



**U.S. Department of Labor
Wage and Hour Division**



June 27, 2025

Field Assistance Bulletin No. 2025-3

MEMORANDUM FOR: Regional Administrators
District Directors

FROM: Donald M. Harrison, III
Acting Administrator

**SUBJECT: Prohibition on Seeking Liquidated Damages in Administrative Settlements
under the FLSA**

This Field Assistance Bulletin (FAB) rescinds FAB 2021-2 and clarifies that the Wage and Hour Division (WHD) may not supervise the payment of liquidated damages in any administrative matter under the Fair Labor Standards Act (FLSA). Section 216(c) of the FLSA authorizes WHD to “supervise the payment of the unpaid minimum wages or the unpaid overtime compensation owing to any employee.” The statute does not authorize the Department to compromise claims for or recover liquidated damages except where an enforcement action is brought in litigation.

Accordingly, effective June 27, 2025, WHD must limit all supervised payments under § 216(c) to the recovery of unpaid minimum wages or overtime compensation. The Department may no longer request liquidated damages in any pre-litigation investigation or resolution, including that the Solicitor’s Office will not seek liquidated damages prior to filing a lawsuit.

Background

A federal agency may exercise only the authority that Congress has clearly delegated to it. Where statutory text is silent, an agency may not infer additional enforcement powers unless that inference is clearly supported by structure or context. With respect to liquidated damages, Congress has authorized their award only in judicial proceedings—not in administrative matters under § 216(c).

The Solicitor of Labor (SOL) and its Regional Solicitors (RSOL) have historically sought liquidated damages when resolving FLSA violations through litigation or litigation-related settlement. In 2010, however, the WHD began to seek liquidated damages in the administrative investigation stage—prior to referral for litigation. This practice was initially asserted to be permissible under 29 U.S.C. § 216(c), which governs Department-supervised payments of unpaid minimum wages or overtime compensation. The inclusion of liquidated damages in administrative matters gradually expanded across WHD offices. WHD temporarily curtailed the practice in 2020 in issuing FAB 2020-2, which explained that the practice of seeking liquidated damages in the administrative investigation stage extended the length of this stage by 28 percent and, correspondingly, delayed recovery to affected workers. Subsequently, WHD expanded the practice again. It replaced FAB 2020-

2 with FAB 2021-2, which explicitly authorized WHD, with concurrence from RSOL, to seek liquidated damages in administrative matters.

Upon reconsideration, the Department believes WHD is not authorized to seek liquidated damages as part of any payment it supervises under § 216(c) and WHD will discontinue engaging with RSOLs on this issue.

Most FLSA claims are resolved by means of § 216(b), which authorizes employees to bring private lawsuits to recover unpaid minimum wages or overtime compensation and provides for “an additional equal amount as liquidated damages.” This language authorizes mandatory liquidated damages, unless the employer proves good faith and reasonable grounds under 29 U.S.C. § 260. These damages are available either through employee lawsuits or litigation initiated by the Secretary of Labor. Portions of §216(c) and § 217 reflect the availability of these remedies as well. In each context though, liquidated damages are a part of a judicial process that affords the parties due process protections.

Section § 216(c) authorizes the Secretary of Labor to “supervise the payment of the unpaid minimum wages or the unpaid overtime compensation owing to any employee or employees under section 206 or 207” prior to the initiation of litigation. It allows the Secretary to resolve wage violations administratively by supervising the payment of these back wages only. The absence of the term “liquidated damages” with respect to the supervision of payments prior to litigation, in contrast to the repeated inclusion of the term “liquidated damages” when discussing recovery and enforcement in the litigation context, is notable. As such WHD may not supervise the payment of such potential liquidated damages in administrative matters.

Section 260 confirms that liquidated damages are reserved for judicial proceedings. It provides that a court may decline to award liquidated damages if it determines that the employer acted in good faith and had reasonable grounds for believing its conduct was not in violation of the Act. This statutory language expressly vests the authority to evaluate an employer’s good faith defense—and to determine whether liquidated damages are appropriate—with courts, not WHD. Because WHD lacks the authority to make this determination, it likewise lacks the authority to supervise the payment of liquidated damages in administrative matters. The structure of § 260 reinforces that liquidated damages are a judicial remedy, and not an administrative tool available.

The Department further recognizes this limitation based on a fundamental principle of administrative law: a federal agency may act only when Congress has clearly granted it the authority to do so. Congress has not clearly granted the Department the authority to supervise the payment of liquidated damages in administrative matters. Any attempt to do so exceeds the Department’s authority.

Accordingly, FAB 2021-2, which authorizes WHD to supervise the payment of liquidated damages in administrative matters, is withdrawn effective June 27, 2025. This policy change applies prospectively and does not affect matters where liquidated damages have been agreed to in writing before June 27, 2025.

Enforcement Guidance

The WHD may not supervise the payment of liquidated damages in administrative matters under § 216(c). This prohibition is not limited to any particular action or phase in a matter. It includes any manner or method of seeking, pursuing, imposing, accepting, endorsing, approving, encouraging, leveraging, or otherwise supporting in any way the payment of liquidated damages before the filing of a lawsuit. This position does not limit RSOL’s ability to seek liquidated damages when filing a lawsuit, but as an enforcement position it does correspondingly limit the Department’s ability to seek liquidated damages in a matter that it does not intend to litigate. Moreover, liquidated damages will be permitted only in matters where the Department files a lawsuit and, in accordance with the law of the relevant jurisdiction, a settlement or award is reached.