

FY 2021

CONGRESSIONAL BUDGET JUSTIFICATION

WAGE AND HOUR DIVISION

This page is intentionally left blank.

WAGE AND HOUR DIVISION

TABLE OF CONTENTS

Appropriation Language	1
Amounts Available for Obligation	2
Summary of Changes.....	3
Summary of Budget Authority and FTE by Activity	5
Budget Authority by Object Class.....	6
Authorizing Statutes	7
Appropriation History.....	9
Overview.....	10
Organization Chart.....	14
Budget Activities	15
Wage and Hour Division	15

This page is intentionally left blank.

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, [\$242,000,000] \$244,283,000.

(Department of Labor Appropriations Act, 2020.)

WAGE AND HOUR DIVISION

AMOUNTS AVAILABLE FOR OBLIGATION						
(Dollars in Thousands)						
	FY 2019 Enacted		FY 2020 Enacted		FY 2021 Request	
	FTE	Amount	FTE	Amount	FTE	Amount
A. Appropriation	1,297	\$229,000	1,398	\$242,000	1,387	\$244,283
Reimbursements (CMP's)	0	\$2,800	0	\$2,800	0	\$2,800
H-1B L Fraud Fees (Collected)	214	\$48,000	214	\$50,000	214	\$53,000
<i>Subtotal</i>	<i>1,511</i>	<i>\$279,800</i>	<i>1,612</i>	<i>\$294,800</i>	<i>1,601</i>	<i>\$300,083</i>
B. Gross Budget Authority	1,511	\$279,800	1,505	\$294,800	1,518	\$300,083
Reimbursements (CMP's)	0	-\$2,800	0	-\$2,800	0	-\$2,800
H-1B L Fraud Fees (Collected)	-214	-\$48,000	-214	-\$50,000	-214	-\$53,000
Transfer to DM for Shared Services	-16	\$0	-16	\$0	0	\$0
C. Budget Authority Before Committee	1,281	\$229,000	1,382	\$242,000	1,387	\$244,283
Reimbursements (CMP's)	0	\$2,800	0	\$2,800	0	\$2,800
H-1B L Fraud Fees (Actual)	228	\$47,953	214	\$50,000	214	\$53,000
D. Total Budgetary Resources	1,509	\$279,753	1,596	\$294,800	1,601	\$300,083
FTE Lapsed and Unobligated Balance Expiring	-33	-\$209	0	\$0	0	\$0
Transfer to DM for Shared Services	16	\$0	0	\$0	0	\$0
E. Total, Estimated Obligations	1,492	\$279,544	1,596	\$294,800	1,601	\$300,083

WAGE AND HOUR DIVISION

SUMMARY OF CHANGES

(Dollars in Thousands)

	FY 2020 Enacted	FY 2021 Request	Net Change
Budget Authority			
General Funds	\$292,000	\$297,283	+\$5,283
Total	\$292,000	\$297,283	+\$5,283
Full Time Equivalents			
General Funds	1,596	1,601	5
Total	1,596	1,601	5

Explanation of Change	FY 2021 Change							
	FY 2020 Base		Trust Funds		General Funds		Total	
	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
Increases:								
A. Built-Ins:								
To Provide For:								
Costs of pay adjustments	1,596	\$146,181	0	\$0	0	\$2,740	0	\$2,740
Personnel benefits	0	\$47,865	0	\$0	0	\$0	0	\$0
Employee health benefits	0	\$0	0	\$0	0	\$0	0	\$0
Moving allowance	0	\$0	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	\$0	0	\$0	0	\$0	0	\$0
Benefits for former personnel	0	\$0	0	\$0	0	\$0	0	\$0
Travel and transportation of persons	0	\$4,869	0	\$0	0	\$0	0	\$0
Transportation of things	0	\$10	0	\$0	0	\$0	0	\$0
Rental payments to GSA	0	\$0	0	\$0	0	\$0	0	\$0
Rental payments to others	0	\$8	0	\$0	0	\$0	0	\$0
Communications, utilities, and miscellaneous charges	0	\$2,300	0	\$0	0	\$0	0	\$0
Printing and reproduction	0	\$351	0	\$0	0	\$0	0	\$0
Advisory and assistance services	0	\$2,900	0	\$0	0	\$0	0	\$0
Other services from non-Federal sources	0	\$1,652	0	\$0	0	\$0	0	\$0
Working Capital Fund	0	\$49,836	0	\$0	0	\$0	0	\$0
Other Federal sources (DHS Charges)	0	\$1,300	0	\$0	0	\$0	0	\$0
Other goods and services from Federal sources	0	\$12,585	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	\$5,116	0	\$0	0	\$0	0	\$0
Supplies and materials	0	\$1,003	0	\$0	0	\$0	0	\$0

WAGE AND HOUR DIVISION

FY 2021 Change

Explanation of Change	FY 2020 Base		Trust Funds		General Funds		Total	
	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
Equipment	0	\$900	0	\$0	0	\$0	0	\$0
Grants, subsidies, and contributions	0	\$0	0	\$0	0	\$0	0	\$0
Insurance claims and indemnities	0	\$584	0	\$0	0	\$0	0	\$0
Built-Ins Subtotal	1,596	+\$277,460	0	\$0	0	+\$2,740	0	+\$2,740
B. Programs:								
USMCA	0	\$0	0	\$0	5	\$561	5	\$561
Programs Subtotal			0	\$0	5	+\$561	5	+\$561
Total Increase	1,596	+\$277,460	0	\$0	5	+\$3,301	5	+\$3,301
Decreases:								
A. Built-Ins:								
To Provide For:								
One day less of Pay	0	\$0	0	\$0	0	-\$624	0	-\$624
Federal Employees' Compensation Act (FECA)	0	\$1,040	0	\$0	0	-\$43	0	-\$43
Rental payments to GSA	0	\$13,500	0	\$0	0	-\$351	0	-\$351
Built-Ins Subtotal	0	+\$14,540	0	\$0	0	-\$1,018	0	-\$1,018
B. Programs:								
Total Decrease	0	+\$14,540	0	\$0	0	-\$1,018	0	-\$1,018
Total Change	1,596	+\$292,000	0	\$0	5	+\$2,283	5	+\$2,283

WAGE AND HOUR DIVISION

SUMMARY BUDGET AUTHORITY AND FTE BY ACTIVITY								
(Dollars in Thousands)								
	FY 2019 Enacted		FY 2020 Enacted		FY 2021 Request		Diff. FY21 Request / FY20 Enacted	
	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
Wage and Hour Division	1,248	229,000	1,382	242,000	1,387	244,283	5	2,283
General Funds	1,248	229,000	1,382	242,000	1,387	244,283	5	2,283
Wage Hour H-1B	228	48,000	214	50,000	214	53,000	0	3,000
General Funds	228	48,000	214	50,000	214	53,000	0	3,000
Total	1,476	277,000	1,596	292,000	1,601	297,283	5	5,283
General Funds	1,476	277,000	1,596	292,000	1,601	297,283	5	5,283

NOTES: 2019 reflects actual FTE. FTE for all years reflect the Shared Services Realignment.

WAGE AND HOUR DIVISION

BUDGET AUTHORITY BY OBJECT CLASS					
(Dollars in Thousands)					
		FY 2019 Enacted	FY 2020 Enacted	FY 2021 Request	Diff. FY21 Request / FY20 Enacted
	Full-Time Equivalent				
	Full-time Permanent	1,487	1,548	1,601	53
	Total	1,487	1,548	1,601	53
	Average ES Salary	\$183,120	\$183,120	\$183,120	\$0
	Average GM/GS Grade	12	12	12	0
	Average GM/GS Salary	\$92,580	\$93,440	\$93,404	-\$36
11.1	Full-time permanent	136,128	141,718	144,416	2,698
11.3	Other than full-time permanent	1,598	765	765	0
11.5	Other personnel compensation	2,562	3,698	3,698	0
11.8	Special personal services payments	0	0	0	0
11.9	Total personnel compensation	140,288	146,181	148,879	2,698
12.1	Civilian personnel benefits	47,134	48,905	48,841	-64
13.0	Benefits for former personnel	0	0	0	0
21.0	Travel and transportation of persons	2,924	4,869	4,869	0
22.0	Transportation of things	1	10	10	0
23.0	Rent, Communications, and Utilities	0	0	0	0
23.1	Rental payments to GSA	14,218	13,500	13,149	-351
23.2	Rental payments to others	14	8	8	0
23.3	Communications, utilities, and miscellaneous charges	1,297	2,300	2,300	0
24.0	Printing and reproduction	250	351	351	0
25.1	Advisory and assistance services	2,399	2,900	5,540	2,640
25.2	Other services from non-Federal sources	600	1,652	1,652	0
25.3	Other goods and services from Federal sources 1/	60,529	63,721	64,081	360
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	4,837	5,116	5,116	0
26.0	Supplies and materials	193	1,003	1,003	0
31.0	Equipment	900	900	900	0
41.0	Grants, subsidies, and contributions	0	0	0	0
42.0	Insurance claims and indemnities	1,416	584	584	0
	Total	277,000	292,000	297,283	5,283
	1/Other goods and services from Federal sources				
	Working Capital Fund	49,765	49,836	50,196	360
	DHS Services	1,400	1,300	1,300	0
	Services by DOL Agencies	6,381	7,323	7,323	0
	GSA Services	199	2,288	2,288	0
	HHS Services	0	14	14	0
	Services by Other Government Departments	173	338	338	0

NOTE: FTE for all years reflect the Shared Services Realignment.

WAGE AND HOUR DIVISION

AUTHORIZING STATUTES

Public Law / Act	Legislation	Statute No. / US Code	Expiration Date
PUB. L. 75-718	Fair Labor Standards Act of 1938, as amended.	29 U.S.C. 201-219	N/A
PUB. L. 74-846	Walsh-Healy Public Contracts Act, as amended (1936).	41 U.S.C. 6501-6511	N/A
PUB. L. 90-321	Consumer Credit Protection Act (Title III – Restriction on Garnishment) (1968).	15 U.S.C. 1671-1677	N/A
PUB. L. 87-581	Contract Work Hours and Safety Standards Act, as amended (1962).	40 U.S.C. 3701-3708	N/A
PUB. L. 89-286	McNamara-O’Hara Service Contract Act, as amended (1965).	41 U.S.C. 351-357	N/A
PUB. L. 74-403	Davis-Bacon Act, as amended and related acts (1931).	40 U.S.C. , Chapter 31, Subpart IV	N/A
PUB. L. 97-470	Migrant and Seasonal Agricultural Worker Protection Act (1983).	29 U.S.C. 1801-1872	N/A
PUB. L. 99-603	Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986.	8 U.S.C. 1324, 8 U.S.C. 1101(a), 1184(c), 1824, 29 U.S.C. 1802, 1813(a)	N/A
PUB. L. 100-347	Employee Polygraph Protection Act of 1988.	29 U.S.C. 2001 et seq	N/A
PUB. L. 103-3	Family and Medical Leave Act of 1993.	29 U.S.C. 2601, et. Seq.	N/A
PUB. L. 105-277	American Competitiveness and Workforce Improvement Act (ACWIA), Title IV of the Omnibus Consolidated and Emergency Supplemental Appropriation Act (1998).	Title IV, sec. 414(b) and (c)	N/A

WAGE AND HOUR DIVISION

PUB. L. 108-447	L-1 Visa and H-1B Visa Reform Act, Title IV of the Consolidated Appropriations Act, (2005).	Title IV, sec. 401-430	N/A
PUB. L. 89-209	National Foundation for the Arts and Humanities Act, Sections 5(i) and 7(g) (1965).	20 U.S.C. 954 (i) and 956 (g)	N/A

WAGE AND HOUR DIVISION

APPROPRIATION HISTORY (Dollars in Thousands)					
	Budget Estimates to Congress	House Allowance	Senate Allowance	Appropriations	FTE
2011					
Base Appropriation	\$244,240			\$227,491	1,022
2012					
Base Appropriation	\$240,937		\$227,491	\$227,061	1,418
2013					
Base Appropriation...1/2/	\$237,730			\$215,184	1,420
2014					
Base Appropriation	\$243,254			\$224,330	1,446
2015					
Base Appropriation	\$265,766			\$227,500	1,332
2016					
Base Appropriation	\$277,100	\$215,500	\$210,000	\$227,500	1,376
2017					
Base Appropriation	\$276,599			\$227,500	1,404
2018					
Base Appropriation	\$230,068	\$217,500		\$227,500	1,355
2019					
Base Appropriation...3/	\$230,068		\$229,000	\$229,000	1,297
2020					
Base Appropriation...4/5/	\$232,568	\$298,131		\$242,000	1,382
2021					
Base Appropriation...5/	\$244,283				1,387

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

2/ Does not reflect \$1,002,000 transferred to WHD for Hurricane Sandy reconstruction and recovery activities, as provided in the Disaster Relief Appropriations Act, 2013, P.L. 113-2. This amount has been transferred from the Employment and Training Administration, Training and Employment Services account via a non-expenditure transfer.

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

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

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

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

WAGE AND HOUR DIVISION

OVERVIEW

Introduction

The Wage and Hour Division (WHD) enforces minimum wage, overtime, and other wage laws under 29 U.S.C. 201, *et seq.*, so that America's workers receive wages required by law and businesses that play by the rules can operate on a level playing field. Collectively, these laws cover most private, state, and local government employment and protect more than 143 million of America's workers in more than 9.8 million establishments throughout the United States and its territories.

WHD enforces and administers:

- The minimum wage, overtime, child labor, anti-retaliation, and break time for nursing mothers provisions of the Fair Labor Standards Act (FLSA);
- The prevailing wage requirements and wage determination provisions of the Davis Bacon Act (DBA) and Related Acts (DBRA), the Service Contract Act (SCA), the Contract Work Hours and Safety Standards Act (CWHSA), the Walsh-Healey Act, and the Copeland Act, an anti-kickback law;
- The wages and working conditions provisions of the Migrant and Seasonal Agricultural Worker Protection Act (MSPA);
- The filed sanitation and temporary labor camp standards in agriculture under the Occupational Safety and Health Act (OSH Act);
- The Family and Medical Leave Act (FMLA);
- The Employee Polygraph Protection Act (EPPA);
- The labor standards protections of the Immigration and Nationality Act (INA) for certain temporary nonimmigrant workers admitted to the U.S., including the labor standards of the H-1B, H-2A, and H-2B programs; and
- The garnishment provisions of the Consumer Credit Protection Act (CCPA).

Foremost, WHD is an enforcement agency, and collectively, the work undertaken by the agency helps both employees and employers. The WHD mission is to promote and achieve compliance with labor standards to protect and enhance the welfare of the nation's workforce. This mission levels the playing field for employees and employers, as well as across employers. Enforcement protects workers and eliminates unfair competitive advantages of unscrupulous employers who fail to pay their workers the wages they are due. For the second year in a row, WHD recovered a record amount of back wages for workers — topping the 2018 record by recovering over \$322 million in back wages for more than 313,000 workers. Using resources judiciously, WHD also works with employers to remedy their violations and move them into compliance. WHD has always relied upon a combination of rigorous enforcement and robust education to improve compliance and has long maintained that enforcement alone will never be sufficient to achieve the Division's mission. WHD believes that most employers want to comply with the laws that apply to their establishments, but may need compliance assistance to identify and correct violations. If employers know their responsibilities, they are more likely to comply. Similarly, when employees know their rights, they are less likely to allow themselves to be exploited. In FY 2019, WHD conducted more than 3,700 outreach events and presentations, providing valuable

WAGE AND HOUR DIVISION

information and compliance assistance to thousands of employers, employees, and industry associations.

WHD enforcement is focused on the most egregious violators, such as those who engage in criminal activity, retaliation, and other forms of exploitation most damaging to the American workforce. WHD leverages data to prioritize enforcement around those industries with a history and prevalence of violations. WHD invests resources where data analytics and evidence suggest they will have the broadest impact—improving compliance beyond just those employers investigated. Given the size of the organization relative to the size of the regulated community—over 143 million workers and 9.8 million workplaces—WHD must make wise use of every resource in order to achieve the greatest effect.

To meet these challenges, WHD looks inward—finding ways to modernize business processes and technology infrastructure and to build the agency’s capacity to work with data and evidence to improve the quality of day-to-day decision making. Using data and evidence at every level of the organization has the potential to transform WHD and ensure that the organization operates at the forefront of enforcement agencies. WHD is expanding its use of statistical data to effectively plan and evaluate enforcement and compliance assistance. Data is also critical for how the agency manages resources internally, including identifying and developing solutions to address inefficiencies in business operations, as well as where to add resources when hiring. To that end, WHD is working to streamline and improve business processes that support a range of non-enforcement activities, including certification programs, wage determination surveys, and customer service functions. WHD is evaluating its use of physical space with plans to reduce its footprint.

WHD continues to evolve its culture so that all parts of the agency can work together to identify problems, find creative solutions, and continuously improve. To that end, WHD is innovating the way case inventories are managed through technology-supported data analytics and reporting. These tools are helping WHD to conclude cases in fewer days and hours. WHD has developed an FLSA Severity Index and a related performance measure to focus resources on those cases with the most egregious violations. A balance of different types of measures, including efficiency, effectiveness, and productivity measures, is driving WHD’s evidence-based strategies. Performance targets and contextual measures ensure progress against production and outcome goals. Enforcement staff determine how to best resolve compliance issues through a range of available tools.

WHD focuses enforcement resources on employers with egregious violations, while the Payroll Audit Independent Determination (PAID) program established an efficient, compliance assistance-based self-audit tool for good faith employers to proactively resolve potential FLSA violations. In response to the Committee’s request, WHD released a [report on the PAID program](#) showing that between April 1, 2018 and September 15, 2019, WHD concluded 74 PAID cases, representing less than one percent of all compliance actions. A total of \$4,131,238 in back wages was paid to 7,429 employees in PAID cases during this time period.¹ During FY 2019 overall, WHD concluded 69 PAID cases, representing less than one percent of all compliance actions. A total of \$3,987,895 in back wages was paid to 7,394 employees in PAID cases. PAID self-audits

¹ <https://www.dol.gov/whd/PAID/PAID-programreport.pdf>

WAGE AND HOUR DIVISION

returned more back wages to employees in less time than compliance actions overall. During FY 2019, back wages per case for PAID cases (\$57,796) were more than four times the average back wages per compliance action (\$11,999). Back wages per enforcement hour for PAID cases (\$2,871) were nearly ten times greater than back wages per enforcement hour for all compliance actions (\$297). During FY 2019, PAID self-audits averaged 20 hours of investigator time per case as compared to 40 hours per compliance action agency-wide. PAID self-audits reach employers that WHD would not typically prioritize for enforcement, including government establishments and industry sectors with higher wage occupations. The program design and implementation are built on existing protocols and practices and involve a significant outreach effort. Moving forward, the agency will continue using and evaluating self-audits, consistent with the goals, priorities, and data-driven practices of the agency. Effective use of these tools has always been critical to the mission, and increasingly, agency decisions require strong data analytics and evolving skill sets.

In FY 2021, the Department is committed to implementing the President's Management Agenda (PMA) and an Enterprise Shared Services delivery model for administrative functions. The purpose of the Enterprise Shared Services initiative is to create an administrative services delivery model that is streamlined, consistent, and efficient. Instead of directly funding information technology functions, the Department plans to have WHD use a shared services provider through the Working Capital Fund (WCF) and the proposed information technology (IT) Working Capital Fund (IT WCF). Under this plan, 16 FTE will be realigned from WHD to the WCF and IT WCF as part of the implementation of this model. The FY 2021 President's Budget reflects this FTE realignment and the corresponding realignment of personnel compensation and benefits. The Budget does not include any related changes to non-personnel funding. The Department continues to develop and implement plans for Enterprise Shared Services. All FTE and funding estimates related to the Enterprise Shared Services initiative are preliminary and will be validated before final implementation.

The FY 2021 budget request provides for an increase of \$2,283,000 from the FY 2020 Enacted level and includes a program increase of \$561,000 and 5 FTE for implementation of the Labor Value Content (LVC) provision of the United States-Mexico-Canada Agreement (USMCA). The new USMCA will create more balanced, reciprocal trade that supports high-paying jobs for Americans and grows the North American economies. As a result of the enacted FY 2020 budget level, WHD will have increased staffing levels for investigators and technicians while also significantly advancing efforts to modernize the agency's business processes and underlying infrastructure. These efforts will provide a critical foundation for implementation of the USMCA. Increased staffing levels will allow WHD to more effectively level the playing field for employers while protecting the wages of even more workers. WHD can only estimate the ways in which streamlined business processes and more agile technology can revolutionize the work, including developing capabilities to fulfill new responsibilities under the USMCA.

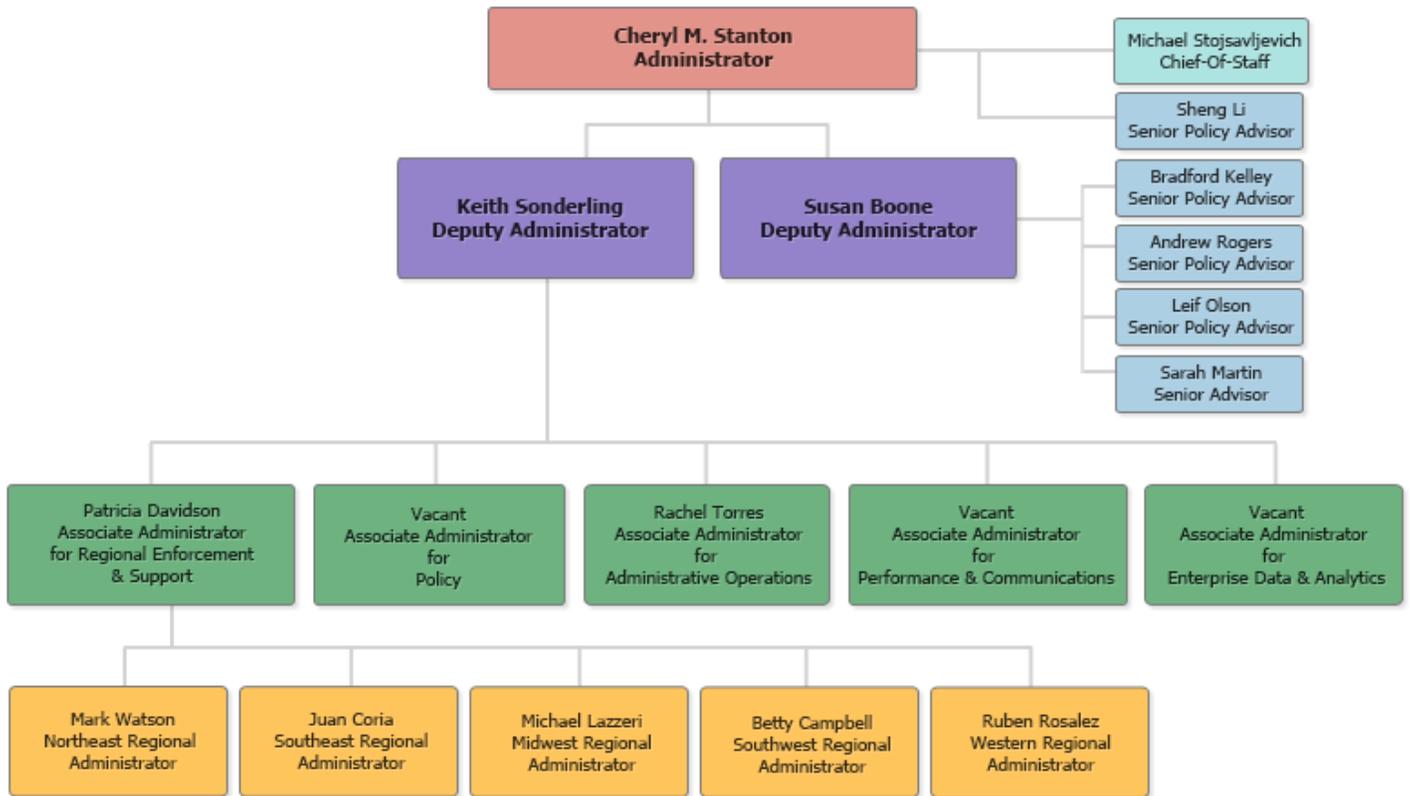
This FY 2021 budget request supports the work WHD will undertake to carry out this vision for the agency and the resources necessary to mitigate risks to the agency's success. Organized around three performance goals, this request speaks to how WHD can be an effective enforcement agency. With this resource request for FY 2021, WHD will:

WAGE AND HOUR DIVISION

- Improve employers' compliance through enforcement and compliance assistance, including for new USMCA responsibilities;
- Deliver timely and relevant regulatory and sub-regulatory guidance to internal and external stakeholders; and
- Drive organizational excellence by modernizing infrastructure, building capacity for using data and evidence in all aspects of the agency's operations, and cultivating workforce talent.

The FY 2021 budget request also demonstrates how WHD efforts support the government-wide PMA. WHD is leveraging DOL IT platform service capabilities, including data analytics, case management, and Enterprise License Agreements; modernizing legacy agency applications; and transforming the regulated employer and employee experience through the use of IT. WHD is using data as a strategic asset to increase program effectiveness, oversight, and transparency, through efforts that include leveraging data to maximize enforcement outcomes, applying data and evidence towards enforcement planning, and better allocating scarce budget resources. WHD is creating a Workforce for the 21st Century that is capable of delivering increased and improved services to the taxpayers by increasing the use of shared services to improve agency efficiency and reducing duplication and administrative costs through a carefully planned and executed consolidation of office space throughout the organization.

WAGE AND HOUR DIVISION



WAGE AND HOUR DIVISION

BUDGET AUTHORITY BEFORE THE COMMITTEE				
(Dollars in Thousands)				
	FY 2019 Enacted	FY 2020 Enacted	FY 2021 Request	Diff. FY21 Request / FY20 Enacted
Activity Appropriation	229,000	242,000	244,283	2,283
FTE	1,248	1,382	1,387	5

NOTE: FTE for all years reflect the Shared Services Realignment.

NOTE: FY 2019 reflects actual FTE. Authorized FTE for FY 2019 was 1,297

Introduction

WHD prioritizes resources using evidence-based, multi-pronged strategies to improve compliance that include delivering compliance assistance to employers; conducting investigations in high-violation industries; engaging and educating private and public stakeholders on compliance issues; and using traditional and social media to inform employers, workers, consumers, and the public about WHD and the resources available to them. WHD protects fair competition through investigations of employers that have gained an unfair advantage through violations of wage and hour laws. WHD also helps employers proactively address and prevent violations through new and innovative approaches to compliance assistance. WHD rigorously enforces all laws within its jurisdiction governing the administration and enforcement of non-immigrant visa programs in order to protect American workers and guest workers.

The FY 2021 budget request provides a total increase of \$2,283,000 over the 2020 Enacted level, including a program increase of \$561,000 and 5 FTE from the FY 2020 Enacted level for implementation of the Labor Value Content (LVC) provision of the United States-Mexico-Canada Agreement (USMCA).

Five-Year Budget Activity History

<u>Fiscal Year</u>	<u>Funding</u> (Dollars in Thousands)	<u>FTE</u>
2016	\$227,500	1,376
2017	\$227,500	1,404
2018	\$227,500	1,355
2019	\$229,000	1,297
2020	\$242,000	1,382

FY 2021

The FY 2021 budget request provides for a total of \$244,283,000 and 1,387 FTE for implementation of the USMCA and other WHD enforcement responsibilities. The total FTE reflects both the increase in 5 FTE and the onboarding of new investigators and technicians in FY 2020 and 2021. The USMCA includes a first-of-its-kind Labor Value Content (LVC) provision to the Rules of Origin Chapter. In order to qualify for reduced tariffs, the LVC requires that a percentage of the value of vehicles must be produced in North American facilities where

WAGE AND HOUR DIVISION

workers who are directly involved in the production earn an average of \$16 per hour. WHD will be responsible for writing regulations to implement the LVC and establishing an enforcement program for the wage-related component of the provision. This enforcement program will require dedicated staff, training, travel, and an IT system equipped with program-specific capabilities. Initial program investments will focus on developing the guidance, policy, training, and infrastructure necessary for program implementation.

FY 2020

The FY 2020 Enacted level provided \$242,000,000 and 1,382 FTE, which is \$13,000,000 and 85 FTE above the FY 2019 Enacted level. In FY 2020, WHD has prioritized hiring investigators and technicians. The agency's primary resource is the people who carry out the mission every day. WHD investigators conduct investigations to determine employers' compliance with applicable laws, while technicians provide front-line support for these efforts, receive and evaluate incoming complaints, and often provide compliance information directly to stakeholders. Increasing staffing levels will allow WHD to effectively level the playing field for employers while protecting the wages of even more workers.

Modernizing the agency's IT infrastructure remains a priority, and with these funds, WHD is dedicating resources towards building a modern, cloud-based system that will achieve significant efficiency gains for the agency while eliminating the costs and risks of operating outdated systems. WHD is developing a new system that aligns with forward-looking business processes and can support continuous process improvements. WHD has made incremental progress, and in doing so, has developed expertise in managing a modernization effort consistent with best practices in federal government and the private sector. In FY 2020, WHD released the first module of the investigative case management system, the Electronic Case File (ECF) to a subset of district offices, with a planned rollout to all offices in 2020. This component lays the groundwork for the new investigative case management system that will fully replace the existing Wage and Hour Investigative Support and Reporting Database (WHISARD) system. The system will serve as the platform for all WHD applications in the future.

On December 12, 2019, WHD published the Regular Rate Final Rule, clarifying for stakeholders certain types of perks and payments that may be excluded from the regular rate of pay for overtime computation purposes.

On January 16, 2020, WHD published the Joint Employer Final Rule to revise and update its regulations interpreting joint employer status under the Fair Labor Standards Act (FLSA). The final rule provides updated guidance for determining joint employer status when an employee performs work for his or her employer that simultaneously benefits another individual or entity, including guidance on the identification of certain factors that are not relevant when determining joint employer status. The effective date of the final rule is March 16, 2020.

FY 2019

In FY 2019, WHD further elaborated its modernization roadmap, which has been developed in close collaboration with the Department's Office of Chief Information Officer. Ongoing

WAGE AND HOUR DIVISION

investments and implementation are continuing in FY 2020. WHD renewed its emphasis on the role of compliance assistance in serving the employer community. WHD continued exploring ways to deliver more effective compliance assistance information using evidence-based approaches and leveraging new platforms and technology.

On September 27, 2019, WHD published the Overtime Final Rule, resulting in 1.3 million workers who will be newly eligible for overtime pay. On July 26, 2019, the Department published the H-2A Notice of Proposed Rulemaking (NPRM) to modernize the existing H-2A Temporary Agricultural Worker Program by improving the application process and strengthening worker protections. WHD played a critical role in developing the H-2A NPRM.

As part of WHD's commitment to provide workers and businesses with the necessary tools for complying with the labor laws it enforces, in FY 2019, WHD published 24 Opinion Letters, on topics including designation of leave under the Family and Medical Leave Act, compensability of time spent in a truck's sleeper berth, the application of the FLSA to travel time, the employment status of volunteers, and the scope of various FLSA exemptions. An opinion letter is an official written opinion by WHD on how a particular law it enforces applies in specific circumstances presented by a worker, business, or other entity requesting the opinion. WHD also launched an online application system and an updated internal processing platform for reviewing applications for section 14(c) certificates to modernize the processing of these certificate requests.

WAGE AND HOUR DIVISION

WORKLOAD AND PERFORMANCE SUMMARY					
		FY 2019 Enacted		FY 2020 Enacted	FY 2021 Request
		Target	Result	Target	Target
Wage and Hour Division					
Strategic Goal 2 - Promote Safe Jobs and Fair Workplaces for All Americans					
Strategic Objective WHD 2.3 - Secure lawful wages and working conditions for America's workers.					
WHD-CA-01	Number of outreach events to employers	1,450	1,843	1,458	1,601
WHD-DB-06	Percent of Building, Heavy, and Residential Wage Classifications published at the County or Group Level	56%	52%	57%	58%
WHD-E-01	Number of compliance actions concluded	28,000	26,876	26,270	26,500
WHD-E-02	Percent of agency-initiated compliance actions (excluding conciliations)	46%	52%	46%	46%
WHD-E-04	Percent of no violation, agency-initiated compliance actions (excluding conciliations)	21%	13%	19%	19%
WHD-E-05	Percent of no violation, complaint compliance actions (excluding conciliations)	21%	14%	19%	19%
WHD-SEV-01	Percent of FLSA compliance actions (excluding conciliations) with severity score of 30 or more	--	--	[base]	TBD

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

WAGE AND HOUR DIVISION

Workload and Performance Summary

A balance of different types of measures, including efficiency, effectiveness, and productivity metrics drives WHD strategies. Consistent with WHD's overall strategic planning approach, the agency continuously evaluates both the results of measures and the measures themselves to determine whether they are steering the organization in the right direction. Enforcement staff are constantly evaluating which enforcement and compliance assistance tools are most appropriate and effective for the circumstances. These day-to-day decisions are central to maximizing resources and our effect on compliance.

Performance measures guide and inform those decisions, and, in FY 2021, WHD will continue refining and developing measures that drive the mission. The FY 2020 performance framework is incorporating critical feedback from field operations, including reducing the number of performance measures overall, right-sizing WHD's "balancing" measures that allocate enforcement resources across the programs that WHD administers, and setting performance targets that are aligned with agency resources.

In addition, in FY 2020, WHD is introducing a new measure referencing WHD's new FLSA Severity Index that incentivizes WHD to investigate the most egregious violators and to bring those investigations to successful conclusion. Most WHD investigations identify violations (86% in FY 2018). The FLSA Severity Index allows more nuanced comparisons by quantifying the severity of violations WHD finds in each case on a 0-100 point scale. The FLSA Severity Index and associated measure will help inform decision-making about resource allocation and will give credit to offices for investing time and resources in more impactful investigations.

WHD internally tracks access and use of new compliance assistance tools and leverages feedback to improve compliance assistance products. FY 2021 targets reflect WHD's goal of ensuring that an active and productive compliance assistance program delivers information and resources strategically and effectively.

The FY 2021 target for compliance actions reflects WHD's goal of emphasizing investigations where WHD finds the most severe violations over the overall number of compliance actions of any kind. In FY 2020, WHD is hiring new investigators and prioritizing enforcement activities.

WHD continues to track cases with no violations (i.e., no violation rates) as an indicator of whether the agency is accurately selecting employers for investigation. Concurrently, WHD aims for a balance of agency-initiated and complaint-based investigations. WHD plans to maintain performance levels in these areas while implementing the severity index and conducting further analysis around long-term targets for these measures, which drive evidence-based strategies designed to maximize the agency's impact and outcomes.

In FY 2021, WHD will continue implementing recommendations from the Office of Inspector General 2019 report "Better Strategies are Needed to Improve the Timeliness and Accuracy of Davis-Bacon Act Prevailing Wage Rates" (Report Number: (04-001-15-001). The targeted increase in the percent of building, heavy, and residential wage classifications published at the

WAGE AND HOUR DIVISION

county or group level reflects WHD's ongoing efforts to improve the accuracy of published wage rates.

WAGE AND HOUR DIVISION

BUDGET ACTIVITY BY OBJECT CLASS					
(Dollars in Thousands)					
		FY 2019 Enacted	FY 2020 Enacted	FY 2021 Request	Diff. FY21 Request / FY20 Enacted
11.1	Full-time permanent	115,330	119,642	122,340	2,698
11.3	Other than full-time permanent	1,362	702	702	0
11.5	Other personnel compensation	1,780	3,271	3,271	0
11.8	Special personal services payments	0	0	0	0
11.9	Total personnel compensation	118,472	123,615	126,313	2,698
12.1	Civilian personnel benefits	40,259	41,510	41,446	-64
13.0	Benefits for former personnel	0	0	0	0
21.0	Travel and transportation of persons	2,124	4,479	4,479	0
22.0	Transportation of things	1	3	3	0
23.0	Rent, Communications, and Utilities	0	0	0	0
23.1	Rental payments to GSA	14,218	13,500	13,149	-351
23.2	Rental payments to others	14	8	8	0
23.3	Communications, utilities, and miscellaneous charges	1,297	2,300	2,300	0
24.0	Printing and reproduction	250	350	350	0
25.1	Advisory and assistance services	1,995	2,900	2,900	0
25.2	Other services from non-Federal sources	600	1,533	1,533	0
25.3	Other goods and services from Federal sources 1/	42,779	44,202	44,202	0
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	4,485	5,116	5,116	0
26.0	Supplies and materials	190	1,000	1,000	0
31.0	Equipment	900	900	900	0
41.0	Grants, subsidies, and contributions	0	0	0	0
42.0	Insurance claims and indemnities	1,416	584	584	0
	Total	229,000	242,000	244,283	2,283
	1/Other goods and services from Federal sources				
	Working Capital Fund	38,065	36,317	36,317	0
	DHS Services	1,400	1,300	1,300	0
	Services by DOL Agencies	331	1,323	1,323	0
	GSA Services	199	2,288	2,288	0
	HHS Services	0	14	14	0
	Services by Other Government Departments	173	338	338	0

WAGE AND HOUR DIVISION

CHANGES IN FY 2021

(Dollars in Thousands)

Activity Changes

Built-In

To Provide For:

Costs of pay adjustments	\$2,740
Personnel benefits	0
Employee health benefits	0
Moving allowance	0
One day less of Pay	-624
Federal Employees' Compensation Act (FECA)	-43
Benefits for former personnel	0
Travel and transportation of persons	0
Transportation of things	0
Rental payments to GSA	-351
Rental payments to others	0
Communications, utilities, and miscellaneous charges	0
Printing and reproduction	0
Advisory and assistance services	0
Other services from non-Federal sources	0
Working Capital Fund	0
Other Federal sources (DHS Charges)	0
Other goods and services from Federal sources	0
Research & Development Contracts	0
Operation and maintenance of facilities	0
Operation and maintenance of equipment	0
Supplies and materials	0
Equipment	0
Grants, subsidies, and contributions	0
Insurance claims and indemnities	0

Built-Ins Subtotal **\$1,722**

Net Program **\$561**

Direct FTE **5**

	Estimate	FTE
Base	\$243,722	1,382
Program Increase	\$561	5
Program Decrease	\$0	0