

decisions that followed its reasoning in the H-2B context were wrongly decided and that inbound travel expenses of H-2B workers do not primarily benefit their employers. 73 FR 78039-41. DOL characterized this discussion as an interpretation of the FLSA, 73 FR 78041, and did not seek public comment on the issue when it issued the H-2B Notice of Proposed Rulemaking, 73 FR 29941 (May 22, 2008). Prior to the issuance of the preamble discussion, courts uniformly had held that relocation expenses were primarily for the benefit of employers.

This matter concerns important issues as to whether various pre-employment expenses incurred by workers lawfully may result in workers' weekly wages being reduced below the minimum wage. Because of the reach of FLSA coverage, any interpretation of FLSA regulations has wide-ranging effects; the interpretation of section 203(m) of the FLSA and its regulations in the preamble of the H-2A and H-2B Final Rules may have ramifications well beyond the workers and employers subject to the H-2A and H-2B rules. Indeed, the H-2A and H-2B preamble interpretation of the FLSA is not codified in any regulatory requirement set out in the H-2A and H-2B rules, and DOL did not seek public comment on the issue from the H-2A and H-2B regulated communities. DOL is especially sensitive to potential adverse impacts an interpretation, which was included in the preamble in order to state a policy position of the prior Administration, might have on our Nation's most vulnerable workers, including low-wage U.S. workers and foreign guest workers. For these reasons, DOL believes that this issue warrants further review. Consequently, in accordance with authority granted under the FLSA, 29 U.S.C. 203(m) and 259, as well as the INA, 8 U.S.C. 1101(a)(15)(h)(ii)(a), 1101(a)(15)(h)(ii)(b), 1103(a)(6), 1184(c), 1188; 8 CFR 214.2(h); and 20 CFR 655.50(a), DOL withdraws the FLSA interpretation at 73 FR 77148-52 and at 73 FR 78039-41 for further consideration and the interpretation may not be relied upon as a statement of agency policy for purposes of the Portal-to-Portal Act, 29 U.S.C. 259 or otherwise.<sup>1</sup> After reconsideration of this issue, DOL will provide the public with interpretive guidance through a

mechanism established for disseminating the Department's opinions and interpretations of the FLSA.

Signed in Washington, DC, this 20th day of March 2009.

**Douglas F. Small,**

*Deputy Assistant Secretary, Employment and Training Administration.*

**Shelby Hallmark,**

*Acting Assistant Secretary, Employment Standards Administration.*

[FR Doc. E9-6623 Filed 3-25-09; 8:45 am]

**BILLING CODE 4510-FP-P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

#### Workforce Investment Act; Lower Living Standard Income Level

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice of Determination of Lower Living Standard Income Level.

**SUMMARY:** Under Title I of the Workforce Investment Act (WIA) of 1998 (Pub. L. 105-220), the Secretary of Labor annually determines the Lower Living Standard Income Level (LLSIL) for uses described in the law. WIA defines the term "Low Income Individual" as one who qualifies under various criteria, including an individual who received income for a six-month period that does not exceed the higher level of the poverty line or 70 percent of the LLSIL. This issuance provides the Secretary's annual LLSIL for 2009 and references the current 2009 Health and Human Services "Poverty Guidelines."

**DATES:** *Effective Date:* This notice is effective on the date of publication in the **Federal Register**.

**ADDRESSES:** Send written comments to: Mr. Samuel Wright, Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW., Room C-4510, Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:** Please contact Mr. Samuel Wright, Telephone (202) 693-2870; Fax (202) 693-3015 (these are not toll free numbers).

**SUPPLEMENTARY INFORMATION:** It is the purpose of the Workforce Investment Act of 1998 "to provide workforce investment activities, through statewide and local workforce investment systems, that increase the employment, retention, and earnings of participants, and increase occupational skill attainment by participants, and as a result, improve

the quality of the workforce, reduce welfare dependency, and enhance the productivity and competitiveness of the Nation."

The LLSIL is used for several purposes under WIA. Specifically, WIA Section 101(25) defines the term "low income individual" for eligibility purposes, and Sections 127(b)(2)(C) and 132(b)(1)(B)(v)(IV) define the terms "disadvantaged youth" and "disadvantaged adult" in terms of the poverty line or LLSIL for state formula allotments. The Governor and state/local workforce investment boards (WIBs) use the LLSIL for determining eligibility for youth, eligibility for employed adult workers for certain services and for the Work Opportunity Tax Credit (WOTC). We encourage the Governors and state/local WIBs to consult WIA regulations and the preamble to the WIA Final Rule (published at 65 FR 49294 August 11, 2000) for more specific guidance in applying the LLSIL to program requirements. The Department of Health and Human Services (HHS) published the annual 2009 update of the poverty-level guidelines in the **Federal Register**, Vol. 74, No. 14, January 23, 2009, pp. 4199-4201. The HHS 2009 Poverty guidelines may also be found on the Internet at: <http://aspe.hhs.gov/poverty/09fedreg.pdf>. ETA plans to have the 2009 LLSIL available on its Web site at [<http://www.doleta.gov/llsil/2009/>].

WIA Section 101(24) defines the LLSIL as "that income level (adjusted for regional, metropolitan, urban and rural differences and family size) determined annually by the Secretary [of Labor] based on the most recent lower living family budget issued by the Secretary." The most recent lower living family budget was issued by the Secretary in the fall of 1981. The four-person urban family budget estimates, previously published by the Bureau of Labor Statistics (BLS), provided the basis for the Secretary to determine the LLSIL. BLS terminated the four-person family budget series in 1982, after publication of the fall 1981 estimates. Currently, BLS provides data to ETA through which ETA develops the LLSIL tables, as provided in the Appendices.

ETA published the 2008 updates to the LLSIL in the **Federal Register** of April 25, 2008, at 73 FR 22435 and the corrections to tables 4 and 5 in the **Federal Register** of June 10, 2008, at 73 FR 32740. These notices again updates the LLSIL to reflect cost of living increases for 2008, by applying the percentage change in the most recent 2008 Consumer Price Index for All Urban Consumers (CPI-U) for an area, compared with the 2007 CPI-U to each

<sup>1</sup> On March 17, 2009, DOL proposed to suspend the H-2A Final Rule. 74 FR 11408. The proposed suspension is open to public comment, but regardless of the outcome of the notice of proposed rulemaking, the Department withdraws for further consideration the interpretation of the FLSA that appeared in the preamble to the H-2A Final Rule.

of the April 25, 2008 LLSIL figures. Those updated figures for a family-of-four are listed in Appendix A, Table 1, by region for both metropolitan and non-metropolitan areas. This year the LLSIL figures for some areas have decreased because the over-the-year change in CPI-U was negative due to the economic downturn. Figures in all of the accompanying tables, in the Appendices, are rounded up to the nearest dollar. Since low income individuals, "disadvantaged adult" and "disadvantaged youth" may be determined by family income at 70 percent of the LLSIL, pursuant to WIA Sections 101(25), 127(b)(2)(C), and 132(b)(1)(B)(v)(IV), respectively, those figures are listed as well.

Jurisdictions included in the various regions, based generally on Census Divisions of the U.S. Department of Commerce, are as follows:

#### **Northeast**

Connecticut,  
Maine,  
Massachusetts,  
New Hampshire,  
New Jersey,  
New York,  
Pennsylvania,  
Rhode Island,  
Vermont,  
Virgin Islands.

#### **Midwest**

Illinois,  
Indiana,  
Iowa,  
Kansas,  
Michigan,  
Minnesota,  
Missouri,  
Nebraska,  
North Dakota,  
Ohio,  
South Dakota,  
Wisconsin.

#### **South**

Alabama,  
American Samoa,  
Arkansas,  
Delaware,  
District of Columbia,  
Florida,  
Georgia,  
Northern Marianas,  
Oklahoma,  
Palau,  
Puerto Rico,  
South Carolina,  
Kentucky,  
Louisiana,  
Marshall Islands,  
Maryland,  
Micronesia,  
Mississippi,  
North Carolina,  
Tennessee,  
Texas,  
Virginia,

West Virginia.

#### **West**

Arizona,  
California,  
Colorado,  
Idaho,  
Montana,  
Nevada,  
New Mexico,  
Oregon,  
Utah,  
Washington,  
Wyoming.

Additionally, separate figures have been provided for Alaska, Hawaii, and Guam as indicated in Appendix B, Table 2.

For Alaska, Hawaii, and Guam, the year 2008 figures were updated from the April 2008 "State Index" based on the ratio of the urban change in the state (using Anchorage for Alaska and Honolulu for Hawaii and Guam) compared to the West regional metropolitan change, and then applying that index to the West regional metropolitan change.

Data on 23 selected MSAs are also available. These are based on semiannual CPI-U changes for a 12-month period ending in June 2008. The updated LLSIL figures for these MSAs and 70 percent of the LLSIL are reported in Appendix C, Table 3.

Appendix D, Table 4 lists each of the various figures at 70 percent of the updated 2008 LLSIL for family sizes of one to six persons. Because tables 1-3 only list the LLSIL for a family of four, table 4 can be used to determine the LLSIL for families of one to six persons. For families larger than six persons, an amount equal to the difference between the six-person and the five-person family income levels should be added to the six-person family income level for each additional person in the family.

Where the poverty level for a particular family size is greater than the corresponding LLSIL figure, the figure is indicated in parentheses. A modified Excel version of Appendix D, Table 4, with the area names, will be available on the Department of Labor, Employment and Training Administration LLSIL Webpage at [<http://www.doleta.gov/llsil/2009/>]. Appendix E, Table 5, indicates 100 percent of LLSIL for family sizes of one to six and is used to determine self-sufficiency as noted at 20 CFR 663.230 of the WIA regulations and WIA Section 134(d)(3)(A)(ii).

#### **Use of These Data**

Governors should designate the appropriate LLSILs for use within the state from Appendices A, B, and C, containing Tables 1 through 3. Appendices D and E, which contain

Tables 4 and 5, may be used with any LLSIL designated. The Governor's designation may be provided by disseminating information on MSAs and metropolitan and non-metropolitan areas within the state or it may involve further calculations. For example, the State of New Jersey may have four or more LLSIL figures for Northeast metropolitan, Northeast non-metropolitan, portions of the state in the New York City MSA, and those in the Philadelphia MSA. If a workforce investment area includes areas that would be covered by more than one figure, the Governor may determine which is to be used.

Under 20 CFR 661.110, a state's policies and measures for the workforce investment system shall be accepted by the Secretary to the extent that they are consistent with the WIA and the WIA regulations.

#### **Disclaimer on Statistical Uses**

It should be noted, the publication of these figures is only for the purpose of meeting the requirements specified by WIA as defined in the law and regulations. BLS has not revised the lower living family budget since 1981, and has no plans to do so. The four-person urban family budget estimates series has been terminated. The CPI-U adjustments used to update the LLSIL for this publication are not precisely comparable, most notably because certain tax items were included in the 1981 LLSIL, but are not in the CPI-U. Thus, these figures should not be used for any statistical purposes, and are valid only for those purposes under WIA as defined in the law and regulations.

#### **Lower Living Standard Income Level for 2009**

Under Title I of the Workforce Investment Act of 1998 (Public Law 105-220), the Secretary of Labor annually determines the Lower Living Standard Income Level (LLSIL). This Notice announces the LLSIL Tables for 2009. WIA requires the Department of Labor to update and publish the LLSIL tables annually. The LLSIL tables are used for several purposes under WIA, including determining eligibility for youth and for the Work Opportunity Tax Credit.

Signed at Washington, DC, this 16th day of March 2009.

**Douglas F. Small,**  
*Deputy Assistant Secretary.*

#### **Appendix A**

TABLE 1—LOWER LIVING STANDARD INCOME LEVEL  
(For a family of four persons) by Region <sup>1</sup>

Region <sup>2</sup>	2009 Adjusted LLSIL	70 percent LLSIL
Northeast		
Metro .....	\$37,703	\$26,392
Non-Metro <sup>3</sup> .....	36,086	25,260
Midwest		
Metro .....	33,198	23,239
Non-Metro .....	31,817	22,272
South		
Metro .....	32,143	22,500
Non-Metro .....	30,986	21,690
West		
Metro .....	36,664	25,665
Non-Metro <sup>4</sup> .....	35,126	24,588

<sup>1</sup> For ease of use, these figures are rounded to the next highest dollar.

<sup>2</sup> Metropolitan area measures were calculated from the weighted average CPI-U's for city size classes A and B/C. Non-metropolitan area measures were calculated from the CPI-U's for city size class D.

<sup>3</sup> Non-metropolitan area percent changes for the Northeast region are no longer available. The Non-metropolitan percent change was calculated using the U.S. average CPI-U for city size class D.

<sup>4</sup> Non-metropolitan area percent changes for the West region are unpublished data.

## Appendix B

TABLE 2—LOWER LIVING STANDARD INCOME LEVEL  
(For a family of four persons)—Alaska, Hawaii and Guam <sup>1</sup>

Region	2009 Adjusted LLSIL	70 percent LLSIL
Alaska		
Metro .....	\$44,250	\$30,975
Non-Metro <sup>2</sup> .....	44,073	30,851
Hawaii, Guam		
Metro .....	47,622	33,335
Non-Metro <sup>2</sup> .....	47,051	32,936

<sup>1</sup> For ease of use, these figures are rounded to the next highest dollar.

<sup>2</sup> Non-metropolitan percent changes for Alaska, Hawaii and Guam were calculated from the CPI-U's for city size class D in the Western Region.

## Appendix C

TABLE 3—LOWER LIVING STANDARD INCOME LEVEL  
(For a family of four persons) 23 MSAs <sup>1</sup>

Metropolitan Statistical Areas (MSAs)	2009 Adjusted LLSIL	70 percent LLSIL
Anchorage, AK .....	\$45,356	\$31,749
Atlanta, GA .....	30,799	21,559
Boston—Brockton—Nashua, MA/NH/ME/CT .....	41,150	28,805
Chicago—Gary—Kenosha, IL/IN/WI .....	34,947	24,463
Cincinnati—Hamilton, OH/KY/IN .....	33,753	23,627
Cleveland—Akron, OH .....	34,542	24,179
Dallas—Ft. Worth, TX .....	31,333	21,933
Denver—Boulder—Greeley, CO .....	35,307	24,715
Detroit—Ann Arbor—Flint, MI .....	31,957	22,370
Honolulu, HI .....	48,670	34,069
Houston—Galveston—Brazoria, TX .....	29,759	20,831
Kansas City, MO/KS .....	32,479	22,735
Los Angeles—Riverside—Orange County, CA .....	38,822	27,175
Milwaukee—Racine, WI .....	33,405	23,384
Minneapolis—St. Paul, MN/WI .....	33,585	23,510
New York—Northern NJ—Long Island, NY/NJ/CT/PA .....	40,205	28,144
Philadelphia—Wilmington—Atlantic City, PA/NJ/DE/MD .....	36,317	25,422
Pittsburgh, PA .....	40,379	28,265
St. Louis, MO/IL .....	31,917	22,342
San Diego, CA .....	42,827	29,979
San Francisco—Oakland—San Jose, CA .....	38,904	27,233

TABLE 3—LOWER LIVING STANDARD INCOME LEVEL—Continued  
(For a family of four persons) 23 MSAs<sup>1</sup>

Metropolitan Statistical Areas (MSAs)	2009 Adjusted LLSIL	70 percent LLSIL
Seattle—Tacoma—Bremerton, WA .....	40,221	28,155
Washington—Baltimore, DC/MD/VA/WV <sup>2</sup> .....	41,013	28,709

<sup>1</sup> For ease of use, these figures are rounded to the next highest dollar.

<sup>2</sup> Baltimore and Washington are now calculated as a single metropolitan statistical area.

## Appendix D

### Table 4—Seventy Percent of Updated 2009 Lower Living Standard Income Level (LLSIL), by Family Size

To use the seventy percent LLSIL value, where it is stipulated for WIA programs, begin by locating the region or metropolitan area where they reside. These are listed in Tables 1, 2 and 3. After locating the appropriate region or metropolitan statistical area, find the seventy percent LLSIL amount for that location. The seventy percent LLSIL figures are listed in the last column to the right on each of the three tables. These figures apply to a family of four.

Larger and smaller family eligibility is based on a percentage of the family of four. To determine eligibility for other size families consult table 4 and the instructions below.

To use Table 4, locate the seventy percent LLSIL value that applies to the individual's region or metropolitan area from Tables 1, 2 or 3. Find the same number in the "family of four" column of Table 4. Move left or right across that row to the size that corresponds to the individual's family unit. That figure is the maximum household income the individual is permitted in order to qualify as economically disadvantaged under WIA.

Where the HHS poverty level for a particular family size is greater than the corresponding LLSIL figure, the LLSIL figure appears in a shaded block. Individuals from these size families may consult the 2009 HHS poverty guidelines found in the **Federal Register**, Vol. 74, No. 14, January 23, 2009, pp. 4199–4201 (on the Internet at <http://aspe.hhs.gov/poverty/09fedreg.pdf>) to find the higher eligibility standard. Individuals from Alaska and Hawaii should consult the HHS guidelines for the generally higher poverty levels that apply in their states.

Family of one	Family of two	Family of three	Family of four	Family of five	Family of six
\$7,505 .....	\$12,296	\$16,876	\$20,831	\$24,585	\$28,751
7,762 .....	12,722	17,470	21,559	25,444	29,754
7,815 .....	12,802	17,571	21,690	25,597	29,935
7,901 .....	12,947	17,771	21,933	25,887	30,272
8,024 .....	13,144	18,044	22,272	26,288	30,742
8,049 .....	13,187	18,101	22,342	26,367	30,832
8,056 .....	13,199	18,123	22,370	26,398	30,870
8,104 .....	13,278	18,225	22,500	26,556	31,058
8,184 .....	13,416	18,421	22,735	26,831	31,379
8,366 .....	13,714	18,824	23,239	27,422	32,075
8,418 .....	13,798	18,943	23,384	27,596	32,272
8,467 .....	13,874	19,048	23,510	27,747	32,449
8,508 .....	13,945	19,144	23,627	27,884	32,608
8,707 .....	14,272	19,588	24,179	28,536	33,369
8,807 .....	14,439	19,815	24,463	28,871	33,766
8,853 .....	14,509	19,921	24,588	29,019	33,939
8,901 .....	14,587	20,025	24,715	29,166	34,110
9,096 .....	14,909	20,467	25,260	29,812	34,859
9,157 .....	15,002	20,595	25,422	30,004	35,085
9,240 .....	15,142	20,790	25,665	30,285	35,422
9,505 .....	15,578	21,379	26,392	31,148	36,424
9,784 .....	16,034	22,013	27,175	32,068	37,507
9,809 .....	16,073	22,060	27,233	32,138	37,587
10,133 .....	16,609	22,797	28,144	33,210	38,845
10,142 .....	16,613	22,809	28,155	33,226	38,856
10,181 .....	16,683	22,901	28,265	33,359	39,011
10,340 .....	16,945	23,258	28,709	33,884	39,626
10,372 .....	16,997	23,339	28,805	33,995	39,752
10,798 .....	17,689	24,287	29,979	35,379	41,377
11,111 .....	18,203	24,992	30,851	36,406	42,575
11,157 .....	18,277	25,094	30,975	36,554	42,753
11,435 .....	18,739	25,720	31,749	37,471	43,815
11,861 .....	19,437	26,681	32,936	38,866	45,453
12,007 .....	19,670	27,007	33,335	39,339	46,010
12,270 .....	20,102	27,596	34,069	40,203	47,022

**Appendix E**

*Table 5—Updated 2009 LLSIL (100%),  
By Family Size*

To use the LLSIL to determine the minimum level for establishing self-sufficiency criteria at the State or local level, begin by locating the metropolitan

area or region from Table 1, 2 or 3. Then locate the appropriate region or metropolitan statistical area and then find the 2009 Adjusted LLSIL amount for that location. These figures apply to a family of four. Locate the corresponding number in the family of

four in the column below. Move left or right across that row to the size that corresponds to the individual's family unit. That figure is the minimum figure States must set for determining whether employment leads to self-sufficiency under WIA programs.

Family of one	Family of two	Family of three	Family of four	Family of five	Family of six
\$10,722	\$17,566	\$24,109	\$29,759	\$35,121	\$41,073
11,089	18,174	24,957	30,799	36,348	42,505
11,164	18,289	25,101	30,986	36,567	42,764
11,287	18,496	25,387	31,333	36,982	43,246
11,463	18,777	25,777	31,817	37,554	43,917
11,499	18,838	25,858	31,917	37,667	44,046
11,509	18,855	25,890	31,957	37,712	44,100
11,577	18,969	26,036	32,143	37,937	44,369
11,692	19,166	26,316	32,479	38,330	44,827
11,952	19,592	26,891	33,198	39,174	45,822
12,026	19,712	27,062	33,405	39,423	46,103
12,095	19,820	27,211	33,585	39,638	46,355
12,154	19,922	27,348	33,753	39,834	46,583
12,438	20,389	27,983	34,542	40,766	47,670
12,582	20,627	28,307	34,947	41,244	48,237
12,647	20,727	28,458	35,126	41,455	48,484
12,716	20,838	28,607	35,307	41,665	48,729
12,994	21,299	29,239	36,086	42,589	49,799
13,081	21,432	29,421	36,317	42,863	50,121
13,200	21,632	29,700	36,664	43,264	50,603
13,578	22,254	30,542	37,703	44,497	52,034
13,977	22,905	31,447	38,822	45,811	53,582
14,013	22,961	31,514	38,904	45,911	53,696
14,476	23,727	32,567	40,205	47,443	55,493
14,489	23,733	32,584	40,221	47,466	55,508
14,544	23,833	32,715	40,379	47,656	55,730
14,771	24,207	33,226	41,013	48,405	56,609
14,817	24,282	33,341	41,150	48,564	56,789
15,426	25,270	34,696	42,827	50,541	59,110
15,873	26,004	35,703	44,073	52,009	60,821
15,938	26,110	35,849	44,250	52,220	61,075
16,336	26,770	36,743	45,356	53,530	62,593
16,944	27,767	38,115	47,051	55,523	64,933
17,153	28,100	38,581	47,622	56,199	65,728
17,528	28,717	39,423	48,670	57,433	67,174

[FR Doc. E9-6618 Filed 3-25-09; 8:45 am]

**BILLING CODE**

**DEPARTMENT OF LABOR**

**Occupational Safety and Health Administration**

[Docket No. OSHA-2009-0006]

**Reports of Injuries to Employees Operating Mechanical Power Presses; Extension of the Office of Management and Budget's (OMB) Approval of an Information Collection (Paperwork) Requirement**

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Request for public comment.

**SUMMARY:** OSHA solicits comments concerning its proposal to extend OMB approval of the information collection

requirement contained in the Provision on Reports of Injuries to Employees Operating Mechanical Power Presses (29 CFR 1910.217(g)).

**DATES:** Comments must be submitted (postmarked, sent, or received) by May 26, 2009.

**ADDRESSES:**

*Electronically:* You may submit comments and attachments electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

*Facsimile:* If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693-1648.

*Mail, hand delivery, express mail, messenger, or courier service:* When using this method, you must submit three copies of your comments and attachments to the OSHA Docket Office,

Docket No. OSHA-2009-0006, U.S. Department of Labor, Occupational Safety and Health Administration, Room N-2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

*Instructions:* All submissions must include the Agency name and OSHA docket number for the ICR (OSHA-2009-0006). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at <http://www.regulations.gov>. For further information on submitting comments see the "Public Participation" heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.