

U.S. Department of Labor Wage and Hour Division



November 2016

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TAB 1: AGENCY ORGANIZATIONAL OVERVIEW

Mission

The Wage and Hour Division (WHD) mission is to “*promote and achieve compliance with labor standards to protect and enhance the welfare of the Nation’s workforce.*”

Authorizing Legislation

WHD is authorized to administer and enforce a variety of laws that establish the minimum standards for wages and working conditions in the United States. Collectively, these labor standards cover most private, state, and local government employment. These labor laws range from some of the earliest labor protections passed by Congress to some of the most recent. 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, to ensure fair compensation for work performed, and to level the playing field for responsible employers. The Fair Labor Standards Act (FLSA) minimum wage provisions and the government contract 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 Worker Protection Act (MSPA) and the immigration programs establish working conditions intended to protect the wages and the safety and health of vulnerable workers, to ensure that the local labor force is not displaced by lower paid foreign or migrant labor, and ensure employers that obey the law are not disadvantaged. The McNamara-O’Hara Service Contract Act (SCA) requires contractors and subcontractors performing services on prime contracts in excess of \$2,500 to pay service employees in various classes no less than the wage rates and fringe benefits found prevailing in the locality, or the rates (including prospective increases) contained in a predecessor contractor's collective bargaining agreement. The Davis-Bacon and Related Acts (DBRA) require payment of prevailing wages on federal funded or assisted construction projects. The Family and Medical Leave Act (FMLA) 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.

Public Law / Act	Legislation	Statute No. / US Code
PUB. L. 75-718	Fair Labor Standards Act of 1938, as amended.	29 U.S.C. 201-219
PUB. L. 74-846	Walsh-Healey Public Contracts Act, as amended. (1936).	41 U.S.C. 6501-6511
PUB. L. 90-321	Consumer Credit Protection Act(Title III – Restriction on Garnishment). (1968).	15 U.S.C. 1671-1677
PUB. L. 87-581	Contract Work Hours and Safety Standards Act, as amended. (1962).	40 U.S.C. 3701-3708
PUB. L. 89-286	McNamara-O’Hara Service Contract Act, as amended. (1965).	41 U.S.C. 6701-6707
PUB. L. 71-798	Davis-Bacon Act, as amended and related	40 U.S.C. 3141-3148

TAB 1: Agency Organizational Overview

Public Law / Act	Legislation	Statute No. / US Code
	acts. (1931).	
PUB. L. 97-470	Migrant and Seasonal Agricultural Worker Protection Act. (1983)	29 U.S.C. 1801-1872
PUB. L. 99-603 PUB. L. 101-649	Immigration and Nationality Act, as amended by the Immigration Reform and Control Act.	8 U.S.C. 1101(a)(15)(E), (H), 1184(c), 1324b; 29 U.S.C. 1802, 1813(a)
PUB. L. 100-347	Employee Polygraph Protection Act (1988).	29 U.S.C. 2001-2009
PUB. L. 103-3	Family and Medical Leave Act of 1993.	29 U.S.C. 2601-2654
PUB. L. 105-277	American Competitiveness and Workforce Improvement Act (ACWIA), Title IV of the Omnibus Consolidated and Emergency Supplemental Appropriation Act. (1998).	Pub. L. 105, Title IV, Sec. 414(b) and (c)
PUB. L. 108-447	L-1 Visa and H-1B Visa Reform Act, Title IV of the Consolidated Appropriations Act, (2005).	Pub. L. 108-447, Title IV, Sec. 401-430
PUB. L. 89-209, 94-462, and 99-164	National Foundation for the Arts and Humanities Act, as amended, Sections 5(j), 5(k), 7(g), and 7(j). (1965).	20 U.S.C. 954 (m), (n) and 956 (g), (j)

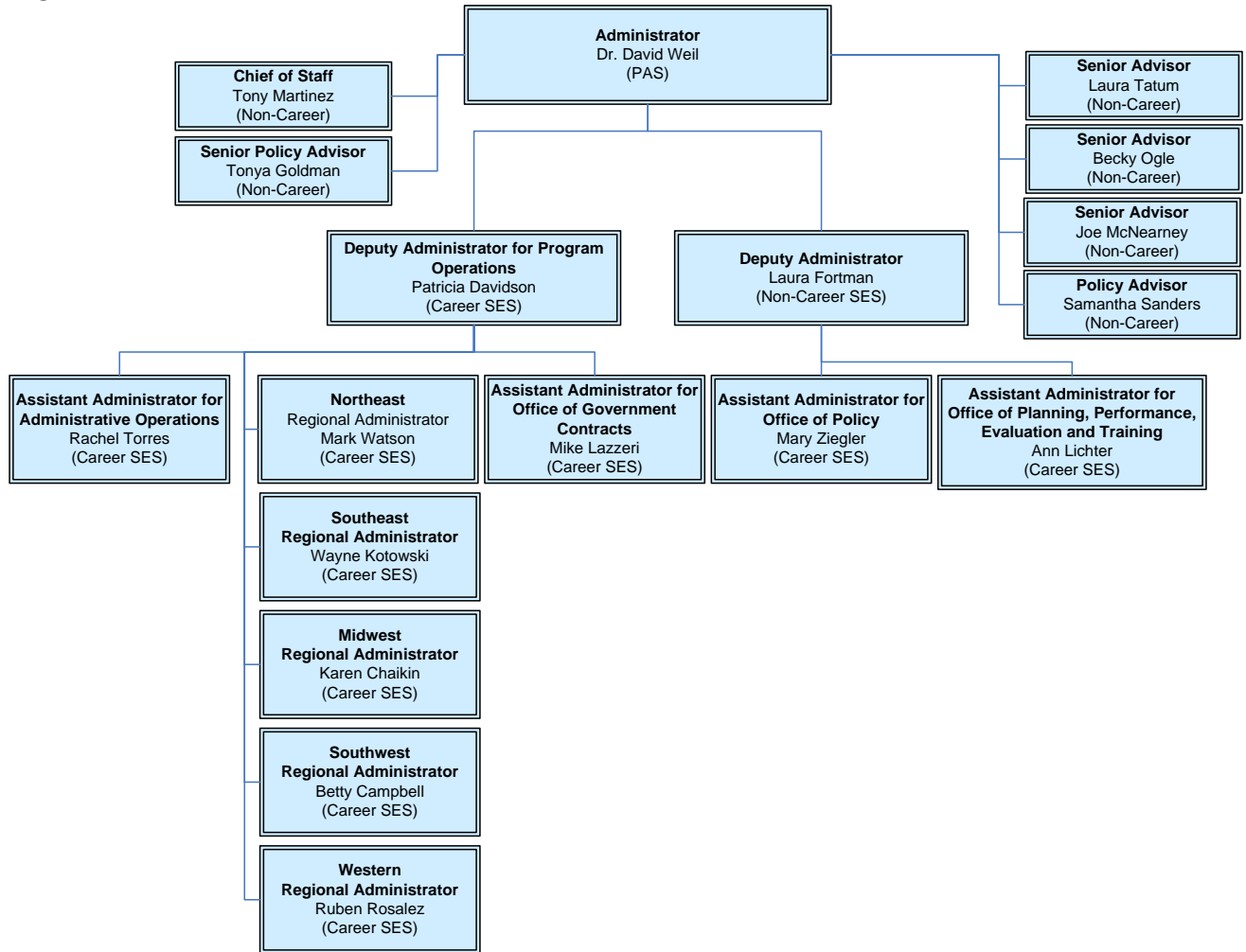
Organizational Structure

On November, 8, 2009, the Employment Standards Administration (ESA) was abolished and the four major program components of ESA, including WHD, became stand-alone programs reporting directly to the Secretary of Labor. The purpose of the reorganization was to improve the efficiency of all four programs by eliminating a layer of review and decision-making, which allows DOL leadership to more quickly attend to policy matters in each program without having an added organization component review between the program heads and senior leadership.

As a result, WHD's National Office was reorganized in 2010 into five primary organizational units headed by career senior executives. The Assistant Administrator for the Office of Policy, and the Assistant Administrator for the Office of Planning, Performance, Evaluation and Training report to the non-career Deputy Administrator, and the Assistant Administrator for Administrative Operations, the Assistant Administrator for Office of Government Contracts, and the five Regional Administrators report to the career Deputy Administrator for Program Operations. The National Office is comprised of approximately 190 staff, responsible for the functions detailed below. The remaining 1600 staff are distributed among the five regions and are principally located at the local level among the 55 district offices, and many associated area offices and field offices.

TAB 1: Agency Organizational Overview

Organizational Chart



A. Deputy Administrator

The non-career appointee who serves as WHD's Deputy Administrator is responsible for policy and regulatory work, strategic planning and performance management, learning and evaluation, data management, communications, stakeholder engagement, and business transformation efforts. The Deputy Administrator oversees the Office of Policy and the Office of Planning, Performance, Evaluation, and Training.

Office of Policy

The Office of Policy, headed by a SES assistant administrator, is responsible for developing and implementing the division's legislative, regulatory, and enforcement policies. The Office has two divisions.

- **The Division of Regulations, Legislation, and Interpretation** is responsible for developing national policies, regulations, and interpretations under the laws administered and enforced by WHD. This Division is primarily responsible for the Field Operations Handbook and guidance, and works with the Division of Enforcement Policies and Procedures on the development of guidance and informational materials related to regulatory or statutory changes, Administrator Interpretations, Field Assistance Bulletins, and other guidance documents.
- **The Division of Enforcement Policy and Procedures** is responsible for developing and implementing enforcement policies and procedures. The Division is primarily responsible for the development of Administrator Interpretations, Field Assistance Bulletins, and other guidance documents, including Field Operations Handbook content, and works with the Division of Regulations, Legislation, and Interpretation on the development of regulations and related guidance and informational materials.

Office of Planning, Performance, Evaluation and Training

The Office of Planning, Performance, Evaluation and Training, headed by a SES assistant administrator, is responsible for strategic and operational planning, budget formulation, data management, performance management, research and evaluation, business transformation efforts, partnerships and stakeholder engagement, and communication and liaison activities. The Office is comprised of two distinct divisions.

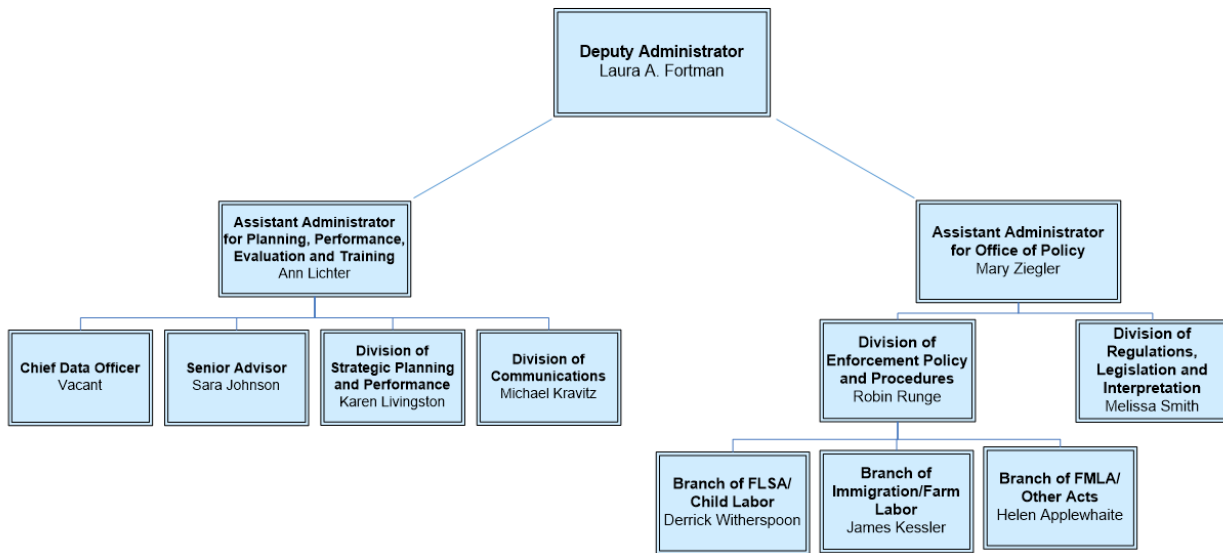
- **The Division of Communication** is responsible for the agency's internal and external communications, including communications with agency and department personnel, state and local governments, Congress, media, stakeholders, and workers. The Division also oversees stakeholder engagement at the national level and supports this work at the local level.
- **The Division of Strategic Planning and Performance (DSPP)** is responsible for the budget formulation, development and implementation of performance measures, and reporting of performance outcomes. This Division provides national planning, direction

TAB 1: Agency Organizational Overview

and coordination of the agency’s strategic enforcement initiatives. DSPP also sets the learning and evaluation program for the agency and has established a forensic accounting program to support back wage recovery.

- **The Chief Data Officer** is responsible for establishing data governance practices to manage and use data to support agency operations including data collection, analysis, business intelligence, and open data efforts.

Deputy Administrator’s Organization Chart



B. Deputy Administrator for Program Operations

The career deputy administrator is responsible for all national and field program operations. This unit has offices for government contracts enforcement, prevailing wage generation and enforcement, enforcement strategy and support, and the administrative operations for both the national office and the regions.

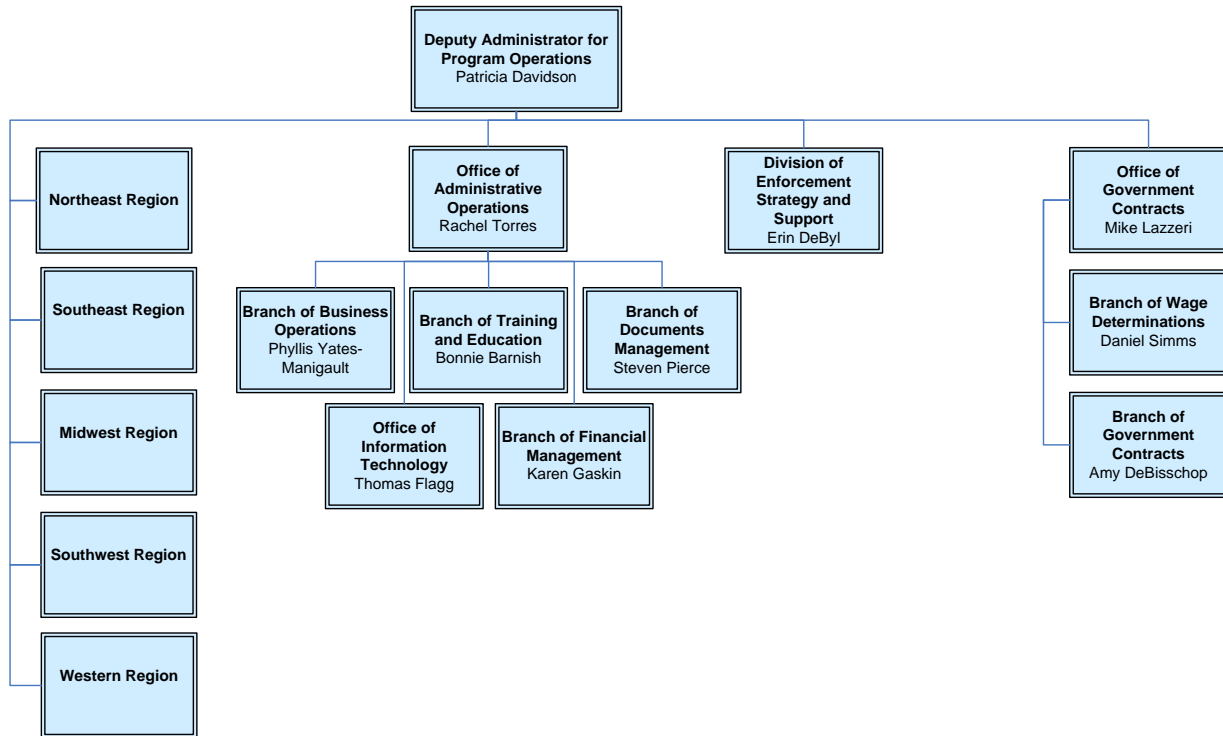
- **The Office of Administrative Operations** is headed by a SES administrative officer. This unit includes: financial management and budget execution; training; business operations, including human resources and procurement; information technology; and documents/records management.
- **The Division of Enforcement Strategy and Support** is responsible for managing a nationwide accountability review program and developing enforcement and litigation strategies for targeted industries.

TAB 1: Agency Organizational Overview

- **The Office of Government Contracts** is headed by a SES assistant administrator and is responsible for matters related to government contracts enforcement and wage determinations. The Office is comprised of two distinct units:
 - The Branch of Government Contracts Enforcement administers and enforces the prevailing wage requirements of the Davis Bacon Act, the Service Contract Act, and other statutes and Executive Orders applicable to Federal contracts for construction and for the provision of goods and services, and
 - The Division of Wage Determinations determines the minimum compensation based upon locally prevailing wage rates and fringe benefits for employees performing work on contracts subject to SCA, DBRA, and other statutes applicable to Federal contracts for construction and for the provision of services.

- The five regional administrators from WHD’s five regions, the Northeast headquartered in Philadelphia, the Southeast headquartered in Atlanta, the Midwest headquartered in Chicago, the Southwest headquartered in Dallas, and the West headquartered in San Francisco, report to this deputy administrator.

Program Operations Organization Chart



C. Wage and Hour Division Regional Structure

WHD consists of five regions, each headed by an SES regional administrator. The regional administrators are supported by deputy regional administrators, directors of enforcement and directors of operations. Additional regional office staff includes regional planning officers, wage determination personnel, back wage and civil money penalty collection and disbursement personnel, Freedom of Information Act specialists, and program enforcement coordinators. Each region has district offices and area offices that are headed by a manager, and field offices in which investigators are stationed. WHD investigators, technician, and assistants are stationed in the district and area offices.

Northeast Regional Office

The Northeast has fourteen district offices headed by a district director and eleven area offices headed by an assistant district director. The Regional Office is located in Philadelphia, PA.

Southeast Regional Office

The Southeast Region has ten district offices and eleven area offices. The Regional Office is located in Atlanta, GA.

Midwest Regional Office

The Midwest Region has nine district offices and seven area offices. The Regional Office is located in Chicago, IL.

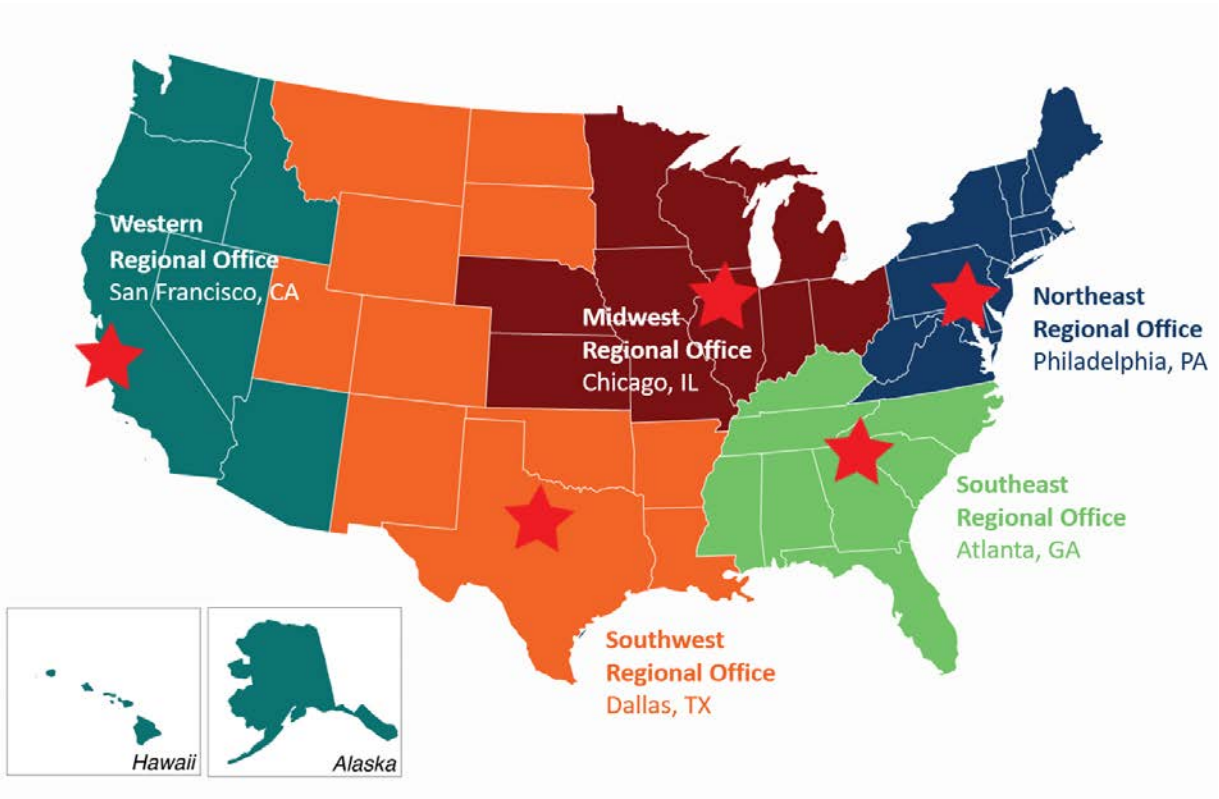
Southwest Regional Office

The Southwest has twelve district offices and four area offices. The Regional Office is located in Dallas, TX.

Western Regional Office

The Western Region has ten district offices and six area offices. The Regional Office is located in San Francisco, CA.

TAB 1: Agency Organizational Overview



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Agency At-A-Glance

**DEPARTMENT OF LABOR EMPLOYMENT *
AS OF 11/1/2016 - WH**

AGENCY			
Subagency	National Office	Regional Office	Total
WH	159	1658	1817
Total	159	1658	1817
RACE & GENDER			
Ethnicity	F	M	Total
American Indian	5	2	7
Asian	77	55	132
Black	254	121	375
Hawaiian/PI	2	3	5
Hispanic	250	244	494
Two or more Races	10	7	17
White	382	405	787
Total	980	837	1817

BARGAINING UNIT	
Local 12	126
NCFL	1269
Non-BU	422
SUPERVISORY**	
Non Supervisor	1545
Supervisor	272
WORK SCHEDULE	
F-Full Time	1790
I-Intermittent	12
P-Part Time	15
REGIONS	
1 Boston	63
2 New York	169
3 Philadelphia	165
4 Atlanta	357
5 Chicago	188
6 Dallas	272
7 Kansas City	81
8 Denver	49
9 San Francisco	267
10 Seattle	47
Natl Ofc	159
Total	1817

GRADE DISTRIBUTION	
00	11
04	4
05	25
06	37
07	217
08	23
09	215
11	142
12	744
13	269
14	105
15	25
Total	1817
DISABLED STATUS	
No Disability	1598
Non-targeted	199
Targeted	20
APPOINTMENT TENURE	
Indefinite	11
Permanent	1797
Temporary	9
RETIREMENT ELIGIBILITY	
Early Out	243
Eligible	230
Not Eligible	1344

METRO D.C. AREA EMPLOYEES BY BUILDING		
FRANCES PERKINS BLDG		158
PATRIOT'S PLAZA		1
Total		159
Includes regional employees working in the D.C. area		
GRADE 13 & ABOVE		
Ethnicity	F	M
American Indian	0	2
Asian	14	13
Black	51	25
Hispanic	40	48
Two or more Races	2	1
White	91	124

* Permanent and Temporary Employees
** Supervisor count includes manager levels 2 and 4

Organizational Changes During the Past Eight Years

The Wage and House Division's (WHD) mission is to "promote and achieve compliance with labor standards to protect and enhance the welfare of the Nation's workforce." With more than 7.3 million establishments and 135 million workers covered by the laws we enforce, WHD has established a strategic enforcement approach to achieving compliance. To carry out the goal of protecting the earnings and welfare of workers, and ensuring a fair and level playing field for employers, WHD prioritizes and directs efforts to where the problems are largest, where workers are least likely to exercise their rights provided by the law, and where WHD can have the greatest impact on compliance.

Strategic enforcement is WHD's response to an increasingly complex structure of employment and labor market. The 21st century workplace in many industries is no longer a traditional brick and mortar company owned and operated by a single employer. In recent years, the employment relationship between workers and businesses receiving the benefit of their labor has fissured apart as companies have contracted out or otherwise shed activities to be performed by other businesses. Often those secondary companies deepen the fissures, breaking those activities apart and shifting work even further out from the primary business. For example, when you walk into the lobby of a hotel these days operating under a well-known brand name, there's a high probability that the workers who greet you at the desk or clean your room are likely not employed by the hotel chain of that corporate brand. Instead, the management of that hotel property has actually been contracted out to another business offering this service. In fact, many more of the services provided on site – cleaning companies, landscapers, food service providers, etc. – have also been contracted out to providers of these services. Employees are often unaware for whom they actually work.

The blurred lines from the fissured workplace make achieving compliance with the wage and hour laws a difficult task. Intense competition within business models like subcontracting, temporary agencies, labor brokers, franchising, licensing and third-party management leads to low pay, and noncompliance pulls down standards for all – making it difficult for responsible employers to survive in low margin, fiercely competitive conditions. The costs in this race to be the lowest bidder are borne by workers deprived of their wages and their rights and by law-abiding employers who are undercut by unscrupulous competitors.

WHD has achieved [significant results](#) over the last eight years through strategic enforcement. Strategic enforcement requires a proactive approach to using enforcement, outreach, and different forms of partnership to achieve compliance. Since the beginning of 2009, WHD investigations have resulted in nearly \$1.6 billion in back wages for 1.7 million workers nationwide. In Fiscal Year 2015, WHD investigations resulted in more than \$246 million in back wages and helped over 240,000 workers. Importantly, as WHD has implemented strategic enforcement, the average back wage recovery per worker has increased steadily, from \$785 dollars in FY 2009 to over \$1,000 per worker in FY 2015, a significant amount for the predominantly low-wage workers who benefit from WHD's enforcement efforts.

These results, described in more detail below, have been achieved by a sustained effort to maximize WHD's impact on compliance through strategic enforcement.

- *Evidence-Based Approach:* At its core, strategic enforcement means taking an evidence-based approach to determining where problems are the greatest, where workers are least likely to complain, and where WHD can have the greatest impact on compliance. WHD uses data to determine which industries are at highest-risk for non-compliance and prioritizes enforcement in these industries. WHD conducts the majority of investigations in priority industries that employ workers vulnerable to being subject to illegal labor practices. WHD also uses performance measures and evaluation studies to continually evaluate and learn about the effectiveness of the agency's efforts.
- *Agency-Initiated Enforcement:* A growing percentage of investigations are directed, *i.e.*, agency-initiated, which allows the agency to carry out strategies that aim for industry-level compliance. Whereas before WHD was more reactive and focused on resolving individual complaints, through strategic enforcement WHD proactively directs resources to where the evidence shows labor law violations are greatest. WHD also seeks to impact compliance beyond the investigated employer, so that enforcement actions resonate throughout a particular sector and influence the behaviors of employers across the entire industry, leveling the playing field for law-abiding businesses.
- *Effective Enforcement:* WHD has rebuilt its number of investigators from 731 on board at the end of FY 2008 to 995 on board at the end of FY 2015, and is focused on changing incentives for compliance by using all enforcement tools available. When violations are found, WHD uses enforcement tools such as litigation, civil money penalties, liquidated damages, subpoenas, search warrants, hot goods, and debarment to recover back wages for the affected workers and deter future violations from occurring.
- *Stakeholder Engagement and Communications:* In order to expand its impact, WHD has strategically engaged stakeholders and used communications to promote compliance. Employers who are aware of their legal responsibilities (and the consequences of breaking the law) and workers who are aware of their rights are better positioned to identify and remedy violations, or to prevent them from occurring in the first place. Seen in this light, stakeholder engagement and outreach complement the agency's enforcement activities.

TAB 1: Agency Organizational Overview

WHD conducts the majority of investigations in priority industries that employ workers vulnerable to being subject to illegal labor practices. These industries include hotel and motel work, agriculture, janitorial services, garment manufacturing, and the restaurant industry. WHD is reaching those workers by devoting three-quarters of its investigations to priority industries (74 percent in fiscal year 2015). At the same time, a growing percentage of investigations are directed, *i.e.*, agency-initiated, which allows the agency to carry out strategies that aim for industry-level compliance. In fiscal year 2015, more than 42% of WHD investigations were agency-initiated, up from 35% just 6 years ago. Whereas before WHD was more reactive and focused on resolving individual complaints, through strategic enforcement WHD proactively directs resources to where the evidence shows labor law violations are greatest.

And it's working. The Division's directed investigations are smarter and more efficient – and uncovering violations at nearly the same rate as its complaint-driven investigations. By fiscal year 2015, the percent of directed investigations without violations decreased to 21 percent – versus 18 percent in complaint cases – which means the directed investigations are nearly as accurate as complaints in finding violations.



Source: WHD website: [Enforcement Statistics](#)

TAB 1: Agency Organizational Overview

As strategic enforcement has made investigations more effective at finding violations, the average amount of back wages per employee paid in violation continues to increase. In fiscal year 2015, the Wage and Hour Division's compliance actions resulted in over \$1,000 in back wages per employee paid in violation – a roughly 30 percent increase over fiscal year 2009. Between 2010 and 2011, total back wages increased from \$176 million to over \$224 million. That trajectory continued in fiscal year 2015, when the agency found over \$240 million in back wages.

It is important to place these annual back wage amounts into context. [An average of more than \\$1,000 per worker is real money that has enabled them to put food on the table, cover the rent, provide care of their children, keep the lights on and pay for other expenses.](#) These results illustrate the real-world, life-changing effects and benefits of WHD's work.

WHAT DOES \$1,000 MEAN?

\$1,000 represents multiple paychecks to typical workers in many industries*



(*based upon BLS data for average wage rates and weekly hours per occupation)

Stakeholder Engagement and Strategic Communications

Strategic communication provides a powerful and necessary complement to enforcement. Outreach, media, and educational efforts enable WHD to deter future violations among the regulated community and educate workers of their rights under the laws enforced by WHD, by strategically messaging enforcement outcomes and addressing compliance topics of interest to WHD's broad community of stakeholders. The Community Outreach and Resource Planning Specialist (CORPS) position, which was established in FY 2011, plays an important role in carrying out these strategies and in supporting strategic enforcement planning at the local level.

WHD's Misclassification Initiative is making great strides in combating a pervasive issue, where employees, misclassified as independent contractors, are denied access to critical benefits and protections – such as family and medical leave, overtime compensation, minimum wage pay and Unemployment Insurance. Employee misclassification generates losses to the U.S. Treasury and the Social Security and Medicare funds. Misclassification also creates a serious competitive disadvantage for employers who comply with the law. WHD has signed Memorandums of Understanding with the IRS, and with labor commissioners and other agency leaders representing 35 state governments with more under development. These MOUs are enabling the Department to share information and to coordinate enforcement efforts with participating states and agencies in order to level the playing field for law-abiding employers and to ensure that employees receive the protections to which they are entitled under federal and state law. These collaborations are making a difference, including generating lost revenue for states. WHD regularly finds large concentrations of misclassified workers in low-wage industries. In Fiscal Year 2015, WHD investigations resulted in more than \$74.3 million in back wages for more than 102,000 workers in industries such as janitorial, food service, temporary staffing, day care, hospitality and garment. As part of the initiative, WHD issued an [Administrator's Interpretation](#) to provide employers assistance in complying with the law.

WHD is committed to increasing public awareness and compliance with federal wage and hour laws. Since 2009, WHD has conducted more than 15,000 outreach events and presentations, providing valuable information and compliance assistance to thousands of employees, employers, community organizations, industry associations and other stakeholders nationwide. WHD also offers a number of useful compliance resources intended to provide employers with readily accessible, easy-to-understand information relevant to both their rights and to their responsibilities under the law. To achieve a more ongoing presence in communities, the Division is seeing results from its newly hired Community Outreach and Resource Planning Specialists to work in many WHD District Offices. These officers are establishing and maintaining lines of communication at the local level; engaging partners in dialogue about local industry practices and labor concerns; providing training and resources to advocates, employer associations, and other stakeholders on wage and hour laws; and providing WHD with recommendations on how to better serve workers and their communities.

Updating a Fair Day's Pay

WHD's regulatory priorities reflect the agency's commitment to ensuring the protections we enforce are relevant to today's workplace and workforce. DOL has also focused on the

TAB 1: Agency Organizational Overview

implementation of its regulations, striving to ensure that WHD investigators are well-trained and the regulated community is well-informed.

- WHD is implementing two regulatory actions that had an effective date of January 1, 2015: the Minimum Wage and Overtime Pay Rule for Direct Care Workers (the Home Care Final Rule); and the Minimum Wage for Contractors Final Rule which implemented Executive Order 13658 and raised the minimum wage for work performed by parties who contract with the Federal Government to \$10.20.
- WHD refined requirements and implementation strategies for Executive Order 13673 – Fair and Pay and Safe Workplaces which creates a system for taking into account a prospective contractor’s labor law compliance record in making contract decisions.
- In May 2016, WHD issued a final rule to update and revise the regulations issued under the FLSA implementing the exemption from minimum wage and overtime pay for executive, administrative, professional, outside sales, and computer employees. This exemption is referred to as the FLSA's "EAP" or "white collar" exemption. To be considered exempt, employees must meet certain minimum tests related to their primary job duties and be paid on a salary basis at not less than a specified minimum amount. The overtime final rules becomes effective December 1, 2016, raising the salary threshold indicating eligibility from \$455/week to \$913 (\$47,476 per year), ensuring protections to 4.2 million workers.
- In September 2016, WHD published a final rule to implement Executive Order 13706, Establishing Paid Sick Leave for Federal Contractors. The Executive Order requires certain employers that contract with the federal government to provide their employees with up to seven days of paid sick leave annually, including for family care and absences resulting from domestic violence, sexual assault, and stalking.
- WHD has also focused efforts for government contract workers. In the past two years, WHD has taken a number of actions to improve the Davis-Bacon construction survey process. In 2015, WHD conducted a comprehensive evaluation of the wage determination process to identify continuing issues and develop additional process improvements to enhance the accuracy and timeliness of wage rates. WHD has provided transparency into the program’s operations by building key stakeholder relationships and seeking input, introducing mid and post survey briefings into the process so that contractors may understand the process and their role in ensuring that participation increases. In response to feedback from stakeholders, WHD has not only published a survey schedule for fiscal year 2016, but has also sought input from stakeholders on a proposed survey plan for fiscal year 2017.
- Internally, WHD has moved towards data driven decision-making, using project data to make targeted policy decisions and to select where and how to survey. WHD anticipates continuing positive results from many of these decisions in the next few years.

TAB 2: 30/60/90 DAYS – STATE OF PLAY

Key Meetings, Decisions and Announcements

In April or May of 2017, the agency will hold its annual Spring Executive Leadership Team meeting to set priorities for the upcoming fiscal year.

Construction Surveys to Determine Wage Rates

Federally financed or assisted construction projects subject to the Davis-Bacon and related Acts (DBRA) must contain a prevailing wage determination. The agency has planned surveys to determine wage rates in the following areas:

Region	Survey Type	State
SW	Building and Heavy (Metro Counties)	New Mexico
NE	Statewide Building	Connecticut
NE	Building (Select Counties)	New York
W	Statewide All Types	Guam
NE	Statewide Highway	Virginia
SE	Statewide Residential	North Carolina
SE	Statewide Residential	South Carolina
SE	Statewide Highway	Alabama
MW	Statewide Highway	Kansas
W	Statewide Residential	Alaska

Key Agency Stakeholders

Stakeholders interested in WHD’s actions:

- American Payroll Association (APA)
- American Staffing Association (ASA)
- American Network of Community Options and Resources (ANCOR)
- Associated General Contractors (AGC)
- Associated Builders and Contractors, Inc. (ABC)
- Building and Construction Trades Department (BCTD)
- Ford Foundation
- HR Policy Association
- Interfaith Worker Justice (IWJ)
- Jobs With Justice
- National Alliance for Fair Contracting
- National Association of Home Builders (NAHB)

TAB 2: 30/60/90 Days - State of Play

- National Employment Law Project (NELP)
- Paraprofessional Healthcare Institute (PHI)
- Public Welfare Foundation
- College and University Professional Association for Human Resources (CUPA-HR)
- National Council of Nonprofits

Stakeholders that should be engaged by the Secretary in the first 90 days:

- American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)
- Service Employees International Union (SEIU)
- Society for Human Resource Management (SHRM)
- U.S. Chamber of Commerce

TAB 3: INITIATIVES

Policy and Regulatory Issues

Section 14(c) of the FLSA provides that the Secretary of Labor may, to the extent necessary to prevent the curtailment of opportunities for employment, issue certificates to permit the payment of subminimum wages to individuals with disabilities whose earning or productive capacities are affected by their disability. These regulations were last updated in 1989.

Major Grants and Contracts

- N/A

Enforcement

With more than 7.3 million establishments and 135 million workers covered by the laws WHD enforces, the agency will never have enough resources. Through strategic enforcement, WHD seeks to impact compliance beyond the investigated employer, so that enforcement actions resonate throughout a particular sector and influence the behaviors of employers across the entire industry, leveling the playing field for law-abiding businesses.

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

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

WHD also conducts directed investigations to secure compliance for other workers at a higher risk of exploitation such as: workers with disabilities, young workers, agricultural workers, and workers with no private right to pursue remedies on their own behalf. Enforcing the law is key to protecting workers who deserve a fair day's pay for a day's work, for leveling the playing field for responsible employers, and for protecting fair and vigorous competition—the cornerstone of a strong economy.

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

Addressing the Fissured Workplace: WHD is modernizing its approach in key enforcement areas in industries where complex employment relationships exist. Through directed investigations, WHD increases its presence in high risk industries, such as those industries with high minimum wage and overtime violations that employ vulnerable worker populations particularly those who do not typically report violations, either because they fear retaliation or because they do not understand the law and complaint process. WHD will continue to focus on industries characterized by a high degree of subcontracting, use of temporary labor providers, and other third-party managers. These industries are often fiercely competitive and, unfortunately, that can lead some unscrupulous employers to cut corners in an effort to gain a competitive advantage over employers who follow the law and protect their workers. If laws are not vigorously enforced, more and more employers can start to violate worker protection laws in an effort not to be under-bid. This results in a growing population of workers subject to illegal practices, including workers who are misclassified or who do not receive the wages they earned and were required to be paid by law.

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

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

FMLA: In order to promote work and family balance, WHD will continue implementing its FMLA enforcement strategy to promote a more comprehensive approach to compliance. Since FMLA compliance at the establishment level is often driven by corporate policies, WHD has been developing strategies to provide a more in-depth review of the employer's business practices and

leave policies with the objective of making a broader impact on compliance, rather than resolving one individual complaint.

Section 14(c): On July 22, 2014, the President signed the Workforce Innovation and Opportunity Act (WIOA) which provides for comprehensive changes to employment for trainees and workers with disabilities. Among other items, WIOA amends the Rehabilitation Act of 1973 by establishing further requirements on conditions where workers with disabilities can be employed at subminimum wages. WIOA created an advisory committee to look broadly at increasing opportunities for competitive, integrated employment, as well as to examine the Section 14(c) program under the FLSA.

Audits and Reports

- **Wage and Hour Division Needs to Strengthen Management Controls for Back Wage Distributions, [Report No. 04-15-001-04-420](#) (March 31, 2015).**

Open Recommendations: Two out of three recommendations are in resolved status, which means further action is required before the OIG closes the recommendation.

- Recommendation 1: To develop reporting tools that will support greater oversight and performance management of the back wage follow-up and distribution process. Due: September 30, 2016.
- Recommendation 3: Update the Field Operations Handbook and establish uniform procedures for staff to utilize all existing available tools and resources for locating employees due back wages. Due: December 31, 2016.

WHD is continuing to work on recommendations from the following report, which pre-dates FY 2013.

- **WHD Lacked Effective Financial Management of Back Wage and Civil Monetary Penalty Receivables, [Report No. 22-12-013-04-420](#) (September 28, 2012).**

WHD intends to close the following recommendations concurrent with efforts to address the above 2015 report on back wage distributions.

- Develop and implement policies and procedures to account and report status of back wage and civil monetary penalties
- Improve monitoring of work performed by contractors to ensure accuracy and completeness
- Update agency policies regarding segregation of duties
- Modify user guides for back wage and civil monetary systems to include reports used in the Treasury Report on Receivables (TROR) process.

Management

IT Opportunities/Challenges

The Wage and Hour Division (WHD) has one central IT challenge and several IT opportunities. The challenge is WHD's legacy IT system. The agency's aging legacy IT system was recently reported to the Government Accountability Office as one of the Department of Labor's top three mission critical legacy systems in need of the replacement.

The agency has a plan in place for modernization and replacement, but without sufficient funding, it cannot implement the plan. Repeated requests in the President's Budget for dedicated funding have not succeeded. Despite the lack of resources dedicated to this effort and consistent with best practices in modernizing IT, WHD regularly updates its systems in an iterative, modular way, in order to try to keep pace with the regulated community. At the same time, WHD is leveraging more modern development practices, such as lean start-up, agile, and human-centered design methodologies consistent with the [Digital Services Playbook](#). Yet every year that passes without sufficient funding increases the likelihood that WHD's legacy system will no longer be able to support the agency's core programmatic needs.

In the near term, WHD is focused on providing updated tools to its enforcement staff and the public. WHD has partnered with [GSA's 18F](#) to bring modern practices, including agile development, lean start-up, and human-centered design, to its efforts to update and transform services and products. For example, WHD is converting its paper-based Field Operations Handbook (FOH) to a digital-native format. When finished, the [Digital FOH](#) will be an accessible, accurate, and easy to navigate resource that will efficiently facilitate research of WHD regulatory interpretations, enforcement policies, and administrative procedures. In addition, WHD is partnering with 18F and a developer to create a new online certification module for 14(c) certificate holders. This new module is being developed under GSA's agile development blanket purchase agreement and represents one of the first agile development projects in the department.

WHD is also focused on IT opportunities such as the agency's investment in data infrastructure to support a more robust business intelligence platform, as part of a broader effort to build WHD's data capacity. Data is the link between the agency's mission and the technology necessary to accomplish the mission. The business strategy and goals drive the data strategy which informs the IT choices for infrastructure and applications. Delivering new data-driven applications and tools to the field positions the agency to adopt forward-looking technology and set the stage for further modernization. By making WHD's data more accessible and visible to the public, external stakeholders such as industry leaders, employers, workers, and other government agencies can leverage WHD's data to inform decisions and actions that influence compliance.

Employee Engagement

WHD is working to improve employee engagement through the implementation of its Employee Viewpoint Survey Plan. Like all federal agencies, WHD receives annual results from the Federal Employee Viewpoint Survey (FEVS or EVS) that inform the development of a plan for improvement in the coming year. The challenges and solutions differ across the national office and WHD's five regions; each office is leading individualized efforts under their Employee Engagement Plans. In the national office, leadership paid careful attention to the process for developing meaningful plans that reflect the views and ideas of the workforce. In FY 2015 and 2016, the WHD Administrator convened a series of all-hands meetings to discuss the EVS findings and to engage employees in developing strategies to address areas for improvement. The National Office and the Western Region have also been participating in the pilot of the Modern Government Management Traits initiative that is based on a program instituted at Google. The initiative focuses on front-line managers who have the most influence on the day-to-day morale of the staff. The program involves action items that embody eight traits identified by Google of excellent managers.

The agency is also developing professional, management, and leadership development programs for staff.

BUILDING EMPLOYEE ENGAGEMENT

WHD overall EVS results continued to improve:

- For 63 of the 71 core questions, our positive response percentage increased from 2015 to 2016.
- For all 71 core questions, our positive response percentage increased from 2014 to 2016.
- **Building strategic enforcement and achieving our mission requires continuing employee engagement.**

In FY 2017, WHD will continue its collaborative processes, based on the principles of inclusiveness, transparency, and, most of all, engagement of employees at all levels. Regional offices have undertaken a range of efforts, including working with the National Council of Field Labor Locals to establish Labor/Management Teams in district offices, developing engagement competencies in local offices, participation in online training that provides steps for improving employee engagement through Appreciation, Communication and Empowerment, creating workplace principles for civility and communications, and the development of employee recognition programs.

Calendar

WHD enforcement and operations activities follow the fiscal year cycle, October 1 to September 30th.

Each year, the Executive Leadership Team, which consists of the Administrator's political staff, the Regional and Deputy Regional Directors and the Senior Executive Service Staff in the National Office, gathers input from each WHD functional area to set the priorities for the coming fiscal year, consistent with the Department's strategic plan. This step usually occurs in April through June with the development of a draft plan that outlines how the agency plans to achieve the mission in the upcoming year. The framework is communicated through the Regional Office to the District Office Managers in early summer typically. District Offices meet during the summer with their staff to develop strategies and local initiatives in support of the plan. The District Offices communicate their local plans through the Regional Office to the National Office for review and modification, as appropriate, in August. The Administrator then finalizes the plan after consultation in the DOL and approves local initiatives by the end of the fiscal year.

TAB 3: Initiatives

There are typically Executive Leadership Team meetings in the fall, winter, and spring. Training activities, accountability reviews, and prevailing wage surveys occur throughout the fiscal year.

TAB 4: BUDGET

(Dollars in millions)

	FY 2013 Enacted	FY 2014 Enacted	FY 2015 Enacted	FY 2016 Enacted	FY 2017 Request
Budget Authority	\$215.2	\$224.3	\$227.5	\$227.5	\$276.6
FTE	1,479	1,332	1,367	1,357	1,694

At-A-Glance

- WHD receives funding through an annual appropriation. In addition, WHD receives funding for its H-1B L-Fraud account through collected fees. The H-1B account supports additional FTE not included in the table above. In FY 2016, WHD apportioned \$58.0 million to support 367 FTE through its H-1B account. A portion of H-1B funds are allocated to the Office of the Solicitor (\$7.6 million in FY16).

Budget and FTE Trends

- In FY 2010, WHD received an increase of approximately \$34.0 million over its FY 2009 funding level for an appropriated funding level of \$227.3 million. Since then, with the exception of FY 2013, the agency’s enacted funding levels have remained flat; the FY 2016 appropriated funding is \$227.5 million. In FY 2013, WHD was subject to the sequester and funded at \$215.2 million. The FY 2017 President’s Budget requests approximately \$45.0 million in additional resources, the majority of which would fund an increase in enforcement staff. WHD has included this request in previous President’s Budgets, but has not received an increased appropriation.
- WHD’s overall FTE usage increased in FY 2010 with the increased funding level. FTE usage continued to increase through FY 2012, when WHD used 1,810 FTE between its S&E and H-1B accounts. FTE usage began to decrease in FY 2013 due to sequestration, and this trend continued through FY 2015 due to flat funding levels and higher-than-expected attrition levels. The FY 2017 request includes an increase of over 300 FTE to support its strategic enforcement approach. As discussed above, WHD has included this request in previous President’s Budgets, but has not received an increased appropriation.
- In FY 2009 and 2010, WHD received approximately \$15.0 million total in transferred funding for the American Recovery and Reinvestment Act from the worker protection pool. In FY 2013, WHD received \$1.0 million in supplemental funding for the Superstorm Sandy Supplemental in order to cover travel costs to the Northeast region for national office staff to perform outreach activities and enforcement.
- In FY 2013, WHD reduced contracts usage to achieve savings for sequestration. The agency also implemented a temporary hiring freeze, eliminated performance bonuses, reduced overtime and premium pay, and reduced PCS moves to reach the necessary funding level under sequestration.
- Since FY 2014, WHD has requested \$5.8 million to fund the IT modernization/legacy system replacement, but has not received an increased appropriation.
- Since FY 2009, WHD has increased its investigator staff, going from 743 investigator FTE in FY 2009 to over 900 investigator FTE in FY 2015 between the S&E and H-1B accounts. During this timeframe, WHD has significantly changed how it carries out the agency

TAB 4: Budget

mission by adopting a strategic enforcement approach to achieving compliance. The agency has requested additional resources for investigator FTE in recent budget submissions to support its strategic enforcement approach; however, Congress has not provided this increase in resources. The FY 2017 President's Budget again includes requests to support its push towards a more strategic enforcement, totaling approximately \$30.0 million and over 300 FTE.

TAB 5: AGENCY PERFORMANCE

In FY 2010, WHD adopted a strategic enforcement approach to maximize the impact of its efforts by increasing the percent of directed (agency-initiated) investigations. WHD prioritizes efforts in industries where the problems are greatest, where workers are least likely to complain, and where WHD can influence compliance at the industry-level. WHD has shifted its approach from focusing on single establishments and resolving complaints to improving compliance across industries for greater numbers of workers. To measure success in targeting, the agency measures the “no violation rate” of its closed investigations.

Performance Goal WHD 3.3 – Provide that vulnerable workers are employed in compliance and secure sustained and verifiable employer compliance, particularly among the most persistent violators.

*Target reached (Y), Improved (I), or Not Reached (N)		FY/PY 2011	FY/PY 2012	FY/PY 2013	FY/PY 2014	FY/PY 2015	FY/PY 2016	FY/PY 2017	What Worked	What Didn't Work	Program Performance Improvement Plan
Number of compliance actions	Target	31,897	34,533	34,231	33,635	30,500	30,500	31,411	WHD continued to prioritize compliance actions, both complaint and directed, in industries with high violations and vulnerable workers.	WHD continued to identify areas where the infrastructure needed further alignment with strategies.	WHD will maintain optimal investigator levels to ensure productivity while advancing strategic enforcement goals through planning, coordination, and evaluation.
	Result	33,293	34,139	33,146	29,483	27,915	--	--			
	Status	Y	I	N	N	N	--	--			
Percent of directed investigations (excludes conciliations)	Target	32%	35%	38%	40%	43%	45%	46%	WHD's enforcement program has evolved from complaint-based to strategic where directed investigations are conducted in priority industries and the complaints are prioritized.	WHD identified various ways the field can be further supported in their efforts to advance strategic initiatives.	WHD is implementing new tools and training to better equip the field with data and guidance
	Result	29%	41%	44%	44%	42%	--	--			
	Status	--	Y	Y	Y	N	--	--			
Percent of directed no violation cases	Target	28%	25%	23%	22%	25%	24%	22%	WHD achieved the	No violation rates provide	WHD is piloting internal measures to
	Result	30%	29%	26%	22%	21%	--	--			

TAB 5: Agency Performance

*Target reached (Y), Improved (I), or Not Reached (N)		FY/PY 2011	FY/PY 2012	FY/PY 2013	FY/PY 2014	FY/PY 2015	FY/PY 2016	FY/PY 2017	What Worked	What Didn't Work	Program Performance Improvement Plan
	Status	--	I	I	Y	Y	--	--	lowest no violation rate in recent history with a continued shift towards strategic enforcement in priority industries.	limited insights on the severity of violations.	evaluate the nature and severity of violations.
Percent of complaint no violation cases	Target	15%	23%	22%	20%	21%	21%	21%	WHD maintained targeted complaint levels through prioritization and leveraged opportunities for strategic enforcement.	WHD continued to balance the goals of strategic directed enforcement and customer service in States with limited enforcement.	See Above
	Result	25%	21%	21%	19%	18%	--	--			
	Status	--	Y	Y	Y	Y	--	--			
Percent of Directed Investigations in Priority Industries	Target	80%	83%	85%	86%	84%	84%	86%	WHD continues to place high priority and resources in industries with vulnerable workers unlikely to complain.	WHD may have reached the optimum level and is evaluating what other measures are needed to drive continued improvements that can be achieved.	WHD is developing methods and practices to further develop data on priority industries.
	Result	82%	85%	83%	82%	84%	--	--			
	Status	Y	Y	N	N	Y	--	--			
Percent of complaint investigations in priority industries (excludes conciliations)	Target	63%	66%	68%	68%	69%	69%	70%	WHD commits to industries where it expects to find vulnerable workers, which is balanced against doing investigations in each statutory program.	See Above	See Above
	Result	66%	67%	68%	67%	67%	--	--			
	Status	Y	Y	Y	N	N	--	--			
Average age of	Target	40[p]	36[p]	36[p]	36[p]	--	45[p]	45[p]	WHD has	While the	WHD is identifying

TAB 5: Agency Performance

*Target reached (Y), Improved (I), or Not Reached (N)		FY/PY 2011	FY/PY 2012	FY/PY 2013	FY/PY 2014	FY/PY 2015	FY/PY 2016	FY/PY 2017	What Worked	What Didn't Work	Program Performance Improvement Plan
Davis-Bacon wage rates for non-Residential Construction (in months)	Result	39	39	42	43	46	--	--	shifted this program to a more data-driven approach to determine where to survey and how to identify where policy changes are needed.	measure tracks timeliness in completing surveys, the measure does not adequately reflect survey quality or accuracy.	areas to enhance the accuracy and timeliness of wage rates. WHD is working on additional improvements to shorten the time to complete surveys and simplify the data submission process
	Status	--	--	--	--	--	--	--			

Sources: Wage Determination Generation System (WDGS) Wage and Hour Investigative Support and Reporting Database (WHISARD). **Notes:** WHD intends to replace the wage survey measure with one or more measures that better reflect the direction of the program. In the interim, WHD continues to report data from the survey measure without setting targets. The measure is not being used to drive performance, therefore, target-setting is not appropriate.

The Family and Medical Leave Act (FMLA) entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave. WHD protects workers' rights by conducting investigations into potential FMLA violations; performance is measured by timely resolution of incoming complaints.

Performance Goal WHD 3.2 –
 Increase corporate compliance with the Family and Medical Leave Act

