency to two factors. The average number of hours to conclude an investigation leveled, while the percentage of workers receiving back wages increased from FY 2008. WHD also received more complaints in FY 2009 than in the two years prior.

WHD also saw a reverse in the recent upward trend of recidivism rates. The overall level of compliance among prior violators increased by 13 percentage points from 56 percent in FY 2008 to 69 percent in FY 2009. Wage determination efficiency also increased in FY 2009. WHD processed 3,294 forms per 1,000 hour in FY 2009 – a 47 percent increase over the FY 2008 result. The survey backlog will be eliminated by the end of calendar year 2008, and WHD has seen rapid improvements in the rate at which survey data submission forms are processed.

WHD recovered more than \$185,000,000 in back wages for over 219,700 employees in FY 2008. The agency also concluded 24,900 compliance actions and assessed over \$9.4 million in civil money penalties.

Recovery Act Update

The Recovery Act increased the Department of Labor's "Departmental Management" account by \$80,000,000 for the enforcement of worker protection laws and regulations, oversight, and coordination activities related to the infrastructure and unemployment insurance investments in the Act. The Secretary of Labor was provided the authority to transfer these funds to various agencies within the Department in furtherance of the above noted activities. WHD was provided \$15,119,000 and 87 FTE through September 30, 2010.

Section 1606 of the Recovery Act requires the payment of Davis-Bacon Act prevailing wage rates to "laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government" pursuant to the Act. This new Davis-Bacon related Act labor standards provision expands Davis-Bacon

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coverage to federally-assisted construction projects that were not subject to the payment of prevailing wage rates under existing laws. Moreover, the amount of Recovery Act funding designated for infrastructure work will necessarily increase the number of Davis-Bacon covered construction projects over the course of the next two to five years as the amount of Federal capital infrastructure spending increases. The Federal contracting community, *i.e.*, the building trades unions, the Federal contracting agencies, state and local governments, contractors, and contractor associations is rightly insisting that WHD publish up-to-date and accurate Davis-Bacon prevailing wage determinations for use on the newly funded construction projects and that the agency establish an active enforcement program for the Recovery Act covered projects.

The immediate short-term impact was felt in the wage determination program. Now that the covered construction projects are underway, however, WHD expects an increased demand for enforcement of the prevailing wages fueled in part by an increase in complaints and in part by an expectation for more directed, *i.e.*, non-complaint-based, enforcement. This higher workload is expected to continue over a number of years given that some of the funded projects may be under construction over the course of several years.

In response to concerns raised by the Department of Energy that the current Davis-Bacon residential wage determinations did not reflect the wage rates and classifications performed by workers performing weatherization work, WHD wage determination staff surveyed all 50 state and the District of Columbia to establish prevailing wage rates and fringe benefits for the classifications of worker perform this unique type of work and issued prevailing wage determinations to the Department of Energy for incorporation into weatherization projects funded by the Recovery Act. WHD has also examined and streamlined its highway, building, and heavy wage determinations processes so that wage surveys can be more efficiently conducted and so that wage rates required by the program are current and accurate.

WHD has hired 100 investigators and promoted 33 senior investigator advisors as part of its effort to ensure that contractors on stimulus projects funded under the Recovery Act are in compliance with the applicable laws. WHD is using trained and experienced investigators for direct Recovery Act-related enforcement and compliance assistance and charging their related activity costs to the Recovery Act funding. This, in turn, has allowed WHD to finance the 100 new investigator positions. The majority of these costs will be incurred in FY 2010 as the agency begins its enforcement initiative.

WHD has issued guidance to the Federal contracting agencies and other stakeholders on the application of the Davis-Bacon requirements in the Recovery Act. The agency launched a new web page to provide ready access and transparency to the agency's Recovery Act materials and advisory letters. Finally, the agency conducted seven Prevailing Wage Conferences to educate the federal contracting community on the requirements of the Davis-Bacon and Service Contract Acts as they apply to Recovery Act projects. Over 2,600 individuals participated in the training.

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WORKLOAD SUMMARY				
	FY 2009		FY 2010	FY 2011
	Target	Result	Target	Target
Enforcement of Wage and Hour Standards				
Compliance Actions	28,790	24,922 (r)	29,986	42,521
Outreach Events	1,826	1,830 (r)	1,936	2,243
Wage Surveys Published		12 (r)	18	20

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

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BUDGET ACTIVITY BY OBJECT CLASS						
(Dollars in Thousands)						
		FY 2009 Comparable	Recovery Act	FY 2010 Estimate	FY 2011 Request	Change FY 11 Req. / FY 10 Est.
11.1	Full-time permanent	98,714	7,151	113,466	119,887	6,421
11.5	Other Personnel Compensation	2,866	75	2,916	2,916	0
11.9	Total personnel compensation	101,580	7,226	116,382	122,803	6,421
12.1	Civilian personnel benefits	28,216	1,753	32,558	34,283	1,725
21.0	Travel and transportation of persons	5,763	1,444	7,720	8,436	716
22.0	Transportation of things	384	0	385	385	0
23.1	Rental payments to GSA	9,114	0	10,828	13,184	2,356
23.2	Rental payments to others	145	0	146	528	382
23.3	Communications, utilities, and miscellaneous charges	2,819	124	3,272	3,272	0
24.0	Printing and reproduction	507	70	593	620	27
25.1	Advisory and assistance services	1,602	862	2,851	3,277	426
25.2	Other services	1,730	1,348	6,117	6,420	303
25.3	Other purchases of goods and services from Government accounts 1/	26,596	501	27,906	27,837	-69
25.5	Research and development contracts	0	0	0	1,000	1,000
25.7	Operation and maintenance of equipment	15,387	1,090	15,105	17,562	2,457
26.0	Supplies and materials	753	55	1,054	1,109	55
31.0	Equipment	1,420	646	2,689	3,524	835
	Total	196,016	15,119	227,606	244,240	16,634
1/Other Purchases of Goods and Services From Government Accounts						
	Working Capital Fund	21,344	0	22,330	22,180	-150
	Services by DOL Agencies	312	0	371	371	0
	GSA Services	17	0	52	70	18
	Services by Other Government Departments	4,002	501	4,039	4,039	0
	DHS Services	921	0	1,114	1,177	63

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CHANGES IN FY 2011

(Dollars in Thousands)

Activity Changes

Built-In

To Provide For:

Costs of pay adjustments \$1,671

Personnel benefits 554

Rental payments to GSA 159

Working Capital Fund -150

Built-Ins Subtotal 2,234

Net Program 14,400

Direct FTE 90

	Estimate	FTE
Base	229,840	1,582
Program Increase	14,400	90