

and labor-management standards policies, programs, and activities of the Department of Labor, including those functions to be performed by the Secretary of Labor under the designated provisions of the following statutes:

(1) The Labor-Management Reporting and Disclosure Act of 1959, as amended, 29 U.S.C. 401 *et seq.* If, in the course of investigations under the Labor-Management Reporting and Disclosure Act, there appear to be indications of organized crime and labor racketeering, the Director of the Office of Labor-Management Standards shall promptly notify the Inspector General, who also has statutory authority to investigate such issues. The Inspector General shall have the power to assume the lead in further investigative activities arising from such case with respect to issues involving organized crime and labor racketeering.

(2) Section 701 (Standards of Conduct for Labor Organizations) of the Civil Service Reform Act of 1978, 5 U.S.C. 7120; Section 1017 of the Foreign Service Act of 1980, 22 U.S.C. 4117; Section 220(a)(1) of the Congressional Accountability Act of 1995, 2 U.S.C. 1351(a)(1); and the regulations pertaining to such sections at 29 CFR Parts 457–459.

(3) Section 1209 of the Postal Reorganization Act of 1970, 39 U.S.C. 1209.

(4) The employee protection provisions of the Federal Transit law, as codified at 49 U.S.C. 5333(b), and related provisions.

(5) The employee protection provisions certified under Section 405(a), (b), (c), and (e) of the Rail Passenger Service Act of 1970, 45 U.S.C. 565(a), (b), (c), and (e).

(6) Executive Order 13496, (“the Notification of Employee Rights Under Federal Labor Laws”) of January 30, 2009.

(7) Section 211(a) of the Labor Management Relations Act, 1947, 29 U.S.C. 181(a) (“Compilation of Collective Bargaining Agreements, etc.; Use of Data”).

(8) Such additional Federal acts that from time to time may assign to the Secretary or the Department duties and responsibilities similar to those listed under subparagraphs (1)–(7) of this paragraph, as directed by the Secretary.

B. *The Solicitor of Labor* is delegated authority and assigned responsibility for providing legal advice and assistance to all officers of the Department relating to the administration of the statutory provisions, regulations, and Executive Orders listed above. The bringing of legal proceedings under those authorities, the representation of the

Secretary and/or other officials of the Department of Labor, and the determination of whether such proceedings or representations are appropriate in a given case, are delegated exclusively to the Solicitor.

6. *Reservation of Authority and Responsibility.*

A. The submission of reports and recommendations to the President and the Congress concerning the administration of the statutory provisions and Executive Orders listed above is reserved to the Secretary.

B. Nothing in this Order shall limit or modify the delegation of authority and assignment of responsibility to the Administrative Review Board by Secretary’s Order 1–2002.

C. Except as expressly provided, nothing in this Order shall limit or modify the provisions of any other Order, including Secretary’s Order 4–2006 (Office of Inspector General).

7. *Redelegation of Authority.* Except as otherwise provided by law, all of the authorities delegated in this Order may be redelegated.

8. *Effective Date.* This order shall become effective on November 8, 2009.

Dated: November 6, 2009.

Hilda L. Solis,
Secretary of Labor.

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DEPARTMENT OF LABOR

Office of the Secretary

[Secretary’s Order 9–2009]

Delegation of Authorities and Assignment of Responsibilities to the Administrator, Wage and Hour Division

1. *Purpose.* To delegate authorities and assign responsibilities to the Administrator, Wage and Hour Division.

2. *Authorities.* This Order is issued under the authority of 5 U.S.C. 301 (Departmental Regulations); 29 U.S.C. 551 *et seq.* (Establishment of Department; Secretary; Seal); and Reorganization Plan No. 6 of 1950 (5 U.S.C. App. 1 Reorg. Plan 6 1950); and the authorities cited in Section 5 of this Order.

3. *Directives Affected.* Secretary’s Order 1–2008 (Employment Standards) is hereby canceled. All other Secretary’s Orders and DOL directives (including policies and guidance) which reference Secretary’s Orders 1–2008 or the Employment Standards Administration are amended to refer to this Order and/or Secretary’s Orders governing the Office of Workers’ Compensation

Programs, Office of Federal Contract Compliance Programs, or the Office of Labor-Management Standards, as appropriate.

4. *Background.* This Order is occasioned by the November 8, 2009 dissolution of the Employment Standards Administration (ESA) into its four constituent components: The Wage and Hour Division (WHD); the Office of Federal Contract Compliance Programs; the Office of Workers’ Compensation Programs; and the Office of Labor-Management Standards. This Order cancels Secretary’s Order 1–2008 and constitutes the Secretary’s Order devolving certain authorities and responsibilities of ESA to WHD. Specifically, this Order delegates authorities and assigns responsibilities to the Administrator, WHD. The authorities and responsibilities specified below are consistent with the current ESA redelegation and distribution of authorities and responsibilities to WHD in effect at the time of this dissolution.

5. *Delegations of Authority and Assignment of Responsibility*

A. *The Administrator, Wage and Hour Division* is hereby delegated authority and assigned responsibility, except as hereinafter provided, for carrying out the employment standards, labor standards, and labor-management standards policies, programs, and activities of the Department of Labor, including those functions to be performed by the Secretary of Labor under the designated provisions of the following statutes:

(1) The Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 201 *et seq.* (FLSA), including the issuance thereunder of child labor hazardous occupation orders and other regulations concerning child labor standards, and subpoena authority under 29 U.S.C. 209. Authority and responsibility for the Equal Pay Act, Section 6(d) of the FLSA, were transferred to the Equal Employment Opportunity Commission on July 1, 1979, pursuant to the President’s Reorganization Plan No. 1 of February 1978, set out in the Appendix to Title 5, Government Organization and Employees.

(2) The Walsh-Healey Public Contracts Act of 1936, as amended, 41 U.S.C. 35 *et seq.*, except those provisions relating to safety and health delegated to the Assistant Secretary for Occupational Safety and Health or the Assistant Secretary for Mine Safety and Health. The authority of the Administrator, WHD includes subpoena authority under 41 U.S.C. 39.

(3) The McNamara-O’Hara Service Contract Act of 1965, as amended, 41

U.S.C. 351 *et seq.*, except those provisions relating to safety and health delegated to the Assistant Secretary for Occupational Safety and Health. The authority of the Administrator, WHD includes subpoena authority under 41 U.S.C. 353(a).

(4) The Davis-Bacon Act, as amended, 40 U.S.C. 3141 *et seq.*, and any laws now existing or subsequently enacted, providing for prevailing wage findings by the Secretary in accordance with or pursuant to the Davis-Bacon Act; the Copeland Act, 40 U.S.C. 3145; Reorganization Plan No. 14 of 1950; and the Tennessee Valley Authority Act, 16 U.S.C. 831.

(5) The Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. 3701 *et seq.*, except those provisions relating to safety and health delegated to the Assistant Secretary for Occupational Safety and Health.

(6) Title III of the Consumer Credit Protection Act, 15 U.S.C. 1671 *et seq.*

(7) The labor standards provisions contained in Sections 5(i), (m), (n) and 7(g) of the National Foundation for the Arts and the Humanities Act, 20 U.S.C. 954(i) (m), (n) and 956(g), except those provisions relating to safety and health delegated to the Assistant Secretary for Occupational Safety and Health.

(8) The Migrant and Seasonal Agricultural Worker Protection Act of 1983, as amended, 29 U.S.C. 1801 *et seq.*, including subpoena authority under 29 U.S.C. 1862(b).

(9) The Employee Polygraph Protection Act of 1988, 29 U.S.C. 2001 *et seq.*, including subpoena authority under 29 U.S.C. 2004(b).

(10) The following provisions of the Immigration and Nationality Act of 1952, as amended, 8 U.S.C. 1101 *et seq.* (INA): Section 258, 8 U.S.C. 1288(c)(4)(B)–(F), relating to the enforcement of the attestations required by employers pertaining to the employment of nonimmigrant longshore workers (D visas); Section 212(n)(2), (t)(3), 8 U.S.C. 1182(n)(2), (t)(3); relating to the enforcement of labor condition applications for employment of nonimmigrant professionals (H–1B, H–1B1, and E–3 visas); Section 212(m)(2)(E)(ii) through (v), 8 U.S.C. 1182(m)(2)(E)(ii) through (v), relating to the complaint, investigation, and penalty provisions of the attestation process for users of nonimmigrant registered nurses (H–1C Visas); Section 218(g)(2), 8 U.S.C. 1188(g)(2), relating to assuring employer compliance with terms and conditions of employment under the temporary alien agricultural labor certification program (H–2A visas); Section 214(c)(14), 8 U.S.C. 1184(c)(14), relating to assuring

employer compliance with the terms and conditions of employment under the temporary alien labor certification program in occupations other than agriculture or registered nursing (H–2B visas); and Section 274A(b)(3), 8 U.S.C. 1324A(b)(3), relating to employment eligibility verification and related recordkeeping.

(11) The Family and Medical Leave Act of 1993, as amended, 29 U.S.C. 2601 *et seq.* (FMLA), including subpoena authority under 29 U.S.C. 2616.

(12) The Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. 651 *et seq.* (OSH Act), to conduct inspections and investigations, issue administrative subpoenas, issue citations, assess and collect penalties, and enforce any other remedies available under the statute, and to develop and issue compliance interpretations under the statute, with regard to the standards on:

(a) Field sanitation, 29 CFR 1928.110; and

(b) temporary labor camps, 29 CFR 1910.142, with respect to any agricultural establishment where employees are engaged in “agricultural employment” within the meaning of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802(3), regardless of the number of employees, including employees engaged in hand packing of produce into containers, whether done on the ground, on a moving machine, or in a temporary packing shed, except that the Assistant Secretary for Occupational Safety and Health retains enforcement responsibility over temporary labor camps for employees engaged in egg, poultry, or red meat production, or the post-harvest processing of agricultural or horticultural commodities.

The authority of the Administrator, WHD under the Occupational Safety and Health Act with regard to the standards on field sanitation and temporary labor camps does not include any other agency authorities or responsibilities, such as rulemaking authority. Such authorities under the statute are retained by the Assistant Secretary for Occupational Safety and Health.

Moreover, nothing in this Order shall be construed as derogating from the right of States operating OSHA-approved State plans under 29 U.S.C. 667 to continue to enforce field sanitation and temporary labor camp standards if they so choose. The Assistant Secretary for Occupational Safety and Health retains the authority to monitor the activity of such States with respect to field sanitation and temporary labor camps.

(13) Executive Order 13,495 (“Nondisplacement of Qualified Workers Under Service Contracts”) of January 30, 2009.

(14) Such additional Federal laws that from time to time may assign to the Secretary or the Department duties and responsibilities similar to those listed under subparagraphs (1)–(13) of this paragraph, as directed by the Secretary.

B. *The Administrator, Wage and Hour Division* is hereby delegated authority and assigned responsibility to issue administrative subpoenas under Section 9 of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 209; Section 5 of the Walsh-Healey Public Contracts Act, as amended, 41 U.S.C. 39; Section 4(a) of the McNamara-O’Hara Service Contract Act, as amended, 41 U.S.C. 353(a); Section 512(b) of the Migrant and Seasonal Agricultural Worker Protection Act of 1983, as amended, 29 U.S.C. 1862(b); Section 5(b) of the Employee Polygraph Protection Act of 1988, 29 U.S.C. 2004(b); Section 106 of the Family and Medical Leave Act of 1993, as amended, 29 U.S.C. 2616; and Section 8(b) of the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. 657(b), with respect to the authority delegated by this Order.

C. *The Wage and Hour Regional Administrators* are hereby redelegated authority and assigned responsibility to issue administrative subpoenas under Section 9 of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 209; Section 5 of the Walsh-Healey Public Contracts Act, as amended, 41 U.S.C. 39; Section 4(a) of the McNamara-O’Hara Service Contract Act, as amended, 41 U.S.C. 353(a); Section 512(b) of the Migrant and Seasonal Agricultural Worker Protection Act of 1983, as amended, 29 U.S.C. 1862(b); Section 5(b) of the Employee Polygraph Protection Act of 1988, 29 U.S.C. 2004(b); Section 106 of the Family and Medical Leave Act of 1993, as amended, 29 U.S.C. 2616; and Section 8(b) of the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. 657(b), with respect to the authority delegated by this Order.

D. *The Administrator, Wage and Hour Division and the Assistant Secretary for Occupational Safety and Health* are directed to confer regularly on enforcement of the Occupational Safety and Health Act with regard to the standards on field sanitation and temporary labor camps (see section 7.a. (12) of this Order), and to enter into any memoranda of understanding which may be appropriate to clarify questions of coverage which arise in the course of such enforcement.

E. *The Solicitor of Labor* is delegated authority and assigned responsibility for providing legal advice and assistance to all officers of the Department relating to the administration of the statutory provisions, regulations, and Executive Orders listed above. The bringing of legal proceedings under those authorities, the representation of the Secretary and/or other officials of the Department of Labor, and the determination of whether such proceedings or representations are appropriate in a given case, are delegated exclusively to the Solicitor.

6. *Reservation of Authority and Responsibility.*

A. The submission of reports and recommendations to the President and the Congress concerning the administration of the statutory provisions and Executive Orders listed above is reserved to the Secretary.

B. Nothing in this Order shall limit or modify the delegation of authority and assignment of responsibility to the Administrative Review Board by Secretary's Order 01-2002 (September 24, 2002).

C. Except as expressly provided, nothing in this Order shall limit or

modify the provisions of any other Order, including Secretary's Order 4-2006 (Office of Inspector General).

7. *Redelegation of Authority.* Except as otherwise provided by law, all of the authorities delegated in this Order may be redelegated.

8. *Effective Date.* This order shall become effective on November 8, 2009.

Dated: November 6, 2009.

Hilda L. Solis,

Secretary of Labor.

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