



UNITED STATES DEPARTMENT OF LABOR  
WAGE AND HOUR DIVISION  
Washington, DC 20210



April 9, 2021

FIELD ASSISTANCE BULLETIN No. 2021-2

MEMORANDUM FOR: Regional Administrators  
Deputy Regional Administrators  
Directors of Enforcement  
District Directors

FROM: Jessica Looman  
Principal Deputy Administrator

SUBJECT: Practice of Seeking Liquidated Damages in Settlements in Lieu of  
Litigation

This Field Assistance Bulletin (FAB) rescinds FAB 2020-2 and provides updated guidance to Wage and Hour Division (WHD) field staff regarding the practice of seeking liquidated damages in settlements in lieu of litigation (liquidated damages).

### **Background**

Under the Fair Labor Standards Act (FLSA), employers who violate the provisions of the Act concerning minimum wages, overtime compensation, and protections for employees who receive tips are liable for the unpaid wages or unlawfully kept tips and for an additional equal amount as liquidated damages. (29 U.S.C. § 216(b), § 216(c)). Prior to June 23, 2020, it had been the policy of WHD to seek liquidated damages in certain cases upon concurrence by the Solicitor's Office. This policy was revised pursuant to a June 23, 2020 memorandum from the Deputy Secretary based upon Executive Order (E.O.) 13924, *Regulatory Relief to Support Economic Recovery*, and FAB 2020-2, issued on June 24, 2020. Both of those documents are rescinded and WHD will return to pursuing liquidated damages from employers found due in its pre litigation investigations provided that the Regional Solicitor (RSOL) or designee concurs with the liquidated damages request.

### **Enforcement Guidance**

Effective April 9, 2021, the Regional Administrator, or designee, shall consult through a Joint Review Committee (JRC) or other agreed upon process, with the appropriate RSOL or designee on the assessment of liquidated damages in lieu of litigation on a case by case basis. WHD may not make a demand for liquidated damages without first obtaining concurrence from the RSOL or designee. Liquidated damages shall not be assessed by WHD where the employer has set forth credible evidence of a good faith defense or the where the RSOL deems the matter inappropriate for litigation.