

**FY 2012**

**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, \$240,937,000.*

Note.—A full-year 2011 appropriation for this account was not enacted at the time the budget was prepared; therefore, this account is operating under a continuing resolution (P.L. 111–242, as amended). The amounts included for 2011 reflect the annualized level provided by the continuing resolution

## **WAGE AND HOUR DIVISION**

### **EXPLANATION OF LANGUAGE**

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 2012.

## WAGE AND HOUR DIVISION

<b>AMOUNTS AVAILABLE FOR OBLIGATION</b>						
(Dollars in Thousands)						
	<b>FY 2010 Comparable</b>		<b>FY 2011 Estimate</b>		<b>FY 2012 Request</b>	
	<b>FTE</b>	<b>Amount</b>	<b>FTE</b>	<b>Amount</b>	<b>FTE</b>	<b>Amount</b>
<b>A. Appropriation</b>	<b>1,571</b>	<b>\$225,256</b>	<b>1,571</b>	<b>\$225,256</b>	<b>1,677</b>	<b>\$240,937</b>
Reduction pursuant to (P.L. 111-117) in FY 2010	1,571	\$225,256	1,571	\$225,256	1,677	\$240,937
<i>Subtotal Appropriation</i>	<i>1,571</i>	<i>\$225,256</i>	<i>1,571</i>	<i>\$225,256</i>	<i>1,677</i>	<i>\$240,937</i>
Comparative Transfer From: ESA	11	\$2,350	11	\$2,350	0	\$0
Unobligated Balance Carried Forward - ARRA	94	\$12,780	0	\$0	0	\$0
Reimbursements (CMP's)	0	\$2,800	0	\$2,800	0	\$2,800
H-1B L Fraud Fees	0	\$9,504	0	\$39,150	0	\$39,150
H-2B Fees	0	\$6,000	0	\$4,675	0	\$539
<i>Subtotal</i>	<i>1,676</i>	<i>\$258,690</i>	<i>1,582</i>	<i>\$274,231</i>	<i>1,677</i>	<i>\$283,426</i>
<b>B. Gross Budget Authority</b>	<b>1,676</b>	<b>\$258,690</b>	<b>1,582</b>	<b>\$274,231</b>	<b>1,677</b>	<b>\$283,426</b>
Reimbursements	0	-\$2,800	0	-\$2,800	0	-\$2,800
H-1B L Fraud Fees	0	-\$9,504	0	-\$39,150	0	-\$39,150
H-2B Fees	0	-\$6,000	0	-\$4,675	0	-\$539
Unobligated Balance Carried Forward - ARRA	-94	-\$12,780	0	\$0	0	\$0
<i>Subtotal</i>	<i>-94</i>	<i>-\$31,084</i>	<i>0</i>	<i>-\$46,625</i>	<i>0</i>	<i>-\$42,489</i>
<b>C. Budget Authority Before Committee</b>	<b>1,582</b>	<b>\$227,606</b>	<b>1,582</b>	<b>\$227,606</b>	<b>1,677</b>	<b>\$240,937</b>
Offsetting Collections From:						
Reimbursements (CMP's) Actual	0	\$2,800	0	\$2,800	0	\$2,800
H-1B L Fraud Fees Actual	0	\$8,425	0	\$39,150	0	\$39,150
H-2B Fees Actual	0	\$768	0	\$4,675	0	\$539
Unobligated Balance Carried Forward - ARRA Actual	43	\$6,842	0	\$0	0	\$0
<i>Subtotal</i>	<i>43</i>	<i>\$18,835</i>	<i>0</i>	<i>\$46,625</i>	<i>0</i>	<i>\$42,489</i>
<b>D. Total Budgetary Resources</b>	<b>1,625</b>	<b>\$246,441</b>	<b>1,582</b>	<b>\$274,231</b>	<b>1,677</b>	<b>\$283,426</b>
FTE Lapse and Unobligated Balance Expiring	-87	-\$1,399	0	\$0	0	\$0
<b>E. Total, Estimated Obligations</b>	<b>1,538</b>	<b>\$245,042</b>	<b>1,582</b>	<b>\$274,231</b>	<b>1,677</b>	<b>\$283,426</b>
Note: FY 2010 FTE includes 43 Recovery Act FTE.						

# WAGE AND HOUR DIVISION

## SUMMARY OF CHANGES

(Dollars in Thousands)

	FY 2011 Estimate	FY 2012 Request	Net Change
<b>Budget Authority</b>			
General Funds	\$227,606	\$240,937	+\$13,331
Trust Funds	\$0	\$0	\$0
<b>Total</b>	<b>\$227,606</b>	<b>\$240,937</b>	<b>+\$13,331</b>
<b>Full Time Equivalents</b>			
General Funds	1,582	1,677	95
Trust Funds	0	0	0
<b>Total</b>	<b>1,582</b>	<b>1,677</b>	<b>95</b>

Explanation of Change	FY 2011 Base		Trust Funds		FY 2012 Change General Funds		Total	
	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
<b>Increases:</b>								
<b>A. Built-Ins:</b>								
To Provide For:								
Costs of pay adjustments	1,582	\$116,382	0	\$0	0	\$0	0	\$0
Personnel benefits	0	\$21,676	0	\$0	0	\$0	0	\$0
Employee health benefits	0	\$7,551	0	\$0	0	\$0	0	\$0
Moving allowance	0	\$1,783	0	\$0	0	\$0	0	\$0
One day less of Pay	0	\$0	0	\$0	0	\$0	0	\$0
Federal Employees Compensation Act (FECA)	0	\$1,548	0	\$0	0	\$0	0	\$0
Benefits for former personnel	0	\$0	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	\$137	0	\$137
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
Working Capital Fund	0	\$22,330	0	\$0	0	\$0	0	\$0
Other government accounts (DHS Charges)	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
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	\$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
Grants, subsidies, and contributions	0	\$0	0	\$0	0	\$0	0	\$0
Insurance claims and indemnities	0	\$0	0	\$0	0	\$0	0	\$0

## WAGE AND HOUR DIVISION

Explanation of Change	FY 2011 Base		Trust Funds		FY 2012 Change General Funds		Total	
	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
<b>Built-Ins Subtotal</b>	<b>1,582</b>	<b>+\$227,606</b>	<b>0</b>	<b>\$0</b>	<b>0</b>	<b>+\$137</b>	<b>0</b>	<b>+\$137</b>
<b>B. Programs:</b>								
Increase Inspectors to Detect and Prevent Misclassification	0	\$0	0	\$0	107	\$15,223	107	\$15,223
<b>Programs Subtotal</b>			<b>0</b>	<b>\$0</b>	<b>107</b>	<b>+\$15,223</b>	<b>107</b>	<b>+\$15,223</b>
<b>Total Increase</b>	<b>1,582</b>	<b>+\$227,606</b>	<b>0</b>	<b>\$0</b>	<b>107</b>	<b>+\$15,360</b>	<b>107</b>	<b>+\$15,360</b>
<b>Decreases:</b>								
<b>A. Built-Ins:</b>								
To Provide For:								
<b>Built-Ins Subtotal</b>	<b>0</b>	<b>\$0</b>	<b>0</b>	<b>\$0</b>	<b>0</b>	<b>\$0</b>	<b>0</b>	<b>\$0</b>
<b>B. Programs:</b>								
Decrease Employer Compliance Assistance and Call Center	0	\$0	0	\$0	-12	-\$2,029	-12	-\$2,029
<b>Programs Subtotal</b>			<b>0</b>	<b>\$0</b>	<b>-12</b>	<b>-\$2,029</b>	<b>-12</b>	<b>-\$2,029</b>
<b>Total Decrease</b>	<b>0</b>	<b>\$0</b>	<b>0</b>	<b>\$0</b>	<b>-12</b>	<b>-\$2,029</b>	<b>-12</b>	<b>-\$2,029</b>
<b>Total Change</b>	<b>1,582</b>	<b>+\$227,606</b>	<b>0</b>	<b>\$0</b>	<b>95</b>	<b>+\$13,331</b>	<b>95</b>	<b>+\$13,331</b>

## WAGE AND HOUR DIVISION

<b>SUMMARY BUDGET AUTHORITY AND FTE BY ACTIVITY</b> (Dollars in Thousands)						
	<b>FY 2010 Comparable</b>		<b>FY 2011 Estimate</b>		<b>FY 2012 Request</b>	
	<b>FTE</b>	<b>Amount</b>	<b>FTE</b>	<b>Amount</b>	<b>FTE</b>	<b>Amount</b>
<b>Wage and Hour Division</b>	<b>1,539</b>	<b>227,606</b>	<b>1,582</b>	<b>227,606</b>	<b>1,677</b>	<b>240,937</b>
General Funds	1,539	227,606	1,582	227,606	1,677	240,937
<b>Total</b>	<b>1,539</b>	<b>227,606</b>	<b>1,582</b>	<b>227,606</b>	<b>1,677</b>	<b>240,937</b>
<b>General Funds</b>	<b>1,539</b>	<b>227,606</b>	<b>1,582</b>	<b>227,606</b>	<b>1,677</b>	<b>240,937</b>

NOTE: FY 2010 reflects actual FTE.

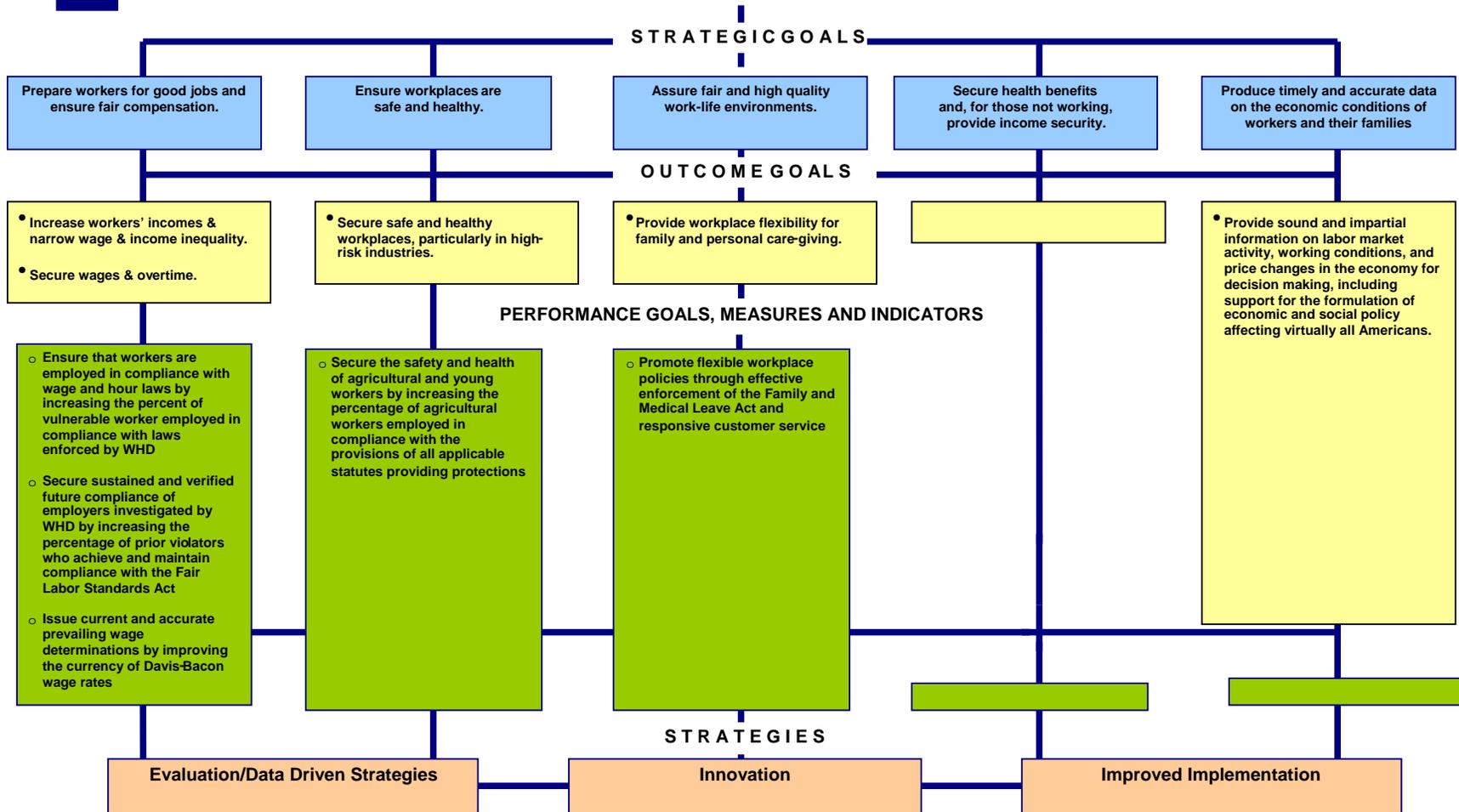
## WAGE AND HOUR DIVISION

<b>BUDGET AUTHORITY BY OBJECT CLASS</b>					
(Dollars in Thousands)					
		<b>FY 2010 Comparable</b>	<b>FY 2011 Estimate</b>	<b>FY 2012 Request</b>	<b>Change FY 12 Req. / FY 10 Comp.</b>
	Full-Time Equivalent				
	Full-time Permanent	1,582	1,582	1,677	95
	Total	1,582	1,582	1,677	95
	Reimbursable	0	0	0	0
	Total Number of Full-Time Permanent Positions	1,582	1,582	1,677	95
	Average ES Salary	\$170,136	\$170,136	\$170,136	\$0
	Average GM/GS Grade	11/6	11	11	-0/6
	Average GM/GS Salary	\$73,566	\$73,566	\$73,566	\$0
	Average Salary of Ungraded Positions	0	0	0	0
11.1	Full-time permanent	113,466	113,466	119,887	6,421
11.3	Other than full-time permanent	0	0	0	0
11.5	Other personnel compensation	2,916	2,916	2,916	0
11.9	<b>Total personnel compensation</b>	<b>116,382</b>	<b>116,382</b>	<b>122,803</b>	<b>6,421</b>
12.1	Civilian personnel benefits	32,558	32,558	34,283	1,725
13.0	Benefits for former personnel	0	0	0	0
21.0	Travel and transportation of persons	7,720	7,720	8,436	716
22.0	Transportation of things	385	385	385	0
23.1	Rental payments to GSA	10,828	10,828	13,569	2,741
23.2	Rental payments to others	146	146	528	382
23.3	Communications, utilities, and miscellaneous charges	3,272	3,272	3,272	0
24.0	Printing and reproduction	593	593	620	27
25.1	Advisory and assistance services	2,851	2,851	3,277	426
25.2	Other services	6,117	6,117	5,346	-771
25.3	Other purchases of goods and services from Government Accounts	27,906	27,906	27,837	-69
25.4	Operation and maintenance of facilities	0	0	0	0
25.5	Research and development contracts	0	0	0	0
25.7	Operation and maintenance of equipment	15,105	15,105	15,948	843
26.0	Supplies and materials	1,054	1,054	1,109	55
31.0	Equipment	2,689	2,689	3,524	835
39.0	Depreciation Expense - Funded - WCF Use Only	0	0	0	0
41.0	Grants, subsidies, and contributions	0	0	0	0
42.0	Insurance claims and indemnities	0	0	0	0
	<b>Total</b>	<b>227,606</b>	<b>227,606</b>	<b>240,937</b>	<b>13,331</b>
	1/Other Purchases of Goods and Services From Government Accounts				
	Working Capital Fund	22,330	22,330	22,330	0
	DHS Services	1,114	1,114	1,114	0
	Services by DOL Agencies	371	371	371	0
	GSA Services	52	52	52	0
	Services by Other Government Departments	4,039	4,039	3,970	-69

# WAGE AND HOUR DIVISION



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



## WAGE AND HOUR DIVISION

TOTAL BUDGETARY RESOURCES												
FY 2010 - 2012												
(Dollars in Thousands)												
	FY 2010 Comparable				FY 2011 Estimate				FY 2012 Request			
	Activity Approp.	Other Approp. <sup>1</sup>	Other Resrcs.2	Total	Activity Approp.	Other Approp 1	Other Resrcs.2	Total	Activity Approp.	Other Approp.1	Other Resrcs. 2	Total
<b>Wage and Hour Division</b>	<b>227,606</b>	<b>0</b>	<b>18,304</b>	<b>245,910</b>	<b>227,606</b>	<b>0</b>	<b>46,625</b>	<b>274,231</b>	<b>240,937</b>	<b>0</b>	<b>42,489</b>	<b>283,426</b>
Wage and Hour Division	227,606	0	2,800	230,406	227,606	0	2,800	230,406	240,937	0	2,800	243,737
Wage Hour H-1B Revenue	0	0	9,504	9,504	0	0	39,150	39,150	0	0	39,150	39,150
Wage Hour H-2B Revenue	0	0	6,000	6,000	0	0	4,675	4,675	0	0	539	539
<b>Total</b>	<b>227,606</b>	<b>0</b>	<b>18,304</b>	<b>245,910</b>	<b>227,606</b>	<b>0</b>	<b>46,625</b>	<b>274,231</b>	<b>240,937</b>	<b>0</b>	<b>42,489</b>	<b>283,426</b>

<sup>1</sup> "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)

<sup>2</sup> "Other Resources" include funds that are available for a budget activity, but not appropriated, such as reimbursements and fees.

## WAGE AND HOUR DIVISION

### PERFORMANCE STRUCTURE

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

## WAGE AND HOUR DIVISION

### AUTHORIZING STATUTES

<b>Public Law / Act</b>	<b>Legislation</b>	<b>Statute No. / US Code</b>	<b>Volume No.</b>	<b>Page No.</b>	<b>Expiration Date</b>
PUB. L. 75-718	Fair Labor Standards Act of 1938, as amended.	29 U.S.C. 201-219			N/A
PUB. L. 74-846	Walsh-Healy Public Contracts Act, as amended.	41 U.S.C. 35-45			N/A
PUB. L. 90-321	Consumer Credit Protection Act (Title III – Restriction on Garnishment).	15 U.S.C. 1671-1677			N/A
PUB. L. 87-581	Contract Work Hours and Safety Standards Act, as amended.	40 U.S.C. 327-330			N/A
PUB. L. 89-286	McNamara-O’Hara Service Contract Act, as amended.	41 U.S.C. 351-357			N/A
PUB. L. 74-403	Davis-Bacon Act, as amended and related acts.	40 U.S.C. , Chapter 31, Subpart IV			N/A
PUB. L. 97-470	Migrant and Seasonal Agricultural Worker Protection Act.	29 U.S.C. 1801-1872			N/A
PUB. L. 99-603	Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986.	8 U.S.C. 1324, 8 U.S.C. 1101(a), 1184(c), 1824, 29 U.S.C. 1802, 1813(a)			N/A
PUB. L. 100-347	Employee Polygraph Protection Act of 1988.	29 U.S.C. 2001 et seq			N/A
PUB. L. 101-238	Immigration Nursing Relief Act of 1989.	8 U.S.C. 1101, et seq.			N/A
PUB. L. 101-649	Immigration Act of 1990.	8 U.S.C. 1101, et seq.			N/A
PUB. L. 103-3	Family and Medical Leave Act of 1993.	29 U.S.C. 2601, et. Seq.			N/A
PUB. L. 105-277	American Competitiveness and Workforce Improvement Act (ACWIA), Title IV of the Omnibus Consolidated and	414(b) and (c)			N/A

## WAGE AND HOUR DIVISION

	Emergency Supplemental Appropriation Act.				
PUB. L. 108-447	L-1 Visa and H-1B Visa Reform Act, Title IV of the Consolidated Appropriations Act, 2005.	401-430			N/A
PUB. L. 89-209	National Foundation for the Arts and Humanities Act, Sections 5(i) and 7(g).	20 U.S.C. 954 (i) and 956 (g)			N/A

## WAGE AND HOUR DIVISION

<b>APPROPRIATION HISTORY</b>					
(Dollars in Thousands)					
	<b>Budget Estimates to Congress</b>	<b>House Allowance</b>	<b>Senate Allowance</b>	<b>Appropriations</b>	<b>FTE</b>
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	0	0	0	227,606	1,582
2011	244,240	0	0	0	1,672
2012	240,937	0	0	0	1,677

NOTE: FY 2009 and FY 2010 amounts reflect reallocated funds from the dissolution of ESA's Program Direction and Support Office.

NOTE: A full-year 2011 appropriation for this account was not enacted at the time the budget was prepared.

# WAGE AND HOUR DIVISION

## OVERVIEW

### Introduction

The Wage and Hour Division (WHD) is authorized under 29 U.S.C. 207, *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. Collectively, these labor standards cover most private, state, and local government employment. They protect over 135,000,000 workers in more than 7,300,000 establishments throughout the United States and its territories. These labor laws range from some of the earliest labor protections passed by Congress to some of the most recent. WHD's mission is to *"promote and achieve compliance with labor standards to protect and enhance the welfare of the Nation's workforce."* The WHD mission and its performance outcomes directly support the Secretary's vision of *good jobs for everyone.*

WHD is comprised of a nationwide staff of investigators, supervisors, analysts, technicians, and administrative employees who share responsibilities for enforcing the minimum wage, overtime, and child labor provisions of the Fair Labor Standards Act (FLSA); the prevailing wage requirements and wage determination provisions of the Davis-Bacon and Related Acts (DBRA) and the McNamara-O'Hara Service Contract Act (SCA); the wages and working conditions under the Migrant and Seasonal Agricultural Worker Protection Act (MSPA); the job protections of the Family and Medical Leave Act (FMLA); and the Employee Polygraph Protection Act (EPPA). WHD 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).

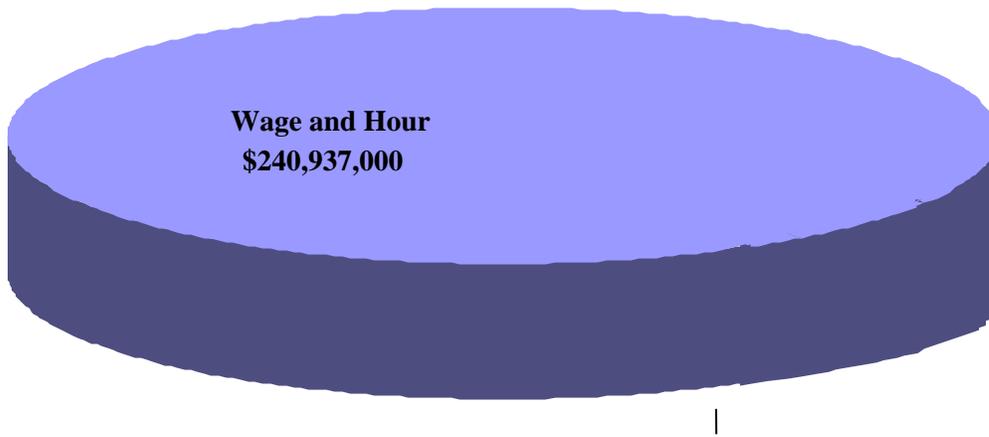
Compliance with this Nation's wage and workplace standards ensures the most basic protections for workers in the workplace and the greatest opportunities for them to advance. In the absence of these minimum labor standards too many workers would be poorly positioned to improve their economic status. Young workers and farmworkers would be without safe and healthy working conditions. Contingent workers would be improperly relegated to independent contractor status, and the beneficiary of their labor would be able to avoid responsibility for providing a fair wage and safe workplace. 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.

# WAGE AND HOUR DIVISION

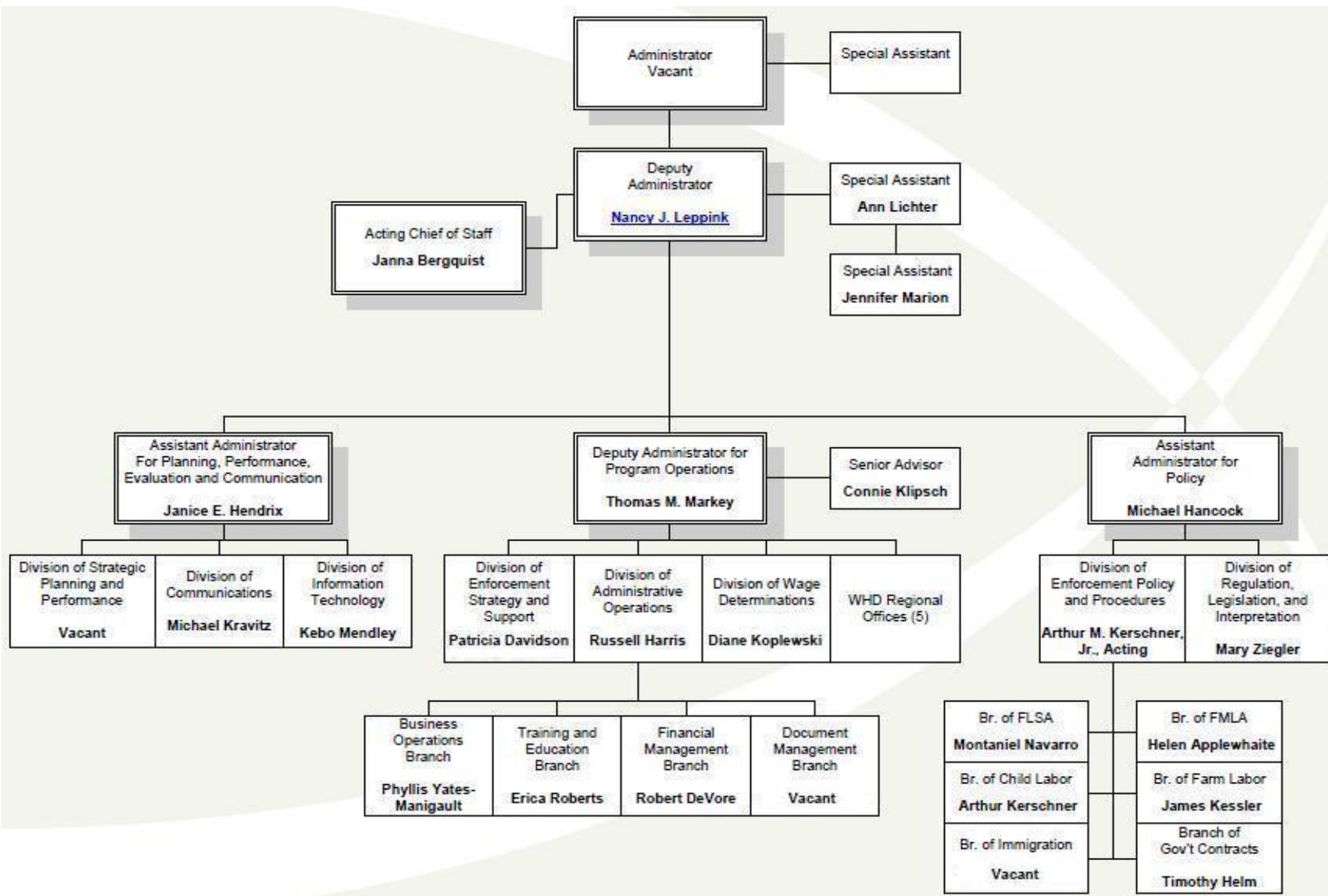
## Cost Model

Total new budget authority requested for Wage and Hour Division FY 2012 is \$240,937,000.

**FY 2012 Budget Request**  
**Wage and Hour Budget Request \$240,937,000**  
**(Dollars in Thousands)**



# WAGE AND HOUR DIVISION



## WAGE AND HOUR DIVISION

<b>BUDGET AUTHORITY BEFORE THE COMMITTEE</b>				
(Dollars in Thousands)				
	<b>FY 2010 Comparable</b>	<b>FY 2011 Estimate</b>	<b>FY 2012 Request</b>	<b>Diff. FY 12 Req. / FY 10 Comp.</b>
Budget Authority	227,606	227,606	240,937	13,331
FTE	1,539	1,582	1,677	138

NOTE: FY 2010 reflects actual FTE of which 43 were Recovery Act. Authorized FTE for FY 2010 was 1,582.

### **Introduction**

The labor standards statutes, for which WHD is responsible, provide basic protections for all workers in this country. Although they differ in scope, all of the statutes enforced by WHD are intended to protect and to promote the welfare of the nation's workforce, to provide opportunities for advancement, and to ensure fair compensation for work performed. The Fair Labor Standards Act (FLSA) minimum wage provisions and the prevailing wage laws provide a floor for the payment of fair wages, while the FLSA overtime provisions are intended to broaden work opportunities and promote employment. The Migrant and Seasonal Agricultural Protection Act and the immigration programs establish working conditions intended both to protect the wages and the safety and health of vulnerable workers and to ensure that the local labor force is not displaced by lower paid foreign or migrant labor. The prevailing wage programs provide protections to local middle-class workers who may be disadvantaged by competition from outside labor who 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*. Vulnerable workers are those who are at risk of exploitation at work, such as workers who are reluctant to complain when they are subject to violations for fear of retaliation. WHD's efforts to increase compliance in the agricultural industry and among agricultural and young worker populations to whom additional safety and health standards apply specifically contribute to this outcome.

Vulnerable workers also include those that are employed in industries with subcontracting, independent contracting, and other contingent workforce characteristics. Employers often fail to classify such workers as employees leaving them subject to unfair treatment and disparate wages. 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 outcome effort to *ensure fair compensation*.

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

The multi-billion dollar Federal investment in infrastructure construction through the Recovery Act will continue to generate enforcement workloads for WHD in FY 2012. The emphasis on prevailing wage enforcement will *help middle-class families*, who will receive not just a minimum wage but a prevailing wage, *remain in the middle-class*. In addition, the construction industry is among several that are characterized by the prevalent use of independent contractors.

WHD plans to establish a compliance baseline in this industry in the summer of 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, narrow wage and income inequality and promote fair workplaces where every worker's contribution is respected*.

The FY 2010 Omnibus Appropriation amended section 426(b) of division J of the Consolidated Appropriations Act 2005 (Public Law 108-447) authorizing 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*.

WHD has established a goal of increasing compliance among prior violators. WHD will evaluate its success in reducing recidivism in the priority industries in FY 2012.

**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

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service to workers and others who allege wage and hour violations support 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 2012 Agency Request Level, WHD will increase its FTE level to 1,677. Approximately 62 percent or 1,032 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 services and other entities that share the goals of improving the lives of working men, women, and children.

### Worker Protection Strategies

In FY 2012, WHD will continue to employ resource-leveraging strategies and technologies to affect compliance with the labor laws within its enforcement jurisdiction. The agency will continue to use its directed investigations to increase WHD presence in high risk industries, *i.e.*, those industries with high minimum wage and overtime violations and among vulnerable worker populations where complaints are not common. 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 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

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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>
2007	\$170,220	1,200
2008	\$175,658	1,208
2009	\$193,092	1,283
2010	\$227,606	1,582
2011	\$0	0

NOTE: A full-year 2011 appropriation for this account was not enacted at the time the budget was prepared.

### FY 2012

For FY 2012, WHD is requesting a total of \$240,937,000 and 1,677 FTE. This funding includes an inflationary increase of \$137,000 and a program increase totaling \$15,223,000 and 107 FTE partially offset by a program decrease for Employer Compliance Assistance and Call Center of \$2,029,000 and 12 FTE. Total funding will be distributed across the agency's activities to pursue its performance outcomes which directly support the strategic vision for *good jobs for everyone*. WHD proposes two program increase requests that contribute directly to the Departmental budget themes.

To support the Department's theme of expanding efforts to deter and detect worker misclassification WHD proposes an increase of 107 FTE and \$15,223,000 as part of an initiative to detect and deter the inappropriate misclassification of employees as independent contractors and strengthen and coordinate Federal and State efforts to enforce labor violations arising from misclassification. Individuals wrongly classified as independent contractors are denied access to critical benefits and protections -- such as family and medical leave, overtime, civil rights laws, and unemployment insurance -- to which they may be entitled as regular employees. Worker misclassification also generates substantial losses to the Treasury and the Social Security, Medicare and Unemployment Insurance Trust Funds. 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, such as the National Employment Law Project and the

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Brennan Center, by researchers on behalf of state governments, and by 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.

To be effective in securing compliance on behalf of the most vulnerable and often misclassified workers, WHD must increase the number and percentage of its directed investigations. The agency must ensure a noticeable and highly visible presence in the high risk industries in which these workers are employed. Recent studies<sup>3[1]</sup> demonstrate a clear deterrent effect in industries within the same geographical area when the agency conducts directed investigation initiatives. Directed industry initiatives have a ripple effect on employers within the same industry in succeeding years.

This request supports greater enforcement in industries where the misclassification of employees as independent contractors is prevalent. More and more industries are moving to a fissured business model in which the beneficiaries of the labor are distanced by multiple layers from the individuals who actually perform the labor. Rather than add workers to their permanent payrolls, companies are relying on various contingent workforce solutions to produce goods and services. Moreover, as WHD develops additional targeting criteria such as misclassifying independent contractors, the agency will engage in more directed investigations of those persistent violators.

The requested funding level will allow WHD to employ approximately 1,200 investigator FTE - approximately 15 percent more than employed at the FY 2010 level. The sum total increase in staffing will enable the agency to continue to provide customer service to complainants, to expand complaint investigations to address industry-wide or corporate-wide compliance issues and to conduct a higher number and percentage of directed investigations targeted at misclassification issues.

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

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<sup>3[1]</sup> Weil, David. *Improving Workplace Conditions through Strategic Enforcement: A Report to the Wage and Hour Division*. (2010)

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WHD's budget request also includes \$39,150,000 in Fraud Prevention and Detection Account fees to be used for enforcement programs and activities described in Section 416(b) of Division J of the Consolidated Appropriations Act, 2005 (Public Law 108-447) \$539,000 in carryover H-2B fees, 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.*"

### **FY 2011**

Figures shown for FY 2011 reflect the annualized Continuing Resolution level as a full-year appropriation has not been enacted at the time the budget was produced. Since this level is based on the FY 2010 enacted level, operations under a full-year Continuing Resolution would be consistent with those described in the FY 2010 section.

### **FY 2010**

The FY 2010 Omnibus Bill provided WHD with \$227,606,000 and 1,582 FTE. This funding included 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, which is included in the total.

WHD achieved mixed results in meeting its performance targets. WHD sought to establish a baseline for the percentage of H-2A agricultural workers who are employed in compliance with the laws administered and enforced by WHD. Preliminary analysis of enforcement data show that 78 percent of employers surveyed so far were not in compliance with the H-2A regulations. This effort will continue in FY 2011.

WHD established a target of 85 percent for the percentage of workers with disabilities who are employed in compliance with the laws administered and enforced by WHD including the provisions of Section 14(c) of the FLSA. WHD did not meet this target. Only 57 percent of such workers were found to be employed in compliance. WHD is still analyzing component parts of the overall initiative, including whether a self-audit conducted prior to the issuance of certification prompts greater compliance. The agency is developing a five-year plan to promote compliance with this important provision. Elements of the plan will include targeted enforcement, outreach to the Section 14 (C) community and training WHD investigators on enforcement techniques. WHD will continue its enforcement presence in the industry in FY 2011 and FY 2012. The agency will also implement any compliance strategies that become apparent after a review of the evaluation results.

WHD is establishing a baseline for the percent of violators in the janitorial industry that remain in compliance with laws administered and enforced by WHD. WHD completed the investigative work on 194 randomly selected janitorial firms. Preliminary results indicate a compliance rate of approximately 43 percent.

WHD sought to establish a baseline for the number of contractors in compliance with federally-assisted or funded projects of agencies that traditionally conducted their own Davis-Bacon Act

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compliance investigations. WHD targeted 49 federally funded or assisted contracts across a broad spectrum of federal agencies. In total, 660 contractors were investigated on the 49 projects. The actual compliance rate established was 45 percent.

WHD established a target to increase to 65 percent, building, heavy, and highway Davis-Bacon wage rates based on survey data that are three years old or less. WHD exceeded the target with 75 percent of wage rates being based on survey data less than three years old.

WHD recovered more than \$176,000,000 in back wages for nearly 210,000 workers while completing nearly 26,500 compliance actions.

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<b>DETAILED WORKLOAD AND PERFORMANCE</b>				
	<b>FY 2010 Enacted</b>		<b>FY 2011 Estimate</b>	<b>FY 2012 Request</b>
	<b>Target</b>	<b>Result</b>	<b>Target</b>	<b>Target</b>
<b>Wage and Hour Division</b>				
<b>Strategic Goal 1 - Prepare Workers for Good Jobs and ensure fair compensation</b>	--	--	--	--
<b>Outcome Goal 1.1- Increase workers' incomes and narrowing wage and income inequality</b>	--	--	--	--
Percent of Davis-Bacon wage rates that are three years old or less (Bldg. & Heavy Construction)	.00% (base)	72.00%	75.00%	80.00%
Average age of Davis-Bacon wage rates excluding residential (in months)	45	47	40	12
Number of Davis-Bacon wage surveys published	39	41	26	25
	--	--	--	--
<b>Strategic Goal 1 - Prepare Workers for Good Jobs and ensure fair compensations</b>	--	--	--	--
<b>Outcome Goal 1.5 - Secure wages and overtime</b>	--	--	--	--
Percent of firms in the janitorial industry in compliance with applicable statutes	--	43.00%	--	--
Percent of construction companies in compliance with applicable statutes	--	--	(base)	--
Percent of firms in the hotel/motel industry in compliance with applicable statutes	--	--	--	(base)
Percent of directed investigations (exclude conciliations)	--	27.00%	32.00%	35.00%
Percent of full investigations (exclude conciliations)	--	69.50%	71.50%	73.00%
Number of compliance actions concluded	29,268	26,486	31,897	38,515
Number of outreach events	1,928	2,020	2,005	1,990
	--	--	--	--
<b>Strategic Goal 2 - Ensure Workplaces are Safe and Healthy</b>	--	--	--	--
<b>Outcome Goal 2.1 - Secure safe and healthy workplaces, particularly in high-risk industries</b>	--	--	--	--
Percent of H-2A certified employers in compliance with applicable statutes	--	21.00% (e)	25.00%	30.00%
Percent of enforcement hours in agricultural industry	7.00%	6.30%	7.00%	7.50%
Percent of investigations in which child labor compliance is examined (exclude conciliations)	--	92.80%	95.00%	96.00%
	--	--	--	--
<b>Strategic Goal 3 - Assure fair and high quality work-life environments</b>	--	--	--	--
<b>Outcome Goal 3.2 - Provide workplace flexibility for family and personal care-giving</b>	--	--	--	--
Percent of FMLA incoming complaints resolved within the fiscal year	73.50%	62.24%	74.00%	75.00%
Number of FMLA outreach hours	9,046	--	9,245	9,361
Percent of FMLA complainants who rate WHD's service as "satisfied" or "very satisfied"	--	--	--	--

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

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

Note: WHD's FY 2010 baseline included H-2A certified employers who were certified under different regulatory requirements. To ensure consistency in measuring, WHD will reestablish a baseline under the existing H-2A regulations in FY 2011. Targets for FY 2011 and FY 2012 may not be comparable to the FY 2010 levels of compliance.

### **Workload Summary**

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 and outcome goals, WHD has realigned its five 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.

WHD's ability to achieve compliance on behalf of workers in this county is dependent on a balance of enforcement, both complaint and directed investigations; outreach to workers, worker advocates, and community organizations; compliance assistance to employers; and the promulgation of regulations that promote compliant behaviors. Conducting investigations, providing outreach and education, and issuing regulations are essential activities but measuring the number of investigations conducted and the number of outreach events held will not provide a meaningful measure of how successful the agency is in achieving compliance, *i.e.*, changing the behavior of individual employers and changing the behavior of entire industries. To this end, WHD will use statistical sampling techniques and social science research methods to determine the baseline levels of compliance within industries and to assess the extent to which the agency is successful in applying the balance of these strategies to promote and achieve compliance.

WHD's methodology for measuring compliance is an investigation-based evaluation of randomly-selected employers within high-risk industries. The results of the evaluation investigations provide WHD with a baseline measure of compliance as well as information on the nature of violations within the targeted industry. The evaluation also informs WHD on the strategies that are most likely to be successful in changing the behavior of employers within the industry, be it more targeted enforcement, increased litigation, greater penalties, or more effective education. The implementation of various strategies must be given a period of time in which to affect behaviors; therefore, WHD will measure the change in behavior by re-evaluating

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the targeted industry compliance every two years. This staggered approach also allows WHD to concentrate its efforts on more than one high-risk industry.

**Worker Protections Strategies:** WHD will employ resource-leveraging strategies and technologies to affect compliance with the labor laws within its enforcement jurisdiction. These strategies incorporate elements of evaluation, innovation, and improved implementation. 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 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 arrangement must benefit 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 and to deter violations among employers in a given geographic area.

**Industry-Wide Enforcement:** WHD's directed investigations will be concentrated in high risk fissured industries<sup>4</sup> that employ vulnerable workers or focused on program areas in which workers are at a higher risk of exploitation. High risk industries include the agricultural, janitorial, construction, and hotel/motel industries. Specific program areas include the FLSA Section 14(c) program in which employers are certified to employ disabled workers at wages below the Federal minimum wage. WHD will also conduct directed investigations in industries in which young workers are employed and at risk of injury. WHD will examine the employment relationship and industry structures in determining appropriate strategies for affecting

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<sup>4</sup> Fissured industries are those sectors that increasingly rely on a wide variety of organizational methods that have redefined employment relationships: subcontracting, third-party management, franchising, independent contracting, and other contractual forms that alter who is the employer of record or make the worker-employer tie tenuous and less transparent. Weil, David. *Improving Workplace Conditions through Strategic Enforcement: A Report to the Wage and Hour Division*. (2010)

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compliance. Strategies will be developed around the business entities rather than individual workplaces. The agency will hold joint employers liable for violations and expand the use of tools, such as the “hot goods” provision of the FLSA to encourage industry-wide compliance.

**Strategic Complaint Handling:** 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. In 2010, WHD launched a multi-lingual public awareness campaign titled *We Can Help* to reach those vulnerable workers who are so often reluctant to report violations and fearful of exercising their rights to minimum wage and overtime pay. The campaign is designed to build awareness about WHD and its ability to remedy violations on behalf of workers. WHD will use radio and television spots, print materials, and partnerships with worker and community-based organizations to increase public awareness of worker rights and remedies. WHD will also approach its complaint workload in a more strategic manner by applying more comprehensive investigations techniques and increased penalties in industries that traditionally have higher violations.

**Increased Deterrence and Sustained System-Wide Compliance:** WHD enforcement activities, both complaint and directed, will be oriented towards ensuring sustained employer compliance by targeting the most persistent violators, by pursuing corporate-wide compliance strategies, and by imposing penalties and sanctions as appropriate to maximize the deterrent effect of the agency’s enforcement program. Greater transparency of WHD investigations and the consequences of violating the law will also help deter future violations. Increased monitoring arrangements, enhanced litigation, and greater attention to joint liability and responsibility among employers will promote system-wide behavioral changes within industries.

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

Current recordkeeping regulations require covered employers to keep specified payroll records and other information, but do not require that such information or other information regarding a worker’s employment or exemption status be disclosed to the worker.

**Increasing workers’ incomes and narrowing wage and income inequality:** Current and accurate prevailing wage rates provide a level of income above the federal minimum wage in most instances. Workers in traditional low-wage industries, such as residential construction, janitorial, and guard services; receive the benefit of a prevailing wage when they are employed on federally-funded or assisted contracts. Efforts to boost incomes and secure “good-paying jobs” through federal stimulus activities are successful only if the wages issued by the Department on behalf of workers are accurate, up-to-date, and truly reflective of what is prevailing in the locality. WHD’s wage determination programs support the Department’s efforts to *increase workers’ incomes and help narrow income inequalities.*

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WHD has revised its Davis-Bacon wage survey processes to improve the quality and timeliness of wage determinations published by the agency. WHD, for example, is now utilizing state prevailing wage determinations as the basis for issuing more current highway wage rates. This change, coupled with changes in the survey process to eliminate unnecessary down time, positions the agency to complete pipeline surveys in FY 2011. WHD can then concentrate more heavily on updating the most dated building and heavy wage rates in FY 2012. New surveys will result in current non-union wage rates while timely updating of collectively bargained wage rates will result in the most current union wage rates. WHD should update approximately 714,000 wage rates by FY 2012, which will ensure that 84 percent of the total wage rates are current as of three years or less. WHD will continue to identify efficiencies in its Davis-Bacon wage survey program to improve both the accuracy and timeliness of wage determinations by evaluating the wage survey strategies and by closely monitoring the average age of existing wage rates. With the changes in the survey processes and closer monitoring, WHD expects little or no deviation in its survey outputs or wage rate productivity at the various funding levels.

**Securing wages and overtime:** WHD concentrates its directed enforcement program towards increasing the percent of vulnerable workers employed in compliance with the laws that the agency enforces and towards *securing the wages and overtime* compensation that all workers are due. Vulnerable workers include workers who are reluctant to approach any Federal agency for any reason and who often will not file a complaint when their rights have been violated. They are frequently employed in fissured industries where the employment relationship is splintered and the beneficiary of the labor is distanced from the workers who actually provide the labor. These industries typically have 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. WHD is requesting an additional 107 FTE and \$15,223,000 to increase the number of investigators dedicated to misclassification related issues. Vulnerable workers also include young workers, agricultural workers, disabled workers, and those workers employed in statutory programs for which there is no private right of action.

To be effective in securing compliance on behalf of the most vulnerable workers, WHD must increase the number and percentage of its directed investigations. The agency must ensure a noticeable and highly visible presence in the high risk industries in which these workers are employed. Recent studies<sup>5</sup> demonstrate a clear deterrent effect in industries within the same geographical area when the agency conducts directed investigation initiatives. Directed industry initiatives have a ripple effect on employers within the same industry in succeeding years.

Moreover, WHD must manage its complaint investigations strategically to broaden the impact of the investigations and to address compliance problems on an industry-wide basis. Funding for FY 2012, including the resources made available from the Fraud Prevention and Detection Account, will enable WHD to increase the number of field investigators. Overtime violations continue to be the most common cause of employee underpayments. Expanded investigations of overtime complaints, particularly in high-risk industries will allow WHD to pursue corporate and enterprise-wide settlements and injunctions when WHD investigations identifies patterns of “off-

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<sup>5</sup> Weil, David. *Improving Workplace Conditions through Strategic Enforcement: A Report to the Wage and Hour Division*. (2010)

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the-clock” and “misclassified executive, administrative, and professional” employees, which represent the primary reason for overtime violations. The requested funding level (including investigators financed with from the H-1B Fraud Prevention and Detection Account) will allow WHD to employ approximately 1,200 investigator FTE - approximately 15 percent more than employed at the FY 2010 level. The sum total increase in staffing will enable the agency to continue to provide customer service to complainants, to expand complaint investigations to address industry-wide or corporate-wide compliance issues, and to conduct a higher number and percentage of directed investigations. As a result, WHD would expect to see an increase of nearly 12,000 compliance actions over the FY 2010 estimates by the end of FY 2012. The increase can also be attributed to newly hired investigators becoming fully productive and to the additional staff. The two actions combined will permit a robust directed enforcement program.

In addition to the agency’s efforts to secure compliance on behalf of vulnerable workers, WHD’s FY 2012 resources will be used to implement strategies for deterring recidivist behavior among employers. WHD has established, as a high priority, a goal of increasing compliance among prior violators. Obtaining corporate-wide compliance, securing future compliance, and deterring future violations in industry sectors and among employers also support the Department’s outcome goal of *securing wages and overtime*. At the Agency Request level, WHD plans to increase the percentage of full investigations conducted to 73 percent of all investigations concluded during a fiscal year. Full investigations are more resource intensive than other forms of WHD interventions; however, they provide the best opportunity to correct the widest range of employer violations because investigators check compliance with all applicable statutes. Moreover, full investigation procedures provide investigators with a more direct means to instruct the investigated employer on ways to maintain compliance.

WHD’s ability to provide timely and responsive service to workers and others who allege wage and hour violations provides additional opportunities to further the Department’s goal of *securing wages and overtime*. The agency’s complaint handling 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, such as Web-based applications and improve data systems, to improve customer service, transparency, and openness. The proposed improvements would include violation data integrated with geographic mapping functions to allow the public to visually identify locations and businesses with violation histories. The graphical representation of investigation results would increase transparency and inform local communities of employers who violate labor laws. In addition, WHD proposes to develop a system of on-line complaint tracking, similar to that used by other agencies, to inform complainants on where their complaint stand in the district office queue. This will help individuals make informed decisions about whether to pursue their claim with WHD or use alternatives avenues, such as a State agency or the private bar, to secure their back wages.

To encourage workers and community organizations to better identify and report alleged workplace violations, WHD will use various outreach strategies to increase the agency’s visibility in vulnerable worker populations and among worker advocate organizations and to give voice to workers in the workplace. The agency’s *We Can Help* campaign is intended to reduce the perceived risk of filing a WHD complaint and to emphasize the benefits of exercising one’s

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rights and pursuing one's remedies. This campaign places a special focus on reaching employees in the high risk fissured industries as construction, janitorial work, hotel/motel services, food services and home health care. With the advent of this campaign, WHD will increase its outreach activities in FY 2012, many of which will be geared directly to workers and their advocates. WHD will, at the same time, increase its compliance assistance to employers, particularly those in the high-risk targeted industries. An aggressive awareness campaign to workers, through worker advocates, community organizations, and unions will help engage workers in preventing and identifying violations.

**Secure safe and healthy workplaces, particularly in high-risk industries:** WHD's efforts to increase compliance in the agricultural industry and among agricultural and young worker populations directly contribute to the Department's strategic goal of *securing safe and healthy workplaces*. For example, the Fair Labor Standards Act child labor provisions ensure the safe employment of young workers as well as encourage their educational endeavors and provide a path to future employment. The Migrant and Seasonal Agricultural Protection Act, the Immigration and Nationality Act's H-2A program, and the Field Sanitation Provisions of the Occupational Safety and Health Act (OSHAct) provide protections for agricultural workers by providing standards regulating the safe transportation of migrant and seasonal workers, ensuring safe and healthy housing for farmworkers, and establishing standards for drinking water, toilets, and hand-washing for field workers.

The FLSA child labor provisions are designed to protect the safety and health of young workers by restricting the types of jobs they perform and limiting the number of hours and times of day that they may work. WHD employs a number of key strategies to promote compliance with the child labor laws. The agency provides education to teens, parents, educators and employers on the law's requirements. WHD offices work in collaboration with their State counterparts and other Federal agencies to promote consistent strategies for keeping young workers safe in the workplace. WHD local offices target industries and workplace in which young workers are most likely to be injured or killed on the job, and each WHD full and limited investigation includes a requirement to verify the employer's compliance with the child labor laws. As WHD increases its full and directed investigations, the number of investigations in which WHD examines child labor compliance will increase. This provides the agency with additional opportunities to protect the welfare of young workers before they are injured or killed on the job. WHD's efforts in this regard can be demonstrated by the increase in the number of investigations in which WHD investigators examine child labor compliance and by the corresponding percent of case time ascribed to child labor enforcement. At the request level, the number of investigations increases by approximately 10,000 over the estimated number for FY 2010.

Agricultural labor remains among the most dangerous and difficult of jobs performed in this country. Domestic and temporary non-immigrant agricultural workers endure low wages, unsafe housing and transportation, and harsh working conditions. MSPA protects migrant and seasonal agricultural workers by establishing employment standards related to wages, housing, transportation, disclosures, and recordkeeping. MSPA also requires farm labor contractors and farm labor contractor employees to register with the Department and to obtain special authorization before housing, transporting, or driving covered workers. The H-2A non-immigrant guestworker program establishes standards related to recruitment, wages, housing,

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transportation, and recordkeeping for employers of temporary non-immigrant agricultural workers admitted to the country under section 218 of the Immigration and Nationality Act. The OSHAct's Field Sanitation provisions establish minimum standards for covered agricultural settings for toilets, potable drinking water, hand-washing facilities, and for providing information regarding good hygiene practices.

On February 12, 2010, the Department published final rules implementing changes to the H-2A program that significantly strengthened workers protections and provided enhanced enforcement tools to promote compliance with applicable agriculture labor standards. In FY 2012, to assess compliance with the H-2A program, WHD will conduct directed investigations of H-2A employers to determine their compliance with all applicable agricultural labor standards statutes. This increase in WHD enforcement will ensure a broadened approach to compliance with all agricultural standards. Education and outreach to employers will concentrate on child labor requirements, H-2A regulatory changes, joint employer responsibilities, and increased awareness of non-compliant farm labor contractors. Public awareness and outreach to workers will be designed to increase WHD visibility among agricultural worker populations, including with worker advocacy organizations. Penalties, sanctions, revocation, hot goods, debarment, and similar strategies will be used as appropriate to ensure future compliance among violators and to deter violations among other agricultural employers. Media releases will be used to inform the public of WHD agricultural laws, compliance actions taken, and penalties assessed.

**Provide workplace flexibility for family and personal care-giving:** The Family and Medical Leave Act (FMLA) provides job-protected leave for workers who must take time off work to attend to their own or their family's medical needs. WHD is responsible for ensuring that eligible workers covered under FMLA are afforded the protections specified in the law. Through this program, WHD contributes to the Department's goal of *providing workplace flexibility for family and personal care-giving*.

FMLA is primarily a complaint-based program under which workers seek the agency's assistance in securing their job-protected leave, in ensuring that their benefits are maintained or in restoring them to the same or an equivalent position when their family leave has been exhausted. WHD will pursue two key strategies in this program area. The agency will properly screen incoming complaints to triage those that need immediate attention. This will allow WHD technicians and investigators to provide timely and responsive service to workers who allege FMLA violations. WHD will also boost the effectiveness of its outreach in this program area by improving the accuracy and professionalism of advice and information provided to the public and providing greater access to updated materials through its Web site. WHD will measure customers' satisfaction with the agency's FMLA services to demonstrate progress in promoting workplace flexibility. WHD's ability to resolve incoming FMLA complaints in a timely fashion and its ability to respond to requests for information is dependent on the both the number of and technical skill of its staff. With respect to FMLA, WHD will need to be prepared to respond to the expected increase in complaints generated by new legislation, specifically the National Defense Authorization Act and the Airline Flight Crew Technical Corrections Act. FMLA complaints typically involve individuals who are losing their jobs or being denied critical leave. They are time sensitive, so WHD must likewise be timely in protecting the rights of these individuals who are dealing with their own or their family's serious health conditions.

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<b>BUDGET ACTIVITY BY OBJECT CLASS</b>					
(Dollars in Thousands)					
		<b>FY 2010 Comparable</b>	<b>FY 2011 Estimate</b>	<b>FY 2012 Request</b>	<b>Change FY 12 Req. / FY 10 Comp.</b>
11.1	Full-time permanent	113,466	113,466	119,887	6,421
11.3	Other than full-time permanent	0	0	0	0
11.5	Other personnel compensation	2,916	2,916	2,916	0
11.9	<b>Total personnel compensation</b>	<b>116,382</b>	<b>116,382</b>	<b>122,803</b>	<b>6,421</b>
12.1	Civilian personnel benefits	32,558	32,558	34,283	1,725
13.0	Benefits for former personnel	0	0	0	0
21.0	Travel and transportation of persons	7,720	7,720	8,436	716
22.0	Transportation of things	385	385	385	0
23.1	Rental payments to GSA	10,828	10,828	13,569	2,741
23.2	Rental payments to others	146	146	528	382
23.3	Communications, utilities, and miscellaneous charges	3,272	3,272	3,272	0
24.0	Printing and reproduction	593	593	620	27
25.1	Advisory and assistance services	2,851	2,851	3,277	426
25.2	Other services	6,117	6,117	5,346	-771
25.3	Other purchases of goods and services from Government Accounts	27,906	27,906	27,837	-69
25.4	Operation and maintenance of facilities	0	0	0	0
25.5	Research and development contracts	0	0	0	0
25.7	Operation and maintenance of equipment	15,105	15,105	15,948	843
26.0	Supplies and materials	1,054	1,054	1,109	55
31.0	Equipment	2,689	2,689	3,524	835
41.0	Grants, subsidies, and contributions	0	0	0	0
42.0	Insurance claims and indemnities	0	0	0	0
	<b>Total</b>	<b>227,606</b>	<b>227,606</b>	<b>240,937</b>	<b>13,331</b>
1/Other Purchases of Goods and Services From Government Accounts					
	Working Capital Fund	22,330	22,330	22,330	0
	DHS Services	1,114	1,114	1,114	0
	Services by DOL Agencies	371	371	371	0
	GSA Services	52	52	52	0
	Services by Other Government Departments	4,039	4,039	3,970	-69

# WAGE AND HOUR DIVISION

## CHANGES IN FY 2012

(Dollars in Thousands)

### Activity Changes

#### Built-In

To Provide For:

Costs of pay adjustments		\$0
Personnel benefits		0
Employee health benefits		0
Moving allowance		0
One day less of Pay		0
Federal Employees Compensation Act (FECA)		0
Benefits for former personnel		0
Travel and transportation of persons		0
Transportation of things		0
Rental payments to GSA	137	
All Other Rental		0
Communications, utilities, and miscellaneous charges		0
Printing and reproduction		0
Advisory and assistance services		0
Other services		0
Working Capital Fund		0
Other government accounts (DHS Charges)		0
Other purchases of goods and services from Government accounts		0
Research & Development Contracts		0
Operation and maintenance of facilities		0
Operation and maintenance of equipment		0
Supplies and materials		0
Equipment		0
Grants, subsidies, and contributions		0
Insurance claims and indemnities		0

**Built-Ins Subtotal** **\$137**

**Net Program** **\$13,194**

**Direct FTE** **95**

	Estimate	FTE
<b>Base</b>	<b>\$227,743</b>	<b>1,582</b>
<b>Program Decrease</b>	<b>-\$2,029</b>	<b>-12</b>
<b>Program Increase</b>	<b>\$15,223</b>	<b>107</b>