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**FY 2022**

**CONGRESSIONAL BUDGET JUSTIFICATION**

**WAGE AND HOUR DIVISION**

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# WAGE AND HOUR DIVISION

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# **WAGE AND HOUR DIVISION**

## **APPROPRIATION LANGUAGE**

### **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, [\$246,000,000] \$276,500,000. (Department of Labor Appropriations Act, 2021.)

## WAGE AND HOUR DIVISION

<b>AMOUNTS AVAILABLE FOR OBLIGATION</b>						
(Dollars in Thousands)						
	<b>FY 2020 Revised Enacted</b>		<b>FY 2021 Enacted</b>		<b>FY 2022 Request</b>	
	<b>FTE</b>	<b>Amount</b>	<b>FTE</b>	<b>Amount</b>	<b>FTE</b>	<b>Amount</b>
<b>A. Appropriation</b>	<b>1,293</b>	<b>\$242,000</b>	<b>1,340</b>	<b>\$246,000</b>	<b>1,515</b>	<b>\$276,500</b>
Reimbursements (CMP's)	0	\$2,800	0	\$2,800	0	\$2,800
H-1B L Fraud Fees (Collected)	214	\$50,000	170	\$49,000	170	\$51,000
USMCA Supplemental (P.L. 116-113)	0	\$3,200	0	\$3,937	0	\$0
CARES Act (P.L. 116-127)	10	\$2,500	0	\$0	0	\$0
American Rescue Plan Act Supplemental (P.L. 117-2)	0	\$0	248	\$21,275	0	\$0
<i>Subtotal</i>	<i>1,517</i>	<i>\$300,500</i>	<i>1,758</i>	<i>\$323,012</i>	<i>1,685</i>	<i>\$330,300</i>
<b>B. Gross Budget Authority</b>	<b>1,517</b>	<b>\$300,500</b>	<b>1,758</b>	<b>\$323,012</b>	<b>1,685</b>	<b>\$330,300</b>
Reimbursements (CMP's)	0	-\$2,800	0	-\$2,800	0	-\$2,800
H-1B L Fraud Fees (Collected)	-214	-\$50,000	-170	-\$49,000	-170	-\$51,000
USMCA Supplemental	0	-\$3,200	0	-\$3,937	0	\$0
CARES Act	-10	-\$2,500	0	\$0	0	\$0
American Rescue Plan Supplemental	0	\$0	-248	-\$21,275	0	\$0
Shared Services Realignment	-16	\$0	0	\$0	0	\$0
<b>C. Budget Authority Before Committee</b>	<b>1,277</b>	<b>\$242,000</b>	<b>1,340</b>	<b>\$246,000</b>	<b>1,515</b>	<b>\$276,500</b>
Reimbursements (CMP's)	0	\$2,800	0	\$2,800	0	\$2,800
H-1B L Fraud Fees (Actual)	214	\$41,000	170	\$49,000	170	\$51,000
<b>D. Total Budgetary Resources</b>	<b>1,491</b>	<b>\$285,800</b>	<b>1,510</b>	<b>\$297,800</b>	<b>1,685</b>	<b>\$330,300</b>
FTE Lapsed and Unobligated Balance Expiring	-76	-\$4,293	0	\$0	0	\$0
Shared Services Realignment	16	\$0	0	\$0	0	\$0
<b>E. Total Estimated Obligations</b>	<b>1,431</b>	<b>\$281,507</b>	<b>1,510</b>	<b>\$297,800</b>	<b>1,685</b>	<b>\$330,300</b>

# WAGE AND HOUR DIVISION

## SUMMARY OF CHANGES

(Dollars in Thousands)

	FY 2021 Enacted	FY 2022 Request	Net Change
<b>Budget Authority</b>			
General Funds	\$295,000	\$327,500	+\$32,500
Total	\$295,000	\$327,500	+\$32,500
<b>Full Time Equivalents</b>			
General Funds	1,510	1,685	175
Total	1,510	1,685	175

### FY 2022 Change

Explanation of Change	FY 2021 Base		Trust Funds		General Funds		Total	
	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
<b>Increases:</b>								
<b>A. Built-Ins:</b>								
To Provide For:								
Costs of pay adjustments	1,510	\$151,111	0	\$0	0	\$5,670	0	\$5,670
Personnel benefits	0	\$48,074	0	\$0	0	\$1,972	0	\$1,972
Employee health benefits	0	\$6,875	0	\$0	0	\$0	0	\$0
Moving allowance	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	\$1,464	0	\$0	0	\$0	0	\$0
Transportation of things	0	\$6	0	\$0	0	\$0	0	\$0
Rental payments to GSA	0	\$13,500	0	\$0	0	\$0	0	\$0
Rental payments to others	0	\$8	0	\$0	0	\$0	0	\$0
Communications, utilities, and miscellaneous charges	0	\$1,800	0	\$0	0	\$0	0	\$0
Printing and reproduction	0	\$350	0	\$0	0	\$0	0	\$0
Advisory and assistance services	0	\$3,304	0	\$0	0	\$0	0	\$0
Other services from non-Federal sources	0	\$705	0	\$0	0	\$0	0	\$0
Working Capital Fund	0	\$50,219	0	\$0	0	\$0	0	\$0
Other Federal sources (DHS Charges)	0	\$2,801	0	\$0	0	\$0	0	\$0
Other goods and services from Federal sources	0	\$5,917	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

## WAGE AND HOUR DIVISION

FY 2022 Change

Explanation of Change	FY 2021 Base		Trust Funds		General Funds		Total	
	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
Operation and maintenance of equipment	0	\$2,779	0	\$0	0	\$0	0	\$0
Supplies and materials	0	\$1,503	0	\$0	0	\$0	0	\$0
Equipment	0	\$3,000	0	\$0	0	\$0	0	\$0
Grants, subsidies, and contributions	0	\$0	0	\$0	0	\$0	0	\$0
Insurance claims and indemnities	0	\$500	0	\$0	0	\$0	0	\$0
<b>Built-Ins Subtotal</b>	<b>1,510</b>	<b>+\$293,916</b>	<b>0</b>	<b>\$0</b>	<b>0</b>	<b>+\$7,642</b>	<b>0</b>	<b>+\$7,642</b>
<b>B. Programs:</b>								
Enforcement FTE	0	\$0	0	\$0	175	\$25,028	175	\$25,028
<b>Programs Subtotal</b>			<b>0</b>	<b>\$0</b>	<b>175</b>	<b>+\$25,028</b>	<b>175</b>	<b>+\$25,028</b>
<b>Total Increase</b>	<b>1,510</b>	<b>+\$293,916</b>	<b>0</b>	<b>\$0</b>	<b>175</b>	<b>+\$32,670</b>	<b>175</b>	<b>+\$32,670</b>
<b>Decreases:</b>								
<b>A. Built-Ins:</b>								
To Provide For:								
Federal Employees' Compensation Act (FECA)	0	\$1,084	0	\$0	0	-\$170	0	-\$170
<b>Built-Ins Subtotal</b>	<b>0</b>	<b>+\$1,084</b>	<b>0</b>	<b>\$0</b>	<b>0</b>	<b>-\$170</b>	<b>0</b>	<b>-\$170</b>
<b>B. Programs:</b>								
<b>Total Decrease</b>	<b>0</b>	<b>+\$1,084</b>	<b>0</b>	<b>\$0</b>	<b>0</b>	<b>-\$170</b>	<b>0</b>	<b>-\$170</b>
<b>Total Change</b>	<b>1,510</b>	<b>+\$295,000</b>	<b>0</b>	<b>\$0</b>	<b>175</b>	<b>+\$32,500</b>	<b>175</b>	<b>+\$32,500</b>



## WAGE AND HOUR DIVISION

<b>SUMMARY BUDGET AUTHORITY AND FTE BY ACTIVITY<sup>1</sup></b>								
(Dollars in Thousands)								
	FY 2020 Revised Enacted		FY 2021 Enacted		FY 2022 Request		Diff. FY22 Request / FY21 Enacted	
	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
<b>Wage and Hour Division</b>	<b>1,250</b>	<b>242,000</b>	<b>1,340</b>	<b>246,000</b>	<b>1,515</b>	<b>276,500</b>	<b>175</b>	<b>30,500</b>
General Funds	1,250	242,000	1,340	246,000	1,515	276,500	175	30,500
<b>Wage Hour H-1B</b>	<b>191</b>	<b>50,000</b>	<b>170</b>	<b>49,000</b>	<b>170</b>	<b>51,000</b>	<b>0</b>	<b>2,000</b>
General Funds	191	50,000	170	49,000	170	51,000	0	2,000
<b>Total</b>	<b>1,441</b>	<b>292,000</b>	<b>1,510</b>	<b>295,000</b>	<b>1,685</b>	<b>327,500</b>	<b>175</b>	<b>32,500</b>
<b>General Funds</b>	<b>1,441</b>	<b>292,000</b>	<b>1,510</b>	<b>295,000</b>	<b>1,685</b>	<b>327,500</b>	<b>175</b>	<b>32,500</b>

NOTE: 2020 reflects actual FTE.

<sup>1</sup> Note: H-1B Fees - This account is not appropriated.

## WAGE AND HOUR DIVISION

<b>BUDGET AUTHORITY BY OBJECT CLASS</b>					
(Dollars in Thousands)					
		<b>FY 2020 Revised Enacted</b>	<b>FY 2021 Enacted</b>	<b>FY 2022 Request</b>	<b>Diff. FY22 Request / FY21 Enacted</b>
	Full-Time Equivalent				
	Full-time Permanent	1,507	1,601	1,685	84
	<b>Total</b>	<b>1,507</b>	<b>1,601</b>	<b>1,685</b>	<b>84</b>
	Average ES Salary	\$183,120	\$183,120	\$191,034	\$7,914
	Average GM/GS Grade	12	12	12	0
	Average GM/GS Salary	\$93,440	\$93,404	\$94,453	\$1,049
11.1	Full-time permanent	143,671	146,391	168,557	22,166
11.3	Other than full-time permanent	765	938	938	0
11.5	Other personnel compensation	3,698	3,782	3,804	22
11.8	Special personal services payments	0	0	0	0
11.9	<b>Total personnel compensation</b>	<b>148,134</b>	<b>151,111</b>	<b>173,299</b>	<b>22,188</b>
12.1	Civilian personnel benefits	49,549	56,033	66,345	10,312
13.0	Benefits for former personnel	0	0	0	0
21.0	Travel and transportation of persons	4,869	1,464	1,464	0
22.0	Transportation of things	10	6	6	0
23.0	Rent, Communications, and Utilities	0	0	0	0
23.1	Rental payments to GSA	13,500	13,500	13,500	0
23.2	Rental payments to others	8	8	8	0
23.3	Communications, utilities, and miscellaneous charges	2,300	1,800	1,800	0
24.0	Printing and reproduction	351	350	350	0
25.1	Advisory and assistance services	2,900	3,304	3,304	0
25.2	Other services from non-Federal sources	1,652	705	705	0
25.3	Other goods and services from Federal sources 1/	61,124	58,937	58,937	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	5,116	2,779	2,779	0
26.0	Supplies and materials	1,003	1,503	1,503	0
31.0	Equipment	900	3,000	3,000	0
41.0	Grants, subsidies, and contributions	0	0	0	0
42.0	Insurance claims and indemnities	584	500	500	0
	<b>Total</b>	<b>292,000</b>	<b>295,000</b>	<b>327,500</b>	<b>32,500</b>
	1/Other goods and services from Federal sources				
	Working Capital Fund	49,836	50,219	50,219	0
	DHS Services	1,300	2,801	2,801	0
	Services by DOL Agencies	7,323	5,917	5,917	0
	GSA Services	2,288	0	0	0
	HHS Services	14	0	0	0
	Services by Other Government Departments	338	0	0	0

## 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
PUB. L. 108-447	L-1 Visa and H-1B Visa Reform Act, Title IV of	Title IV, sec. 401-430	N/A

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	the Consolidated Appropriations Act, (2005).		
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

<b>APPROPRIATION HISTORY</b>					
(Dollars in Thousands)					
	<b>Budget Estimates to Congress</b>	<b>House Allowance</b>	<b>Senate Allowance</b>	<b>Appropriations</b>	<b>FTE</b>
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			\$246,000	1,340
2022					
Base Appropriation	\$276,500				1,515

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 mission of the Wage and Hour Division (WHD) is to promote and achieve compliance with labor standards to protect and enhance the welfare of the nation's workforce. WHD enforces workplace protections like minimum wage, overtime, and other labor standards and laws under 29 U.S.C. 201, *et seq.*, so that America's workers receive the wages they earned as required by law and businesses that comply with the law operate on a level playing field. Collectively, these laws cover most private, state, and local government employment and protect more than 148 million of America's workers in more than 10 million workplaces throughout the United States and its territories.

WHD enforces and administers:

- The minimum wage, overtime, child labor, recordkeeping, 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 (CWHSSA), 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 field 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;
- The garnishment provisions of the Consumer Credit Protection Act (CCPA);
- The Labor Value Content (LVC) requirements of the United States-Mexico-Canada Implementation Act (USMCA);
- The temporary emergency paid leave mandate for COVID-related reasons under the Families First Coronavirus Response Act (FFCRA)<sup>2</sup>;
- Executive Order 13658, Establishing a Minimum Wage for Contractors; and
- Executive Order 13706, Establishing Paid Sick Leave for Federal Contractors.

The scope of the agency's responsibilities is broad, so WHD prioritizes its resources to carry out its mission in the most impactful manner possible. While ample evidence has shown enforcement strategies, particularly investigations, are effective in improving employer compliance with laws

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<sup>2</sup> While the FFCRA paid leave employer mandate ended December 31, 2020, the statute of limitations allows workers who were improperly denied COVID-19 emergency leave two to three years to complain of such violations and seek back wages. Further, employers are still eligible for voluntary tax credits extended by the American Rescue Plan Act for providing qualified leave.

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and regulations, WHD cannot intervene in all the cases where it is needed.<sup>3</sup> Instead, WHD maximizes its limited resources by strategically applying its enforcement tools to achieve the greatest effect on compliance and reach the largest number of workers.

The FY 2022 budget request seeks additional resources to enhance and support these activities, which are guided by three key principles:

- Through full and fair enforcement of the law, WHD holds employers accountable for wage theft from workers, particularly populations disproportionately represented in low-wage occupations, essential workers, and individuals working without critical labor protections due to misclassification.
- Through modernized outreach and education, WHD equips workers with knowledge of their rights, protections, and the back wages due them and provides technical assistance to employers on their responsibilities under the laws enforced by WHD.
- Through strong stakeholder engagement and media strategies, WHD deters violations and significantly broadens the reach of its enforcement and outreach strategies.

### **Protect Access to Economic Equity**

**WHD seeks an additional \$30,500,000 and 175 FTE to restore enforcement staff, thereby strengthening enforcement strategies serving communities most vulnerable to economic exploitation and supporting the regulatory work to protect workers' rights.** Also importantly, the FY 2022 request includes funding for covering the pay and benefits built-in increases that are necessary to prevent further staff erosion. WHD will work closely with the Department to achieve its ambitious hiring goals, including building upon the tools and techniques developed from prior significant hiring and onboarding efforts and the pandemic.

WHD plays a critical role in addressing economic equity, and research has shown that wage violations contribute to inequality in job quality.<sup>4</sup> While the laws enforced by WHD are important for all workers, they are especially critical for workers of color, immigrants, and women, who due to historical and current marginalization are often overrepresented in those occupations most vulnerable to violations. The agency will expand efforts in industries experiencing the highest rates of minimum wage and overtime violations and in those industries where evidence suggests workers are at risk of misclassification as independent contractors.

With additional resources, WHD will increase enforcement staff dedicated to addressing systemic compliance problems in industries relying on millions of low-wage workers to deliver goods and services. These workers experience higher rates of wage violations and may be least likely to complain, due to intimidation, fear of retaliation or a lack of awareness of their rights.

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<sup>3</sup> Dolfin, Sarah, Nan Maxwell, Alix Gould-Werth, Armando Yañez, Jonah Deutsch, Libby Hendrix, "Compliance Strategies Evaluation Literature and Database Review," Mathematica, Report for the U.S. Department of Labor, Chief Evaluation Office, May 2020.

[https://www.dol.gov/sites/dolgov/files/OASP/evaluation/pdf/WHD\\_ComplianceStrategies\\_LiteratureReview\\_Oct2020.pdf](https://www.dol.gov/sites/dolgov/files/OASP/evaluation/pdf/WHD_ComplianceStrategies_LiteratureReview_Oct2020.pdf) (visited April 19, 2021).

<sup>4</sup> Marinescu, Ioana, Yue Qiu, and Aaron Sojourner, "Wage Inequality and Labor Rights Violations," National Bureau of Economic Research, February 2021.

[https://www.nber.org/system/files/working\\_papers/w28475/w28475.pdf?utm\\_campaign](https://www.nber.org/system/files/working_papers/w28475/w28475.pdf?utm_campaign). (Visited April 20, 2021).

## **WAGE AND HOUR DIVISION**

WHD will increase investments in developing well-designed, effective resources—including those available online, in multiple languages, and specific to targeted industries—for educating larger numbers of workers and employers. WHD will reestablish strategic partnerships with local and state governments, industry and diverse stakeholders who can further the agency’s efforts to deter violations, serve as many workers as possible, and address compliance more broadly.

### **Advance Sector-based Strategies**

Labor standards violations can occur in most sectors of the economy, however, problems facing workers whose contributions to the economy are systematically undervalued—particularly women, people of color, and immigrants—are concentrated in a subset of industries that require focused attention by WHD. Sector-based strategies go beyond the establishments subject to investigations by strategically applying a mix of tools and resources—including industry partnerships and compliance assistance—throughout the industry structure. This approach recognizes the broader economic factors and complex industry structures that may be contributing to employer non-compliance as well as those parts of the industry that are best positioned to influence compliance behaviors broadly.<sup>5</sup> By taking a more comprehensive, multi-pronged approach to compliance, WHD is working to change employer behaviors in a lasting and systemic manner. WHD relies on evidence-based, data driven strategies to develop and implement sector-based strategies. Carrying out multi-faceted strategies within complex, rapidly evolving industries requires an adequate baseline level of enforcement staff, which the FY 2022 budget request will help restore.

### **Strengthen Stakeholder Engagement**

Addressing compliance systemically also requires working with a diverse network of stakeholders who can serve as trusted intermediaries to workers and industry. Increased resources will support field efforts to cultivate new relationships while strengthening current and past partnerships. Stakeholders include federal, state, and local agencies, associations representing industries and a range of services provided to those industries, and worker centers and community-based organizations serving worker populations. Community Outreach and Resource Planning Specialists (CORPS), located in every district office, work closely with enforcement staff to plan and conduct comprehensive sector-based strategies. The additional enforcement staff will help the agency pursue and maintain stakeholder strategies that produce a variety of results, including enforcement referrals, opportunities to engage workers and employers directly, and information on compliance challenges and opportunities.

### **Protect and Prioritize Essential Workers and Care Workers**

Increased investment in enforcement staff will directly support sector-based strategies serving low-wage workers who have also disproportionately borne the costs of the pandemic. The crises created by COVID-19 highlighted the critical contributions of these essential workers in fueling the country’s economic recovery and growth, yet they are at greatest risk of labor violations. For

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<sup>5</sup> Weil, David, “Improving Workplace Conditions Through Strategic Enforcement,” (2010) A Report to the Wage and Hour Division, Boston University.



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example, during the initial weeks of the pandemic, the most highly exposed industries employed more hourly workers and part-time workers and paid considerably lower wages and total earnings than other parts of the economy.<sup>6</sup> As America emerges from a global pandemic, WHD protects those workers who formed the backbone of America's resiliency during this crisis and who will continue to anchor the country's return throughout the recovery. Essential workers include workers in grocery stores, health care, delivery services, retail establishments, agriculture, and other essential industries who remained on the job despite many potential risks to their own health or that of their families.<sup>7</sup> WHD is committed to ensuring that these, and all workers, receive the workplace protections provided under the law.

Further, the President is calling on Congress to increase the minimum wage to \$15 an hour across the country and eliminate the tipped minimum wage, because no one should work 40 hours a week and still live below the poverty line.

The pandemic also highlighted the critical role and contributions of care workers, and WHD is developing initiatives focused on the rapidly increasing employment in those industries. Healthcare support occupations, which include home health and personal care aides, reached employment of 6.4 million in May 2020, representing 4.6 percent of total U.S. employment.<sup>8</sup> Five out of the 20 industries projected to grow the fastest from 2019 to 2029 are in healthcare and social assistance, the fastest growing sector in the economy. Factors that are expected to contribute to the large increase include increased demand from caring for the aging baby-boom population, longer life expectancies, and continued growth in the number of patients with chronic conditions.<sup>9</sup> These factors argue for sustained, long-term investments in enforcement and outreach around care workers and in understanding how the significant growth and evolution of these industries affect compliance.

### Support Workers' Access to Leave

During times of crisis, the importance the protections provided by the Family and Medical Leave Act (FMLA) prove all the more crucial to workers and their families. In March 2018, 17 percent of all civilian workers had access to paid family leave, and 89 percent had access to unpaid

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<sup>6</sup> Dey, Matthew, Mark A. Lowenstein, David S. Piccone Jr., Anne E. Polivka, "Demographics, earnings, and family characteristics of workers in sectors initially affected by COVID-19 shutdowns," *Monthly Labor Review*, U.S. Bureau of Labor Statistics, June 2020. [https://www.bls.gov/opub/mlr/2020/article/demographics-earnings-and-family-characteristics-of-workers-in-sectors-initially-affected-by-covid-19-shutdowns.htm#\\_edn7](https://www.bls.gov/opub/mlr/2020/article/demographics-earnings-and-family-characteristics-of-workers-in-sectors-initially-affected-by-covid-19-shutdowns.htm#_edn7) (visited April 19, 2021).

<sup>7</sup> Elka Torpey, "Essential work: Employment and outlook in occupations that protect and provide," *Career Outlook*, U.S. Bureau of Labor Statistics, September 2020. <https://www.bls.gov/careeroutlook/2020/article/essential-work.htm> (visited April 19, 2021).

<sup>8</sup> Bureau of Labor Statistics, U.S. Department of Labor, *The Economics Daily*, Healthcare support occupations had employment of 6.4 million in May 2020 at <https://www.bls.gov/opub/ted/2021/healthcare-support-occupations-had-employment-of-6-4-million-in-may-2020.htm> (visited April 20, 2021).

<sup>9</sup> Bureau of Labor Statistics, U.S. Department of Labor, *The Economics Daily*, 5 out of 20 fastest-growing industries from 2019 to 2029 are in healthcare and social assistance at <https://www.bls.gov/opub/ted/2020/5-out-of-20-fastest-growing-industries-from-2019-to-2029-are-in-healthcare-and-social-assistance.htm> (visited April 20, 2021).

## WAGE AND HOUR DIVISION

family leave.<sup>10</sup> According to a 2018 national survey of employees, overall, 56 percent of U.S. employees are eligible for FMLA, but only 10 percent of worksites in the private sector, which employ 59 percent of private sector employees, are part of firms covered by FMLA. WHD also sees the effects of leave policies on low-wage workers, who experience different consequences for taking leave despite using leave at similar rates as other workers. About one third of low-wage workers are eligible for FMLA (38 percent) versus about two thirds of non-low-wage workers (63 percent). For those low-wage workers who did take leave, they faced greater challenges in covering expenses compared to non-low-wage workers. They were also at greater risk of job loss (18 vs. 5 percent) or cited fear of job loss at a higher rate than non-low-wage workers (64 percent versus one third).<sup>11</sup>

Given these trends, WHD will ensure enforcement and outreach strategies focused on low-wage and essential workers also examine leave policies. WHD will continue developing resources, such as employer toolkits, and educational initiatives, such as the Essential Workers Essential Protections Initiative, to address the gaps in workers' understanding of FMLA.<sup>12</sup> Rapid changes in the workplace surface even more questions for workers, their advocates, and employers about wages, hours worked, and time off for their personal health care or to care for their family members dealing with serious illness.

The President's American Families Plan proposes to create a national comprehensive paid family and medical leave program that will phase in up to 12 weeks of paid parental, family, and personal illness/safe leave by year 10 of the program, and will provide three days of bereavement leave per year. The President also calls on Congress to pass the Healthy Families Act, which will require employers to allow workers to accrue seven days paid sick leave per year to seek preventative care for them or their family like getting a flu shot, recovering from short-term illness, or caring for a sick child or family member or a family member with disability-related needs.

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<sup>10</sup> Bureau of Labor Statistics, U.S. Department of Labor, The Economics Daily, Access to paid and unpaid family leave in 2018 at <https://www.bls.gov/opub/ted/2019/access-to-paid-and-unpaid-family-leave-in-2018.htm> (visited April 19, 2021).

<sup>11</sup> A higher percentage of low-wage workers reported borrowing money (41 vs. 26 percent) or going on public assistance (26 vs. 7 percent) to cover lost wages. More than three-quarters (76 percent) report limiting their spending. About two-fifths (43 percent) report using money saved in anticipation of needing leave. They also report using savings intended for something else (34 percent), borrowing money (31 percent), putting off paying bills (27 percent), cutting leave short (27 percent), and going on public assistance (17 percent). Brown, S., Roy, R., & Klerman, J. A. (2020). Leave Experiences of Low-Wage Workers. Produced for the U.S. Department of Labor, Chief Evaluation Office. Rockville, MD: Abt Associates Inc., [https://www.dol.gov/sites/dolgov/files/OASP/evaluation/pdf/WHD\\_FMLA\\_LowWageWorkers\\_January2021.pdf](https://www.dol.gov/sites/dolgov/files/OASP/evaluation/pdf/WHD_FMLA_LowWageWorkers_January2021.pdf) (visited April 19, 2021).

<sup>12</sup> More than three-quarters of U.S. employees have heard of FMLA, but many have gaps in their understanding of its policies. Source: Scott, Brown, Jane Herr, Radha Roy, Jacob Alex Klerman, "Employee and Worksite Perspectives of the Family and Medical Leave Act: Results from the 2018 Surveys," (2020), Produced for the U.S. Department of Labor, Chief Evaluation Office. Rockville, MD: Abt Associates Inc. [https://www.dol.gov/sites/dolgov/files/OASP/evaluation/pdf/WHD\\_FMLA2018SurveyResults\\_FinalReport\\_Aug2020.pdf](https://www.dol.gov/sites/dolgov/files/OASP/evaluation/pdf/WHD_FMLA2018SurveyResults_FinalReport_Aug2020.pdf) (visited April 19, 2021).

## WAGE AND HOUR DIVISION

### **Ensure federal infrastructure investments create quality jobs**

WHD will ensure workers on federally funded construction projects and services contracts receive no less than the prevailing wage. The Davis Bacon Act and Service Contracts Act ensure that government purchases elevate labor standards for workers and provide high road employers with fair opportunities to bid for contracts. Prevailing wages contribute to creating a middle-class through higher wages, expanded health insurance coverage, an increased share of workers with pension plans, and by helping to reduce racial pay gaps. Paired with recruitment strategies targeting underserved communities, employers paying prevailing wages contribute quality jobs to the economy that can also benefit workers and communities. Prevailing wage requirements also importantly prevent low-road businesses from undercutting high-road employers that compete fairly during the bidding process.<sup>13</sup> Additional resources will allow WHD to fully implement critical business process improvements that aim to improve the accuracy and timeliness of prevailing wage surveys and increase the number of enforcement staff trained to coordinate investigations of large, complex federal projects.

### **American Jobs Plan**

It is critical to ensure that good jobs created through the investments in the President's American Jobs Plan remain good jobs. To make this a reality, the Budget includes \$7.5 billion in mandatory funding for the Department of Labor's worker protection agencies to protect against discrimination, protect wages and benefits, enforce health and safety protections, and safeguard workers' rights.

### **Combat Worker Misclassification**

Employers in many industries misclassify employees as independent contractors to reduce labor costs at the expense of millions of workers and to gain an advantage over competitors. These misclassified workers are denied labor protections and benefits, as well as the right to organize and bargain collectively. Employers misclassifying workers avoid payroll and unemployment insurance taxes, workers' compensation premiums, and health insurance obligations. These employers undercut law-abiding employers doing right by their employees, drive wages and labor standards down across the workforce, and deprive the economy of good-quality jobs.

The President strongly endorses an aggressive and comprehensive approach to ending this unlawful, anti-worker practice, as well as holding violators accountable. He has called for the adoption of the ABC test in federal laws, where appropriate, urged the creation of substantive violations for misclassifying workers, and both stiffer penalties and tougher enforcement. The President strongly supports the Protecting the Right to Organize (PRO) Act, which would strengthen the employee test under the National Labor Relations Act, ensuring millions of misclassified workers the rights to organize and bargain collectively they are owed. He also

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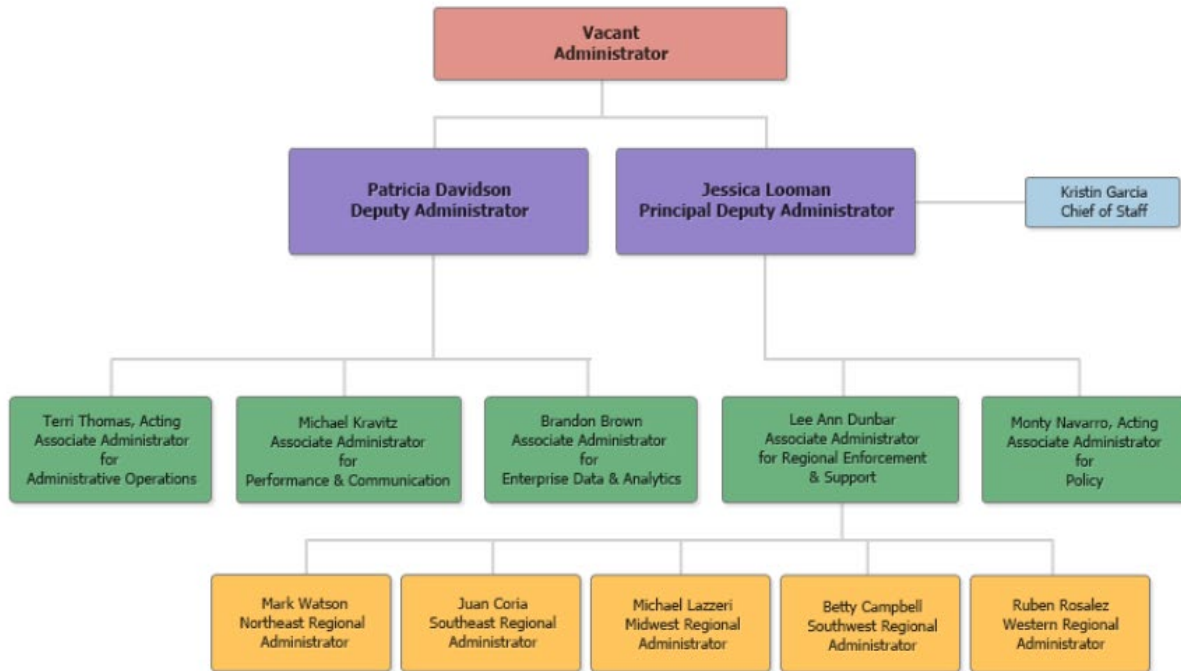
<sup>13</sup> Wall, Malkie, David Madland, and Karla Walter, "Prevailing Wages: Frequently Asked Questions," Center for American Progress, December 22, 2020. <https://www.americanprogress.org/issues/economy/reports/2020/12/22/494144/prevailing-wages-frequently-asked-questions/> (visited April 21, 2021).

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supports extending civil rights protections and other nondiscrimination provisions to all workers regardless of their classification.

The Administration would like to work with Congress to develop comprehensive legislation to adopt the ABC test to protect against misclassification across appropriate statutes. This effort would build off existing legislative proposals that would address misclassification under statutes including the Fair Labor Standards Act, the Family and Medical Leave Act, the Occupational Safety and Health Act, the Federal Unemployment Tax Act, and others. These proposals, the PRO Act, and new proposals to address misclassification under other laws can be building blocks toward a comprehensive solution to worker misclassification.

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<b>BUDGET AUTHORITY BEFORE THE COMMITTEE</b>				
(Dollars in Thousands)				
	<b>FY 2020 Revised Enacted</b>	<b>FY 2021 Enacted</b>	<b>FY 2022 Request</b>	<b>Diff. FY22 Request / FY21 Enacted</b>
<b>Activity Appropriation</b>	<b>242,000</b>	<b>246,000</b>	<b>276,500</b>	<b>30,500</b>
FTE	1,250	1,340	1,515	175

NOTE: FY 2020 reflects actual FTE. Authorized FTE for FY 2020 was 1,382.

### **Introduction**

WHD prioritizes resources using evidence-based, multi-pronged strategies to improve compliance that include conducting investigations in high-violation industries; delivering compliance assistance to employers; 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 promotes 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 2022 budget request provides for a total increase of \$30,500,000 and 175 FTE to support WHD’s role in protecting access to economic equity, ensuring federal infrastructure investments create quality jobs, and to advance progress on the agency’s information technology roadmap.

### **Five-Year Budget Activity History**

<b><u>Fiscal Year</u></b>	<b><u>Funding</u></b> (Dollars in Thousands)	<b><u>FTE</u></b>
2017	\$227,500	1,404
2018	\$227,500	1,355
2019	\$229,000	1,297
2020	\$242,000	1,382
2021	\$246,000	1,340

### **FY 2022**

The FY 2022 budget request seeks an additional \$30,500,000 and 175 FTE to restore enforcement staff thereby strengthening enforcement strategies serving communities most vulnerable to economic exploitation. Additional enforcement staff will support the implementation of sector-based strategies informed by evidence, increase stakeholder engagement, and protect and prioritize strategies helping essential workers. This funding level will also ensure workers on federally funded construction projects and services contracts receive no less than the prevailing wage. Additional resources will allow WHD to implement critical business process improvements that aim to improve the accuracy and timeliness of prevailing

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wage surveys and increase the number of enforcement staff trained to coordinate investigations of large, complex federal projects. Finally, this funding will allow WHD to complete the regulatory work necessary to enhance and protect workers' rights.

### **FY 2021**

The FY 2021 Enacted level provided \$246,000,000 and 1,340 FTE to WHD. WHD is focusing on rebuilding relationships with key stakeholders and using a variety of communications tools to reach a broader audience. WHD is working to restore and revive relationships with labor and worker stakeholders who can help amplify the WHD message.

**Safe On-Site Investigations:** Understanding the importance of protecting workers, WHD's strategic planning and enforcement procedures have incorporated remote and hybrid approaches to conducting investigations during the pandemic. On-site investigations remain crucial to the WHD's enforcement efforts, especially in areas like child labor (which has seen a resurgence in light of school closures), and enforcement of laws regulating the agriculture industry.

**Compliance Assistance:** Working conditions during the pandemic have continued to evolve and raise novel questions about the proper application of worker protection laws. Employers have raised questions about the proper way to calculate hours worked when they require their employees to get vaccinated or to calculate overtime pay when an individual is entitled to hazard pay under state or local law. The regulated community needs clear, concise, accurate information about these worker protections in order to ensure that the laws are being followed. WHD is delivering compliance assistance to employers whose operations are significantly impacted by the pandemic.

### **FY 2020**

The FY 2020 Enacted level provided \$242,000,000 and 1,250 FTE to WHD. In FY 2020, responding to the COVID-19 pandemic became a top priority for WHD. WHD addressed the critical need to provide information to the American workforce about their rights and benefits available under the Families First Coronavirus Response Act (FFCRA), while ensuring the safety and well-being of agency staff and the uninterrupted continuation of the agency's mission. In FY 2020, WHD also ensured hiring investigators and technicians remained a priority, and piloted remote strategies and methods for training and onboarding new hires.



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<b>WORKLOAD AND PERFORMANCE SUMMARY</b>					
	<b>FY 2020 Revised Enacted</b>		<b>FY 2021 Enacted</b>	<b>FY 2022 Request</b>	
	<b>Target</b>	<b>Result</b>	<b>Target</b>	<b>Target</b>	
<b>Wage and Hour Division</b>					
<b>Strategic Goal 2 - Promote Safe Jobs and Fair Workplaces for All Americans</b>					
<b>Strategic Objective WHD 2.3 - Secure lawful wages and working conditions for America's workers.</b>					
WHD-BW-01	Percent of compliance actions with back wages agreed to pay or Civil Monetary Penalties Assessed (excluding Break Time for Nursing Mothers, Family and Medical Leave Act, Families First Coronavirus Response Act, and conciliations)	--	--	[base]	TBD
WHD-SEV-01	Percent of FLSA compliance actions (excluding conciliations) with severity score of 30 or more	[base]	20%	20%	20%
WHD-CA-03	Number of outreach events	--	--	3,700	3,700
WHD-E-01	Number of compliance actions concluded	26,270	26,096	24,872	25,500
WHD-E-02	Percent of agency-initiated compliance actions (excluding conciliations)	46%	47%	46%	46%

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

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## Workload and Performance Summary

A balance of different types of measures covering efficiency, impact, and productivity drive 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 demonstrating progress towards outcomes. Enforcement staff are constantly evaluating which combination of enforcement, outreach, and compliance assistance tools are most appropriate and effective to achieve impact while also meeting annual performance targets. These day-to-day decisions are central to maximizing resources and WHD's effect on compliance.

Conducting enforcement activities during the pandemic has presented performance and operational challenges for the agency. For example, on-site investigations provide immediate access to employers, workers, and records in a way that remote office audits do not. Pandemic conditions also shifted enforcement priorities, as establishments faced closures, reduced or consolidated operations, or delivered essential services in pandemic conditions. During this time, WHD employed innovative strategies to mitigate the effects from the pandemic on productivity and efficiency, such as increased flexibilities in the use of investigative and compliance assistance tools. While WHD maintained a steady inventory of cases in FY 2020, particularly cases under FFCRA, WHD expects the effects of the pandemic may continue to show in performance results in subsequent years.

In the near term, WHD is using a range of data-driven tools and a robust performance framework to measure, monitor, and evaluate progress moving forward. WHD's FY 2021 performance framework emphasized productivity and efficiency, particularly as the agency sought to mitigate COVID-19 effects on performance. In FY 2022, WHD is seeking to increase its enforcement staffing levels, but given the time required to train and develop a new investigator, compliance actions may not increase for two to three years after onboarding additional investigators—particularly following a period of significant attrition.

In FY 2021, WHD is evaluating and refining the balance of measures as part of the four-year DOL strategic planning process, which will allow the agency to improve how performance is communicated and managed throughout the organization. At a minimum, WHD will renew the focus on creating greater impact and reaching as many workers as possible utilizing a full range of outreach, compliance, and enforcement strategies. For example, the WHD FLSA severity index helps the agency identify and investigate the most egregious violators and to bring those investigations to successful conclusion. The severity index was built to inform decision-making about resource allocation and give credit to offices for investing time and resources in more impactful investigations. In FY 2021, with one year of baseline data available, WHD is undertaking further analysis of the underlying methodology in order to determine whether the severity index is performing as intended and to identify potential refinements.

WHD aims for a balance of agency-initiated and complaint-based investigations. Renewed emphasis on industry- and sector-based strategies will further develop the agency's capacity to coordinate and collaborate across the organization and to apply a range of evidence towards the improved design and implementation of strategies. In addition, outreach continues to be a

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priority for the agency to ensure employers, employees, and other members of the public understand their rights and responsibilities.

WHD will continue to strengthen its performance and accountability framework through a maturing, and increasingly sophisticated data analytics program and ongoing assessments of the design and implementation of strategies and industry-based initiatives. WHD works to develop a portfolio of high quality evidence to support decision-making in all aspects of the organization. The agency will continue developing more sophisticated methods for goal setting and monitoring performance, including examining relationships and trends using statistical modeling, supplementing performance results with contextual data, and producing data visualizations that help explain performance. These efforts are also helping to advance the agency's commitments to building its capacity to build and apply a range of evidence towards policy- and decision-making.

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<b>BUDGET ACTIVITY BY OBJECT CLASS</b>					
(Dollars in Thousands)					
		<b>FY 2020 Revised Enacted</b>	<b>FY 2021 Enacted</b>	<b>FY 2022 Request</b>	<b>Diff. FY22 Request / FY21 Enacted</b>
11.1	Full-time permanent	121,595	124,461	144,627	20,166
11.3	Other than full-time permanent	702	702	702	0
11.5	Other personnel compensation	3,271	3,000	3,022	22
11.8	Special personal services payments	0	0	0	0
11.9	<b>Total personnel compensation</b>	<b>125,568</b>	<b>128,163</b>	<b>148,351</b>	<b>20,188</b>
12.1	Civilian personnel benefits	42,154	48,138	58,450	10,312
13.0	Benefits for former personnel	0	0	0	0
21.0	Travel and transportation of persons	4,479	1,464	1,464	0
22.0	Transportation of things	3	6	6	0
23.0	Rent, Communications, and Utilities	0	0	0	0
23.1	Rental payments to GSA	13,500	13,500	13,500	0
23.2	Rental payments to others	8	8	8	0
23.3	Communications, utilities, and miscellaneous charges	2,300	1,800	1,800	0
24.0	Printing and reproduction	350	350	350	0
25.1	Advisory and assistance services	2,900	2,900	2,900	0
25.2	Other services from non-Federal sources	1,533	705	705	0
25.3	Other goods and services from Federal sources 1/	41,605	41,187	41,187	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	5,116	2,779	2,779	0
26.0	Supplies and materials	1,000	1,500	1,500	0
31.0	Equipment	900	3,000	3,000	0
41.0	Grants, subsidies, and contributions	0	0	0	0
42.0	Insurance claims and indemnities	584	500	500	0
	<b>Total</b>	<b>242,000</b>	<b>246,000</b>	<b>276,500</b>	<b>30,500</b>
	1/Other goods and services from Federal sources				
	Working Capital Fund	36,317	38,519	38,519	0
	DHS Services	1,300	2,801	2,801	0
	Services by DOL Agencies	1,323	-133	-133	0
	GSA Services	2,288	0	0	0
	HHS Services	14	0	0	0
	Services by Other Government Departments	338	0	0	0

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## CHANGES IN FY 2022

(Dollars in Thousands)

### Activity Changes

#### Built-In

To Provide For:

Costs of pay adjustments	\$3,670
Personnel benefits	1,972
Employee health benefits	0
Moving allowance	0
Federal Employees' Compensation Act (FECA)	-170
Benefits for former personnel	0
Travel and transportation of persons	0
Transportation of things	0
Rental payments to GSA	0
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** **\$5,472**

**Net Program** **\$25,028**

**Direct FTE** **175**

	Estimate	FTE
<b>Base</b>	<b>\$251,472</b>	<b>1,340</b>
<b>Program Increase</b>	<b>\$25,028</b>	<b>175</b>
<b>Program Decrease</b>	<b>\$0</b>	<b>0</b>