

**NOMINATION OF DR. DAVID WEIL TO SERVE  
AS ADMINISTRATOR OF THE WAGE AND HOUR  
DIVISION, DEPARTMENT OF LABOR**

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**HEARING**

OF THE

**COMMITTEE ON HEALTH, EDUCATION,  
LABOR, AND PENSIONS**

**UNITED STATES SENATE**

**ONE HUNDRED THIRTEENTH CONGRESS**

FIRST SESSION

ON

**NOMINATION OF DR. DAVID WEIL TO SERVE AS ADMINISTRATOR OF  
THE WAGE AND HOUR DIVISION, DEPARTMENT OF LABOR**

DECEMBER 10, 2013

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(II)

# CONTENTS

## STATEMENTS

TUESDAY, DECEMBER 10, 2013

	Page
COMMITTEE MEMBERS	
Harkin, Hon. Tom, Chairman, Committee on Health, Education, Labor, and Pensions, opening statement .....	1
Warren, Hon. Elizabeth, a U.S. Senator from the State of Massachusetts .....	1
Alexander, Hon. Lamar, a U.S. Senator from the State of Tennessee, opening statement .....	3
Scott, Hon. Tim, a U.S. Senator from the State of South Carolina .....	11
WITNESS	
Weil, David, Ph.D., Belmont, MA .....	4
Prepared statement .....	6
ADDITIONAL MATERIAL	
Statements, articles, publications, letters, etc.:	
Senator Bennet .....	13
Letters from Mr. Weil's Academic Peers—Past and Present Deans .....	14
Response by David Weil to questions of:	
Senator Harkin .....	19
Senator Alexander .....	19
Senator Baldwin .....	29
Senator Franken .....	30
Senator Isakson .....	31
Senator Murkowski .....	32



**NOMINATION OF DR. DAVID WEIL TO SERVE  
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HOUR DIVISION, DEPARTMENT OF LABOR**

**TUESDAY, DECEMBER 10, 2013**

U.S. SENATE,  
COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS,  
*Washington, DC.*

The committee met, pursuant to notice, at 10 a.m., in room SD-430, Dirksen Senate Office Building, Hon. Tom Harkin, chairman of the committee, presiding.

Present: Senators Harkin, Alexander, Franken, Baldwin, Murphy, Warren, and Scott.

OPENING STATEMENT OF SENATOR HARKIN

The CHAIRMAN. The Senate Committee on Health, Education, Labor, and Pensions will come to order. We're going to have a hearing this morning on the nominee to administer the Wage and Hour Division at the Department of Labor.

I'll now turn to Senator Warren for purposes of an introduction.

STATEMENT OF SENATOR WARREN

Senator WARREN. Thank you very much, Mr. Chairman. It is my great pleasure to introduce Dr. David Weil, who has strong Massachusetts ties, having taught at Boston University School of Management for the past two decades, after having received his master's and Ph.D. from Harvard. He currently serves as the co-director of the Transparency Policy Project at Harvard's JFK School of Government and as the lead technical advisor for a State-funded research study on the underground economy.

He is well known for his expertise in these issues, not only in Massachusetts, but also nationally, having written extensively on topics related to the Wage and Hour Division's responsibilities. There are few, if any, more knowledgeable or more qualified people that the President could have nominated for this position, and I look forward to his speedy confirmation.

Dr. Weil, we're very pleased to have you here today to share your testimony.

The CHAIRMAN. Thank you very much, Senator Warren.

We again welcome Dr. Weil as the nominee to administer the Wage and Hour Division at the Department of Labor. This Division oversees some of the most fundamental protections for American workers. It ensures that people are paid fairly in accordance with our minimum wage and overtime laws. It protects vulnerable chil-

dren when our child labor laws are abused. It ensures that workers can spend time with their families when a new baby is born or a health crisis is looming. In short, this relatively unknown agency plays a huge role in how Americans experience their day-to-day working lives.

However, despite this important mission, this critical agency was unfortunately allowed to atrophy during the past Administration. The agency took a backseat approach that relied almost exclusively on complaint-driven enforcement, relying on the questionable assumption that vulnerable workers know their rights and will approach the agency to report violations of the law rather than taking a more proactive approach to educate workers and seek out industries and populations where abuses are likely to happen.

The current Administration has corrected these problems and beefed up enforcement, revitalizing this essential agency. This is in large part due to the comprehensive guidance provided by the expert sitting before us today, Dr. Weil, as well as the dedication of the career staff in the Division.

The Department of Labor has long looked to Dr. Weil for expert advice, and he has answered their call. While he has never worked directly for the agency, he is intimately familiar with its structure and mission, as well as the challenges it faces.

As has been said, he has studied and written extensively on the most effective ways to use limited resources to most effectively increase compliance with critical workplace protections. He has spearheaded new ways of thinking, enforcement, and investigations that will have the greatest impact and most sustainable, long-lasting results. In a time of increasingly tight budgets, this sort of innovative thinking will be a tremendous asset to the agency.

A group of Dr. Weil's peers, respected academics at a variety of universities, have strongly endorsed his nomination and have only the highest praise for him. I ask unanimous consent to include the text of these letters in the record.

[The information referred to may be found in additional material.]

The CHAIRMAN. Dr. Weil brings unique perspective to all of these issues. Again, he has a wealth of experience in collaborating with many groups, often playing a role of mediator and advisor, skills that will be extremely appropriate to a role leading the Wage and Hour Division.

Dr. Weil has received strong recommendations of his professionalism and fair-mindedness from past and current Deans of his business school, former colleagues and partners on a variety of projects who represent both management and labor. I ask unanimous consent to include the text of these letters in the record.

[The information referred to may be found in additional material.]

The CHAIRMAN. It is clear that Dr. Weil is an exemplary candidate to administer the Wage and Hour Division. It is unfortunate that this division has been without a Senate-confirmed leader for many years now. I join with Senator Warren in hoping that we can, together, expeditiously move Dr. Weil's nomination following today's hearing. It is a critical agency, responsible for protecting our Nation's tens of millions of workers.

Dr. Weil, I look forward to hearing more about your background and experience and your plans for the Wage and Hour Division. With that, I will yield to Senator Alexander.

OPENING STATEMENT OF SENATOR ALEXANDER

Senator ALEXANDER. Thanks, Mr. Chairman. Welcome, Dr. Weil.

We look forward to considering the nomination of Dr. Weil. As the chairman said, this is an important agency which oversees the enforcement of more than a dozen major laws which govern just about every private sector employment relationship in the United States. If confirmed, he'll be charged with supervising the work of over 1,800 employees in 54 field offices covering all of our States and territories.

My understanding is that Dr. Weil has never supervised more than 15 or 20 people, and that was in an academic research setting. I want to talk a little bit about his management skills and his plans in that way. As the committee of jurisdiction for the Wage and Hour Division of the Department of Labor, we want to make sure that anyone confirmed to lead this division has appropriate management and practical experience. I may have some written questions to explore that.

I also have some questions about Dr. Weil's views on enforcing current law, which I hope he will answer thoroughly. I'm concerned about an agenda that aims to stretch the law to redefine what constitutes an employer and an employee in order to reach beyond a franchisee owner and penalize larger corporations.

The franchising industry has been an incredible engine of economic growth in our country. According to the International Franchise Association, it has created hundreds of thousands of successful small businesses employing over 8 million individuals. Many of these businesses are owned by people who started on the bottom rung of the economic ladder, making minimum wage, and working their way all the way up to the top. Many of them are owned by women and minorities. For so many people, franchising has been the path to the American Dream.

I think of my friend, Sandy Beall, who dropped out of college at the University of Tennessee about 40 years ago and went to work in a Pizza Hut. Then he founded his first Ruby Tuesday, and pretty soon he had a company with 800 Ruby Tuesdays when he retired a couple of years ago.

A nominee with a singular focus on inappropriately stretching current law to throw a big wet blanket on that dream is not one that would have my support. Nor could I support an enforcement strategy that focuses on preconceived targets set in Washington rather than being responsive to complaints of breaches of the law or a strategy that has the underlying goal of increasing unionization without regard to the desires of employees themselves. There is some serious concern here that needs to be reviewed before the nominee is put in charge of the agency.

It's worth noting that this position has been without a confirmed administrator for the entirety of the current Administration. I want to point out that this can't be blamed on Republican delays or use of the filibuster. The President has nominated two other individ-

uals to the position, both of whom voluntarily withdrew before any HELP Committee votes were scheduled. The last nominee withdrew his nomination of August 2011, a full 28 months ago.

I would point out to my Democratic friends that if the nominee is reported to the full committee, and even if there were to be an objection, the only debate on the nominee under the changes of rules that we made 6 months ago, since it's a subcabinet nominee, would be for 8 hours or 4 hours, if Democrats gave that time back, so the Democratic leader could bring the nominee to the floor, even if it were objected to on a Thursday—make Friday the intervening day, and it could be voted on a Monday.

There's really no opportunity for delay on the part of the minority in this case. In the history of President Obama's administration only two subcabinet nominees have been denied their seats by a filibuster. I hope the chairman will give this committee the time to fully conduct our constitutionally required vetting.

I thank the chair.

The CHAIRMAN. Thank you, Senator Alexander.

I'm asking members to submit any written questions for the nominee by tomorrow, Wednesday, by 5 p.m. We'll be holding an executive session next week on December 18th. I ask Senators and their staffs, who may be here, to include that on your schedule for December 18th to consider this nomination among some other items that we have.

Dr. Weil, welcome. We have your complete statement. It will be made a part of the record in its entirety. If you could, please sum up in just a few minutes, because I'm told we have four votes starting at 10:15. I'd like to wrap this up so we won't have to come back. So, please, if you could wrap up in about 5 minutes, I'd sure appreciate it.

#### **STATEMENT OF DAVID WEIL, Ph.D., BELMONT, MA**

Mr. WEIL. Thank you, Chairman Harkin and Ranking Member Alexander and distinguished members of the committee, for the opportunity to appear before you today as you consider my nomination to serve as the U.S. Wage and Hour Administrator.

I am deeply grateful to President Barack Obama for nominating me to the position of Wage and Hour Administrator and to Secretary Thomas Perez for the confidence he has shown me in supporting my nomination. I want to thank Senator Warren for her very kind introduction this morning. I also wish to acknowledge and thank my wife, Miriam; sisters, Carla and Lisa Weil; cousins, Greg Schetina and Amy Shapiro; and my good friend, Mayor Tony Williams, who have joined me today.

I am humbled by the opportunity, if confirmed, to serve my country as Wage and Hour Administrator. The laws that the Wage and Hour Division oversee, including the Fair Labor Standards Act, which celebrates its 75th anniversary this year, are key to ensuring that men and women earn a fair day's pay for a fair day's work, and that businesses who abide by the law can compete on a level playing field. These principles are not only rooted in our workplace laws, but reflect a basic concept of justice that underlies our labor market and economy.



I sit here today in large part because of the ability of my parents and grandparents to earn a fair day's pay for a fair day's work. My mother's parents came to the United States at the turn of the last century. Like thousands of other immigrants, my grandparents toiled for years in the garment industry in order to save enough to start a small business to support family members and educate their children.

My father and his family fled Nazi Germany and arrived in the United States in 1939 with few resources but a desire to build a new life in this country. My father has often recounted to me the many jobs he held as a young man, whether stocking goods in a grocery store, selling shoes, delivering mail, or working on a truck assembly line. He was able to earn enough to support his family, go to college, and eventually attend medical school, providing a solid foundation for his children.

Growing up in a small town in northeastern Colorado, I had many classmates whose families were similarly seeking to follow that pathway, whether sons and daughters of farmers, farm workers, workers in the local meat packing industry, or the children of small business owners. Some of those families were successful in building an economic foundation for their children, as my parents had been able to do for my sisters and me. But other families were not so fortunate, and these experiences gave me a deep appreciation of the opportunity that had been afforded to me and my family and an abiding interest in the workplace.

Beginning with my doctoral work at Harvard University and continuing over the course of my academic career, I have pioneered research regarding how industry structure and market forces affect business decisions regarding the workplace. As a Boston University Business School professor for over 20 years, I bring a unique perspective to these public policy questions, rooting my work on government policy in an understanding of how businesses make decisions in competitive environments.

On the basis of my expertise, I've advised both Democratic and Republican administrations in the United States at the Federal and State levels and policymakers in other countries on designing and implementing public policies for the workplace, particularly in the area of labor standards. If confirmed, I would work tirelessly as Wage and Hour Administrator to assure that men and women receive the compensation they are entitled to from their work, and that the ideals embodied in labor standards legislation are carried out in practice.

Let me briefly describe the principles that would guide me in pursuit of that goal. In my view, a fundamental role of the Wage and Hour Administrator is making sure that the laws entrusted to the agency are administered efficiently, fairly, transparently, and rigorously. Let me briefly describe these principles.

The Wage and Hour Division, like all organizations, has limited resources with which to pursue its objectives of ensuring compliance across millions of workplaces spread throughout the United States. In order to efficiently respond to this, it needs to set priorities.

Efficiency also requires the Wage and Hour Division to use the range of tools available to it effectively. For example, noncompli-

ance may arise in some instances from confusion about regulatory requirements. In those cases, education and outreach is the most appropriate tool. Where noncompliance may arise from intentional and more egregious causes and intentions to evade legal requirements, those cases may require stronger tools of enforcement, particularly where businesses gain competitive advantage by not complying with the law.

This relates to a second principle of fairness. It is important to ensure that those businesses that comply with the law and exceed its requirements are not put at a competitive disadvantage because of their responsible actions. At the same time, one must be equally vigilant that businesses that flout the law do not benefit from that behavior. This fairness principle requires administering labor standards laws in a way that creates the right incentives, making those who comply with our workplace laws stronger and not weaker.

Finally, transparency is another critical principle that ensures that all parties affected by the laws administered by the Division understand their rights and responsibilities as well as the objectives and policies being pursued by the agency. Transparency also entails fostering dialog with Congress and the public, and if I am confirmed, I would make engagement with all parties, including this committee, a major priority.

The complexity of the modern workplace and the challenges facing the Wage and Hour Division are very great. I would be honored to be able to work with the talented men and women that make up the Wage and Hour Division in their vital work of ensuring that American workers receive a fair day's pay for a fair day's work.

Mr. Chairman, Ranking Member Alexander, and members of the committee, I once again thank you for the opportunity to discuss my views, and I look forward to addressing your questions.

[The prepared statement of Mr. Weil follows:]

PREPARED STATEMENT OF DAVID WEIL, PH.D.

Thank you Chairman Harkin, Ranking Member Alexander, and distinguished members of the committee for the opportunity to appear before you today as you consider my nomination to serve as the U.S. Wage and Hour Administrator.

I am deeply grateful to President Barack Obama for nominating me to the position of Wage and Hour Administrator and to Secretary Thomas Perez for the confidence he has shown me in supporting my nomination. As someone who considers himself a son of two great States, I want to thank Senators Warren and Markey of Massachusetts for their kind introductions this morning. I also wish to acknowledge and thank my wife, Miriam, sisters Carla and Lisa Weil, cousins Greg Schetina and Amy Shapiro, and many friends for joining me today.

I am humbled by the opportunity, if confirmed, to serve my country as Wage and Hour Administrator. The laws that the Wage and Hour Division oversees, including the Fair Labor Standards Act which celebrates its 75th anniversary this year are key to ensuring that men and women are paid a fair day's wage for a fair day's work and that businesses who abide by the law can compete on a level playing field. These principles are not only rooted in our workplace laws, but reflect a basic concept of justice that underlies our labor market and economy.

I sit here today in large part because of the ability of my parents and grandparents to earn a fair day's wage for a fair day's work. My mother's parents came to the United States at the turn of the last century. Like thousands of other immigrants, my grandparents worked for years in the garment industry in order to save enough to start a small business to support their family and educate their children. My father and his family fled Nazi Germany and arrived in the United States in 1939 with few resources, but a desire to build a new life in this country. My father has often recounted to me the many jobs that he held as a young man. Whether

stocking goods in a grocery, selling shoes, delivering mail, or working on a truck assembly line, he was able to earn enough to help support his family, go to college, and eventually attend medical school, providing a solid economic foundation for his children.

Growing up in a small town in northeastern Colorado, I had many classmates whose families were seeking to find the same pathway—whether the sons and daughters of farmers or farm workers, of workers in the local meat packing and livestock industry, or of small business owners. Some of those families were successful in building an economic foundation for their children as my parents were able to do for my sisters and me. But other families were not so fortunate. These experiences gave me a deep appreciation of the opportunity that had been afforded to my family and an abiding interest in the labor market and the workplace. Beginning with my doctoral work at Harvard University and continuing over the course of my academic career, I have pioneered research regarding how industry structure and market forces affect business decisions regarding the workplace. As a Boston University business school professor who has taught close to 1,000 MBAs in my 20-year career, I bring a unique perspective to these public policy questions, rooting my work on government policy in an understanding of how businesses make decisions in competitive environments. On the basis of my expertise, I have advised both Democratic and Republican administrations in the United States at the Federal and State levels and policymakers in other countries on designing and implementing public policies for the workplace, particularly in the area of labor standards.

If confirmed, I would work tirelessly as Wage and Hour Administrator to assure that men and women receive the compensation that they are entitled from their work and that the ideals embodied in labor standards legislation are carried out in practice. Let me describe the principles that would guide me in pursuit of that goal.

#### PRINCIPLES AND PRIORITIES

In my view, a fundamental role of the Wage and Hour Administrator is making sure that the laws entrusted to the agency are administered *efficiently, effectively, fairly, transparently, and rigorously*. Let me briefly describe what these principles mean to me.

*Efficiency:* The Wage and Hour Division, like all organizations, has limited resources with which to pursue its objectives—in this case, ensuring compliance with minimum wage, overtime, child labor, family medical leave, and other compensation standards across millions of workplaces spread throughout the United States. In order to efficiently respond to this challenge, the agency must prioritize. Prioritization, in turn, requires establishing clear measures of workplace problems. Efficiency attained through prioritization, however, must be accompanied by a second principle: effectiveness.

*Effectiveness:* Achieving the aims of labor standards laws requires using the appropriate methods to achieve compliance. The Wage and Hour Division has a range of tools available to it and the agency must choose the most effective tool at hand. For example, non-compliance may arise in some instances from confusion about regulatory requirements. In such cases, education and outreach may be the most appropriate tools. In other cases, non-compliance may arise from intentional and sometimes egregious efforts to evade legal requirements. Those cases require stronger tools of enforcement, particularly where businesses gain competitive advantage by not complying with the law. This relates to a third principle: fairness.

*Fairness:* It is important to ensure that those businesses that comply with the law—and often exceed its requirements—are not put at a competitive disadvantage because of their responsible actions. At the same time, one must be equally vigilant that businesses that flout the law do not benefit from that behavior. This fairness principle requires administering labor standards laws in a way that creates the right incentives, making those who comply with our workplace laws stronger, not weaker, in the markets in which they operate.

*Transparency:* It is critical for all parties affected by the laws administered by the Wage and Hour Division—workers, businesses, workers advocates, business associations—to understand their rights and responsibilities under the law, as well as the policies being pursued by the agency. The transparency principle of clearly articulating and communicating with those parties and making the activities of the Wage and Hour Division as clear as possible is a natural complement to the other principles. If employers clearly understand their responsibilities under the law they are far more likely to comply with them.

Transparency is also a vital principle in working with Congress and more broadly with the public. It is essential that the Wage and Hour Division clearly articulate its policies and procedures and explain how these relate to achieving its mission.

Transparency is also vital for fostering dialog with stakeholders, Congress, and the general public. If I am confirmed, I would make that engagement a major priority.

*Rigorous Evaluation:* A final principle to ensure that the Wage and Hour Division best achieves its objectives is engaging in ongoing, rigorous, and evidence-based evaluation of all that we do. Evidence-based management complements the other principles, whether in setting priorities, assessing which intervention tools will have the greatest efficacy, or in providing stakeholders ongoing information on the activities of the agency. Equally, making evaluation a core part of what the agency does means that new initiatives will be assessed as to whether or not they achieve intended objectives. If confirmed, I would work to ensure that both existing and new initiatives were carefully evaluated and that appropriate adjustments were made in light of those evaluations.

Given the complexity of the modern workplace, the challenges facing the Wage and Hour Division are great. I would be honored to be able to work with the talented men and women that make up the Wage and Hour Division in their vital work of ensuring that American workers receive a fair day's pay for a fair day's work. Mr. Chairman, Ranking Member Alexander, and members of the committee, I once again thank you for the opportunity to discuss my views with you and I look forward to addressing your questions.

The CHAIRMAN. Thank you very much, Dr. Weil.

I see a vote has been called. There seems to be a little bit of confusion as to how many votes we're going to have over on the floor. At least we have one right now. I know that Senators have questions to ask. We'll start. We'll see how we proceed. We may have to take a break and then come back. We'll just have to see what's happening on the floor right now. We'll start a 5-minute round of questions here.

Dr. Weil, there's been a lot of attention to your report, which was commissioned by the Department of Labor during the last Bush administration, "Strategic Enforcement of Wage and Hour Laws." Why is strategic enforcement the right or most effective method?

Mr. WEIL. Thank you, Mr. Chairman. The reason strategic enforcement is so important gets back to the basic problem of limited resources that the agency faces. It has, as the Ranking Member said, 1,800 employees that have the responsibility of overseeing over 9 million workplaces in the United States.

Given that the careful use of those resources has to be undertaken, that requires both setting priorities about where the major problems are and really understanding the forces that give rise to noncompliance problems, and then, given that, using enforcement as well as outreach and education tools appropriately according to where those problems lie. It very much results from the need, the fundamental need, to achieve objectives by applying resources very carefully.

The CHAIRMAN. Thank you, Dr. Weil. That's really all I have. I'll turn to Senator Alexander now.

Senator ALEXANDER. I'll be brief, to give other Senators a chance to ask questions.

Dr. Weil, the chairman referred to an article you wrote. You have a new book coming out, I understand, and you mentioned transparency. Would you be willing to give a pre-publication copy of that to the committee so that we can consider it as we ask questions of you?

Mr. WEIL. I'd be happy to do so.

Senator ALEXANDER. Thank you very much.

Sometimes we ask for documents from the Wage and Hour Division. We consider that a pretty essential part of our oversight proc-

ess. Do you consider providing documents a part of transparency in the way that you would run the division?

Mr. WEIL. Senator Alexander, I view the need to work and reach out to all stakeholders, beginning with this committee, very seriously. I would certainly cooperate with the committee in providing information throughout my tenure, if I was confirmed.

Senator ALEXANDER. Well, that would be a great help. In a research paper, “Broken Windows, Vulnerable Workers,” et cetera, you seem to suggest that—and I’m paraphrasing here—that if the Wage and Hour Division helps to create an environment where workers are not afraid to launch complaints against employers, those workers also may not be afraid to take on the more perilous jump and participate in organizing a union or take the first steps in that direction.

Do you view the Wage and Hour Division enforcement as a way to promote and accomplish unionization?

Mr. WEIL. No, I don’t, Senator. The article was written about the overall question of the use of employee voice in the workplace, which has been an area of my study for many years. The point I was making in the course of that article was to describe the use of rights, the entire set of rights that workers are afforded by our existing labor and workplace laws, and whether or not they exercise those.

I view the use of rights as very important in terms of making sure that—again, getting back to the point I made about fairness—that employers who have workers who are aware of their rights and, therefore, comply with the law are not put at a competitive disadvantage against workplace situations where workers may not be as aware of their rights, giving an unfair advantage to those employers in terms of if they do not comply with the law.

I view the issue of provision of rights as very much a fundamental principle of the broader principle of making sure that our laws are fairly administered and that they send the right incentives so that responsible employers can compete effectively.

Senator ALEXANDER. Would you provide employers who might not know their rights to not have a union with the same kind of information?

Mr. WEIL. Absolutely. I believe that one must use the appropriate tools necessary to provide information about what the law requires and what those requirements are. I view education and outreach to all employers as an important element of what the Wage and Hour Division would do in its policies.

Senator ALEXANDER. One last question. In a YouTube lecture video, you argued that traditional approaches that govern the workplace—I’m paraphrasing again—suggest that we might need to rethink our basic labor laws. As an academic, that’s a perfectly understandable comment to make.

Would you agree that if you’re confirmed, you would be committed to enforcing the labor laws as they’re now written, rather than as you think they should be written?

Mr. WEIL. Yes, Senator. I do know that in my role as an academic, I have a different kind of role in terms of speculating on that, and I would be looking solely at the laws that are enacted

and the enforcement of them if I was confirmed as Wage and Hour Administrator.

Senator ALEXANDER. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Alexander.

The second bells have rung. Senator Warren was here first. I would recognize Senator Warren for at least a few minutes of questions before we have to recess.

Senator WARREN. I just have one, Mr. Chairman.

Dr. Weil, I understand that you are the lead technical advisor for the research study on the underground economy that's been commissioned by the Commonwealth of Massachusetts, that one of the difficulties of enforcing misclassification laws is there's very little data on how widespread the problem is. For example, the IRS's last comprehensive worker misclassification estimate was done almost 30 years ago, all the way back in 1984, and it found then that worker misclassification was costing the United States about \$1.6 billion in revenues. Remember, that's 1993 dollars, so that's about \$3.6 billion in today's dollars.

I'm pleased that the IRS is including another study as part of its national research program, and I understand the Department of Labor is also looking to do a survey of thousands of workers to get more information about the prevalence of misclassification. I understand that you're a proponent of trying to use objective data to guide enforcement policies.

I wonder if you could give us a few examples of how the Wage and Hour Division could use data to enhance its effectiveness in enforcing the laws on misclassification.

Mr. WEIL. Thank you, Senator Warren. I very much agree that in the area of misclassification, as in any area, you want to start with as much objective data as you possibly can to understand both where the problems are and the nature of those problems.

In the case of misclassification, I think it's very important that we understand the use of independent contracting generally, which is a very old and very legitimate form of business organization, and understand where it's being used both responsibly but then also where it's being used in an inappropriate way, which is what gives rise to misclassification, which has the implications of not only, in some cases, allowing noncompliance to arise, but also deprives tax revenues to taxpayers and results in a number of related problems to that.

I would hope—and I'm not aware or involved in the current Labor Department efforts to look at misclassification. I would hope, if I was confirmed, to undertake studies to understand both the use of legitimate independent contracting and then within that where misclassification occurs and how great those problems might be.

Senator WARREN. That's very good. I thank you very much. I think we are very lucky to have someone of your talents and experience who is willing to serve in this job. I look forward to your speedy confirmation in this role.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Warren.

Senator Scott, I know you had a couple of questions.

## STATEMENT OF SENATOR SCOTT

Senator SCOTT. I'll make them brief because of the time that we have.

Dr. Weil, thank you for being here. I have a couple of quick questions. In the area of fissured industries, having owned a franchise for about 15 years with Allstate, targeting the parent company, so to speak, as opposed to the franchisee seems to be inconsistent with who has the ability to have the impact on their employees. I'd love to hear your response to targeting the parent company as opposed to targeting the franchise owners like myself, No. 1.

No. 2, if we have limited resources, and we're talking about the issue of fairness, it seems to me that targeting specific industries that do not necessarily represent a large body—at least in my State, the industries I'm thinking about are 1 out of every 10 jobs, which is a meaningful number of employers, whether it's restaurants, construction workers, or the hospitality industry. I'd love to have your perspective on the issue of fairness and targeting those industries.

The other question I would have is, why shift from a complaint-driven investigation in favor of a directed investigation with limited resources?

Thank you, Mr. Chairman.

Mr. WEIL. Thank you, Senator Scott. As I mentioned in my opening statement, I have taught for 20 years in a business school and teach my students—I teach managerial economics and think a lot about business forms, including franchising, which is a very legitimate, longstanding, and productive form of business organization. Many of my former MBA students have gone into businesses with franchising, and I'm very proud of the work they've done over the years.

My concern with franchising, as in any form of business organization, as I said in regards to independent contracting, is where that's being used in ways that are not legitimate forms of franchising in the pursuit of branding and the other reasons franchisors successfully use that business model, but instead are used as a way to subvert the law. I think that's what all of my writing on franchising is about, the problems arising from franchising as opposed to in any way opposing that vital form of business organization itself.

In regards to targeting, all of my work in the past has been using objective measures to figure out and really prioritize where different industries stand in terms of the severity of wage and hour problems. The work I did for the Labor Department and the Wage and Hour Division under the Bush administration was precisely directed toward that, looking at using various government forms of objective data, how we can prioritize and rank industries. Prospectively, I would hope to again use data, not based on past studies but looking forward, to really understand where the major problems in the economy are and to act accordingly.

Finally, in regards to directed and complaint investigations, I certainly agree with you that one wants to strike the right balance. An organization like the Wage and Hour Division must and would continue to use complaint investigations and respond to complaint

investigations as a way of finding out where there are problems and balancing that against directed investigations as a way to use limited resources.

Senator SCOTT. Thank you.

The CHAIRMAN. Again, all the Senators are instructed to have any written questions in by 5 p.m. tomorrow, and we hope you would expeditiously respond to those, Dr. Weil.

Thank you again. I'm sorry for the abruptness. We have these four votes. I thank your family for being here.

Mayor Williams, it's always good to see you back up here on the Hill.

And with that, the committee will stand adjourned.

[Additional material follows.]



## ADDITIONAL MATERIAL

## PREPARED STATEMENT OF MICHAEL F. BENNET

Chairman Harkin, Senator Alexander, and my colleagues on this committee: It's a pleasure to support David Weil, the President's nominee for Administrator of the Wage and Hour Division at the Department of Labor.

David is one of Colorado's best and brightest. He was born in Denver and grew up in Greeley. His career and his record speak for themselves, and I am confident that he will make a terrific Administrator.

Since 1992, David has worked at Boston University School of Management, where he is a professor of Markets, Public Policy, and Law.

He is also the co-director of the Transparency Policy Project at the Harvard Kennedy University—a position he has held since 2002.

Since beginning his career in 1987 as a Harvard faculty member, David has built up a body of excellent work in the field of labor economics. He has published extensively on labor and employment policy, served as an advisor to the Wage and Hour Division he is now nominated to lead, and advised a range of other government agencies.

David received a Bachelor of Science degree in industrial and labor relations from Cornell University, and a Masters and Ph.D. in Public Policy from Harvard.

Academics, labor groups and business leaders commend David for his diligence and his research. He is one of the foremost experts in this country on how to deploy Federal policy to ensure the health, safety and economic security of workers across a range of industries.

As a professor for many years teaching and studying regulatory issues from the perspective of both labor and business, David understands the real-world impact that government policies have on local businesses. From my discussions with David, I am confident he will take a fair-minded approach to this new position, always balancing the needs of workers and the needs of businesses, ensuring that the Department of Labor considers and safeguards both.

I am also confident that David can bring a little more Colorado common sense to Washington, upholding wage and safety standards while allowing for flexibility when it's called for.

I support David Weil's nomination. I know his service at the Department of Labor would contribute to a stronger U.S. economy. And I hope this committee and this body will swiftly confirm him for this new role.

## LETTERS FROM MR. WEIL'S ACADEMIC PEERS

OCTOBER 29, 2013.

Hon. TOM HARKIN, *Chairman*,  
 Hon. LAMAR ALEXANDER, *Ranking Minority Member*,  
*Committee on Health, Education, Labor, and Pensions*,  
*428 Senate Dirksen Office Building*,  
*Washington, DC 20510*.

DEAR CHAIRMAN HARKIN AND RANKING MEMBER ALEXANDER: We are all academics who study different aspects of employment relations and public policy. Each of us has worked in and/or advised the Department of Labor and other Federal and State government agencies in both Democratic and Republican administrations. While we do not all share the same views on employment policy issues, we share a tremendous respect for David Weil and believe he would be an excellent administrator of the Wage and Hour Division of the Department of Labor.

David is one of if not the Nation's leading expert on enforcement of safety and health, wage and hour, and other workplace regulations. He has done extensive research on the effectiveness of different enforcement strategies and has worked intensively with Labor Department officials for many years to improve the efficiency and effectiveness of the policies he will be entrusted to administer.

He brings a long history of public service to this position. Among other things he worked closely with the late John Dunlop, Secretary of Labor in the Ford administration, on a major study of work practices and productivity in the apparel and textile industries. He currently serves as co-director of the Transparency Policy Project at Harvard University's Kennedy School of Government. He is recognized by his colleagues at Boston University as an extremely competent, fair, and thorough administrator.

For the past 8 years he has served as the neutral chair of the Dunlop Agricultural Labor Commission, a position that requires gaining and maintaining respect and trust from diverse groups of employers, contractors, employees, immigrants, and unions.

For all these reasons, we are pleased to endorse the President's nomination of David Weil to be the Administrator of the Department of Labor's Wage and Hour Division. Please feel free to contact any of us if we can be of further help to your committee.

Sincerely,

RICHARD FREEMAN, *Professor*,  
*Department of Economics, Harvard University*.

HARRY KATZ, *Dean*,  
*School of Industrial and Labor Relations, Cornell University*.

LAWRENCE KATZ, *Professor*,  
*Department of Economics, Harvard University*.

THOMAS KOCHAN, *Professor*,  
*MIT Sloan School of Management*.

DAVID LEVINE, *Professor*,  
*Haas School of Business, University of California-Berkeley*.

LISA LYNCH, *Dean*,  
*Heller School for Social Policy and Management, Brandeis University*.

ROBERT MCKERSIE, *Professor Emeritus*,  
*MIT Sloan School of Management*.

PAUL OSTERMAN, *Professor*,  
*MIT Sloan School of Management*.

JAMES REBITZER, *Chair*,  
*Dept. of Economics, Law & Policy, School of Management, Boston University*.

BOSTON UNIVERSITY SCHOOL OF MANAGEMENT,  
 BOSTON, MA 02215,  
 November 25, 2013.

Hon. TOM HARKIN, *Chairman*,  
 Hon. LAMAR ALEXANDER, *Ranking Member*,  
*Senate Committee on Health, Education, Labor, and Pensions*,  
 Washington, DC 20510.

DEAR SENATORS HARKIN AND ALEXANDER: I am writing in strong support of the nomination of Boston University Professor David Weil to the position of Wage and Hour Administrator in the Department of Labor.

For the past two decades I have known and worked closely with Professor Weil when I served as Dean of Boston University School of Management where David was a faculty colleague. Prior to my appointment as Dean, I was with Ford Motor Company for 27 years reaching the position of president, at Ford of Europe. I currently serve on several public company boards of directors.

As a businessman, and as a senior university administrator, I see Professor Weil as a fair and open-minded scholar who would work well with business people, with unions, and with other stakeholders. He understands and appreciates the working of the free market as well as the important role labor plays in the fabric of our economy.

He is a first-rate, productive scholar who has distinguished himself both as a chaired professor at Boston University and at the Kennedy School at Harvard where he has been co-director of the Transparency Policy Project. But he is also a delightful human being with excellent interpersonal skills and a very thoughtful, balanced approach to complex issues. I believe he would be an excellent addition to the Department of Labor and would serve our country admirably as Wage and Hour Administrator. I support his nomination without reservation.

Respectfully,

*Louis E. Lataif.*

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READ PARTNERS, INC.,  
 NOVEMBER 26, 2013.

Hon. TOM HARKIN, *Chairman*,  
 Hon. LAMAR ALEXANDER, *Ranking Member*,  
*Senate Committee on Health, Education, Labor, and Pensions*,  
 Washington, DC 20510.

DEAR CHAIRMAN HARKIN AND RANKING MEMBER ALEXANDER: I am writing in support of the nomination of **David Weil** as Wage and Hour Administrator within the Department of Labor.

My perspective on David's nomination comes from 25 years in business, including CEO of a \$400 million manufacturing company, currently Commercial Vehicle Group (CVGI:NASDAQ). I have also served as CEO of two national/global non-profits and as the Assistant Secretary for Employment Standards during the Gerald R. Ford Administration, to which this particular position reported. I am therefore quite familiar with the importance of this position in terms both of overseeing the work and of being the object of its statutes and regulations.

I have known David Weil for nearly a decade and know him to be both a brilliant academician and one devoted to public service. In our work together, he has proven to be fair and balanced in his treatment of business as well as labor interests. Most recently we have worked to support common sense solutions to whistle-blower issues within OSHA and David's approach is very much one of problem-solving in the interests of all parties. When confirmed, I have every reason to believe David will consult widely within the business and labor communities to provide effective solutions for all parties.

I commend this nomination to you and would encourage bipartisan support for its approval.

Sincerely yours,

JOHN C. READ,  
*Managing Partner.*

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS,  
 DORCHESTER, MA 02122  
 November 27, 2013.

Hon. TOM HARKIN, *Chairman*,  
 Hon. LAMAR ALEXANDER, *Ranking Member*,  
*Senate Committee on Health, Education, Labor, and Pensions*,  
 Washington, DC 20510.

DEAR CHAIRMAN HARKIN AND RANKING MEMBER ALEXANDER: We write to you to express our support for the confirmation of David Weil as U.S. Wage and Hour Administrator for the Department of Labor. As Business Manager of Local 103 of the International Brotherhood of Electrical Workers (IBEW), and as Executive Manager of the Boston Chapter of the National Electrical Contractors Association (NECA), we rely on David Weil as a source of knowledge and skill in finding a balance in the needs of employers and employees in today's world. David's acute understanding of labor markets and labor-management relations will be a tremendous asset to the position of Wage and Hour Administrator and we have no doubt that he will utilize his experience and expertise to benefit employers and their employees across the country.

Local 103, IBEW, and NECA are both regional organizations, representing 7,000 retired and active electricians and technicians, and over 100 electrical contractors, respectively. Our area of the country has been at the forefront of innovation for years and with that comes an ever-evolving labor market and the challenges of meeting the demands of workers, employers, and consumers. We are in constant contact with David Weil as we continue to forge a common ground on a number of issues. Without David's proficiency at getting to the root of problems, determining the requirements of both sides, and recommending solutions that benefit everyone, we might have lost out on some terrific opportunities for both of our organizations in years past. Because of David's guidance over the past few years, all of our members, and for that matter, all of Greater Boston and New England is in a position to grow a stronger electrical industry into the future.

We believe that the impartiality and ability to relate to all sides, that we have witnessed David Weil exemplify in our own negotiations, will allow David to make a seamless transition to negotiations on a national level. David is a knowledgeable, practical and open-minded individual who makes an ideal candidate for the post of Wage and Hour Administrator for the Department of Labor.

Thank you for your consideration of our recommendation of this very important candidacy. Please do not hesitate to contact either of us for more information on our experience with David Weil.

Sincerely,

MICHAEL P. MONAHAN,  
*Business Manager, Local 103, IBEW.*

GLENN W. KINGSBURY,  
*Executive Manager, NECA Boston.*

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M. L. JOHNSON & ASSOCIATES, LLC,  
 SEATTLE, WA 98112,  
 November 27, 2013.

Hon. TOM HARKIN, *Chairman*,  
 Hon. LAMAR ALEXANDER, *Ranking Member*,  
*Senate Committee on Health, Education, Labor, and Pensions*,  
 Washington, DC 20510.

Subject: Letter of Support for David Weil's Confirmation as the U.S. Wage and Hour Administrator for the Department of Labor

DEAR CHAIRMAN HARKIN AND RANKING MEMBER ALEXANDER: By way of introduction, I am a Labor Relations Consultant, having worked in the construction industry for over 40 years on projects across the United States, both in the public and private sectors. Previously, I was the vice president and manager of Labor Relations for the Parsons Corporation, a national engineering and construction company. In this capacity, I oversaw Labor Relations issues on construction projects with a total value in excess of \$60 billion that were located throughout all areas of the country.

I am writing you to give David Weil my strongest and highest recommendation for the position of U.S. Wage and Hour Administrator for the Department of Labor. I have known David for some time and have worked with him on a professional

basis on a number of Labor/Management issues. He is extremely bright and has shown an incredible ability to see issues from both the Labor and Management perspective. He has also been very open-minded about different, innovative strategies for resolving particularly difficult issues.

I hold David in very high regard for being open to all points of view and, in particular, being a good listener to all perspectives. As a management representative, I have particularly appreciated that he is fair and consistently considers the position of business, understands how the business/corporate world works and tries to incorporate these views into viable, workable solutions. He is an incredible student of "labor" and one in whom I have a great deal of confidence.

In my 40-year career, I cannot think of anyone better prepared, or with the experience and expertise, than David. He would be an outstanding U.S. Wage and Hour Administrator and I encourage you to support his confirmation.

Please feel free to contact me at any time if you desire any further information.

Sincerely,

MARK L. JOHNSON,  
*Principal, M. L. Johnson & Associates, LLC.*

PROMONTORY FINANCIAL GROUP, LLC,  
SAN FRANCISCO, CA 94105,  
*November 27, 2013.*

Hon. TOM HARKIN, *Chairman,*  
Hon. LAMAR ALEXANDER, *Ranking Member,*  
*Senate Committee on Health, Education, Labor, and Pensions,*  
*Washington, DC 20510.*

DEAR CHAIRMAN HARKIN AND RANKING MEMBER ALEXANDER: I write to you in strong support of the nomination of David Weil to serve as Wage and Hour Administrator of the U.S. Department of Labor. It has been my enormous good fortune to know David for 30 years, since we were students together at the Kennedy School of Government in the early 1980s.

If I could tell you just one thing about David's character, based upon my long acquaintance with him, I would tell you about his commitment to fairness, a concept that, for David, rests entirely upon a complete and balanced understanding of relevant facts and perspectives. From the first days of our acquaintance, David has often spoken of the importance of appreciating business and labor interests alike, recognizing that, in the long run, the success of each side depends upon the success of both sides. Achieving and applying that appreciation, through the ceaseless exercise of his great intelligence and natural curiosity, and his abiding passion for the welfare of his fellow citizens, has been his life's work. I have spent most of my own career in business, and currently lead the regional operations of the Promontory Financial Group, a boutique consultancy focused on helping financial institutions to work through and resolve compliance and risk management challenges. Familiar as I am with the needs and perspectives of the business community, I am certain that David's confirmation would well serve not only our country as a whole, but that community in particular. Just as he has done in his academic work, David will systematically collect and consider business perspectives in the conduct of his official duties. In David, the business community will find a door and a mind, both genuinely and reliably open.

Sincerely,

KONRAD ALT,  
*Managing Director, Promontory Financial Group, LLC.*

BOSTON UNIVERSITY,  
BOSTON, MA 02215,  
*December 4, 2013.*

Hon. TOM HARKIN, *Chairman,*  
Hon. LAMAR ALEXANDER, *Ranking Member,*  
*Senate Committee on Health, Education, Labor, and Pensions,*  
*Washington, DC 20510.*

DEAR CHAIRMAN HARKIN AND RANKING MEMBER ALEXANDER: I respectfully reach out to you in strong support of the nomination of David Weil as Wage and Hour Administrator in the Department of Labor. David is a distinguished professor at Boston University School of Management who understands the workings of the busi-

ness world. My specific experience working with David demonstrates that he would be both fair and open-minded in discharging his responsibilities as Administrator and would be someone who would reach out to all stakeholders.

These comments are based on my almost 40 years of working in industry, at Corning, Quest Diagnostics as chairman and CEO, and most recently at Kohlberg Kravis Roberts & Co. before joining the School of Management as Dean 3 years ago.

I would be pleased to provide additional information if it would be helpful in the approval process.

Sincerely,

KENNETH W. FREEMAN,  
*Allen Questrom Professor and Dean.*

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DECEMBER 6, 2013.

Hon. TOM HARKIN, *Chairman,*  
*Senate Committee on Health, Education, Labor, and Pensions,*  
*Washington, DC, 20510.*

DEAR CHAIRMAN HARKIN: It is my privilege to endorse Professor David Weil's nomination as Administrator of the Wage and Hour Division, Department of Labor.

As the retired vice chairman of Burlington Industries, I have had close contact with David in his efforts to improve both the working relationships between management and labor in our industry and to improve the entire industry's competitiveness.

Burlington Industries was a very large textile manufacturer with well over 25,000 employees. Because of its sophisticated industrial relations philosophy, it earned the respect and support of its employees.

David pioneered many aspects of advanced concepts to provide more efficient delivery of product through the entire chain of suppliers to the ultimate consumer, encompassing fiber, fabric and garment production and retail distribution, while enhancing the role of employees in each of these segments. In these endeavors, he worked closely with notable academics—e.g., the late John Dunlop, chairman of Harvard's Economic Department and former Secretary of Labor—as well as top industry executives and labor leaders. Beyond his stellar work at Boston University, he has made major contributions in collaboration with the Labor and Work Life Programs at the Harvard Law School.

David is visionary, hardworking, intelligent and compassionate about his fellow countrymen who are wage earners. I find it an honor to now support David's nomination.

Sincerely,

BERNARD A. LEVENTHAL.

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THE COLTON HOUSING GROUP,  
MCLEAN, VA 22102,  
*December 9, 2013.*

Hon. TOM HARKIN, *Chairman,*  
Hon. LAMAR ALEXANDER, *Ranking Member,*  
*Senate Committee on Health, Education, Labor, and Pensions,*  
*Washington, DC 20510.*

DEAR CHAIRMAN HARKIN AND RANKING MEMBER ALEXANDER: I am delighted to send a letter of strong support for David Weil in his efforts to be confirmed as the U.S. Wage and Hour Administrator for the Department of Labor. I have known David for over a dozen years and have had the opportunity to work with him closely on several occasions—first, to collaborate on a study of the high production home builders in the United States, and second, to co-author a book *Bigger Isn't Necessarily Better* (Lexington Books, 2012), based on that study.

David is well-versed not only in the academic world, but in the business community. When we were working on the study and book related to the high production home builders in the United States, David was excellent in understanding the dimensions and concerns of the Nation's biggest high production home builders. He has developed great expertise over the last many years recognizing and understanding the workings of the business world. Not only does he have excellent understanding, but he is very fair and very good at laying common ground relationships in order to avoid problems and to help work out the best solution.

I also should comment on David's capacity to work with other people—both Republicans and Democrats. David is practical and focused on solutions that will be

good for the building community and for the labor community. He is not an ideologue. I have worked with him in a variety of settings and have always found him to be a first class professional and someone who is always anxious to learn and to make good decisions based on the facts. He is good working with those who are "above" him, and he is good working with those that work for him.

I strongly recommend him without any reservations.

Best regards,

KENT W. COLTON,  
*President.*

RESPONSE BY DAVID WEIL TO QUESTIONS OF SENATOR HARKIN, SENATOR ALEXANDER, SENATOR BALDWIN, SENATOR FRANKEN, SENATOR ISAKSON, AND SENATOR MURKOWSKI

SENATOR HARKIN

The FLSA contains a provision that allows employers to receive certifications to pay workers with significant disabilities below minimum wage; in some cases as low as 50 cents an hour. There have been egregious violations of these provisions—including in my home State in the town of Atalissa, where dozens of men working at a turkey slaughterhouse were kept in deplorable conditions and paid pennies per hour; this went on for decades. Further, many workers become almost trapped in these sheltered workshops because they do not receive training to assist employees to move into competitive integrated employment.

*Question.* Are you familiar with this provision of the FLSA? What will you do to ensure that employers with a 14(c) certificate are strictly monitored and fulfilling the requirements of the certificate? Will you work with me to reduce the use of 14(c) certificates and encourage employers to provide more opportunities for competitive, integrated employment for people with disabilities?

*Answer.* I understand that stakeholders in the disability community have expressed differing views on the subject of the 14(c) exemption under the FLSA. This is an extremely difficult issue. If confirmed, my responsibility as Wage and Hour Administrator is to ensure that employers who employ individuals with disabilities obey the law. I would pursue strategies to strengthen compliance with section 14(c) and maximize the impact of its benefits for workers with disabilities, their employers, families and communities. I share your concerns about effectively monitoring the use of 14(c) certificates, and I look forward to working with you and other members of the committee to provide more employment opportunities for people with disabilities.

SENATOR ALEXANDER

According to the information you provided to our committee, I see you have worked extensively in the world of academics, which I appreciate. As you know, the Wage and Hour Division is a law enforcement agency, and its Administrator is tasked with not only enforcing the law, but managing its 1,800 employees.

*Question 1a.* Can you point to any direct experience you have managing a group of employees this big? What is the largest number of employees you have managed at one time?

*Answer 1a.* I acknowledge that I have never managed or led an organization the size of the Wage and Hour Division. But I strongly believe that my experience over the last 20 years of leading, managing, and supervising in my academic and applied work and my extensive knowledge and work with the Wage and Hour Division since 2002 prepares me well for the challenges I will face in leading the agency.

In my 20 years as a professor, there has not been a time where I have not been leading and coordinating multiple projects, administering research grants and budgets, overseeing faculty colleagues, students, and staff on projects, and evaluating the performance of peers and subordinates. I have engaged in these activities at multiple research centers. The number of people I have managed has varied over time. At various times, I have had 18–20 researchers under my supervision and management. For example, in 2005, I had five professors, seven undergraduate researchers, three Ph.D. students, four staff members operating under my supervision between my research studies for the Department of Labor, and at Harvard University. I have also managed and supervised major teaching and administrative activities. A recent example is the redesign of our MBA curriculum where I led the design and implementation team over the last year consisting of eight professors and instructors, 10 teaching assistants, and five staff members, and coordinated with a second design team of similar size.

My research, teaching, and administrative activities have all involved hiring personnel, assessing performance, overseeing budgets, responding to staffing issues, relating to external funders and research partners and internal administrative units, and setting, monitoring, and delivering on project milestones and deadlines.

*Question 1b.* What professional experience do you have in enforcing any of the more than a dozen major laws the Wage and Hour Division is tasked with enforcing?

Answer 1b. I have worked on a series of major projects with the Wage and Hour Division beginning in 2002. Those projects gave me a detailed understanding of the internal workings of the Wage and Hour Division at the District Office, Regional Office, and National Office levels. It has provided me the opportunity to talk with many investigators in the course of that work at a variety of offices. I have presented that research in a variety of meetings and offices of the Wage and Hour Division during the course of that time, allowing me to understand how investigations are undertaken as well as other administrative activities of the organization.

*Question 1c.* Have you ever disciplined a subordinate for violating workplace policies? If so, please describe the situation and the subsequent discipline, without providing personal information of the subject.

Answer 1c. No.

*Question 1d.* Please provide specific management practices you plan to implement. Answer 1d. I have and would bring an inclusive and collaborative leadership style to the Wage and Hour Division. If confirmed, my responsibility will be to provide leadership of the agency. This begins with articulating a clear vision of how the agency will ensure compliance with the laws entrusted to it, given the priorities stated by the President and the Secretary of Labor. One of the first priorities for me would be to reach out both internally and externally to fully understand views on the agency's mission, direction, and performance.

In many years of work with the Wage and Hour Division, I have come to know many of the highly experienced and effective staff at the national, regional, and district level. Tapping the extensive knowledge and expertise in the agency would be critical to effectively lead the agency and I would anticipate working hand-in-glove with the career staff. Based on my discussions in the first few months, I would assess the best mechanisms to work effectively with the staff. I believe in creating clear and agreed upon objectives and goals, delegating responsibility for specific activities and programs to achieve those goals, and establishing strong systems of accountability. I would establish management practices and systems (e.g., planning and budgeting processes) that would ensure that resources were being applied to priorities and programs as the mechanism to discharge that accountability. Based on my prior work with the agency, I believe that many of those systems are already in place.

Ongoing evaluation would be a key feature of my management approach if confirmed. I believe in setting targets that can be measured in the short-, intermediate- and long-term. Establishing clear outcomes for gauging success would be critical in terms of assuring that the agency is on course in achieving the priorities of the President, and meeting the responsibilities established in legislation administered by the agency and overseen by Congress.

My approach to management would also reflect the principle of transparency I described in my statement for the record. I believe that all parties inside and outside the agency are better served if they understand what the Wage and Hour Division is seeking to do, how it intends to do so, and its ongoing performance in meeting its objectives.

*Question 2a.* What is the largest budget you have managed?

Answer 2a. I have managed research projects with overall budgets of approximately \$2 million.

*Question 2b.* How do you plan to effectively oversee a \$230 million budget?

Answer 2b. Budgets provide a critical mechanism for setting expectations about programmatic activities and objectives in the budgeting period internally and with Congress through authorization of funds. Budgets also provide a critical method for linking the objectives and activities of an organization like the Wage and Hour Division with the resources consumed in pursuing them. If confirmed, I would therefore work closely with the staff of the Wage and Hour Division in all phases of the budget process, and use them as a means of gauging resource allocation against plans for the upcoming budget period. Some of my applied work with different organizations has been on developing internal management and budget practices to allow



organizations to both use budgeting as an instrument of financial control as well as of strategic management and evaluation. I would bring this approach to my oversight of the WHD budget.

*Question 2c.* In your interview with committee staff, you stated you had not reviewed the Wage and Hour Division's Fiscal Year 2014 Congressional Budget Justification. Have you since read it? Do you have any experience with the Federal budget process? If so, please provide specific examples.

Answer 2c. I have reviewed prior Wage and Hour Division Budget Justifications over the years as well as other Federal budget documents as part of my prior work with the agency under both the Bush and Obama administrations. I have used those documents as a way of understanding resource allocation in various parts of the Labor Department and other government agencies. If confirmed, I would work closely with the staff of the Wage and Hour Division to understand those documents given my responsibilities as Wage and Hour Administrator.

*Question 2d.* Please explain whether you believe reading the budget plan for the agency you would oversee before you are confirmed is consistent with good management practices.

Answer 2d. Reviewing and monitoring all relevant budget documents is an important management practice that I have undertaken in all projects that I have undertaken. I will review all relevant budget documents as a basic part of my responsibilities.

*Question 3a.* You have worked as a consultant for several entities, including the AFL-CIO, correct? Please explain, in detail, the work you did for the AFL-CIO in 2012 and 2013?

Answer 3a. I worked with the AFL-CIO in those years facilitating an annual senior staff retreat held over 2 days. The retreat was aimed at bringing the senior department managers of the AFL-CIO to consensus on their plans for the upcoming year as well as helping them develop mechanisms to make sure that the different departments followed through on their specific plans and coordinated across department. The focus of this work was effective internal management given chosen overall objectives and gaining top level consensus among the staff with those plans.

*Question 3b.* Please provide the contract you had with the AFL-CIO to the HELP Committee for review.

Answer 3b. I am attaching my invoice for facilitating the January 2013 retreat.

**MEMORANDUM**

**To:** Jon Hiatt/Thea Lee, AFL-CIO  
**From:** David Weil, Boston University  
**Re:** Expenses for AFL-CIO retreat 2013  
**Date:** February 3, 2013

The following expenses were incurred for my participation as facilitator in the AFL-CIO Retreat from January 14-15, 2013. I have scanned the relevant receipts for them and attached them to this invoice. The AFL-CIO should have my W-9 information from the prior work in facilitating sessions in 2012.

FEES	
Four days (2 days preparation / 2 days facilitation)	
\$3,000 / day .....	\$12,000.00
EXPENSES	
Plane fare (Boston-BWI-Boston) .....	\$169.80
Taxi/Parking .....	\$50.00
Food .....	\$31.97
TOTAL EXPENSES .....	\$251.77
<b>TOTAL FEES and EXPENSES .....</b>	<b>\$12,251.77</b>

The reimbursement check can be sent to my home address: David Weil, 22 Glenn Road, Belmont, MA 02478.

Please contact me if you have any questions regarding this invoice.

*Question 3c.* Do you plan to recuse yourself from any action in which AFL-CIO or its locals are a party or represent a party involved?

Answer 3c. I have signed a conflict of interest agreement with the Office of Legal Counsel of the U.S. Department of Labor that clearly states that I will cease all consulting work and that I will not participate personally and substantially in any particular matter involving specific parties in which a former client of mine is a party or represents a party for a period of 1 year after I last provided service to that client. This would include the AFL–CIO.

*Question 3d.* Are you currently performing any work for the AFL–CIO? If so, please explain it in detail.

Answer 3d. I am not currently performing any work for the AFL–CIO and have not done so since the senior staff retreat held in January 2013.

*Question 3e.* Did you perform any work for the AFL–CIO prior to 2012? If so, please explain in detail the work you performed, whether you were paid, and if so, how much you were paid.

Answer 3e. I facilitated the senior staff retreat for the AFL–CIO for the first time in 2011, providing similar services as described above. I was paid \$15,000 for those services in 2011. As noted in my disclosure documents, I was a Trustee of the Board of the National Labor College, affiliated with the AFL–CIO, from 1999 to 2007. I was not compensated for serving as a Trustee.

*Question 3f.* Have you consulted for any other unions—either now or in the past? If so, please disclose which union(s), explain in detail the work you performed, whether you were paid, and if so, how much you were paid.

Answer 3f. I have disclosed all professional services provided to unions and other organizations during the reporting period required in my OGE and Senate HELP disclosure forms.

*Question 4.* In a letter of support for your nomination sent to the HELP Committee, the International Brotherhood of Electrical Workers (IBEW), Local 103 said that they are in “constant contact” with you directly to discuss various issues. Is this accurate? Are you paid for your work with this union? If confirmed, will you recuse yourself from any issue involving the IBEW?

Answer 4. I worked as a mediator in a joint project between the International Brotherhood of Electrical Workers (IBEW) Local 103 and the National Electrical Contractors Association—Boston (NECA) for several years in the late 1990s and early 2000s. I have from time to time spoken with the business manager of Local 103 and the executive manager of NECA—Boston (once or twice per year at the most), but this was always on an informal and non-compensated basis.

*Question 5.* After I have a chance to review your forthcoming book, “The Fissured Workplace: Why Work Became So Bad For So Many And What Can Be Done To Improve It,” will you commit to answering any followup questions I may have about it?

Answer 5. I would be happy to discuss my book with you.

*Question 6a.* Your name is included in NELP’s report, “Just Pay: Improving Wage and Hour Enforcement at the United States Department of Labor”, as a member of the working group that developed the report. What was your involvement in reviewing or writing that report? Please elaborate, in detail, the work you did on the report.

Do you support all of the recommendations in the report or otherwise agree with them?

Answer 6a. As an academic expert on workplace regulation and labor standards, I was asked to be a member of the working group in 2008. I agreed to do so and participated in a series of conference calls during 2008 and 2009. We were asked to periodically read and comment on drafts of the report’s discussions proceeded which I did.

As a working group member, I provided comments on the report. We were not asked to support all recommendations in the report, but to provide our input regarding them. I did not agree with all of the recommendations included in the report at the time nor do I now.

*Question 6b.* In particular, the report recommends that the Wage and Hour Division,

“hold subcontracting (joint) employers accountable for wage and hour violations of their subcontractors using the broad employment definitions in the Fair Labor Standards Act and the ‘joint employer’ regulation.”

Do you agree with that recommendation?

Answer 6b, The issue of responsibility in complicated employment relationships has been an area of analysis and policy of concern to me for some time and remains one. Understanding how to apply legal responsibilities of the FLSA and other labor standards has been an increasingly challenging one for the Wage and Hour Division for decades. I would anticipate that to be the case going forward. This would require a more nuanced review than implied in the broad recommendation.

*Question 6c.* The report also recommends that the Wage and Hour Division “provide guidance to investigators who are told by an employer that a complaining worker is an independent contractor” and states that “the guidance should note that a worker performing labor or services is presumed to be an employee absent employer proof to the contrary.” Do you agree with that recommendation?

Answer 6c. The recommendation is a broad statement that does not provide specific guidance required for the Wage and Hour Division. If confirmed, I would review policies for investigations in areas of concern like the use of independent contracting.

*Question 6d.* Do you support issuing new guidance or interpretations or amending the Field Operations Handbook (FOH) to instruct investigators to presume a worker performing labor or services is an employee even if the employer has stated that the worker is an independent contractor?

Answer 6d. If confirmed, I would see it as part of my responsibility to rigorously review with the Wage and Hour Division staff the adequacy of Field Operations Handbook in achieving the objectives established by the laws administered by the WHD.

*Question 7.* Should employers be required to provide their employees with detailed information regarding such things as how they are classified, their rate of pay, and/or any Fair Labor Standards Act exemptions that apply to their employment? Should employers have to provide written documentation of all this information to their employees?

Would you support new rules requiring this disclosure? Should employers be required to keep records of their employee pay for more than 3 years, as currently required? If so, for how long?

Answer 7. While I am unfamiliar with the particular disclosure proposal you describe, as a co-director of a research project at Harvard University on transparency, I have studied the application of disclosure requirements across many different areas of public policy in the United States. I would look carefully to evaluate whether disclosure in this case and all cases would effectively improve compliance with laws administered by the Wage and Hour Division. If confirmed, I would welcome discussion with the committee regarding this issue.

*Question 8a.* At a time of limited budgets for Federal agencies, do you support coordinating with third party groups to accomplish the Wage and Hour Division’s goals? If so, what specific duties do you think are appropriate for third party involvement?

Answer 8a. The investigation and enforcement of the laws administered by the Wage and Hour Division are inherently governmental and as such are the sole responsibility of the agency.

*Question 8b.* If confirmed, will you ensure that third party, non-governmental groups will not be permitted to carry out the legal duties of the Wage and Hour Division as delegated to it by Congress?

Answer 8b. If confirmed, I assure you that Wage and Hour investigators and staff will be solely in charge of investigating and enforcing the laws under the Division’s jurisdiction.

*Question 8c.* Are you familiar with New York’s “Wage Watch” program started by then-State Labor Commissioner Patricia Smith? Would you support the implementation of this program within the Wage and Hour Division?

Answer 8c. I am generally familiar with the “Wage Watch” program. I would not implement such a program at the Wage and Hour Division if confirmed.

*Question 9.* At a time when our economy continues to recover from an unemployment rate high of 10 percent in 2009, should the Federal Government encourage job creation and retention among employers regardless of their business model? Is it a wise use of taxpayer resources to target small employers who are creating jobs?

I read an op-ed from the *USA Today* earlier this year written by a mother down in Arkansas who started a consignment business for children’s clothing out of her home. Today, her business has grown to over 62 locations in 20 States. Her entre-

preneurial business model has given families the opportunity to earn a little extra money by selling their children's old clothes. Yet, the Wage and Hour Division has investigated the mother because she doesn't pay the parents who volunteer at these events to get the first crack at shopping before the general public. Is this a wise use of the agency's limited resources?

Answer 9. I am unfamiliar with the particular circumstances of the case being discussed in the *USA Today* op-ed. However, I believe that it is the responsibility of the agency to ensure compliance with all of the statutes it enforces.

*Question 10a.* Last month, the HELP Committee held a hearing titled, "Payroll Fraud: Targeting Bad Actors Hurting Workers and Businesses," focusing largely on employers' use of independent contractors. At the hearing, the president of a customized logistics and delivery company in New York testified that his company works with 225 independent contractors, all of whom enjoy the flexibility of the job but also the ability to earn more pay. When millions of Americans are still looking for work, is it more beneficial for the Federal Government to encourage job creators in this sector or target them for enforcement even when there are no complaints from independent contractors engaged with the company?

Answer 10a. It is important that responsible employers who use legitimate forms of independent contracting and direct employment are not put at a competitive disadvantage by the inappropriate use of independent contracting that takes the form of misclassification.

*Question 10b.* Do you see a role for the Wage and Hour Division to play in protecting the right of individuals and businesses to continue to voluntarily choose to use the independent contractor business model?

Answer 10b. I believe that the Wage and Hour Division can play a role in clarifying for all parties where the use of independent contracting is a legitimate form of business organization and where its use can result in misclassification. Such guidance can increase compliance with the laws administered by the WHD and assist both workers and employers.

*Question 10c.* Do you support allowing individuals to choose to be independent contractors?

Answer 10c. Independent contracting is a well-established and often appropriate form of business organization, and I support its use where it is used legitimately, as defined by established multi-attribute criteria established in court and agency decisions and guidance.

*Question 10d.* Do you think the Wage and Hour Division should place more requirements on businesses that use independent contractors? If so, what types of requirements for businesses are appropriate?

Answer 10d. I am concerned about misclassification of workers as independent contractors which has become a more prevalent problem in many industries. If confirmed, I would review the approaches taken by the Wage and Hour Division in addressing this issue and evaluate their effectiveness at addressing this problem.

*Question 11.* During your time at either Boston University or Harvard University Kennedy School, did you or your department use student interns? Were they paid or unpaid?

Do you support the use of unpaid internships in colleges and universities?

As you are likely aware, the issue of whether unpaid internships are permitted under the Fair Labor Standards Act (FLSA) has attracted public attention. If confirmed, will you direct the agency to investigate the use of unpaid internships in any way?

Answer 11. I have always paid students working in teaching, research, and administrative projects for me at Boston University and at the Harvard Kennedy School. While I am generally aware of the issue of unpaid internships, I have not been involved in any WHD initiatives in this area nor examined the issue closely. If confirmed, I will evaluate the approaches taken by the agency in this area and assess whether adjustments are appropriate.

*Question 12.* In your written testimony you state that if confirmed you will,

"ensure that both existing and new [Wage and Hour Division] initiatives were carefully evaluated and that appropriate adjustments were made in light of those evaluations."

Will you issue a detailed report of those evaluations and any changes made to Chairman Harkin and myself?

Answer 12. I do not plan, nor am I required, to issue a written report of my evaluation. I would, however, be happy to make myself available to discuss with Members of the committee decisions I would make based on my assessment of the agencies current policies and practices.

*Question 13a.* Do you plan to increase the utilization of directed investigations at the Wage and Hour Division?

Answer 13a. As noted in my hearing, if confirmed, I would use objective information to prioritize where the WHD should focus its attention going forward and assess what tools would be most effective to improving compliance with the laws administered by the WHD. I believe that the agency should balance the use of complaint and directed investigations in pursuing its objectives. At this stage, I am not able to assess whether the current mix of investigations meets those objectives.

*Question 13b.* If so, in what industries would you expect to investigate?

Answer 13b. As noted, I cannot answer that question at this time.

*Question 13c.* Will you commit to not diverting resources from complaint-based investigations toward directed investigations?

Answer 13c. I will seek a balance of directed and complaint investigations given the larger need to improve compliance with the laws administered by the Wage and Hour Division.

*Question 13d.* Will you commit to treating all complaints equally based on the merits, not based on the industry?

Answer 13d. Complaint investigations will always be an important part of the work undertaken by WHD investigators. I will commit to creating clear, transparent, and fair guidance on the prioritization of complaint investigations that can be applied in a consistent manner across the agency.

*Question 14a.* Do you believe that there is an inherent unfairness in the workplaces of fissured industry workplaces?

Answer 14a. I am concerned about instances where business organization is used as a means of avoiding compliance with legal requirements, and where that may give these businesses a competitive advantage against other businesses that are responsibly complying with the law or exceeding its requirements.

*Question 14b.* If so, how will you differentiate between what you personally may view as unfairness in the workplace versus what is actually a labor violation?

Answer 14b. If confirmed, I would base the policies and practices related to Wage and Hour Division enforcement on how relevant laws and regulations define compliance or non-compliance.

*Question 15.* According to a slide on your July 29, 2011, YouTube video, you state that there should be “policies to re-balance (not end) business decisions on fissuring,” including “adjusting employment laws/notions of liability” and “stopping pernicious forms of fissuring.” Please explain, in detail, what you meant by these statements.

Specifically, please include what employment laws you thought needed to be adjusted and how so? What “notions of liability” did you think needed to be adjusted? What are “pernicious forms of fissuring”? Do you still hold these views? Will you make any attempt to “adjusting employment laws/notions of liability” if you are confirmed as the WHD Administrator?

Answer 15. Pernicious forms of fissuring are those types of business entities that are created principally to avoid legal obligations under the FLSA as well as other workplace and tax laws. In many cases, these are entities that regulatory agencies or courts have found to be used as mechanisms to avoid compliance. In the video, I was commenting on policy implications in my academic capacity based on my extensive research on the impact of business organization and industry structure on compliance. If confirmed as Wage and Hour Administrator, my responsibility is to administer existing laws.

*Question 16a.* As you are likely aware, the Senate may vote soon on an increase in the minimum wage to \$10.10 per hour, with future increases tied to the Consumer Price Index (CPI). Do you support that increase?

Answer 16a. President Obama supports the increase in the minimum wage to \$10.10 provided in the Harkin-Miller bill and so do I.

*Question 16b.* Do you support a larger increase? Please explain why you would or would not support a larger increase.

Answer 16b. A family trying to raise children with a parent working full-time at the minimum wage will fall below the poverty line given the current minimum wage. President Obama thinks this is wrong and strongly supports an increase in the minimum wage. I agree with the President and support the increases incorporated in the Harkin-Miller bill.

*Question 16c.* Earlier this year, economist and *New York Times* columnist Paul Krugman wrote that most economists would “agree that setting a minimum wage of, say, \$20 an hour would create a lot of problems.” Do you agree with that statement? If so, should indexing sunset once the minimum wage reaches \$20 per hour?

Answer 16c. Studying the impact of minimum wage increases on employment is one of the most heavily examined areas in labor economics and the best studies indicate that the effects of increases of the minimum wage to \$10.10 on employment would be negligible. At the same time, it would have significant effects on increasing earnings in millions of households, in some cases raising those households out of poverty. The increases discussed in Dr. Krugman’s article are far beyond the range being contemplated in discussions of the Federal minimum wage.

*Question 16d.* Do you support the use of the tip-credit? Do you believe the tip-credit should be higher or lower than current law requires?

Answer 16d. The existing wage rate for tip-credit has not been adjusted since 1991. President Obama believes that an increase in the minimum wage for tipped employees is long overdue, and I agree.

*Question 17.* In March, the HELP Committee held a hearing on raising the minimum wage. One witness, a franchise owner from New Jersey testified that the median hourly earnings for servers in the restaurant industry range from \$16 per hour for entry level employees to \$22 per hour for more experienced employees, after tips. These amounts far exceed the current minimum wage, and show the robust earning potential in the restaurant industry. In followup questions, it was pointed out that the Occupational Employment Statistics (OES) from the Bureau of Labor Statistics, found the median hourly earnings for servers to be only \$8.92 per hour, including tips. With an obvious discrepancy that the restaurant industry believes is due to issues with the OES survey, there is a concern that discrepancies exist in other parts of the survey as well. The Wage and Hour Division relies on the OES survey for other areas of enforcement such as establishing prevailing wage determinations for several government contracts. Are you concerned that the Wage and Hour Division could be relying on inaccurate wage information? If confirmed, what will you do to ensure only the most accurate data is used for important agency determinations?

Answer 17. As someone trained in labor economics, I believe that it is important that wage data accurately reflect relevant labor market conditions. If confirmed, I would be interested in learning more about the issues raised in your question.

*Question 18a.* In September of this year, the Department of Labor finalized a new rule that would greatly narrow the application of the companionship exemption under the Fair Labor Standards Act (FLSA), so that many in-home care givers would have to be paid overtime. The new rule will greatly increase costs for elderly individuals and their families. If confirmed, you will have a major role in implementing the Final Rule, as it won’t go into effect until 2015.

Throughout the rulemaking process many groups, including the association that represents State Medicaid directors, voiced opposition to the rule. Will you reach out to those groups to discuss and address their concerns?

Answer 18a. I am aware generally of the concerns expressed by Medicaid Directors that the rule could impact State budgets and the provision of certain services. If confirmed, I am committed to working with the National Association of Medicaid Directors, State Medicaid directors directly, and other stakeholders, to address their concerns without compromising the integrity of the rule.

*Question 18b.* Do you agree that as a result of the rule, costs for in-home care will rise?

Answer 18b. The Department’s economic analysis shows that the rule’s major costs, which will not be lasting, will be the opportunity costs of the time managers spend shifting schedules, the reduction in work hours of some direct care workers, and reduced overtime payments to direct care workers. The rule’s major benefits, which are lasting effects of the Final Rule, will be reduced turnover of direct care workers and higher pay for those low-wage workers.

*Question 19.* In your written testimony you state that one of the principles with which you will lead the Wage and Hour Division, if confirmed, is fairness. You state, “This fairness principle requires administering labor standards laws in a way that creates the right incentives, making those who comply with our workplace laws stronger, not weaker, in the markets in which they operate.”

Does your fairness principle include using a strong and active compliance assistance program for employers who are faced with keeping up with an ever changing set of wage and hour laws?

Answer 19. Yes.

*Question 20a.* At the start of the Obama administration, the Wage and Hour Division ended the longstanding practice of providing Opinion Letters that answered questions about specific applications of labor laws. These letters were viewed a useful tool by employers and employees alike. The Opinion Letters were replaced with administrator’s interpretations that only give broad opinions on a subject chosen by the agency, leaving many specific details unanswered. To date, the Wage and Hour Division has only issued a total of five administrator’s interpretations.

Do you think stakeholders in general benefit from being able to ask fact specific questions about the application of the law, and receive an appropriate response in return?

Answer 20a. I believe it is important for all stakeholders to understand their responsibilities and rights under the law. Providing that information in a clear, consistent, and accurate manner to all parties would be an operating principle for me if confirmed.

*Question 20b.* Will you commit to restoring a more robust and interactive compliance assistance system so folks can spend less time trying to decipher the law and more time growing successful businesses and creating new jobs?

Answer 20b. I believe that helping employers understand their responsibilities clearly under the law is extremely important. Finding ways to help them understand how the law works through different methods of education and outreach helps to achieve the objectives of the laws administered by the WHD. If confirmed, I would examine different methods to help employers understand their responsibilities so that businesses can act responsibly as they undertake the crucial role of creating good jobs.

*Question 21.* Regulations issued under the Fair Labor Standards Act (FLSA) have been criticized for providing little guidance to employers or employees on the standards for exempt status under the Act. Employees exempted under the FLSA may not be subject to overtime or minimum wage. Terms like “administrative, managerial and professional” are not subject to an easy definition and the terms used to define them are often unclear.

Should the Department of Labor provide safe harbors for exemptions based on clearly understood standards?

Do you believe that it is appropriate to recognize an individual as an exempt managerial employee when that person supervises two or more other employees?

Do you plan on promulgating any new regulations regarding the interpretation of the exempt definitions?

Answer 21. The issue of exemptions under the FLSA is a complicated one. If confirmed, I would examine the issues regarding exemptions and their application given current and prospective issues in the workplace carefully and would look forward to working with the committee as well as stakeholders in making decisions in this area.

*Question 22a.* In your written testimony you state that the Wage and Hour Division has “a range of tools available to it.” You used education and outreach as specific examples, but what other tools do you believe are at the agency’s disposal and how do you plan to use them?

Do you plan on adding new “tools” to the Wage and Hour Division’s enforcement mechanisms?

Answer 22a. While I have no plans to add any “new tools,” if confirmed, I will review the use of the existing spectrum of intervention tools to achieve the objectives set out in the laws administered by the Wage and Hour Division and evaluating their use relative to the problems facing the agency.

*Question 22b.* If confirmed, will you commit to utilize notice and comment rule-making under the Administrative Procedure Act (APA) to implement any new “tools”?

Answer 22b. I will follow the requirements of the APA, where applicable.

*Question 22c.* Have you written about particular regulations or regulatory policies that you think would help the Wage and Hour Division do its job? If so, what are those regulations?

Answer 22c. As an academic, I have written about policy implications arising from my empirical studies of labor standards. If confirmed as Administrator, however, my responsibility would be to implement existing laws and regulations. I would base any new initiatives on regulations on the facts and based on reviews undertaken as the Wage and Hour Administrator.

*Question 23a.* In your interview with committee staff, you stated that you do not want employers who follow the law to be punished by the market for doing so. Please elaborate on “punished by the market”?

Answer 23a. I used this phrase to describe the situation where a responsible employer that complies with the law is put at a competitive disadvantage against an employer who violates the law and is able to therefore operate at lower costs arising from those violations.

*Question 23b.* Do you believe if employers use a fissured business model, but they follow the law, they can still put their competitors at a disadvantage? If so, do you view the role of the Wage and Hour Division Administrator to remedy those competitive disadvantages?

Answer 23b. The responsibility of the Wage and Hour Division is ensuring that employers comply with the law. My focus would be to ensure that the policies and practices of the WHD improve compliance with laws.

*Question 24.* The Davis-Bacon Act law is clear: prevailing wage requirements are required where the Federal Government or the District of Columbia “is a party, for construction, alteration, or repair, including painting and decorating, of public buildings and public works of the Government or the District of Columbia.” 40 U.S.C. § 3142(a). Do you agree that when the Federal Government or the District of Columbia is not a party to the project, and no Federal dollars are spent on the project, the Davis-Bacon Act does not apply?

If confirmed, will you commit to reviewing the Wage and Hour Division’s recent rulings and guidance that dramatically expand the scope of the Davis-Bacon Act?

Do you agree with the Department of Labor’s novel ruling that the Davis-Bacon Act applied to the CityCenter construction project in downtown Washington, DC? Do you agree that because the project will create an economic benefit by supplying jobs and tax revenue for the city, it is a “public work” project?

Do you think Department of Labor’s decision on the CityCenter project computes with your notion of “fairness”?

Do you agree with the May 24, editorial from the *Washington Post* calling the decision a,

“strained notion of a public project [that] contradicts any common-sense definition, or that it could apply to—and raise the cost of—all future commercial redevelopment of land belonging to the District or to the Federal Government anywhere?”

Do you agree that if there is no Federal contract or Federal money spent on a construction project, the project is not being performed to any government specifications, the construction project is not designed for any specific government use, or that there is no expectation of government or public use of the project, then the Davis-Bacon Act is not applicable?

Answer 24. I believe that decisions about the applicability of the Davis-Bacon Act require a thorough evaluation of the project in question. With regards to the CityCenter case, this is an issue that I have general understanding however, I’ve not dealt with the issue personally. If confirmed, I would be interested in learning more about the Department of Labor’s decision in this case.

*Question 25a.* Many decisions that were made by the political leadership at the Wage and Hour Division under the Obama administration have been made without input from various stakeholder groups. For example, on March 22, the Wage and Hour Division issued guidance on the application of the Davis-Bacon Act to members of survey crews, changing over 50 years of precedent. The guidance was based on a single request from the International Union of Operating Engineers, without input from other stakeholders. Should you decide to issue any new policies, interpretations, or guidance, will you commit to a full and transparent process with the input of all affected stakeholders as opposed to a select group?

Answer 25a. Yes. As noted in my statement for the record, transparency including engagement with stakeholders is a fundamental principle to me.



*Question 25b.* Senator Roberts and I currently have an outstanding document request with the Wage and Hour Division about their recent guidance, Memorandum No. 212, “Applicability of Davis-Bacon labor standards to members of survey crews.” So far, we have only been provided with a limited number of documents. If confirmed, will you commit to working with us on the entirety of our document request?

Answer 25b. If confirmed, I am committed to working with you on any issues of interest to the committee.

*Question 26a.* Do you support the use of compensatory time in lieu of overtime pay? Should the Fair Labor Standards Act (FLSA) be amended to permit private sector employees to voluntarily accept compensatory time in lieu of overtime pay?

Answer 26a. There are many time pressures on modern families. We should give serious consideration to policies that help families deal with the competing demands they face. The Fair Labor Standards Act requires that covered workers be promptly paid for overtime worked. I would be concerned about any legislative proposals that would dilute the value of overtime pay.

*Question 26b.* Does your current employer, Boston University offer a form of compensatory time?

Answer 26b. Boston University provides provisions for compensatory time both under its contracts with unionized employees and in the employee policies covering non-represented, non-faculty personnel.

*Question 26c.* Do you support the use of compensatory time by Federal employees?  
Answer 26c. Yes.

*Question 26d.* Would you support curtailing the use of compensatory time by Federal employees?

Answer 26d. Decisions regarding the use of compensatory time for most Federal employees fall under the jurisdiction of the Office of Personnel Management.

SENATOR BALDWIN

#### *Direct Care Workers*

As our Nation ages, members of the baby boomer generation are facing health care decisions for their parents and considering future health decisions for themselves, and their families. More Americans are choosing to receive long term care at home. It is of the utmost importance that these workers provide high quality care and are adequately compensated for their work.

In September, the Wage and Hour Division announced a long-sought-after final rule extending the Fair Labor Standards Act’s minimum wage and overtime protections to most of the Nation’s direct care workers who provide home care assistance to seniors and people with illnesses, injuries, or disabilities.

This welcome change, effective January 2015, will ensure that nearly 2 million workers, including nearly 90,000 in Wisconsin, have the same fundamental workplace protections already provided to most U.S. workers in other fields. It also will ensure that individuals and families who rely on the assistance of direct care workers have access to consistent and high quality care.

*Question 1.* Dr. Weil, as Administrator, what will you do to help families, businesses, and affected workers understand, comply with, and benefit from the new requirements?

Answer 1. The recently finalized rule extends minimum wage and overtime protections to in-home caregivers across America—protections they are currently denied. I am aware that there have been concerns expressed by the industry and some groups about the potential impact of the rule. If confirmed, I am committed to an open dialog with this committee and others on appropriate ways to address those concerns during the implementation phase until the rule will become effective in January 2015. I believe an aggressive outreach campaign will help all stakeholders understand and comply with the new requirements.

#### *Minimum Wage*

Dr. Weil, your nomination hearing comes on the heels of nationwide protests in support of raising the minimum wage. In my home State of Wisconsin last week, we saw fast food workers in Milwaukee, Madison, and Wausau strike for higher wages—wages that support working families. Thanks to Chairman Harkin’s leadership on this issue, I am very hopeful that we’ll see the full Senate vote to increase the minimum wage soon—this will be a long overdue increase for hardworking Americans across the country. It seems to me that there are a few myths surrounding the national conversation about raising the minimum wage and govern-

ment social welfare programs that need to be dispelled as we move toward this vote and Dr. Weil, I'd like your thoughts on two.

The first is that it's not necessary to raise the minimum wage because minimum wage workers are students or teenagers who are not supporting families. And yet we know this isn't true. Nearly 90 percent of workers who would benefit from increasing the minimum wage are at least 20 years old, and 55 percent work full-time. More than three quarters of minimum wage earners are parents and 70 percent are in families with incomes of less than \$60,000 a year.

The second myth is that low-income Americans *want* to be on Federal assistance programs. In fact, they *must* rely on government programs because they don't earn enough money. Therefore, raising the minimum wage could allow Americans who currently rely on government assistance programs the ability to be more self-sufficient—and that is much closer to obtaining the American Dream.

*Question 2.* Dr. Weil, can you help us dispel these myths?

*Answer 2.* The profile of minimum wage earners has changed tremendously in the ways described in your question. Perhaps the best way to see this are looking at estimates of who would be affected by an increase of the Federal minimum wage to \$10.10 as proposed in the Harkin-Miller bill. Nearly 90 percent of those who would benefit would be 19 years or older and approximately 58 percent of those are women, many of whom are raising children.

The modest minimum wage increases we've seen have not kept pace with the higher costs of basic necessities for working families. In fact, the minimum wage has fallen 30 percent in value since 1968. The current level of the minimum wage therefore undermines the goal of the minimum wage providing a basic platform for people to get a solid footing in the labor market and economic opportunity.

*Family and Medical Leave Act (FMLA)*

Dr. Weil, my last question is about the Family and Medical Leave Act—or FMLA. As you know, this is a Federal law that guarantees eligible employees up to 12 weeks of unpaid leave each year to care for a newborn, a newly adopted child or a seriously ill family member, or to recover from their own serious health conditions, including pregnancy. As Administrator, you would have responsibility for enforcing this law.

Now, we know that about 40 percent of the workforce is not eligible for leave under the FMLA because of the current eligibility requirements. Millions more Americans cannot afford to take unpaid leave, so these protections are still out of reach.

*Question 3.* Dr. Weil, can you share any thoughts on making the FMLA accessible to more hardworking Americans? It's up to Congress to change statutory eligibility requirements to provide for greater access to FMLA benefits. But as Administrator, what would you do to increase outreach and education around current FMLA benefits? How might you consider working with employers, States, and cities interested in providing access to paid leave—a benefit not provided for under the FMLA, but an important policy that provides for greater economic security?

*Answer 3.* I believe that a fundamental role of the Wage and Hour Division is providing outreach and education to all stakeholders—workers, employers, worker advocates, and business associations and the public—about their rights and responsibilities under the FMLA as well as other laws administered by the agency. The FMLA is a landmark piece of legislation in ensuring protections of working people in caring for members of their family. If confirmed, I look forward to working with you, and the committee as well, as stakeholders in making sure we are achieving the critical objectives embodied in the FMLA.

SENATOR FRANKEN

*Question 1.* Worker misclassification is a growing problem that threatens workers and undercuts law-abiding employers. Worker misclassification is a significant problem in Minnesota, particularly in the construction industry. Why do you think worker misclassification is so prevalent? In the absence of changes to the current Federal approach, do you think the trend in misclassification will continue? How will you improve Federal efforts to deter worker misclassification?

*Answer 1.* The majority of employers using independent contractors to undertake work are doing so in a responsible manner—for example using independent contractors to do specialized work that the company itself does not have the capacity or expertise to undertake. Misclassification, however, is a serious matter involving changing the designation of what is for all intents and purposes an employment relationship into an independent contracting relationship, as a means of avoiding costs, shifting the liability, or otherwise avoiding legal responsibilities. If such misclassification is allowed to occur, it creates the wrong incentives in a market:

companies that are able to shift legal responsibilities and costs can gain competitive advantage and underbid other companies that are abiding by the law. That allows the practice of misclassification to spread and become more prevalent. It is therefore important to take actions that stop the tilting of the market toward non-compliance.

Although I have not had a role in the current Wage and Hour Division policy regarding misclassification, I believe that it has made positive steps in addressing this problem. If confirmed, I would want to carefully evaluate the steps it has taken and assess the effectiveness of those policies and the need for further adjustments. I would welcome the opportunity to discuss your and the committee's views on this matter.

*Question 2.* In 2011, the Minnesota Department of Labor and Industry entered into a memorandum of understanding with the U.S. Department of Labor to improve worker misclassification enforcement efforts. It is my understanding that this effort has been helpful, but there is still ample reason to be concerned about increasing misclassification in Minnesota and elsewhere. How will you improve coordination between the Department of Labor and States like Minnesota to support efforts to prevent misclassification?

Answer 2. I am aware that the Department of Labor has entered into memoranda of understanding with a number of States regarding the coordination of misclassification efforts. Given the importance of misclassification, I would want to carefully evaluate those initiatives including those in Minnesota to understand their purposes, progress, and impact and reach out to the State agencies involved in those efforts as well as other stakeholders. I would once again welcome the opportunity to discuss your and the committee's views on this matter.

SENATOR ISAKSON

*Question 1.* Employee Misclassification was the subject of a recent HELP Subcommittee on Employment and Workplace Safety hearing. As the Ranking Member of that committee and as a businessman who ran a company employing over 800 independent contractors, the issue of misclassification of employees is of great interest to me. Do you feel that the enforcement of current law is enough to keep employers from misclassifying workers, and if not, what do you propose to do to help?

Answer 1. Independent contracting is a legitimate form of business organization found in many parts of our economy. However, misclassification of employees as independent contractors is a very serious issue that can result in non-compliance with laws. Misclassification is a serious problem not only because it deprives workers of compensation and protections that they are due, but because it disadvantages law-abiding businesses that do not misclassify their employees, and harms responsible taxpayers. When a business misclassifies employees in order to cut costs, it makes it harder for those employers who play by the rules to succeed. This can create market incentives that encourage other employers to misclassify their workers.

If confirmed, I would seek to understand where misclassification is likely to be a problem and review appropriate interventions to respond to it. I would look forward to discussing this important problem with you and the committee.

*Question 2.* Your written testimony states that employer,

“non-compliance [with labor laws] may arise from intentional and sometimes egregious efforts to evade legal requirements. Those cases require stronger tools of enforcement [.]”

Please provide examples of what you believe is “egregious” behavior and what you view as the “stronger tools of enforcement” available to WHD.

Do you expect to use, or increase the use of, WHD's discretionary suspension and debarment authority under the Service Contract Act or the Davis-Bacon Act to suspend or debar Federal contractors?

Do you expect to use WHD's discretionary suspension and debarment authority under the Federal Acquisition Regulation to suspend or debar Federal contractors for Fair Labor Standards Act violations?

Answer 2. Egregious cases arise where an employer is intentionally undertaking activities that are primarily motivated by an effort to avoid legal obligations under the FLSA as well as other workplace laws, rather than from a failure to understand responsibilities under the law. Because such actions can put an employer who is violating the law at a competitive advantage relative to responsible businesses, it is appropriate to use tools of enforcement to stop that behavior. This will have the effect of creating a level playing field based on compliance.

I plan to review the use of different authority and interventions available to the Wage and Hour Division if confirmed as Wage and Hour Administrator. As in other

responses to the committee, I would evaluate the efficacy of different intervention tools based on the severity of violations, the specifics of a particular case, and the efficacy of the tool in terms of improving compliance with the law.

*Question 3.* Your name is listed in NELP's report, "Just Pay: Improving Wage and Hour Enforcement at the United States Department of Labor" as a member of the working group. I understand that this report recommends that the Wage and Hour Division "provide guidance to investigators who are told by an employer that a complaining worker is an independent contractor" and "the guidance should note that a worker performing labor or services is presumed to be an employee absent employer proof to the contrary."

Do you agree with that recommendation?

*Answer 3.* As an academic expert on workplace regulation and labor standards, I was asked to be a member of the working group in 2008. I agreed to do so and participated in a series of conference calls during 2008 and 2009. We were asked to periodically read and comment on drafts of the report in discussions proceeded which I did. As a working group member, I provided comments on the report. We were not asked to support all recommendations in the report, but to provide our input regarding them. I did not agree with all of the recommendations included in the report at the time nor do I now.

*Question 4.* If your nomination is confirmed, you will be in charge of over 1,800 employees at the Wage and Hour Division. Could you speak to your experience in management, and how you plan to effectively run this complex division?

*Answer 4.* I believe that the experience I have from managing and supervising research, teaching and academic initiatives in the course of my work and the mediation and advisory work I have done in applied settings provides me with a set of skills that would be useful in leading the Wage and Hour Division effectively. In addition, my extensive experience in working with the agency, dating back to the Bush administration, provides me with a background and knowledge of the agency and an understanding of its operation that would allow me to hit the ground running if confirmed.

SENATOR MURKOWSKI

*Question 1.* If confirmed as Administrator of the Wage & Hour Division, U.S. Department of Labor (WHD), what will be your top priorities?

*Answer 1.* My priorities would reflect the conditions facing the Wage and Hour Division going forward. I would be guided in thinking about those conditions by the principles I described in my Statement for the Record. Based on those principles, I would in the first few months of my service if confirmed, undertake a listening tour across the five regions making up the WHD. I would seek to understand what the career staff of the agency believes has been working well and what might be improved. I would also reach out to the WHD's stakeholders—workers, businesses, worker advocates, business associations, and others—with a similar question. On the basis of this input and guided by the five principles, I would set clear priorities on how to best move forward in achieving the goals of the laws administered by the Wage and Hour Division.

*Question 2.* Please describe any and all management and/or supervisory experience you have, including but not limited to number of persons you oversaw, size of department you were responsible for, specific management duties, term of position, etc.

*Answer 2.* I acknowledge that I have never managed or led an organization the size of the Wage and Hour Division. But I strongly believe that my experience over the last 20 years of leading, managing, and supervising in my academic and applied work and my extensive knowledge and work with the Wage and Hour Division since 2002 prepares me well for the challenges I will face in leading the agency.

In my 20 years as a professor, there has not been a time where I have not been leading and coordinating multiple projects, administering research grants and budgets, overseeing faculty colleagues, students, and staff on projects, and evaluating the performance of peers and subordinates. I have engaged in these activities at multiple research centers. The number of people I have managed has varied over time. At various times, I have had 18–20 researchers under my supervision and management. For example, in 2005, I had five professors, seven undergraduate researchers, three Ph.D. students, four staff members operating under my supervision between my research studies for the Department of Labor, and at Harvard University. I have also managed and supervised major teaching and administrative activities. A recent example is the redesign of our MBA curriculum where I led the design and imple-

mentation team over the last year consisting of 8 professors and instructors, 10 teaching assistants, and 5 staff members, and coordinated with a second design team of similar size.

My research, teaching, and administrative activities have all involved hiring personnel, assessing performance, overseeing budgets, responding to staffing issues, relating to external funders and research partners and internal administrative units, and setting, monitoring, and delivering on project milestones and deadlines.

*Question 3.* Please explain how your answer to question No. 2 above prepares you to serve as Administrator to manage and carry out the mission of the WHD.

Answer 3. The Wage and Hour Division is fortunate to have an experienced and talented staff at the national, regional, and district-levels. I would view a central part of my job to be providing overall leadership direction, working with the staff and stakeholders to create clear objectives and goals and gaining consensus about them, and then drawing on their expertise in implementation of new and existing directions and interacting with them on an ongoing basis. My experience with the agency and working relationship with many career staff members would be a foundation for quickly building this close working relationship.

I have a strong set of skills and abilities from what I have done in my career that would facilitate the above. First, I have a unique perspective combining business administration and economics with a deep understanding of workplace policy. This provides me a framework for thinking about both the challenges facing the agency in improving compliance with laws and in thinking about leading and managing it. The fact that I have worked with the Wage and Hour Division since 2002 means that these are not abstract ideas, but already reflect thinking about the particular issues facing the agency I would lead if confirmed.

Second, my experience overseeing multiple projects with diverse groups of people has led me to develop managerial skills in clearly defining overall objectives, delegating tasks and activities, clearly articulating goals within those, and reviewing progress. I have experience in hiring and evaluating staff at various levels, creating operating plans, administering budgets, and undertaking planning reviews that would be directly applicable to my responsibilities as Wage and Hour Administrator if confirmed.

Third, my mediation experience of the last 20 years has kept me in the middle of real world problems, and experience in dealing with sensitive, multi-party situations. It has taught me how to bring consensus among competing interests, in part by helping to articulate a common vision of objectives and then finding a pathway to reach them. Similarly, my advisory work with both Democratic and Republican government agencies in taking on complicated problems has shown me how to bring to bear my academic training with creatively dealing with complicated problems facing real world institutions.

Finally, I bring energy, creativity, patience but also passion to leadership.

*Question 4.* Have you ever filed or participated in the filing of a complaint alleging a violation of law enforced by the WHD? If yes, please explain, including your role and the outcome.

Answer 4. No.

*Question 5.* What prior experience do you have investigating complaints or other alleged violations enforced by the WHD for which you will be responsible for overseeing if confirmed as Administrator?

Answer 5. Between 2002 and 2011, I worked on a series of major projects with the Wage and Hour Division. Those projects gave me a detailed understanding of the internal workings of the Wage and Hour Division at the district office, regional office, and national office levels. It has provided me the opportunity to talk with many investigators in the course of that work at a variety of offices. I have presented that research in a variety of meetings and offices of the Wage and Hour Division during the course of that time, allowing me to understand how investigations are undertaken as well as other administrative activities of the organization.

*Question 6.* What prior experience do you have enforcing laws enforced by the WHD for which you will be responsible for overseeing if confirmed as Administrator?

Answer 6. As noted in my answer to question 5, my work over an 8-year period with the Wage and Hour Division under two administrations has provided me with a very detailed understanding of the operation of the division. It has also allowed me to get to know many of the talented career staff both in Washington and the field. This knowledge would allow me to hit the ground running in terms of under-

standing the basic operations of the WHD and a familiarity with many of those whom I would work.

*Question 7.* You have made reference to several “tools” or a “tool box” available to you to enforce the laws you would be responsible for enforcing if you are confirmed as Administrator of the WHD. Please describe, define, and identify with specificity what you mean by such “tools” and “tool box.”

*Answer 7.* The Wage and Hour Division is entrusted with a range of interventions that can be used to attain compliance with the laws it administers. The major tools include but are not limited to, providing information to employers and workers about their rights and responsibilities; providing educational outreach to the various parties regarding policies and programs, including using new, web-based tools of outreach; providing compliance assistance; and undertaking enforcement arising from both complaint and directed investigation. The responsibility of the Administrator is to set clear vision and procedures to enable the agency to choose the interventions most appropriate given the overall goal of improving compliance with the laws administered by WHD.

*Question 8.* Based on your answer to question No. 7, if confirmed as Administrator, what tools are currently not available that you would like to make to available to the WHD and why?

*Answer 8.* I do not have any thoughts about the need for tools not currently available to the Wage and Hour Division.

*Question 9.* When and under what circumstances do you believe it is appropriate for the WHD to use strategic enforcement? Please be specific.

*Answer 9.* Strategic enforcement describes a method of thinking about how to best achieve the objective of assuring compliance with the laws administered by the Wage and Hour Division given the limited resources available to it. It provides a framework for evaluating the appropriate methods of intervention, setting clear goals about what those interventions are to achieve, and, over time, evaluating the success in achieving outcomes given different interventions. It then requires adjusting policies in light of that experience. I would apply the idea of strategic management, a concept basic to private sector business, to lead and manage the Wage and Hour Division if confirmed.

*Question 10.* When and under what circumstances do you believe it is appropriate for the WHD to use directed investigations? Please be specific.

*Answer 10.* Directed investigations are an important complement to complaint investigations for the purposes of enforcement. They have been used as a means to assure that the Wage and Hour Division’s resources are used in part where there is a likelihood of non-compliance, based on objective sources of information. As in all activities of the agency, their impacts should be carefully evaluated as to whether they are improving compliance with the law and that they reflect changing conditions in terms of the relative severity of compliance problems across industries.

[Whereupon, at 10:30 a.m., the hearing was adjourned.]