REVIEWING THE PRESIDENT'S FISCAL YEAR 2016 BUDGET PROPOSAL FOR THE DEPARTMENT OF LABOR

HEARING

BEFORE THE

COMMITTEE ON EDUCATION AND THE WORKFORCE U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTEENTH CONGRESS

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C O N T E N T S

REVIEWING THE PRESIDENT'S FISCAL YEAR 2016 BUDGET PROPOSAL FOR THE DEPARTMENT OF LABOR

Wednesday, March 18, 2015
U.S. House of Representatives
Committee on Education and the Workforce
Washington, D.C.

The committee met, pursuant to call, at 10:01 a.m., in Room 2175, Rayburn House Office Building, Hon. John Kline [chairman of the committee] presiding.

Present: Representatives Kline, Foxx, Roe, Thompson, Walberg, Salmon, Guthrie, Messer, Byrne, Carter, Curbelo, Stefanik, Allen, Scott, Davis, Courtney, Polis, Wilson of Florida, Bonamici, Takano, Jeffries, Clark, and DeSaulnier.

Staff present: Lauren Aronson, Press Secretary; Andrew Banducci, Professional Staff Member; Janelle Belland, Coalitions and Members Services Coordinator; Ed Gilroy, Director of Workforce Policy; Christie Herman, Professional Staff Member; Marvin Kaplan, Workforce Policy Counsel; Nancy Locke, Chief Clerk; John Martin, Professional Staff Member; Zachary McHenry, Legislative Assistant; Daniel Murner, Deputy Press Secretary; Michelle Neblett, Professional Staff Member; Brian Newell, Communications Director; Krisann Pearce, General Counsel; Molly McLaughlin Salmi, Deputy Director of Workforce Policy; Emily Slack, Professional Staff Member; Alissa Strawcutter, Deputy Clerk; Juliane Sullivan, Staff Director; Loren Sweatt, Senior Policy Advisor; Alexa Turner, Legislative Assistant; Joseph Wheeler, Professional Staff Member; Tylease Alli, Minority Clerk/Intern and Fellow Coordinator; Austin Barbera, Minority Staff Assistant; Denise Forte, Minority Staff Director; Melissa Greenberg, Minority Labor Policy Associate; Carolyn Hughes, Minority Senior Labor Policy Advisor; Eunice Ikene, Minority Labor Policy Associate; Brian Kennedy, Minority General Counsel; Richard Miller, Minority Senior Labor Policy Advisor; Amy Peake, Minority Labor Policy Advisor; Kiara Pesante, Minority Communications Director; and Veronique Pluviose, Minority Civil Rights Counsel.

Chairman KLINE. A quorum being present, the Committee on Education and the Workforce will come to order.

Well, good morning, Secretary Perez. Welcome back to the Education and Workforce Committee. Thank you for joining us for this

hearing on the President's Fiscal Year 2016 budget proposal. We have much to discuss in a short period of time.

The American people have been through a lot since the recession began more than seven years ago: millions of jobs destroyed, household incomes plummeted, hard-earned savings wiped out, hopes and dreams shattered. We all welcome the progress seen in recent months, but make no mistake, we still have a long way to go before every American is able to get back on a path to a lifetime of success.

Right now, roughly 15 million workers are in desperate need of full-time jobs, and that does not include the millions of individuals so discouraged by meager job prospects that they have simply dropped out of the workforce. Meanwhile, working families face high health care costs and stagnant wages, and they are struggling to send their kids to college and plan for retirement.

As policymakers, we have an obligation to these men and women to do better. They are not willing to accept a new normal of anemic growth and flat incomes. Neither should we.

Yet, that is precisely what the President's budget would force us to do. As is often said, a budget reflects priorities, and it is clear that the President's priorities continue to be more spending, more taxes, and more debt.

The facts speak for themselves. The President's budget includes $547 billion in new spending and a $1.8 trillion tax increase—$1.8 trillion.

Despite taking more money from hard-working Americans, the President's budget never balances—never balances. In fact, over the next 10 years it would add $6.7 trillion to the national debt. This is not a roadmap leading to a stronger middle class, but a blueprint for more government at the expense of the middle class.

This flawed approach is reflected in the President's budget for the Department of Labor. The administration is requesting an 11 percent increase in discretionary spending for the Department and an astounding $41.5 billion in new mandatory spending.

Will these additional taxpayer dollars be spent reducing regulatory burdens, streamlining the bureaucracy, and encouraging better enforcement of Federal laws? Not likely.

Instead, the new money will be spent imposing more rules on more Americans, including workers employed by Federal contractors, the elderly, and those with disabilities who rely on in-home companion care, and men and women who need help saving for retirement. It will also be spent creating new programs and layers of bureaucracy.

For example, we recently passed bipartisan legislation streamlining the workforce investment system, and already the President is demanding five new workforce development programs. Congress made it easier for job seekers to acquire new skills and get back to work, yet the President is determined to make a maze of programs more complex and confusing.

The President's budget is one of misplaced priorities and missed opportunities. We can invest in policies and programs that will make a real difference in the lives of countless Americans without growing the size, cost, and reach of the Federal Government. Mid-

dle-class families are being squeezed, and the last thing we should do is double down on failed policies.

We can do better and we know how to do better. Last year, Republicans and Democrats came together to enact meaningful job training legislation that will put Americans back to work, and we passed important reforms to strengthen the financial security of workers and retirees in the multiemployer pension system.

Secretary Perez, I want to take a moment here to thank you for your work in that effort. As you know, this was truly a bipartisan effort. It was crucially important to the futures of literally millions of Americans, where we had to fix those multiemployer pension plans.

And you were absolutely true to your word. You said you would step in and help us get some Senate Democrats and, by golly, you did. So that was very, very important work, and I want to thank you for your work there.

It is time to find other areas of agreement, like modernizing an outdated multiemployer pension system—still more work to be done on that multiemployer pension system—simplifying the regulations surrounding Federal wage and hour law, and opening new markets for American-made goods.

Let's ensure the people's priorities are our priorities by rejecting the President's budget and embracing pro-growth reforms that help every American enjoy a lifetime of opportunity and success.

I will now recognize the committee's ranking member, Mr. Scott, for his opening remarks.

[The statement of Chairman Kline follows:]

Prepared Statement of Hon. John Kline, Chairman
Committee on Education and the Workforce

Good morning, Secretary Perez, and welcome back to the Education and the Workforce Committee. Thank you for joining us for this hearing on the president's fiscal year 2016 budget proposal. We have much to discuss in a short period of time, and I intend to keep my opening remarks brief so that each member may have an opportunity to ask questions.

The American people have been through a lot since the recession began more than seven years ago. Millions of jobs destroyed. Household incomes plummeted. Hard-earned savings wiped out. Hopes and dreams shattered. We all welcome the progress seen in recent months, but make no mistake, we still have a long way to go before every American is able to get back on a path to a lifetime of success.

Right now, roughly 15 million workers are in desperate need of full-time jobs, and that does not include the millions of individuals so discouraged by meager job prospects that they have simply dropped out of the workforce. Meanwhile, working families face high health care costs and stagnant wages, and they are struggling to send their kids to college and plan for retirement.

As policymakers, we have an obligation to these men and women to do better. They are not willing to accept a new normal of anemic growth and flat incomes. Neither should we, yet that is precisely what the president's budget would force us to do. As is often said, a budget reflects priorities, and it is clear the president's priorities continue to be more spending, more taxes, and more debt.

The facts speak for themselves. The president's budget includes $547 billion in new spending and a $1.8 trillion tax increase. Despite taking more money from hard-working Americans, the president's budget never balances. In fact, over the next 10 years, it would add $6.7 trillion to the national debt. This is not a roadmap leading to a stronger middle-class, but a blueprint for more government at the expense of the middle-class.

This flawed approach is reflected in the president's budget for the Department of Labor. The administration is requesting an 11 percent increase in discretionary spending for the department and an astounding $41.5 billion in new mandatory spending. Will these additional taxpayer dollars be spent reducing regulatory bur-

dens, streamlining the bureaucracy, and encouraging better enforcement of federal laws? Not likely.

Instead, the new money will be spent imposing more rules on more Americans, including workers employed by federal contractors, the elderly and those with disabilities who rely

on in-home companion care, and men and women who need help saving for retirement. It will also be spent creating new programs and layers of bureaucracy.

For example, we recently passed bipartisan legislation streamlining the workforce investment system, and already the president is demanding five new workforce development programs. Congress made it easier for job seekers to acquire new skills and get back to work, yet the president is determined to make a maze of programs more complex and confusing.

The president's budget is one of misplaced priorities and missed opportunities. We can invest in policies and programs that will make a real difference in the lives of countless Americans, without growing the size, cost, and reach of the federal government. Middle-class families are being squeezed, and the last thing we should do is double-down on failed policies.

We can do better and we know how to do better. Last year, Republicans and Democrats came together to enact meaningful job training legislation that will put Americans back to work, and we passed important reforms to strengthen the financial security of workers and retirees in the multiemployer pension system. Secretary Perez, thank you for your support as Congress worked on these bipartisan efforts.

It is time to find other areas of agreement, like modernizing an outdated multiemployer pension system, simplifying the regulations surrounding federal wage and hour law, and opening new markets for American-made goods. Let's ensure the people's priorities are our priorities by rejecting the president's budget and embracing pro-growth reforms that help every American enjoy a lifetime of opportunity and success.

I will now recognize the Committee's ranking member, Congressman Scott, for his opening remarks.

Mr. SCOTT. Thank you, Mr. Chairman.

And thank you, Mr. Secretary, for being with us this morning.

The United States has emerged from the depths of the Great Depression—from a Great Recession, and job creation has resumed at a consistent but not robust pace. The question before us is whether we will choose to pursue prosperity economics or austerity economics.

What will the new jobs look like? Will they be living-wage jobs or poverty-wage jobs? Will our priorities concentrate the wealth in the hands of the top 1 percent, or will our policies grow and strengthen the middle class?

The choices that we make here in Congress and here in this committee will shape that answer.

The President's budget recognizes this reality and proposes a way to make the investments our country needs by responsibly ending sequestration. Democrats and some Republicans agree that making mindless cuts mandated by sequestration would be a bad policy and would not benefit our economy or our national defense.

Now, cuts are fine in the abstract, but when you start naming them then it becomes clear how bad this policy actually is. As we are extending tax cuts for the wealthiest Americans, we are also robbing the country of resources needed for education, infrastructure, and research.

Keeping the sequester means Federal support for pre-K to 12th grade would be less than we spent back in the year 2000. On the other hand, if the automatic spending cuts required by sequestration were cancelled, employment would be higher by approximately 300,000 to 1.6 million jobs, according to last year's CBO analysis.

The Department of Labor's budget comes to us at a time when the private sector has experienced 60 consecutive months of job growth, the longest uninterrupted stretch of private job growth on record. The economy has created over 200,000 private sector jobs for 12 consecutive months, a growth unmatched since the 1970s.

All of these statistics clearly show that we are on the right track, but despite this progress, some 17.5 million Americans remain unemployed or working part time when they are seeking full-time work. Meanwhile, the inequality in this country has grown. Most new jobs are low-wage jobs, and the fruits of the economic recovery have flowed almost exclusively to the top 1 percent, who captured 95 percent of the income gained through the first three years of the recovery.

Department of Labor's priorities and budget request seek to narrow this extreme and growing economic inequality in our country by closing the pay gap between men and women. The link between productivity and wages in our economy has been broken for Americans for the past generation.

We have a chart that shows that up until—from 1973 to 2013, hourly compensation for a typical worker rose about 9 percent in real terms while productivity increased 74 percent. This means that workers have been producing far more than they receive in their paychecks and the benefit packages from their employers. Prior to that time frame, as productivity went up wages were going up.

Standard and Poor's, one of the companies that rates the creditworthiness of the government and corporate debt for Wall Street, has studied whether the U.S. economy would be better off with a narrower income gap. Standard and Poor's has reduced its projections for annual growth from 2.8 percent down to 2.5 percent due to widening inequality.

Again, economists on Wall Street are telling us that extreme inequality is holding back economic growth.

The next chart we have illustrates the extraordinary rapid growth of annual wages for the top 1 percent compared to everybody else. Top 1 percent wages grew 138 percent, while the bottom 90 percent grew just 15 percent, from 1979 to 2013.

What we are discussing today is whether we need to change the policies that caused the majority of the gains of our economy to concentrate disproportionately at the top on the premise that it eventually trickles down to the rest of us, or whether we need to adopt policies and budgeting that will make public investments in training, infrastructure, and research in order to produce sustainable growth.

We know that there are concrete steps that we can take in order to move in the right direction, which should be the national policy that anybody working full time should be able to earn enough to be above the poverty line. A raise to the minimum wage would do this, and it is the right thing to do. The minimum wage adjusted for inflation would be over $18 an hour, had it kept pace with productivity.

Another concrete step we can take to protect retirees and their hard-earned income is to ensure that fellow Americans can rest with dignity after a lifetime of hard work. While still on the job,

we need to make sure workers enjoy protections they need to stay safe and healthy.

Economic growth and strong regulatory protections are not mutually exclusive. And let's not forget that it was the absence of regulation that allowed Wall Street to run amuck and cause the credit freeze in 2008 and destroyed millions of jobs.

And finally, I know that the secretary remains focused on what works to prepare our nation's workforce for the jobs of today and, more importantly, the jobs of the future. These priorities are reflected through the Department's budget, which focuses on expanding the middle-class in many ways, including funding summer jobs, opportunities for disconnected youth, apprenticeships, and programs that expand access to in-demand jobs.

So, Mr. Secretary, we look forward to learning more about your department's agenda and your vision for a more prosperous economy and a more prosperous middle-class.

Thank you, Mr. Chairman. I yield back.

[The statement of Mr. Scott follows:]

Opening Statement for Robert C. "Bobby" Scott
Committee on Education and the Workforce
Hearing on "Reviewing the President's Fiscal Year 2016 Budget Proposal for the Department of Labor"
March 18, 2015
10:00 am

Thank you, Mr. Chairman and thank you, Secretary Perez, for being with us this morning.

The United States has emerged from the depths of the great recession, and job creation has resumed at a consistent, if not robust pace. The question before us is whether we will choose to pursue prosperity economics or austerity economics? What will new jobs look like, and will they be living wage jobs or poverty wage jobs? Will our priorities concentrate wealth in the hands of the top 1% or will our policies grow and strengthen the middle class?

The choices we make here in Congress, and here in this Committee, will shape that answer. The President's budget recognizes this reality and proposes a way to make the investments our country needs by

responsibly ending sequestration. Democrats and many Republicans agree that the mindless cuts mandated by sequestration are bad policy and do not benefit our economy or our national defense. But instead of addressing the situation head on, the debate has focused on extending tax cuts for the wealthiest Americans while robbing the country of resources needed for education, infrastructure and research. Keeping the sequester means federal support for pre-K to 12th grade would be less than we spent back in 2000. On the other hand, if the automatic spending cuts required by sequestration were cancelled, employment would be higher by 300,000 to 1.6 million jobs, according to last year's CBO analysis.[1]

The Department of Labor's budget comes before us at a time when the private sector has experienced 60 consecutive months of job growth – the longest uninterrupted stretch of private sector job growth on record. The economy has created over 200,000 private sector jobs for 12

[1] http://www.cbo.gov/publication/44445

consecutive months – growth unmatched since the 1970s.[2] All of these statistics show clearly that we are on the right track. Despite this progress, some 17.5 million remain unemployed or working part time when they seek full time work.[3]

Meanwhile, inequality in this country has grown. Most new jobs are lower wage ones,[4]and the fruits of economic recovery have flowed almost exclusively to the top 1%, who captured 95% of the income gains in the first three years of the recovery.[5] The DOL's priorities and budget request seeks to narrow this extreme and growing economic inequality in our country, while closing the pay gap between men and women.

The link between productivity gains and wages in our economy has been broken for most Americans for the past generation.

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[2] Statement of US Labor Secretary Perez on February 2015 employment numbers. U.S. Department of Labor. http://www.dol.gov/opa/media/press/opa/opa20150358.htm

[3] Chart: A more comprehensive measure of slack in the labor market. The State of Working America. Economic Policy Institute. http://stateofworkingamerica.org/charts/number-of-underemployed/

[4] The Low Wage-Recovery: Industry and Employment and Wages Four Years into the Recovery. (April 2014). http://www.nelp.org/page/content/lowwagerecovery2014/

[5] International Monetary Fund, *Fiscal Policy and Income Inequality*, IMF Policy Paper (January 23, 2014). http://www.imf.org/external/np/pp/eng/2014/012314.pdf. Total income (also market income) is all earned and unearned income (wages, capital gains, interest, business income) excluding taxes and transfer payments.

[Chart 1]

From 1973 to 2013, hourly compensation of a typical worker rose just 9 percent in real terms while productivity increased 74 percent. This means that workers have been producing far more than they receive in their paychecks and benefit packages from their employers.

Standard & Poors, one of the companies that rates the creditworthiness of government and corporate debt for Wall Street, has studied whether the U.S. economy would be better off with a narrower income gap. Standard and Poors has reduced its projections for annual growth from 2.8 percent down to 2.5 percent due to widening inequality. Again, let me repeat that point—economists on Wall Street are telling us that extreme inequality is holding back economic growth.

[Chart 2]

This next chart illustrates the extraordinarily rapid growth of annual wages for the top 1 percent compared with everybody else: Top 1

percent wages grew 138 percent, while wages of the bottom 90 percent grew just 15 percent between 1979 and 2013.

What we are discussing today is whether to we need to change the policies that cause the majority of gains in our economy to concentrate disproportionately at the top, on the premise that it eventually trickles down to the rest of us, or whether we need to adopt policies and budgeting that will make public investments in training, infrastructure, and research in order to produce sustainable growth.

And we know there are concrete steps that we can take to move in the right direction. It's unconscionable to allow workers to be paid wages that can't even keep them above the poverty line. A raise in the minimum wage is overdue and it's the right thing to do. The minimum wage, adjusted for inflation, would have increased to over $18 per hour had it kept pace with productivity.

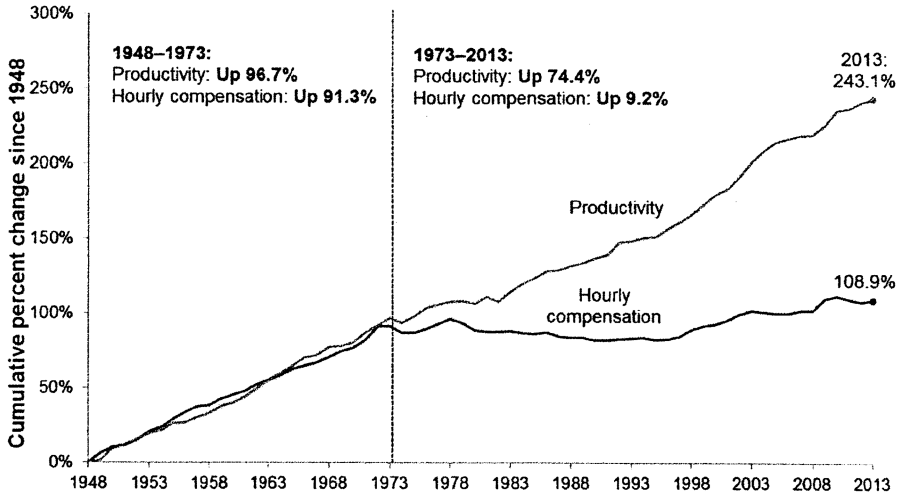
Another concrete step we can take is to protect retirees and their hard earned retirement savings to ensure that our fellow Americans can rest with dignity after a lifetime of hard work. While still on the job, we need to make sure workers enjoy the protections they need to stay safe and healthy. Economic growth and strong regulatory protections are not mutually exclusive. Let us not forget that it was the absence of regulation that allowed Wall Street to run amok, and cause a credit freeze in 2008 that destroyed nearly 800,000 jobs per month.

Finally, I know that Secretary Perez remains focused on what works to prepare the nation's workforce for the jobs of today, and more importantly, the jobs of tomorrow. These priorities are reflected through the Department's budget which focuses on expanding the middle class in many ways, including funding for summer jobs, opportunities for disconnected youth, apprenticeships, and programs that expand access to in-demand jobs.

Mr. Secretary, we look forward to hearing more about your Department's agenda and your vision for a more prosperous economy and a more prosperous middle class.

Workers produced much more, but typical workers' pay lagged far behind

Disconnect between productivity and typical worker's compensation, 1948–2013



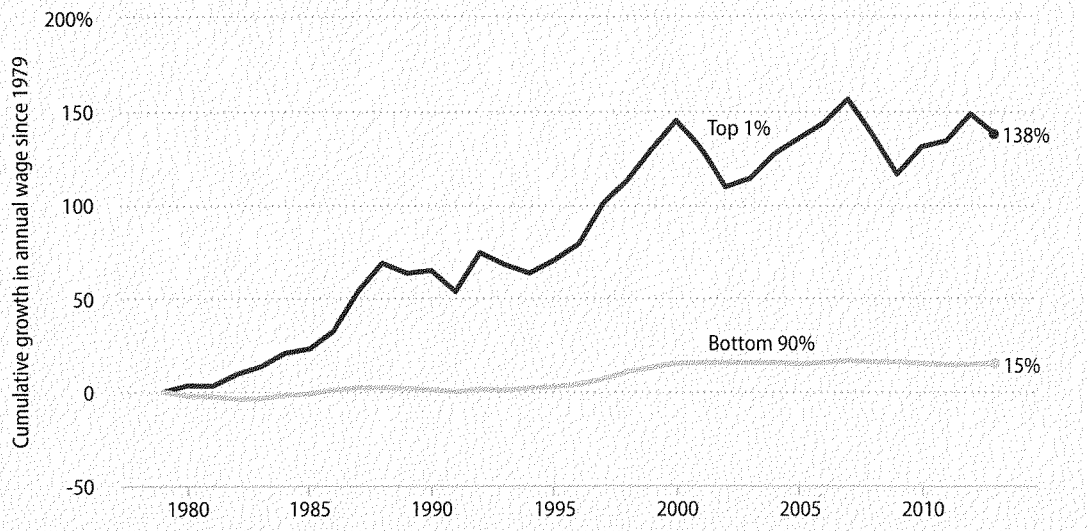
Note: Data are for compensation (wages and benefits) of production/nonsupervisory workers in the private sector and net productivity of the tota economy. "Net productivity" is the growth of output of goods and services less depreciation per hour worked.

Source: EPI analysis of unpublished Total Economy Productivity data from Bureau of Labor Statistics (BLS) Labor Productivity and Costs program wage data from the BLS Current Employment Statistics, BLS Employment Cost Trends, BLS Consumer Price Index, and Bureau of Economic Analysis National Income and Product Accounts

ECONOMIC POLICY INSTITUTE

When it comes to the pace of annual pay increases, the top 1% wage grew 138% since 1979, while wages for the bottom 90% grew 15%

Cumulative change in real annual wages, by wage group, 1979–2013



Source: EPI analysis of data from Kopczuk, Saez, and Song (2010) and Social Security Administration wage statistics

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Chairman KLINE. I thank the gentleman.

Pursuant to committee rule 7(c), all members will be permitted to submit written statements to be included in the permanent hearing record. And without objection, the hearing record will remain open for 14 days to allow such statements and other extraneous material referenced during the hearing to be submitted for the official hearing record.

It is now my pleasure to introduce our distinguished witness.

As I said, Mr. Secretary, welcome back. I think you are well known to all members of this committee.

I was looking here and it says that you were sworn in as the 26th U.S. Secretary of Labor on July 13, 2013. The time is flying by.

And prior to this confirmation, Secretary Perez served as assistant attorney general for civil rights at the U.S. Department of Justice and as the secretary of Maryland's Department of Labor, Licensing, and Regulation, and those are just two of his many assignments in a very distinguished career.

As is now the practice House-wide, I will ask our witness to stand and raise your right hand.

[Witness sworn.]

Let the record reflect the witness answered in the affirmative.

And I am sure "absolutely" is exactly the right response, Mr. Secretary.

Before I recognize you to provide your testimony let me briefly remind you of our lighting system. And I know you know very well about the green, yellow, and red lights; this is more for my colleagues than for you.

I will be very, very tolerant for your opening remarks and your responses. We really do want to hear what you have to say. As disappointed as many of us may be with the President's budget, we nevertheless are really looking forward to your testimony.

But, I will remind my colleagues that when we get to questions and answers, I will be strictly adhering to the five-minute rule unless we actually reduce the time. We have a hard stop for this hearing at 12 o'clock. The secretary has to leave.

So please, my colleagues, be aware of that and be thoughtful of your colleagues.

Mr. Secretary, you are recognized.

TESTIMONY OF HON. THOMAS E. PEREZ, SECRETARY, U.S. DEPARTMENT OF LABOR, WASHINGTON, D.C.

Secretary PEREZ. Good morning. And thank you, Mr. Chairman.

And thank you, Ranking Member Scott, and all the members of the committee.

It is wonderful to be back with you. And as you correctly point out, we have been able to find common ground on a lot of areas of critical importance to this nation, and I look forward to continuing that effort moving forward.

I appear today with a great sense of optimism about the direction of our economy and the role the Department of Labor can play in sustaining and accelerating this recovery. We have come a long way since the Great Recession.

As has been noted, private employers have now added 12 million jobs over the last 60 months. That is 60 consecutive months of private sector job growth. Last year was the best year we had since the late 1990s.

The unemployment rate is now 5.5 percent, its lowest since the spring of 2008. And especially when we look at the last couple years, not only the quantity of jobs, but the quality of jobs are moving in the right direction.

So without question, the wind is at our back. But we also know that it is not time to spike the football because there are many pieces of unfinished business, including putting more people back to work, growing real wages to higher levels, and providing continued help for the long-term unemployed.

We need to make sure that the economic progress that we are seeing results in shared prosperity for all, and that is exactly what the President's budget is seeking to do: to create an economy that works for everyone—an economy based on broad prosperity. And that prosperity and that vision starts with helping people get the skills and training they need to succeed in 21st century jobs.

Each year, on average, our network of roughly 2,500 American Job Centers serves about 14 million people, including a million veterans, through our core workforce programs. And we are serving them well. Fifty-five to 60 percent of those who come to AJCs without a job are working within three months of leaving our programs.

The outcomes are even better for those who get training through the workforce system. About 80 percent of them find work within three months.

In 2014, we put roughly $1 billion in job-driven grant money on the street, all of it designed to help people upskill in a way that helps them move into jobs that are available now or will soon be available. We are doing more to coordinate and integrate our workforce programs with those of other Federal agencies. We are imploding stovepipes to make our government-wide efforts that much more efficient and effective.

Last July, Congress passed in overwhelmingly bipartisan fashion the *Workforce Innovation and Opportunity Act,* which is really the most significant reform of the workforce system in 15 years.

I want to again thank Chairman Kline, Congresswoman Foxx, and all the members of this committee—Ranking Member Scott—for your efforts and leadership. It is further proof that cultivating our human capital is not a Democratic idea or a Republican idea, but it is simply a good idea.

And I know that many stakeholders are anxiously awaiting our proposed WIOA implementation rules. They are at the Federal Register and we expect to have them published very soon, and we look forward to people's input on those proposed rules. It has been a remarkable labor on behalf of so many people at the Department of Labor.

This work will allow us to continue the transformation of the workforce system to prepare people for the jobs of tomorrow. It helps us to continue building what I call the skills superhighway, with on-ramps and off-ramps, where people can pick up skills and credentials on their way to the destination, which is a middle-class job.

And with WIOA we are further strengthening our job-driven approach to training, building unprecedented partnerships with employers, connecting businesses that want to grow with workers that want to punch their ticket to the middle class.

We are match.com, Mr. Chairman. That is what we do at the Department of Labor. We connect job seekers who want to punch their ticket to the middle class with businesses who want to grow, using the secret sauce of training, community college, other partnerships, your great offices, and that is why we are moving in the right direction.

And one of the things that WIOA is going to help promote is one of the most effective strategies I have seen for workforce, and I have chatted with Congresswoman Foxx a lot about this, and that is apprenticeship. Despite the effectiveness of apprenticeship, for all too long I believe that we have devalued apprenticeship in this country, especially relative to our global competitors.

And the fact of the matter is you don't necessarily need a four-year degree to punch your ticket to the middle class. I refer to apprenticeship as the "other college," except without the debt. And later this year we are going to award $100 million in American apprenticeship grants, which are designed to kick-start new apprenticeship programs and take successful models to scale.

With these apprenticeships, we are looking to expand not simply in the traditional skilled trades, which have great application, but in emerging fields such as I.T., cyber security, health care, logistics, and the like. So we will continue that work, and I think that is work that we can continue on a bipartisan basis.

Even as the economy has recovered impressively, we still have a lot of work to do lifting wages, and to create that opportunity and shared prosperity I believe it is more important than ever that we address wages in a number of different ways, starting with raising the minimum wage.

Public opinion is strongly in favor of it. Last November, red states and blue states, voters expressed very strong support for increasing the minimum wage.

Nobody who works a full-time job should have to live in poverty. And we are continuing to work through executive action and through work with our state and local partners to raise the minimum wage, but still, there is no substitute for Federal legislation that would give low-wage workers in all 50 states a hard-earned, well-deserved raise.

We are also working to modernize the nation's rules on overtime, which haven't kept up with inflation or with changes in the economy. Too many people are getting a raw deal, working 60-, 70-hour weeks and not getting that time-and-a-half. In the coming months we will release a new overtime proposal, one that reflects broad input from a range of stakeholders, and we look forward to hearing comments from all key stakeholders.

We are also charged at the DOL with protecting workers on a number of fronts. We enforce the nation's wage and hour laws, and we do so in the most strategic way possible, combining aggressive enforcement with compliance assistance and aggressive education.

To ensure that we are using our resources efficiently, we use data to identify those workers who are most vulnerable and em-

ployers most likely to be violating the law. And the results have been very, very telling. Since Fiscal Year 2009, we have recovered a total of over $1.3 billion for more than 1.5 million workers.

Our Occupational Safety and Health Administration and our Mine Safety and Health Administration continue their critical work to make sure we prevent workplace injuries, illnesses, and fatalities. One of the basic rights that every worker has is that when they go to work in the morning they ought to come home safe and sound, and that is exactly what we do through the work of OSHA and MSHA.

Helping people secure a dignified retirement after a lifetime of hard work is a critical element of our mission. And toward that end, we are working on an updated regulation to ensure that financial advisors provide retirement advice that is in their client's best interest.

The biggest decisions in life fall into one of three categories, I have often found: medical, legal, and financial. Your doctor and your lawyer are obligated to give you informed, unbiased advice, to look out for your interests. You should have the right to expect the same from the professional whom you have trusted with your retirement planning.

Many financial advisors already have taken this oath to look out for their customers first, and we think every financial advisor can and should do this. And we look forward to hearing input from everybody—continued input—when we put our rule out.

In conclusion, thanks to the resilience of our workers, the ingenuity of our businesses, leadership from every level of government, including this committee. We have emerged successfully from the worst times of our economic crisis of our lifetime. But we still have a lot of work to do, and we can't settle for an economy that simply provides an opportunity for a few.

Shared prosperity is, indeed, our north star, and America's promise has always been that everyone, through hard work and responsibility, should have an opportunity to succeed. Keeping that promise is what gets me out of bed every morning and what makes me love my job.

And with that, Mr. Chairman, I look forward to hearing and answering any questions that you and members of the committee have. Thank you very much.

[The statement of Secretary Perez follows:]

TESTIMONY BY
U.S. SECRETARY OF LABOR THOMAS E. PEREZ
BEFORE THE
COMMITTEE ON EDUCATION AND THE WORKFORCE
U.S. HOUSE OF REPRESENTATIVES
MARCH 18, 2015

Introduction

Good morning, Chairman Kline, Ranking Member Scott, Members of the Committee. Thank you for this invitation and opportunity to testify before you today. In 20 months as Labor Secretary, it has been my pleasure to get to know many of you, and to work together constructively on important issues facing our nation's workers and employers.

I appear before you today with a great sense of optimism – about the direction of our economy and the role that the Labor Department can play in sustaining and further accelerating this recovery.

We've come a long way in the last six years. In the few months before President Obama took office, the economy was in free fall -- we had lost roughly two million jobs. Today, we have had five years – 60 consecutive uninterrupted months – of private sector job growth, to the tune of 12 million new jobs over that time. That's the longest such streak on record, and 2014 was the best year for job creation in the United States since 1999.

The wind is clearly at our back. The economic indicators are promising across the board. The current unemployment rate is 5.5 percent, down from 10 percent in the fall of 2009. 2014 was the first year in 30 years that the unemployment rate declined in every state in the nation. Consumer confidence is near a seven-year high. The deficit hasn't fallen this fast since the end of World War II. We're exporting more in American goods and services than ever before. The auto industry was almost left for dead in 2008, but today sales are high again. All of these factors are leading finally to a strengthening labor market – coming out of the Great Recession, there were nearly seven job seekers for each available position; today that ratio is less than two-to-one.

However, this isn't a time to celebrate, but rather to muster the resolve and find the common ground to do even better. We must do more to ensure that the fruits of this recovery are enjoyed by more people and more working families.

The President's FY 2016 Budget makes important investments in our nation's workers, recognizing that our economic success is directly linked to the well-being of our workers and their ability to compete in the global marketplace. The Budget invests in successful job training models, including apprenticeship, which can create pathways to good jobs and is used successfully by many of our global competitors. The Budget includes new resources for reemployment and eligibility assessments and services for workers who are likely to be out of

work for long periods, based on evidence that these services can shorten periods of unemployment and help workers get back on their feet more quickly. It also provides a 10 percent increase for the Department's enforcement agencies, giving them the staff and tools they need to protect the wages, safety and health, and retirement benefits of the Nation's workers.

The Budget builds on the bipartisan deal struck at the end of 2013, when policymakers came together to partially reverse sequestration and to pay for higher discretionary funding levels for both defense and non-defense areas with long-term reforms. The President's Budget reverses sequestration, paid for with a balanced mix of commonsense spending cuts and tax loophole closers, while also proposing additional deficit reduction that would put debt on a downward path as a share of the economy.

The President has made clear that he will not accept a budget that locks in sequestration going forward, which would bring real defense and non-defense funding to the lowest levels in a decade. As the Joint Chiefs and others have outlined, that would damage our national security. It would also damage our economy in the near-term and long-term by preventing us from making pro-growth investments in many areas, including efforts to upskill our workforce and help those still out of work find jobs, a key to our long-term prosperity.

Preparing People for 21st Century Jobs

It starts with helping individuals acquire the skills and training they need to succeed in 21st century jobs. Last July, both parties in Congress came together to pass the Workforce Innovation and Opportunity Act (WIOA), the most significant reform of the workforce system since the late 1990s. I'm grateful to so many Members of this Committee for their leadership in crafting WIOA. It's further proof that cultivating and growing our human capital is not a Democratic or Republican idea; it's simply the smart thing to do in a complex and competitive global economy.

WIOA modernizes and streamlines workforce development, by building a more integrated system that links job seekers and workers with local and regional employers, education, and training services across core programs covered by the law. As I see it, the workforce system has two sets of customers – workers looking to move up the economic ladder and businesses who need talented workers in order to stay on the competitive cutting edge. WIOA recognizes and reinforces those two complementary roles. WIOA strengthens the partnerships that sustain the workforce system and the American Job Center network; fosters regional collaboration and sector strategies; provides access to proven training strategies, such as on-the-job training and apprenticeship; enhances services for individuals with barriers to employment, including individuals with disabilities, disconnected youth, and other vulnerable populations; provide common outcome measures for the core Federal programs covered by the law; and strengthens program evaluation and accountability to promote continuous improvement. There is a lot of work to be done before the majority of WIOA's requirements take effect in July,

and I look forward to working with all of you to ensure successful implementation of this landmark law.

WIOA is part of a fundamental transformation in the way we prepare people for the careers of today and tomorrow. More than ever before, we're taking a job-driven approach, building unprecedented partnerships with employers and making sure training programs connect ready-to-work Americans with ready-to-be-filled jobs. Guided by this principle of job-driven training, in 2014 the Labor Department invested aggressively in our workers and their potential. We put hundreds of millions in grant money on the street to help individuals upskill in a way that will allow them to move into jobs that are available right now, or will be available soon.

Among the Labor Department's investments were funds for community colleges, to help them enhance their capacity to provide adult learners with the credentials and certifications required to launch middle-class careers. Community colleges are a key piece of the workforce system, and that's why we invested nearly $2 billion in the Trade Adjustment Assistance Community College and Career Training (TAACCCT) program, a program that we have implemented in partnership with the Department of Education. The two Departments believe that the TAACCCT program plays a major role in helping America's community colleges and other higher education institutions drive changes in designing and delivering programs that provide career pathways to good jobs for adult workers and meet employer needs for highly skilled workers in growth industries. I've been around the country visiting these campuses and seen this program at work. From aviation instruction in Tucson, to critical infrastructure training in rural North Carolina, to mechatronics programs in San Antonio, I've seen how these schools are using federal dollars to align their curricula with employers' needs and give their students the best shot at success in the job market. The President's FY2016 Budget includes $200 million for an American Technical Training Fund that will be housed at the Department of Education and jointly administered by the Departments of Education and Labor and will build on much of the work of the TAACCCT program.

Even as the economy has recovered, long-term unemployment has remained stubbornly and unacceptably high. A little more than a year ago, I met Katherine Hackett, a single mother of two from Connecticut who found herself out of work for more than a year after a long and successful career in the health care field. She represents everything that's right about America – hard work, personal responsibility, contribution to community. But she was forced to wear a hat and coat around the house last winter because she couldn't afford to turn the thermostat above 58 degrees. Thanks to unemployment benefits, the Affordable Care Act, and the workforce system, Katherine turned things around, and now she puts on her coat every morning and heads to her new job at an orthopedic practice.

Long-term unemployment is one of those issues that keeps me up at night. There are so many individuals like Katherine out there who were just in the wrong place at the wrong time. Last summer in Cleveland, I met with a group of long-term unemployed workers. One has an MBA, but has been laid off several times since 2007 through no fault of her own. Her situation has

grown increasingly dire since her husband was diagnosed with Alzheimer's and had to close his business.

"I've got no quit in me," another Cleveland worker told me. So we're not quitting on him either. The President identified long-term unemployment as an important priority last year, and we invested $170 million in a new grant program called Ready-to-Work, which supports innovative projects in 20 states and Puerto Rico connecting the long-term unemployed with training that leads to a skilled job in growing fields like IT, advanced manufacturing, health care, engineering and more. All of our efforts have begun to pay off – long-term unemployment, while still a major challenge, has fallen considerably. In April 2010, 6.8 million people had been out of work for 27 weeks or more; today, it's down to 2.7 million.

The President's FY2016 Budget includes $16 billion over 10 years for High-Growth Sector Training and Credentialing Grants to provide more resources for training, which due to resource limitations is currently provided to only a small share of people who come into American Job Centers. This additional funding would double the number of recently unemployed individuals who can access training, up from 10 percent now, and help regions with high unemployment serve the long-term unemployed in times of recession. The proposal also includes dedicated funding to develop sector-specific credentials and assessments to more easily connect workers with jobs and ensure that training meets employers' actual skill needs.

We are also doing more to promote apprenticeship, a tried-and-true workforce investment model that for too long we have devalued in the United States, especially relative to global competitors. With the headwinds of the improving economy and the Department's efforts to reach more companies to start apprenticeships – we're already moving the needle, with the addition of 40,000 apprenticeships over the last year.

The fact is you don't need to start with a four-year college degree to find good, middle-class work. We need a renewed focus on the learn-while-you-earn apprenticeship approach, in which Registered Apprenticeship programs pair on-the-job training with classroom instruction provided by technical schools and community colleges. In fact, through our Registered Apprenticeship College Consortium, or RACC, co-managed with the Department of Education, graduates of Registered Apprenticeship programs can turn their years of on-the-job and classroom training into college credits toward an associate or bachelor's degree. I've seen Registered Apprenticeship programs prepare young people to be construction workers in Los Angeles, sheet metal workers in Boston, and commercial painters in inner-city Philadelphia. But apprenticeship isn't just for the building trades. In South Carolina, for example, tax credits and state-led investments are growing apprenticeships in all kinds of industries – health care, manufacturing and hospitality. Companies like CVS, BlueCross BlueShield and UPS have apprenticeship programs because they know it's a cost-effective way to build a top-notch workforce.

Later this year, we will award $100 million in American Apprenticeship Grants, a new program designed to kick start new apprenticeship programs and take successful Registered

Apprenticeship models to scale through public-private partnerships. Among other things, we'll be looking to support efforts that expand apprenticeship in emerging fields and those designed to serve underrepresented populations, including minority communities, workers with disabilities, and women. We consider that $100 million just a down payment. The President wants to double the number of Registered Apprenticeships over the next five years; and to that end his budget calls for an additional $100 million in grants that would help states invest in strategies needed to expand apprenticeships and assist companies to start new apprenticeships, as well as a 4-year, $2 billion proposal to expand and support innovative apprenticeship strategies.

Giving Workers a Raise

Even as the economy has recovered impressively, it has not reversed a decades-long trend in wage stagnation among middle- and low-income families. To create opportunity and shared prosperity – to advance the President's middle-class economics agenda -- we have to help more people increase their incomes and make their paychecks go further.

It starts with a long-overdue increase in the Federal minimum wage for all workers, including tipped workers. The President first called on Congress to take this step more than two years ago, because he believes that no one who works full-time in the wealthiest nation on earth should have to raise their family in poverty. In the 1960s, you could actually support a family on one minimum wage salary, but over time inflation has eroded its value and purchasing power. While the minimum wage hasn't budged, the price of everything from a dozen eggs to a month's rent keeps going up.

Across the country, I have met with low-wage workers for whom every day is a struggle to get by. They are diligent and resilient. They take responsibility for themselves and their families. But no matter how hard they work, they fall further and further behind. Many of them need SNAP (formerly known as food stamps) or other forms of public assistance to get by. Often, they are one setback away from complete desperation. For you or me, car trouble and a trip to the repair shop are inconvenient; for many of them, it's a financial catastrophe

But in my travels, I don't just meet with low-wage workers; I meet with the men and women who sign their checks. And I've found that so many forward-looking employers are embracing higher wages, paying more even although the law doesn't require it, doing so as a matter of enlightened self-interest. From Costco to the Gap to Shake Shack, and the Ace Hardware store a few miles from here, businesses of all kinds have found that an investment in their workers is an investment in their own bottom line. They recognize that it translates into improved morale and greater productivity. It increases retention rates, thus cutting turnover and training costs. Besides, many of them recognize that in an economy driven by consumer demand, better paid workers mean more people with more money in their pockets to spend on all kinds of goods and services, which leads to stronger business growth and more jobs – a virtuous cycle. But we cannot rely on all employers to do the right thing – we know that there are some who will try any way they can to raise their profits at the expense of their workers.

Historically, increasing the minimum wage has been a bipartisan project. President Clinton worked with Speaker Gingrich to do it in the 1990s. President Bush came together with Speaker Pelosi to do it a decade later. Public opinion today clearly and convincingly favors increasing the minimum wage. Grassroots energy and momentum nationwide have moved states, counties and local governments to take action where Congress so far has not. Over the last two years, 17 states plus the District of Columbia have raised their own minimum wages, thus benefitting a total of seven million workers nationwide. On Election Day last November, Nebraska, South Dakota, Alaska, and Arkansas all passed ballot measures to increase their states' minimum wage. That is why we have to raise the national minimum wage even though a lot of states are raising their minimum wages, because whether a full time job lifts you out of poverty shouldn't depend on whether you've won the geographic lottery or not.

Absent Congress taking action, the Obama Administration has acted within its authority to increase the minimum wage for as many workers as possible. In February of last year, the President signed an executive order mandating a $10.10 minimum wage for workers on new federal construction and service contracts, which will give a boost to those workers. It will also give a boost to taxpayers in the form of more effective and efficient service on government contracts that result from better paid workers on those contracts. The Department issued a final rule in October 2014 implementing the Executive Order, and the new rule took effect on the first of this year for all new covered contracts and replacements for expiring contracts with the Federal Government.

The Department is also using its regulatory authority, at the President's direction, to modernize the nation's rules on overtime pay, which have not kept up with inflation or with changes in the economy. The overtime rules have only been updated once since 1975. The basic premise of the overtime law that Congress enacted more than 75 years ago is pretty straightforward: if you work more, you should get paid more. But that basic principle is undermined in too many cases. The assistant manager at a fast food restaurant who puts in 60-70 hours a week for $455 and spends almost all of their time performing the same work as the employees they supervise and who does not get overtime is getting a raw deal. We are updating the rule to prevent this situation. In so doing, we have conducted unprecedented levels of outreach, holding multiple listening sessions with employers and workers in a wide array of industries. We want to make sure that our proposal, which we expect to release in the coming months, is informed by as many stakeholder views as possible.

Leading on Leave

Too many families nationwide see their income depleted – and their quality of life damaged – because of a medical emergency, or even something as joyous as the arrival of a new baby. Too many workers must make the painful choice between caring for themselves or their families and a paycheck they desperately need. These hard choices sap earning power from working families, tear at the family fabric, take workers—and let's face it, mostly women—out of the workforce, and hurt the growth potential of our entire economy.

All this is because, shockingly, we are the only industrialized nation on earth where paid family leave is not the law of the land. Countries from Canada to Australia, the UK to Japan— both progressive and conservative governments—are all leading on leave, while we're falling behind. They all recognize that paid family leave is good economic policy *and* good family policy. These other nations have figured out that robust paid leave policies can strengthen families, businesses and the overall economy. We can and should do the same.

When I was in Germany in October last year, I met a man named Jason. He's an American, raised in Ohio, but he's living and working in Germany. And he wants to stay there because he and his wife are planning to have their second child and they can't afford to give up the paid leave benefits that everyone working in Germany enjoys. Thousands of families from across the country have written to us at the Labor Department, and I have talked to many more, expressing their frustration that they are financially punished for taking home a new baby, that they have to jeopardize their economic security in order to give an elderly parent the care they need, or care for a husband or wife wounded in the military. I have also met with business leaders who see the positive effect on their bottom lines of having paid leave policies. They know it's not just the right thing to do, it's the smart thing to do.

How can we say we're for family values when so many mothers and fathers have to jeopardize their economic security to take a few weeks off from work after the birth of their child -- when we make it a luxury, reserved for the well-off, to care for a seriously ill loved one?

Workers covered by the Family and Medical Leave Act can take up to 12 weeks of unpaid time off without losing their jobs, but many cannot afford to lose income. A handful of States have enacted policies to offer paid leave. And The President has proposed more than $2 billion in new funds to encourage states to develop paid leave programs, following the example of California, New Jersey and Rhode Island. This proposal will help these programs get off the ground by paying the administrative costs and up to half of benefits in up to five states for three years, as well as provide technical assistance and support to states that are still building the infrastructure they need to launch paid leave programs in the future. The Department will also use existing money to offer $1 million for states to conduct paid leave feasibility studies. Last year, we awarded a total of $500,000 in such grants to Massachusetts, Montana, Rhode Island and the District of Columbia.

Sick days laws are a sign of healthy governance—they lead to positive outcomes for the economy, for the health of workers, their families and for public health. We also have strong evidence that they do not lead workers to take unnecessary time off or impose harmful costs on employers. President Obama recently signed a Presidential Memorandum directing federal agencies to advance their employees up to 240 hours of sick leave for parents following the birth of placement of a child. Moreover, he's calling on Congress to pass legislation that would provide federal employees with six weeks of paid parental leave, and allow parents to use sick days to care for a healthy child following birth or adoption. Like any other employer, this can

help the federal workforce recruit and retain the top talent we need, and lower turnover and retraining costs.

The economy, the workforce and family needs have all changed dramatically in recent decades. More than 60 percent of mothers with kids under the age of 6 participate in the labor force, compared to less than 40 percent in 1975, and we are increasingly seeing folks caught in a "sandwich generation," having to care for both their parents and their kids at the same time. We're in the second decade of the 21st century, but our laws are stuck in a *Leave it to Beaver* era. We need to do much more to lead on leave.

Creating Opportunity for Our Veterans

Helping our working families means doing everything we can for our veterans and their families who have sacrificed so much for our nation. The Labor Department's collective resources and expertise are integrated with state workforce agencies and local communities to meet the employment and training needs of all Americans, including veterans, transitioning service members, members of the National Guard and Reserve, and their families. As the Federal government's leader on veteran employment, the Veterans Employment and Training Service (VETS) ensures that the full resources of the Department are readily available for veterans and service members seeking to transition into the civilian labor force.

Our partnerships throughout the Labor Department extend VETS' ability to achieve its mission, and bring all of its resources to bear for America's veterans, separating service members, and their families. VETS's mission is focused on four key areas: (1) preparing veterans for meaningful careers; (2) providing them with employment resources and expertise; (3) protecting their employment rights; and (4) promoting the employment of veterans and related training opportunities to employers across the country.

The Labor Department's Employment and Training Administration administers the national workforce system – a system that supports economic growth and provides workers and employers with critical resources and support to maximize employment opportunities. Each year, more than 16.9 million Americans, including 1.2 million veterans, receive employment assistance through the workforce system at nearly 2,500 American Job Centers across the country. ETA and VETS fund the counselors in the American Job Centers (AJCs) who work directly with veterans on their employment and training needs. The Labor Department's connection with state workforce agencies across the nation facilitates veterans' employment with large national employers as well as small and medium sized businesses that do most of the hiring. Our long-established relationship with State Workforce Agencies is a partnership that delivers proven and positive results.

VETS contributes to the Administration's commitment through the redesigned Transition Assistance Program (TAP). TAP is a collaborative effort led by the Departments of Labor, Veterans Affairs, and Defense, aimed at providing separating service members and their spouses with the training and support they need to transition successfully to the civilian

workforce. Through TAP, the Labor Department brings its extensive expertise in employment services to bear to provide a comprehensive three-day employment workshop at U.S. military installations around the world. Since the inception of the TAP program over 20 years ago, the Labor Department has provided training and services through Employment Workshops to over 2.6 million separating or retiring service members and their spouses. Last year, we conducted more than 6,600 Employment Workshops for over 207,000 participants at 206 military installations worldwide. Of the 207,000 participants, more than 9,000 were members of the National Guard and Reserve. In a recent survey for the TAP Employment Workshop, 91 percent of participants reported that they would use what they learned in their own transition planning and 89 percent reported that the Employment Workshop enhanced their confidence in transition planning.

VETS programs also provide training and facilitate placements for veteran job seekers. For Program Year 2013, 52.9 percent of veterans who received services through the Wagner-Peyser or Jobs for Veterans State Grants programs started employment during the first quarter after leaving the service. Of those job seekers, 81 percent retained employment in the second and third quarters and earned an average of $17,243 during that six month period.

Additionally, a GAO study last year on the handling of federal veterans' discrimination and reemployment cases under the Uniformed Services Employment and Reemployment Rights Act (USERRA) indicates that our claimants are satisfied with our service throughout the investigation process, even for cases that are not resolved in their favor. VETS' investigators are trained to keep the claimant involved throughout the investigation, explaining the status, process, and critical issues. We concurred with GAO's recommendations regarding the customer satisfaction survey and VETS plans to conduct a customer satisfaction survey for USERRA claimants in FY 2015.

Our debt to our veterans means that every day we must support their successful transition into the civilian workforce through effective, targeted policies and programs that serve them as dutifully as they have served us. I trust that our team at the Labor Department feels that in their core, and that we will remain relentless in the pursuit of opportunity for our veterans.

New Tools and a New Approach to Enforce Wage Laws

The Labor Department is one of the federal government's largest law enforcement agencies. It is critical that we use our enforcement resources efficiently and effectively to achieve our mission of ensuring that workers receive the fair wages that they deserve. Enforcement matters, because the laws that you pass and the regulations that we promulgate to implement those laws, are only as good and as meaningful as our ability to make those words on a page a reality for American workers. Enforcement also levels the playing field for employers who play by the rules.

This has been a top priority from the beginning of the Obama Administration. The President has provided the Labor Department's Wage and Hour Division with the resources it needs to

hire and train hundreds of new enforcement personnel. We have increased our investigation force by more than one-third. But these important increases only bring us back to 1970s staffing levels when the labor force was significantly smaller. The President's FY 2016 budget continues this commitment, requesting $277 million overall for the Wage and Hour Division, including a $31.7 million increase for additional enforcement staff and support.

We have equipped our investigators with the modern tools they need to do their work. We've used data and evidence-based strategies to deploy them strategically. And we've also shifted the focus of our enforcement efforts. Instead of a purely reactive approach where we respond to incoming complaints, we have targeted investigations in industries where we know workers are vulnerable, and where they are often reluctant to raise their voices and exercise their rights. Not only does strategic enforcement yield very real results for working families, but it's also a more efficient use of resources. We've directed our resources to where the data and evidence show wage violations are most likely to occur, where emerging business models lend themselves to such violations, and where workers are least likely to exercise their rights. And the numbers tell us that our strategic enforcement efforts are working. Since 2009 we have recovered over $1.3 billion in back wages for 1.5 million workers since 2009. In data released last month, WHD noted that in FY 2014, it had collected an average of more than $659,000 in back wages for workers *every day* last year. That's enough for more than 3,500 working families to buy a week's groceries.

One of our highest-impact enforcement actions came last year against a Philadelphia-based sports bar chain called Chickie's and Pete's. Tipped employees are some of the most susceptible to wage violations, and in this case Chickie's and Pete's management unlawfully took tips from their workers and at times failed to pay them even the $2.13 cash wage per hour the law requires for tipped workers. In the settlement, we were able to secure more than $6.8 million in back wages and damages for over 1,150 employees.

But wage violations are pervasive, especially for low-wage workers, and so we must continue to step up our efforts and take our enforcement to the next level. We want and need to create ripple effects that impact compliance far beyond the workplaces where we are actually on the ground investigating. The goal is to ensure our investigation of a single employer resonates throughout that sector and influences the behavior of many other similar employers. In this way, we send a message about our vigilance, which acts as a credible deterrent, encouraging compliance with the law and protecting the interests of the overwhelming majority of employers who play by the rules and cannot afford to compete against those employers who cut corners and evade the law.

One way to leverage our enforcement resources is to identify the supply chain. The idea is to cause those at the top of the chain to evaluate the compliance practices of those below them; and to get them to think twice about whether it is worth the risk to their good name, and possibly their bottom line, to do business with a supplier or subcontractor who skirts the law.

It is important to recognize that the overwhelming majority of employers are on the up and up, committed to doing the right thing by their workers. It is a few bad apples doing a disproportionate share of the damage. Wage violations, in fact, undermine the competitiveness of those who are playing by the rules. And we hear often from law-abiding employers, recognizing their stake in enforcement and urging us to crack down against those who are distorting the playing field.

It is important to understand that our ultimate goal is compliance, not harsh penalties. That's why education and outreach are an essential part of our strategy. Since 2009, the Wage and Hour Division has conducted more than 10,000 outreach events and presentations – providing information and distributing materials about what the rules are and how not to run afoul of them. At the end of the day, the idea is not to punish; the idea is to work with employers to help them get it right.

Keeping Our Workers Safe

Our enforcement efforts at the Labor Department importantly extend to workplace safety. The Occupational Safety and Health Administration (OSHA) and the Mine Safety and Health Administration work hard to help ensure that workers return home safe and sound at the end of every shift. I believe that workplace safety promotes profit and business growth and reject the false choice that says an employer must look out either for the financial well-being of its shareholders or the physical well-being of its workers. It can and must do both, with one reinforcing the other.

A recent report released by OSHA shows that even with workers' compensation benefits, injured workers' incomes are, on average, almost $31,000 lower over 10 years than if they had not been injured. To give just one example of our safety enforcement efforts, OSHA recently levied a $1.76 million fine against Wisconsin-based Ashley Furniture for repeated and willful safety violations. The company had not taken the necessary steps to protect its workers from dangerous woodworking machines, leading to more than 1,000 workplace injuries, including several amputations, over roughly a three-year period.

OSHA continues its commitment to protecting the rights of America's workers, including those who report work-related injuries or engage in other activities protected by law. Last year, OSHA completed more than 3,000 whistleblower investigations and awarded over $35 million in back wages and other remedies to complainants who blew the whistle on unsafe working conditions and other potential violations of the law. Earlier this year, for example, OSHA issued the maximum punitive damage award permitted by law ($250,000), as well as other relief, against Metro-North Railroad for violating the Federal Railroad Safety Act when it retaliated against an employee after he reported a knee injury. The employee's supervisor had told him, while in route to the hospital that reporting the injury would "ruin" his chances for career advancement in the company.

OSHA is also in the process of crafting a new regulation to protect workers from exposure to crystalline silica dust, a serious hazard identified by Labor Secretary Frances Perkins more than 80 years ago. Inhalation of the dust can lead to deadly silicosis, as well as lung cancer, kidney ailments, and other respiratory diseases. A proposed rule, developed in consultation with all stakeholders and based on rigorous scientific analysis, was released in the summer of 2013. We held hearings last year, solicited comments at multiple stages of the rulemaking process, and continue to move toward a final rule.

Last year saw a huge breakthrough in safety for the nation's coal miners. In 2014, the Labor Department's Mine Safety and Health Administration reported the lowest annual number of coal mining deaths ever recorded. MSHA also took a historic step forward in the effort to end black lung disease by issuing a final, life-saving rule, decades in the making, to reduce miners' exposure to respirable coal mine dust. To help prepare the industry for this rule, MSHA crisscrossed the country to work with operators to provide technical assistance and ensure a smooth transition. As a result, 99 percent of the respirable dust samples taken in the first five months after implementation of phase one of the rule have been in compliance with its requirements. More than 70,000 coal miners in the United States will now be able to breathe easier thanks to this new rule. My visit to Morgantown, West Virginia, for the announcement of the final rule was one of my most moving experiences as Labor Secretary. I will never forget the sound – the *click-click-click* of oxygen tanks attached to so many miners in the room. The President's FY 2016 Budget provides MSHA with the resources it needs to conduct statutorily required mine inspections, as well as target the nation's most dangerous mines.

I want to be clear that I know enforcement alone is not sufficient to protect our nation's workers. We have had a strong focus on compliance assistance—especially for small businesses—through education and outreach to the employer community. For example, in FY 2014, OSHA conducted more than 5,000 outreach activities for workers and employers, the Office of Federal Contract Compliance Programs (OFCCP) conducted 580 compliance assistance events and WHD held nearly 2,300 outreach actions.

Helping Americans Retire With Dignity

Middle-class economics means ensuring that individuals can enjoy economic security after their working years are over. The Labor Department's Employee Benefits Security Administration (EBSA) is charged with ensuring that workers receive the retirement, health and other workplace benefits that allow them to rely on their health care benefits and retire with dignity.

This is not your grandfather's retirement. At a time when defined benefit pension plans are becoming less and less common, individual workers have to take on more responsibility for their own retirement savings. To help them navigate a complicated menu of investment options, more and more individuals rely on professional advice.

How to prepare for retirement is one of the most important decisions you make in life, just like a health care or legal decisions. When you go to the doctor or consult an attorney, you expect those professionals will provide informed, unbiased advice that is best for you.

But the same does not hold true in retirement savings. While most financial advisers are doing the right thing, many receive back-door payments for steering their clients to bad investments with high fees and low returns. Too often, the corrosive power of fine print, along with hidden fees and conflicted advice, can eat away like a chronic illness at hard-earned retirement savings.

To fix this problem, the President has directed the Labor Department to issue a new rule designed to protect investors and prevent abuse. The proposed rule we will be publishing in the next few months will modernize a nearly 40-year-old regulation, the fiduciary rule. And it would require retirement advisers to put the best interests of the clients they advise above their own financial interests. As Arthur Levitt, the longest serving chair of the Securities and Exchange Commission put it recently: this proposed regulation is "long, long overdue."

We formally transmitted a draft rule to the Office of Management and Budget last month. Until it is published, we cannot provide specific details on the rule. But it is the product of substantial, robust outreach to a wide range of stakeholders who have provided invaluable input. We have consulted extensively with the financial services industry as well as other key stakeholders, like some of the largest corporate plan sponsors, financial planners who already adhere to a fiduciary standard, current and former officials of the Treasury Department, and importantly, the SEC, from whom we received extensive technical assistance. The rule and the new proposed exemptions will permit common compensation practices while requiring a simple commitment that advisers put their clients' interests first. In addition, the rule will allow financial advisers to continue providing general education on retirement saving.

Once the proposed rule is made public, we will embark on an open process seeking public comments and input. We urge all interested stakeholders to fully participate in this public process. The administration welcomes all perspectives as part of a collaborative process going forward. And we look forward to a constructive dialogue with you on this critical public policy matter.

Fighting Discrimination

The Labor Department is charged with enforcing our nation's laws to ensure that workers are able to earn a living free from discrimination on the job. As a civil rights attorney for many years, this aspect of DOL's work is a top priority for me. For example, in 2014, investigators from OFCCP audited nearly 4,000 workplaces, recovering $12.7 million for people subjected to unlawful employment discrimination. And we are bolstering that enforcement work with a robust regulatory agenda to make our workplaces fairer and our economy stronger.

A persistent pay gap continues to undermine the economic security of women and the families that depend on their income. To help remedy this injustice, while we wait for Congress to pass

the Paycheck Fairness Act, we have issued proposed regulations that will prohibit discrimination by federal contractors against workers who discuss their pay in the workplace. Eliminating this restriction will create greater transparency and allow workers to discover inequities that might exist, empowering them with the information they need to advocate for themselves and safeguard their rights.

Workers ought to be judged on one thing and one thing alone: their effectiveness at getting the job done. But unbelievably, there is no federal statute protecting LGBT individuals from being fired for no reason other than who they are and whom they love. In December, we took steps to ensure that, at least among those doing business with the federal government that would not be the case. At the President's direction, we issued a regulation prohibiting job discrimination by federal contractors based on sexual orientation or gender identity. And as recently as a few weeks ago, we extended the right of job-protected leave under the Family and Medical Leave Act to same-sex spouses, regardless of the state they live in, pursuant to the Supreme Court's 2013 *U.S. v. Windsor* decision, which overturned part of the Defense of Marriage Act.

The Labor Department helps individuals with disabilities, who continue to suffer high rates of unemployment and low labor force participation rates, to find job opportunities and live in the economic mainstream. The Labor Department's efforts in this regard are in addition to other programs administered by other Federal agencies. Last year, we completed the first and most significant portion of the implementation of our rulemaking under Section 503 and VEVRAA. Section 503 created, for federal contractors, a first-of-its-kind nationwide seven percent employment goal for qualified individuals with disabilities and VEVRAA created a benchmark for measuring progress toward the objective of increasing veterans hiring. Through our Employment First initiative, we've provided technical assistance to 35 states to help them promote integrated employment as the first choice for job-seekers and workers with disabilities. And in 2014, the Office of Disability Employment Policy provided technical assistance to more than 65,000 employers through its employer-focused technical assistance centers, the Job Accommodation Network and the Employer Assistance and Resource Network. In the next year, as we implement WIOA, the Labor Department will be working closely with the Department of Education to integrate the Vocational Rehabilitation program, as a core partner in the workforce development system, in order to provide a seamless and coordinated service delivery system for all workers and job-seekers, including those with disabilities. To that end, individuals with disabilities, including veterans with disabilities, will have access to all workforce development system services in order to prepare for and obtain competitive employment. We believe this coordination at the Federal level will increase job opportunities for individuals with disabilities at the State level.

As we prepare this summer to mark the 25th anniversary of the Americans with Disabilities Act, we must recommit ourselves to helping more individuals with disabilities experience the dignity of work; achieve economic self-sufficiency; and acquire the independence and confidence that comes with the ability to support your family and chart your own destiny.

Our civil rights and anti-discrimination work is a matter of the rule of law, and it is rooted in fundamental American values of fairness, tolerance and inclusion. But it is also driven by pragmatic considerations as well. It is both the right thing and the smart thing to do. When we protect employment rights, when we expand participation in the workplace, when we take advantage of the talents and embrace the contributions of all our people, it leads to greater economic growth and prosperity benefitting everyone. We don't have a person to spare in America. More than ever, in a complex and competitive 21st century economy, we can't afford to let any talent or human capital go to waste. America is always strongest when we field a full team -- everyone off the bench and in the game.

Evidence and Data Based Decision-Making

In recent years, the Administration has been striving to increase the productivity and efficiency of its workforce. The President's FY 2016 Budget request includes a number of investments to improve the Labor Department's ability to serve the public, increase our workers' effectiveness, enhance our agencies' ability to target enforcement to those areas where violations are most likely to occur, and streamline processes.

The Department's Budget request includes a large investment in the IT infrastructure for the Department. Over the past six years, the Department has been working to streamline the nine separate IT infrastructure components into one consolidated system. Within this consolidated system, the Department is proposing to implement a Digital Government Integrated Platform, which will be used by agencies to support information sharing and improve the efficiency and effectiveness of the Department's workforce, transforming the way the Department can provide services to the American public. This includes such things as combining disparate email systems, data sharing, and voice over IP and video conferencing, which will reduce costs over time.

The Bureau of Labor Statistics (BLS) is the principal Federal statistical agency responsible for measuring labor market activity, working conditions, and price changes in the economy. The request for BLS is $632.7 million and includes an increase of $6.5 million to expand the Job Openings and Labor Turnover Survey (JOLTS). JOLTS provides critical information about the health of the labor market by tracking the number of job openings, hires, layoffs and quits in the economy. This is useful because weakness in some of these underlying sources, such as openings, are leading indicators of recessions. Earlier warning about recessions allows policymakers more time to respond. Similarly, increases in some of these underlying sources, such as quits, provide important signals as to the growing strength of the labor market. The expansion would allow JOLTS data to be released at the same time as the monthly unemployment numbers, thereby improving the analysis of both pieces of information. The JOLTS data would be expanded to add greater industry detail and state-level information.

The Labor Department is committed to an evidence-based and data-driven approach to management. An important part of the evidence-based approach is our evaluation system. The Chief Evaluation Office is a departmental unit that coordinates the Department's overall

evaluation plan, so we can expand or replicate what works, and improve or replace things that evaluations find do not work or do not work as well as they should. The Labor Department is recognized as a Federal evaluation leader and our evaluation efforts have been recognized as good models by OMB, GAO, and the "Investing in What Works Index" produced by the organization America Achieves.

The Chief Evaluation Office has between 50 and 70 evaluations underway at any given time, and they initiate about 30 new evaluations a year. Because some studies require a longer term follow-up period, it may be a few years before we have findings. In 2014, the Labor Department launched a new evidence-based clearinghouse called CLEAR—Clearinghouse for Labor Evaluation and Research, which reviews evaluations according to standards of quality of the design and methods—similar to what the Department of Education does through its What Works Clearinghouse. CLEAR has reviews and ratings of hundreds of evaluations on topics ranging from reemployment services and opportunities for youth, to behavioral economics and OSHA enforcement.

Conclusion

Thanks to the resilience of the American people, the ingenuity of our businesses and workers, and leadership from the federal government, we have emerged successfully from the worst economic crisis of our lifetimes.

But the rising tide of this recovery is still not lifting all boats. We can't settle for an economy that provides opportunity just for a few. America's promise has always been that hard work and responsibility will be rewarded with a chance to succeed, the opportunity to do better than your parents and to leave something more for your children. Keeping that promise is what gets me out of bed every morning, and I am eager to work in partnership with this Committee to meet these important challenges. Thank you again, and I look forward to your questions.

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Chairman KLINE. Thank you very much, Mr. Secretary. I will start questioning.

We have already talked in opening comments and brief discussion before the hearing started about the *Multiemployer Pension Reform Act* and the work that was taken to get that done. You are the chairman of the Pension Benefit Guaranty Corporation's Board of Directors, in your role as Secretary of Labor, and so you are watching the health and welfare of the PBGC as well as looking at the health and welfare of these retirement plans.

Based on recent reports from the PBGC and the Congressional Budget Office, even after the enactment of the *Multiemployer Pension Reform Act,* further reform in this area is needed to strengthen and modernize the system, and we have talked some. Can you take a minute or two here and tell us what you think will happen if we are unsuccessful in our efforts to modernize the system and put PBGC on sounder financial footing?

Secretary PEREZ. There is indeed, I think, a multiemployer crisis, and I have had many conversations with you and with Republican and Democratic members. And time is not our ally.

As you and I have discussed, we have what I call about four options: We have a bad option; we have a very bad option; we have a very, very bad option; and then we have the cataclysmically bad option. And as time goes by, the bad option gets removed from the table and we have a discussion about whether we should do the very bad option or the very, very bad option or the cataclysmically bad option.

And I appreciate the actions that were taken last year. You and I have both had discussions about the fact that there is still more work to do, and we look forward to working in a bipartisan fashion and in an inclusive fashion to make sure we hear the views of all stakeholders, because as the chair of the PBGC I take that responsibility seriously, and I think, working together, we can address these issues in a way that is fair to everybody.

Chairman KLINE. Okay. I think that, I mean, we took some steps in the *Multiemployer Pension Reform Act* to increase premiums for the PBGC and put it on sounder footing, but it is this report from the CBO and the PBGC that—pointing out how still deep in the hole they are.

Secretary PEREZ. There is more work to do. It is undeniable that there is more work to do, Mr. Chairman.

Chairman KLINE. Okay. Thank you.

Let me move to something else you and I have talked about. It is not fair to everybody because you and I have had some of these discussions, so the advantage for you, Mr. Secretary, is you have had a preview.

The disadvantage is I still don't have the answer I like. We held a hearing—the committee held a hearing on the so-called Fair Pay and Safe Workplaces Executive Order, which some of us have taken to calling the Blacklisting Executive Order. We heard from witnesses who raised really serious questions and concerns about the proposal.

Witnesses raised legitimate questions about the need for such a proposal since there is already in place longstanding, well-defined procedures for evaluating Federal contractors and, if necessary,

preventing them from getting Federal contracts. We also heard concerns about the process—about due process, and about the process, and unreasonable burdens and how this would even work.

And again, you and I had a discussion. This is not entirely in your basket, but there is a substantial piece here. What sort of analysis has the Department of Labor done to ensure that this new bureaucracy doesn't overburden contractors and disrupt the whole Federal procurement system?

Secretary PEREZ. The executive order that you are referring to is predicated on the notion that procurement is a privilege, not a right. And if you are engaged in bad behavior, you should forfeit that privilege to do business with the Federal Government.

The vast majority of contractors comply with the law, and so, as I understand the process that will be underway, you will be required to answer a question, "Do you have compliance issues in the area of labor laws and other related laws that are outlined in the executive order?" For the vast majority of contractors the answer will be no, so their responsibility will be to check a box.

For others, there a whole scheme of compliance, and the goal here is to actually promote compliance with the law, as opposed to do the gotcha game. And that is why these compliance officers are, I think, a very important part of the process moving forward. And part of the role at the Department of Labor is not only to have a cadre in the Department of Labor—but to work across the Federal Government to ensure that compliance.

Chairman KLINE. Mr. Secretary, I am not sure that is the level of analysis I was looking for, because I really do have some great concerns about how this is going to work, where you have contractors and subcontractors, and they have got subcontractors. A contractor has to be responsible for the performance of the subcontractor. I just think it is very, very complex, and I hope that the Department—your department—will look into the details of this.

Secretary PEREZ. Well—

Chairman KLINE. My time has, indeed, expired.

And I will yield to Mr. Scott for five minutes.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. Secretary, can you—one of these days we are going to get around to comprehensive immigration reform. Meanwhile, can you tell us what happened to the H–2B program and what you are going to do about it?

Secretary PEREZ. Sure. On March the 4th a Federal court in Florida ruled that we lacked the authority at the Department of Labor to issue regulations in the H–2B program.

As someone who was a former labor secretary in Maryland, I am very familiar with the H–2B program. It has been an important part for folks working on the eastern shore.

And what we did was we have immediately taken steps working with the Department of Homeland Security, and we have done three things. We filed a motion day before yesterday to stay the proceeding—to stay the court's ruling so that we can permit those who have already been in the application process to continue to apply—because every day that the program is shut down is a day that can have significant economic harm.

We have also made a commitment to putting in place an interim final rule by April the 30th, and then once that rule comes out, then that would enable the program to operate. And the "we" in that sentence is it would be a joint rule with the Department of Homeland Security and the Department of Labor.

And then thirdly, the Department of Homeland Security has, as of, I believe, yesterday, reopened their application process, because they had a lot of applications that we had approved, but then when the court shut it down they had to shut down, as well. And yesterday they reopened so that there are roughly 1,000 or 2,000 applications that were stuck that we hope to unstick.

So this has been subject of litigation since about 2008. H–2B has been a lawyers' full employment act. Our goal is to try to fix the problem once and for all. We are very mindful of the time sensitivity and we think that these actions will enable us to get a program up and running as soon as possible.

Mr. SCOTT. Thank you.

Can you mention what the research shows about minimum wage, in terms of not only getting people above the poverty level, but also the effect on the economy and what research shows about potential job loss?

Secretary PEREZ. Well, the, you know, minimum wage—you know, when people get an increase in the minimum wage, what they do is they spend it. It is very much akin to what Henry Ford did over 100 years ago when he doubled the wages of people on the assembly line. He did that for two reasons: He had over 300 percent attrition; and he understood that when people make more money, they spend it in their communities and it creates a virtuous cycle.

There are literally hundreds of studies that document the issue of minimum wage and job loss, and the overwhelming weight of the evidence demonstrates that when you have reasonable increases in the minimum wage, such as the bill that was proposed in the last Congress, you have literally little or no effect, and at the same time, you are helping millions of workers who can get above the poverty line.

Mr. SCOTT. Thank you.

What does your budget do to help at-risk and disconnected youth, particularly during the summer?

Secretary PEREZ. We have several areas of focus. Our WIOA youth formula—we are requesting $873.4 million, and under the new WIOA bill, 75 percent of these funds must be spent on out-of-school youth.

Our request for YouthBuild is $84.5 million. YouthBuild is critical.

Obviously Job Corps is a huge asset for what we do for at-risk young adults. Our Reintegration of Ex-Offenders serves both adults and youth. And WIA formula dollars can be used in the summer job context.

So that is an area where local workforce boards can make those decisions and help for the summer job programs.

Mr. SCOTT. Can you say a word about what sequestration will do to your ability to protect workers, worker safety, develop regulations and inspections, and generally protect workers?

Secretary PEREZ. Well, sequestration, I mean, for instance, in the workforce context, you know, we have got a lot of folks who are still coming to American Job Centers, and sequestration meant that there were about a million people who wanted our services who couldn't get our services. In a time when we are talking about jobs, jobs, jobs, you know, match.com wants to be match.com. But, you know, when you have a size 12 need and a size eight budget, there are people who are in need who don't get that.

And similar situations in other aspects of our DOL work.

Mr. SCOTT. Thank you, Mr. Chairman.

Chairman KLINE. Thank you.

Dr. Foxx, you are recognized for five minutes.

Secretary PEREZ. Morning.

Ms. FOXX. Good morning.

Secretary PEREZ. Good to see you again.

Ms. FOXX. Thank you, Mr. Chairman.

And thank you for being here, Secretary Perez. I want to follow up on your mention of Job Corps, actually.

Recently, it has come to the committee's attention that since the passage of WIOA, approximately two-thirds of the competitively bid Job Corps contracts have been or are being scheduled for contractor selections in advance of the law's effective date and promulgation of regulations implementing the new statutory requirements for contractor quality. As noted in the letter Chairman Kline and I sent you earlier this week, we are concerned the Department has not begun implementing these enhanced selection criteria when selecting entities to operate Job Corps centers.

One only need look at the recent contractor performance at the North Texas Job Corps Center to fully realize the devastating problems that can arise when a contract is awarded to a company ill-prepared to successfully operate a Job Corps center. It is critical that the new statutory provisions be implemented as new contracts are being awarded.

And I have always found that when you need new money you look within your own organization for ways that you can more effectively deliver the services, rather than asking for new money. And so we would like to know from you—what is your response to our request in the letter and the need to have more accountability and more effective programs run by Job Corps.

Secretary PEREZ. The letter you are referring to I received last night and we will certainly respond in a timely fashion.

It was slid under my door, Mr. Chairman.

Chairman KLINE. [Off mike.]

Secretary PEREZ. Okay. I just wanted you to know that.

Chairman KLINE. [Off mike.]

Secretary PEREZ. No, by my staff it was slid under the door.

And let me say I totally agree with you, Congresswoman Foxx, that Job Corps contractors need to be subject to accountability, and when they don't do a good job we need to take action. The North Texas center that you are referring to, we revoked that contract as a result of serious issues of safety.

I also agree wholeheartedly with what is in WIOA. One of the provisions in WIOA basically says that contractors that are high-

performing should be able to compete. I completely agree with that proposition.

As I understood the letter—and again, I haven't had a chance to digest it fully—I think it says that—or I think it is concerned that we are speeding up the letting of contracts to get in before the effective date. I am flattered that there is a perception that our procurement process is moving with undue alacrity.

Chairman KLINE. [Off mike.]

Secretary PEREZ. I can assure you that, you know, we are making no effort to speed up contracts in an effort to avoid a new provision of WIOA because I think it is a good provision. And we will give you a much more robust response.

I also believe in accountability, and we have taken a number of steps. That is a very important question that you ask.

When I was in state government we regulated the state banks, and we instituted a—what I call a risk-based assessment system, because not all banks are created equal. Some have more risk factors than others.

Similarly, when I got here, Job Corps—every Job Corps center was looked at on the same timeframe. Not all Job Corps centers have the same risk factors.

And so we have put in place a risk-based assessment system that I think will better enable us to spend more time with the centers that need our attention and less time with the centers that are firing on all cylinders. That is what risk-based accountability and oversight, I think working at its best, does.

Ms. FOXX. Well, you anticipated the next question I was going to ask, actually. So I just want—quickly—so do you then have in your risk-based management system a time to cut these people off, in terms of saying, "Okay, there is going to come a time when we don't think you can be fixed"?

Secretary PEREZ. Oh, well, as you know, one Job Corps center was shut down as of February the 28th in Oklahoma. We are currently reviewing, and our goal is to make sure that everybody can succeed.

I don't want anyone—I don't want to set anyone up for failure. We want to give tools to everyone to help them succeed. And I have seen improvement in a number of centers.

But when there is chronic underperformance, we will not hesitate to take action. And I don't want to prejudge the process, but I expect that we may be making further recommendations in the context of chronically low-performing Job Corps centers.

Because it is all about the kids. I mean, we have got to make sure everybody—anywhere you go, you should be getting top-flight service.

Chairman KLINE. Gentlelady's time has expired.

Mr. Polis?

Mr. POLIS. Thank you, Mr. Chairman.

Thank you, Mr. Secretary.

Secretary PEREZ. Morning, Congressman.

Mr. POLIS. Welcome to the committee.

As we all know LGBT Americans still face historically—historic and current discrimination in the workplace, and I want to acknowledge your great work and show appreciation on behalf of the

LGBT community for the effort the Department of Labor, under your leadership, has gone through in implementing the President's executive order to prohibit Federal contractors from discriminating on the basis of sexual orientation and gender identity.

Can you speak to how the work you did issuing a final rule in December of last year helped to fully implement and comply with your duties and responsibilities under the law?

Secretary PEREZ. Yes. First of all, I want to thank you for your leadership in this area. You know, I believe that people should be judged by the quality of the work they do in a workplace, and not by any other irrelevant factors. And I think this is—the work that we are doing in this area is critically important.

And the executive order was July of last year, and we have been moving forward through our OFCCP office to help contractors prepare for compliance. And I am confident that they can come into compliance.

When we worked on other issues, we have been able to work very effectively to help educate. Because I would much rather prevent than have to come in at the back end and enforce. So I am very confident that we can do that in this context.

Mr. POLIS. Thank you. And your task is assisted by the fact that such discrimination is against the law in 20-some states already, where contractors in those states, at least, would already presumably comply with this.

I wanted to talk about civil penalties for a moment. Your budget proposes to strengthen several of the civil monetary policies that the DOL could impose when a law is violated. You are acting on recommendations by the GAO and the Administrative Conference of the United States by proposing to improve the *Federal Civil Penalties Inflation Adjustment Act.*

As one example, FLSA has a $1,100 maximum fine per willful and repeat violation, which is ridiculously low. And is DOL considering whether to raise that fine? And if so, to what level?

And can you speak to the importance of having civil monetary penalties to deter bad behavior and to ensure that our workforce protection statutes like FLSA, OSHA, and ERISA are followed across our country?

Secretary PEREZ. I very much appreciate that question, and I think our civil money penalties need to be modernized to reflect the realities of the 21st century. Too often, our civil money penalties are cost-of-doing-business fines.

In the whistleblower context, Congress has acted in a bipartisan fashion to modernize whistleblower laws so that they have gotten better and better and given more rights to courageous whistleblowers. There is still work to do there.

But we had a case in 2001—an OSHA case—where a tank full of sulfuric acid exploded in a refinery. The victim's body was literally dissolved. And the OSHA penalty was $175,000.

The same incident, some of that sulfuric acid flowed into a nearby stream, killing fish and crabs. The EPA fine was $10 million. The fine for the dead person was $175,000. I think we need to correct that.

And when I talk to businesses who play by the rules, they tell me that we need to correct this because they are playing by the

rules, and those who cheat do so because of the cost-of-doing-business fines. We don't pack enough punch.

Mr. POLIS. Speaking of playing by the rules, another area that some businesses don't play by the rules is by misclassifying their employees as independent contractors. And I am sure you are familiar with the Oak Grove Cinemas, Barrington Management, and Barrington Venture LLC case, where employees doing general maintenance and construction were working 60 to 68 hours a week, being allocated to different entities that were all under the same ownership under one contract, were denied overtime. The employer was fined $512,000 in back wages.

And this is far too common. So how can we do more to deter this kind of activity, rather than just try to chase after the fact?

Secretary PEREZ. One thing we have been doing is working very closely with states, and we have entered into MOUs with 20 states, ranging from Utah and Alabama to Massachusetts, because this problem is not a red or blue problem, it is a national problem that has three sets of victims: the worker him- or herself; the employers who play by the rules—they can't compete for contracts, they can't compete for businesses because they pay their taxes; and then the tax collector, because when a business is cheating, they are not paying their workers' comp taxes, my U.I. taxes go up because the pool has gotten smaller.

And so those three types of victims are why we are working with states across the country on this issue. It is a very significant problem.

I believe that there is an important place for independent contractors, but I also believe that there is ample evidence that has been abused.

Mr. POLIS. Thank you. I yield back.

Chairman KLINE. Gentleman's time has expired.

Dr. Roe, you are recognized.

Mr. ROE. I thank the chairman.

And—

Secretary PEREZ. Morning.

Mr. ROE.—thank you, Mr. Secretary, for the work you helped us with on the multiemployer pension plan. I think that was a great piece of work. I want to reaffirm what the chairman said, and I appreciate that we still have a lot of work to do.

One of the things I want to talk about is to go to the rulemaking that we are looking at with the fiduciary rule. And we wrote a letter, the chairman and I did, to your department asking for information. And we got back a letter that just gave some dates that you met with the SEC chair or talked to her, but really no information.

We have a constitutional responsibility for oversight, and so we would like to get some data, what happened in those meetings. Would be good for us to know what went on, and would you please provide those documents? That would be number one.

Number two, have you read the Furman Memo? The Furman Memo, from the—

Secretary PEREZ. I have read the report from the CEA on the costs of conflicted advice.

Mr. ROE. Well, exactly. That is what this memo is. And basically, what it says—I have read this memo, and basically what it says,

out of the Council of Economic Advisers, is that investment advisors basically move this money from, say, a 401(k)—I mean, from a company-owned plan to a 401(k) or an IRA basically just to make money. They encourage people to do that, they churn the accounts, obviously buy and sell.

And there are several types of advice that you can get. I have all three of those accounts. I have a managed account, I have just a standard 401(k), and then I have one here as a congressman. And the least advice I have gotten, and I think the poorest result I have had, is the one I have here in Congress, where I can't—I basically can't talk to anybody.

So the question is, do you believe what that memo said about what the investment advisors are actually doing—that they are doing that? And look, there are bad actors out there. We all know Bernie Madoff exists, and we know that people still rob banks and there are laws against that.

But most of these advisors I think act in the best interest of their clients or their clients move when they see what the results are. So the free market system works.

And this Furman Memo I thought was outrageous when I read it. Any comments on that?

Secretary PEREZ. Sure. I wrote down all of your questions. Let me first start by saying I have been thinking and praying for you over recent weeks.

Mr. ROE. Thank you.

Secretary PEREZ. Secondly, we look forward to working with you on the request for documents. And I certainly respect the oversight responsibilities of committees. I also, as someone who entered Federal service in the Bush Administration, worked in Republican and Democratic administrations, I also know that—and I know you appreciate—that when you are having deliberations on what to do and you are having conversations, that there is also deliberative process issues, and we look forward to continuing those discussions with you.

I believe that financial planners can and ought to do what lawyers and doctors do. I am the youngest of five, a lawyer; and I have got four siblings and they are all doctors. And we are all required to—I promised I would never be a plaintiff's personal injury lawyer, and I did keep my promise.

Mr. ROE. Thank you. Only one turned to the dark side. That is good.

Secretary PEREZ. And my dad was a doctor, and I was the one black sheep, I will concede for the record, Congressman.

And, you know, lawyers and doctors look out for their clients' best interests. If I were afflicted with a serious illness I don't want my doctor telling me what is suitable for me; I want my doctor telling me what is best for me. And that doctor has that requirement to do that.

And I talk to people in the financial space who are already doing—have—they are certified financial planners, they have taken the oath to look out for their clients' best interests, and, you know, they tell me that the playing field isn't level.

And Jack Bogle, I think, said it best—the chairman of Vanguard, or founder of Vanguard. "I have been in the business 64 years," he

said, "and I learned that when you take care of your customers and put them first it is best for the customers and it is great for business."

Mr. ROE. My time is about to expire, and the CEA memo said the IRA marketplace lacks meaningful regulation. Well, what about FINRA and the SEC?

And I think probably your department should work with the SEC if there is going to be a change in the fiduciary rule and not just unilaterally do it. I think the SEC really is the place that should be done more than DOL. Any—

Secretary PEREZ. Well, our letter certainly outlines the extensive collaboration we have had with the SEC and will continue to have with the SEC in this process. As Chair White said yesterday at a meeting she was at, we have worked together. In the end, we have statutory schemes that we need to make sure we are vindicating.

Mr. ROE. Okay. Well, other than this memo, I have been able—I tried last night for hours on the Internet to try to find out where the data came from that was in this CEA memo. I couldn't find it.

Secretary PEREZ. Well, I look forward to talking to you about that, because I actually think it—

Chairman KLINE. Gentleman's time has expired.

Ms. Wilson, you are recognized.

Ms. WILSON of Florida.—thanks to the ranking member for today's hearing.

Mr. Secretary, I am so pleased to see you today. I have worked so closely with you since I have been in Congress, and I look forward to working with you as we move forward.

I want to thank you for coming today and speaking to us about these very important issues, especially extending emergency unemployment compensation and raising the minimum wage. I love what you have presented regarding community colleges and also reintegrating ex-felons back into the workforce, which is so, so important.

Everyone needs a job, and I think the mantra of this Congress should really be "jobs, jobs, jobs." I have said it so many times on the floor.

Congress needs to get real about passing a serious full employment agenda, paying workers a fair wage for the hours worked, and raising the minimum wage. That is the least we can do.

Now is the time to invest in the people who keep our economy running. If we raise the minimum wage people will have more money to spend, companies will be able to create more jobs, people will have higher salaries and pay more in taxes, and American workers will be happier and healthier. Everyone wins. America wins.

I hope as a body we can come together and do that.

Mr. Perez, last year I shared with you my concern that the Department of Labor should be very, very careful in crafting a fiduciary rule that would not impact the availability of affordable investment advice.

As you know, I represent South Florida. It is a retirement community. And so retirement security is an important issue for me and for my constituents. We have a better chance of protecting our retirements when we sit down with a trained professional who can

answer the complicated but important questions we have about our savings.

So, as always, I plan to work with you on the proposed rule very closely, and I want to make sure that I have an open line of communication with you as I work with any ongoing concerns I may have. I want to be able to hear from you as I hear from my constituents, and we can become a team to work out a solution.

The President's budget points out that many of our employment and safety laws lack strong civil penalties, and I have a bill that I am filing called Protecting America's Workers Act. Many of these rules are woefully out of date.

The maximum penalty for repeated and willful violations of Federal minimum wage and overtime laws is only $1,100. The maximum OSHA fine for a serious violation that causes an injury or death is only $7,000. In fact, the last time OSHA's penalties were increased was back in 1990, and they have not been adjusted for inflation in 25 years.

Do we need to update OSHA's penalties, Mr. Secretary? What about updating penalties under our wage and hour laws?

Secretary PEREZ. Great. Well, I look forward to working with you on all the issues you addressed.

I agree with you about small investors. I think small investors are people who are most in need of advisors who are looking out for them because the margin of error for them is zero. So I look forward to working with you on that.

As I said to Congressman Polis before, we have to bring civil money penalties into the 20th century—21st century, and that includes wage and hour, that includes OSHA, and I look forward to working with you on those issues.

Ms. WILSON of Florida. Thank you. We will be talking.

Chairman KLINE. Gentlelady yields back.

Mr. Thompson, you are recognized.

Mr. THOMPSON. Thank you, Chairman.

Mr. Secretary, thank you so much for being here.

Secretary PEREZ. Morning, sir.

Mr. THOMPSON. Good morning. Thank you for your comments regarding apprenticeship programs, too. Certainly that is a great opportunity to—

Secretary PEREZ. I agree.

Mr. THOMPSON.—great pathway to opportunity, and I look forward to working with you on that, as well. I am hoping that we can see you do something rather robust as we look at reauthorizing the *Perkins Act,* too, in terms of apprenticeships.

Secretary PEREZ. Absolutely.

Mr. THOMPSON. I have got—one was—is just a request, a follow-up request, and the other a question for you. Kind of a unique situation, that your office, I think, is currently—we haven't heard back from yet on—November 18th of last year my office—we initiated a request for a formal ruling regarding the MSHA issue, actually affecting Old Order Amish contractors who are to wear hard hats on job sites despite religious objections.

It is a confusion within the Department that our inquiry was based on. MSHA's ruling runs contrary to the existing OSHA rul-

ing exempting the Amish from wearing hard hats, and that dates back to 1994.

Mr. Secretary, my constituents being affected by the MSHA regulation are committed to following the law. However, the discrepancy between MSHA and OSHA is not just an issue of religious freedom; it seems like one hand is not talking to the other.

It has been five months since any inquiry, and I have a copy of the letter with me and available. I would just appreciate you looking into the issue so we can—whatever the response is—we can just get a more timely response back to the constituents.

Secretary PEREZ. Well, first of all, I owe you an apology because the delay is unacceptable and that is my responsibility. And I am going to get back to you in no more than a week.

Mr. THOMPSON. Okay.

Secretary PEREZ. When this came to my attention—it is a fascinating issue. There are two very compelling, competing considerations. I take a back seat to no one in my commitment to respecting religious freedom. At the same time, workplace safety is a pretty big thing too.

And so I commit to getting back to you in the next week. We have a team of folks who are not only looking at the MSHA issue that you presented, but looking at our entire array of workplace safety rules because we want to get it right.

Again, I appreciate the patience that you have shown and I apologize for the delay.

Mr. THOMPSON. Well, I appreciate your due diligence. It is not an easy question, there is no doubt about it. Not an easy—to resolve. So thank you for that.

Wanted to touch on—September 12, 2013, OSHA proposed to reduce the silica permissible exposure limit to 50 micrograms of silica per cubic meter of air for all industries. Last week, NIOSH published a silica report showing a dramatic downward trend in incidents of silicosis.

In the regulatory proposal that OSHA had they stated that 30 percent of silica samples in the general industry were above OSHA's current limit, and the construction industry sampling demonstrated 25 percent noncompliance.

Mr. Secretary, can you tell me how many silica-related inspections OSHA conducted in the past two fiscal years, and what is the agency doing now to ensure compliance with the current silica permissible exposure limits?

Secretary PEREZ. I don't know the answer to your first question, but I will get back to you. When you go to a construction site there is a pretty good chance that part of what you are going to be looking at there may be items that relate to silica. So I will make sure I get back to you on that.

What I can say regarding the rule is that there has been a very, very extensive process that included a series of hearings where we heard from a wide array of stakeholders ranging from, you know, the fracking industry to construction companies to large businesses to small businesses. We have a voluminous record in this matter because it is a big rule and it is a big proposal, and we want to make sure we get it right.

Our goal here is to make sure that our workplaces are safe and, you know, as way back as 1937 I have an audio recording of Frances Perkins talking about the dangers of silica. So these issues have been well-known for quite literally decades, and our goal is to try to thread the needle appropriately so that we have safe workplaces and do so in a way that is fair to all sides. That is our goal.

Mr. THOMPSON. Well, I appreciate that, and I thank you. I appreciate seeing the NIOSH published report that the incidents have—the downward trend that is there on silicosis. That is a good thing for us, so thank you.

Secretary PEREZ. Thank you.

Mr. THOMPSON. I yield back.

Chairman KLINE. Gentleman yields back.

Mr. Takano, you are recognized.

Mr. TAKANO. Thank you, Mr. Chairman.

Mr. Secretary, welcome.

Secretary PEREZ. Morning.

Mr. TAKANO. Thank you for being here.

I want to talk to you about overtime pay this morning. Americans are working longer hours and are more productive, yet their wages are largely flat. And one reason Americans' paychecks are not keeping pace with their productivity is that millions of working-class and even middle-class workers are working overtime—more than 40 hours a week—and not getting paid for it.

Today, the threshold for overtime pay is only $23,660 per year, or $455 per week for a salaried worker. Only about 11 percent of the salaried workers are eligible for overtime. Back in 1975, some 65 percent of salaried workers were eligible for overtime pay.

Now, if the overtime salary threshold was raised to the 1975 level after adjusting for inflation, millions of lower-paid white-collar workers would be guaranteed the right to overtime pay if they work more than 40 hours a week, regardless of the nature of their job.

Now, I sent a letter earlier this year with more than 30 colleagues urging the Department to raise the income threshold for overtime pay so that more salaried workers qualify. I was pleased to receive a response from the Wage and Hour Division, last week.

But what I want to ask you, Mr. Secretary, has the President called upon the department to review the overtime white-collar exemption last year? And I know you have been working diligently. Can you tell me more about how the department plans to address this issue and what is your timeline for doing so?

Secretary PEREZ. Well, we are actually working overtime on this, Congressman. And basically, you know, the overtime rule stands for a very simple proposition that was enshrined in the *Fair Labor Standards Act*: If you work extra, you should be paid extra.

And as you correctly point out, we have met people who are working 60 hours a week, 65 hours a week, who are making $455. That is the salary threshold that equals the amount that you said.

And you do the math on that, we have quite literally had cases where the supervisor was making less than the person they supervised. That is not fair.

So the President directed us to figure out what is fair. You know, how can we adjust this threshold to reflect the fact that it has not kept up with inflation? How can we adjust the threshold that reflects the fact that if you work overtime you should be paid overtime? And how can we simplify the process, which would be helpful for employers and workers alike?

And so, I have personally participated in literally, oh, probably 15 to 20 meetings with various stakeholders, including but not limited to employers, across an array of sectors to get their input. And I am hopeful that sometime this Spring we will be in a position to put a proposal out. And then once that proposal is out, there will be a notice and comment—there will be a comment period, and we will have another round of opportunity to get feedback.

But our goal is to make a rule that is fair and make a rule that is—that facilitates compliance and is simpler.

Mr. TAKANO. Well, thank you for that answer.

What is your response to those who say that this will hurt workers that we want to help? If employers don't want to pay extra overtime, won't they logically increase the hours of those working part time and hire more workers?

Secretary PEREZ. If you are working 70 hours a week and you are making $455, this is just fundamental fairness to me. And we see too many people who have been, in fact, left without those protections of overtime.

And by the way, these are some of the most valuable workers in a workplace. These are the folks who have the keys. They are opening and closing places. They are going to the bank with the money. And they ought to be treated fairly.

Mr. TAKANO. Do you think that we might look to—once you get this resolved and propose a new rule, or propose an updating of the rule, that we might want to index—you know, find some way to index the threshold to inflation?

Secretary PEREZ. In the informal feedback that we have undertaken as part of our listening tour, that issue has come up and a number of people have raised that issue. And so, again, we will put a proposed rule out and then we will put it out for comment, and we look forward to getting comments, including comments, I am sure, from members of Congress.

Mr. TAKANO. Well, we look forward to working with you, and I appreciate the hard overtime—the work you are doing on overtime to get this done.

Secretary PEREZ. Thank you.

Mr. TAKANO. And it always seems—I agree with you. I think it seems fundamental fairness that we—that Americans get paid for the work they do.

Thank you, Mr. Chairman. My time is up.

Chairman KLINE. Gentleman's time has expired.

Mr. Walberg, you are recognized for five minutes.

Mr. WALBERG. Thank you, Mr. Chairman.

And—

Secretary PEREZ. Morning, Mr. Chairman.

Mr. WALBERG.—Mr. Secretary, thank you. Certainly appreciate your openness, your willingness to be in front of us, openness to have calls from us, take those calls, and respond. I appreciate that.

Secretary PEREZ. My pleasure.

Mr. WALBERG. In order to continue and keep the respect of my chairman, I want to stay within the five-minute time limit, so there are basically three questions I have.

I think you have addressed, to a great degree, one of those questions already relative to overtime regulations. You indicated that sometime this Spring, which thankfully has come, sometime this Spring that rule will be put forward as a proposal.

I would just say I hope, in context with that, not only do we look at the wages relative to the hours, but we also look at those other—I guess it would be considered quantifiable factors of respect, of the opportunity for individuals to be in a situation where on their resume there is leadership shown, the ability to expand and move forward, and it is not just the money in their cases. It really isn't just the money; it is the opportunity to expand.

The other two question areas that I did want to talk to you about are relative—one area would be the SHARP program and the VPP program, they kind of combined. And my question, the other, is in reference to wellness plans.

Let me ask these questions and then get out of the way to let you address those, so we will stay within the five-minute time period.

Recently, I sent a letter to Dr. Michaels urging him to rescind the November 2014 OSHA guidance document related to the size standard for a Safety and Health Achievement Recognition Program, SHARP. The guidance suggests companies with over 250 employees be encouraged to move to the Voluntary Protection Program, VPP.

However, Dr. Michaels has also suggested, as he has back and forth, VPP should be eliminated—limited and ultimately terminated. We went through that with him in a hearing some time ago and got VPP extended, and now it is going the other way.

When questioned about compliance assistance the agency always holds up these two programs as stellar examples of helping employers and employees. The Department can't have it both ways, and so why does OSHA seek to limit participation in both of these programs, SHARP and VPP?

Secondly, the wellness plans. ACA encourages employers to offer wellness plans, yet EEOC has gone after employer wellness programs.

The question I have is, does the administration support employer wellness plans? And if so, why is the EEOC acting to the contrary to—on the desire for employers, employees, and ACA?

I guess those two questions I would love to have your answer, and then we may go to another issue.

Secretary PEREZ. Great. On overtime, I agree with the issues of respect and leadership, by the way, and we have had that conversation in our outreach, so I just wanted to mention that very briefly.

As it relates to the SHARP program and VPP, the SHARP program, which stands for Safety and Health Achievement Recognition, is an important part of what we have been doing at OSHA. That program was initially designed to help small businesses.

And what happened over time was that a lot of large businesses who have subsidiaries that are under them who are small were getting into that program. And so, just as a matter of how we deal with limited resources, our goal was then to move the subsidiaries of large businesses from SHARP into VPP.

What we have done in response to your feedback is to make sure that, you know, everybody who is currently in SHARP will stay in SHARP, so nobody is kicked out, for lack of a better term. And so that program will continue.

Our aim for 2016 is to expand VPP because we think it is a great program. And just to clarify, I don't believe we have ever made any statement saying that we are going to eliminate VPP because I think it is a good program, and our goal in 2016 is to continue to do—

Mr. WALBERG. We may have misunderstood—

Secretary PEREZ. Okay.

Mr. WALBERG.—Director Michaels' statements, but most recently it has moved the other way toward elimination, so if you can clarify that with me I would certainly—

Secretary PEREZ. Okay. We think, and I am confident that Dr. Michaels agrees, that VPP is a—and SHARP are very important programs, and I look forward to working with you to make sure that they achieve the purpose that I think we both believe that they should have.

Chairman KLINE. Unfortunately, the gentleman's time has expired.

Mr. Jeffries, you are recognized for five minutes.

Mr. JEFFRIES. Thank you, Mr. Chair.

And thank you, Mr. Secretary, for your testimony and for your presence.

When the Obama administration came into office in 2009 the President and the administration inherited a train wreck of an economy as a result of the Great Depression. Since then, the economy has gotten back on track through the leadership of the President, with the able assistance of yourself and other members of the administration.

Yet, it seems like we consistently hear every time the administration has taken a step forward or plans to take another step forward there is a gloom and doom scenario and vision—the sky is going to fall, the world is going to end in some way, shape, or form.

We first heard that in connection with the passage of the *Affordable Care Act.* We were told it was going to end health care as we know it. Instead, more than 16 million previously uninsured Americans now have affordable health insurance. And, in fact, the cost trajectory of health care has slowed in a way that is positive for all of America.

We heard that when Dodd-Frank was passed it was going to end Wall Street productivity as we know it. Instead, we have got a stock market that is way up, CEO compensation is way up, profitability amongst Wall Street institutions is way up. That is a good thing for America, for New York City, where Wall Street is based. But Wall Street as we know it wasn't ended.

Then, of course, I think we heard when the progressive tax code was put into place, consistent with the fiscal cliff agreement at the

beginning of 2013, that the job creators would be hurt in an incredible way. Yet, we have had 60 consecutive months, I believe, of private sector job creation continuing through that period when the fiscal cliff deal was put into place, 12 million private sector jobs have been created.

So we have heard now, consistent with some of the things that you have attempted to do with respect to Federal procurement, your support of the minimum wage, that we are going to grind the economy to a halt, the sky will fall. And so I just want to get into a little bit of the facts, if you will, related to why you are supporting a minimum wage increase, for instance.

We have got a consumer demand problem, I believe, in America that we have been attempting to address moving forward, correct?

Secretary PEREZ. Well, I support a minimum wage because, number one, it is fundamentally fair. Nobody who works a full-time job should have to live in poverty.

I support it, number two, because it is smart. You know, when you put money in people's pockets they spend it. Employer after employer tells me, "Tom, this is a consumption-deprived recovery." And that is because folks don't have enough money in their pocket.

And so it is the fair thing to do and it is the right thing to do, and that is why voters in Nebraska, Arkansas, Alaska, and elsewhere have voted increases in the minimum wage, you know, and New Jersey, as well, because it is an idea that has had bipartisan support in this body. Whether it was Newt Gingrich in the 1990s, George W. Bush, his father, every President except two since FDR has signed an increase in the minimum wage.

Mr. JEFFRIES. Right. And Americans both on the left and the right—blue states, red states—get it. If you put more money in the pockets of everyday Americans they will spend more. If you spend more you are going to yield economic growth. That, of course, is going to be good for the country.

In terms of Federal procurement, there seems to be this argument that access to Federal procurement is a right, not a privilege. Seems to me that it is a privilege that should be earned, as it relates to whether contractors are doing the right thing by standards that already exist in law.

Could you speak to sort of the efforts that the administration has taken to try to level the playing field so that good actors are getting access to Federal procurement and bad actors are not abusing taxpayer dollars?

Secretary PEREZ. It is important to note that contractors already are—contracting officers are already required to assess a contractor's business integrity and ethics before awarding a contract. And when you are a contractor competing for business, you have got to do the same thing if you have subs.

And by the way, that is not simply the right thing to do, it is the smart thing to do. No one wants to associate with a sub who has a bad rep.

And so what we are simply doing in this rule is clarifying that breaking labor laws, if you have had multiple, you know, labor violations in safety or wage and hour, that is not consistent with business ethics. And there is a provision in this—in our regulatory structure here whereby after the rules are final and before they go

into effect, there is a period of time that we have set up by design where businesses who think they have questions can come and get those questions answered, because our goal is compliance.

Mr. JEFFRIES. Thank you, Mr. Chair.

Secretary—

Chairman KLINE. Gentleman's time has expired.

Being mindful of the hard stop at 12:00 p.m., the chair will reduce to four minutes the time for question and answers on each side for the remaining members, and I think that will allow everybody to get a chance to ask their questions.

So unfortunately, Mr. Guthrie, you are going to be limited to four minutes. We are starting with you, and you are recognized.

Mr. GUTHRIE. Too bad I just have four minutes because I was going to praise working here together.

And the chairman said this when he was giving his opening remarks, and he used the comment about you, said "true to your word." And if you remember, when we had a—I guess this hearing last year, we had some concerns that I had of an example of the ESOPs in my area, which, I explained, particularly one, that allow hard-working taxpayers to create real wealth.

And that is what we all want—people not just to survive, but to create real wealth for themselves and their families, as we discussed, hopefully be able to afford to send their kids to college, right? Those types of things.

And you said sitting there, "Well, I want to meet them." And for about a year, the place does work sometimes. You came to my office with your staff. My constituents came, explained their position, and we left with, there are some areas that we can agree and work on, and we have done that.

And I really appreciate that because it was true to your word. You know, sometimes you hear things and you go for meetings and we all get busy. It is not that somebody is trying not to work it out together, but we really have, and I really appreciated you, my people that work in my office working with your office to hopefully to come to some agreement that is moving forward.

And we talked earlier about ESOPs, and I would just like to give you a few moments to talk about ESOPs. And we said earlier, how do we create pathways and policies, not just through ESOPs, but any way, for hard-working taxpayers, I think you said middle-class, to earn—working people to earn real wealth?

And so I'll just give you a couple opportunities to talk about, from our meeting to now, what you kind of discovered or maybe reacquainted yourself with ESOPs. And I guess I am running out of time, so I want to turn it over to you—

Secretary PEREZ. Sure. No, well, thank you.

You were concerned that we had a provision in the proposed conflict of interest rule that—from 2010 or 2011 relating to ESOPs. You thought that was not a good idea to have it in there. Others agreed with you, and upon reflection, we agreed with you, as well. So the rule that will come out will not include the ESOP provision or proposal from before.

What I have learned about ESOPs—we have a shared interest, Republicans and Democrats alike. We want to figure out how we build an economy that works for everyone.

And as you saw with your constituents and as I have seen across the country, employee stock ownership programs are very effective ways of helping people across, you know, whether it is the cashier at the grocery store or—to the owner of the grocery store, giving them opportunities not only to build a nest egg, but when you have skin in the game in your job—and many ESOPs, their governance structures, they are giving people skin in the game.

I am always happiest in my jobs when I feel like my voice is heard, and that is what so many ESOPs are doing. And that is why I think it can lead to this sense of shared prosperity.

And I look forward to working with you, Congressman, moving forward to see, is there public policy that we can undertake that can help, you know, promote and expand a model that I think has had, you know, real success in building wealth for working people across this country in places like Kentucky, in places like Colorado.

Anyone who has had the New Belgium Brewery, one of—it is the second-largest U.S. brewery in America, after Sam Adams, and, you know, that is an ESOP. And the CEO, she is a remarkable person who believes that we all succeed when we all succeed.

Mr. GUTHRIE. Well, thank you. And you were sincere in all your efforts to work, and your staff was great to work with. And appreciate the result that we got.

Secretary PEREZ. Thank you.

Mr. GUTHRIE. I yield back, Mr. Chairman.

Chairman KLINE. Gentleman yields back.

Ms. Bonamici, you are recognized for four minutes.

Ms. BONAMICI. Thank you, Mr. Chairman.

Mr. Secretary, I have a list of thanks and two questions.

First, thank you for your testimony and for your—the great work of your department. Thank you for your visit to the West Coast to help facilitate what I hope will be a lasting solution to the labor dispute at the West Coast ports.

Thank you for your support for Job Corps. I have a great Job Corps program in my district up at Tongue Point in Astoria.

And finally, thank you for your focus on paid family and sick leave. It is clear, as you recognized in your written testimony, that our policies have not kept pace with our workforce. As you note in your testimony, the United States is the only industrialized nation on Earth without paid family leave.

I am beginning to, as you indicated in your testimony, see business support, because businesses recognize that these policies help with retention and recruitment. Intel in my district just implemented an eight-week paid time for new parents. I applaud them for that.

My first question has to do with workforce development programs, which, of course, play an important role in our communities. Department of Labor grants have helped workforce programs in my district develop innovative partnerships. And I applaud the passage of WIOA last Congress.

So can you first address what the Department's plans are to provide technical assistance to states and localities in implementation?

And then my second question I will give to you and you can respond to both. Last Congress, I introduced a bill to reauthorize the *Older Americans Act,* and we have talked a lot about the impor-

tance of having policies that help support people creating secure retirements.

But for many, as you know, staying connected to the workforce is necessary for achieving economic security. And I talk to constituents. The more mature constituents in my district really perceive that there is a lot of age discrimination out there.

So can you talk about what the Department is doing and intends to do to support older workers and to make sure that they are not left behind in workforce issues?

Secretary PEREZ. Sure.

Ms. BONAMICI. Thank you.

Secretary PEREZ. I will take your questions in the order that you asked them.

The *Workforce Innovation and Opportunity Act* is a great opportunity. It is well named.

And we have spent a significant amount of time, and I am really appreciative of the work of our dedicated staff at the Department of Labor. We have done outreach to states; we have traveled the country.

Frankly, Congress asked us to do about 18 months' worth of work in about 6 months, and we didn't quite do it in six months, but we did it in about 8 or 9. And we were meeting regularly with staff, and they understood that we were not asleep at the switch. Quite the contrary.

And as a result, the rule—the proposed rule is at the Federal Register. And we really look forward to the comments, because this can be and it will be game-changing. I think there is so much we can do in this space.

This is what it is all about, taking match.com to scale, recognizing that you take the job seeker where you find them. Some have a college degree or above and we need to just do a few things to help them get back in the workforce; some are coming out of prison; some are a person with disabilities; some are veterans. And we need to have tools in our toolkit to help everybody.

And that is exactly what WIOA does, and I am very excited about the work that has been done and the work that can be done. It is all about scale and sustainability.

Ms. BONAMICI. Thank you.

Secretary PEREZ. As it relates to the—your question about the *Older Americans Act,* we are going to be having a summit on older Americans. We did the working families summit—

Ms. BONAMICI. Right.

Secretary PEREZ.—that you were involved in last year. This year the White House will be doing a summit on older Americans that is going to deal with a wide range of issues relating to older Americans including retirement security, making sure that you can retire with dignity, and when you invest your hard-earned money, that you can make sure that somebody is looking out for you.

The Community Service Employment for Older Americans program, our budget proposes a number of changes all designed to make the program work better. And I certainly look forward to working with you so that your interest and leadership we can put to bear.

Ms. BONAMICI. Thank you, Mr. Secretary.

I yield back.

Chairman KLINE. Thank the gentlelady.

Mr. Carter, you are recognized for four minutes.

Mr. CARTER. Thank you, Mr. Chairman.

Secretary PEREZ. Morning, Congressman.

Mr. CARTER. And thank you, Mr. Secretary, for being here. As a new member of Congress, let me say that it is quite encouraging to hear all the compliments from the committee members about how you have obviously given a concerted effort to try to work with everyone here, so thank you—

Secretary PEREZ. There is a lot of common ground, and I want to find it and work with it.

Mr. CARTER. Well, as a long-time mayor and as a long-time state legislator, I can tell you that I am one who believes that a lot of our social ills can be resolved by jobs, so that is—

Secretary PEREZ. I worked in local government as well, so I know the rubber hits the road back in your old job.

Mr. CARTER. Absolutely.

Secretary PEREZ. Yes.

Mr. CARTER. Well, listen, I want to talk to you real quickly about the H–2B program. That is something that I have an interest in, and it is particularly important in my district.

And, you know, Congress, of course, has instructed the Department of Labor to work with Homeland Security on this, and I know that for many years the Department of Labor performed that role without formal rules. And in 2008, I believe you implemented some formal rules.

What was the need for the formal rules at that time? Why was there a need for that?

Secretary PEREZ. You need to have rulemaking authority to implement the underlying guidance. I mean, there is—the one thing—I don't know a program, Congressman, other than the H–2B program, where there has been literally more litigation, dating back to the Bush administration, and a host of decisions, one of which said that we, the Department of Labor—two of which now have said we, the Department of Labor, lack rulemaking authority to regulate in this space.

And then in other settings—and I think this gets to your underlying question—we have attempted to, in related settings, issue guidance and administer the program through guidance. And there has been litigation in that setting. And on I think two different occasions courts have said, "No, you can't simply run the program through the issuance of guidance; you need to have a notice and comment period if you are going to do that, as well."

So this has been a, quite frankly, a frustrating enterprise because I recognize the importance of the program, as someone who had the eastern shore of Maryland, and we want to try to get it right. And that is why we have outlined, in a very short timeframe, a series of steps designed to get the program up and running, make sure it is fair to American workers, because that is part of our responsibility, and then also make sure it is fair to employers.

Mr. CARTER. Can you give me an update about where we are with the program? When do you expect it to—right now I think that it has been suspended, or—

Secretary PEREZ. Right, it has been—three things. We filed a motion to stay the court's ruling day before last, and it was unopposed by the other side. And that goal is to make sure we can get the program up and running right now.

And then by April 30th we have committed to having an interim final rule in place so that rule will go into effect immediately, there will be a comment period, but while that comment period is in place the program is up and running. And then thirdly, the Department of Homeland Security, we had our—we had gotten roughly 1,000 or more applications off of our assembly line over to DHS, you know, as of March the 4th, and they were in limbo, and that assembly line over there is already up and running again.

So those are three very concrete steps designed to get the program moving again expeditiously.

Mr. CARTER. Great. Well, thank you. It is a good program and we hope that you will be able to get it up and running.

Thank you, Mr. Chairman, and I yield back the remaining time.

Chairman KLINE. I thank the gentleman.

Ms. Clark, you are recognized for four minutes.

Ms. CLARK. [Off mike.]

Secretary PEREZ. Good morning.

I think your microphone—

Ms. CLARK. Newbie on the committee.

Thank you for being here today.

And thank you, Mr. Chairman.

As you and I had a chance to discuss, I believe it is critical as we move forward to address income inequality in this country that we ensure that low and middle Americans still have the access to affordable, quality retirement savings options. And I appreciate the dialogue you have had with several of my colleagues here today and I really look forward—and thank you for your time yesterday—on continuing to work with you as the department goes through its rulemaking process. So thank you for that.

The issues that I want to focus on today are with equal pay and medical leave. As you know, women are still paid 78 cents to a man's dollar; and for women of color that gap—that wage gap is even greater.

Nationally, that is a wage gap of more than $10,000 per year between working women and men. That is the equivalent of 86 weeks of groceries.

So my first question for you is if you can tell me specifically how the Department of Labor is working to close this gap.

And in the same line as my colleague from Oregon raised, only 13 percent of Americans have paid family and medical leave through their employers. And often we are finding—I hear from my constituents—that working families are being forced to choose between their economic security and the health and wellbeing of their families.

Several states, including Massachusetts, California, Rhode Island, and New Jersey, have recently instituted paid leave and/or paid sick day programs. Is this a policy that you believe can be replicated in other states? And specifically, what initiatives is the Department undertaking to promote paid leave?

Thank you.

Secretary PEREZ. Thank you for both of your questions. And I certainly enjoyed our meeting yesterday.

You know, equal pay, as the father of three kids, two of whom are daughters, is very near and dear to my heart. And we issued a report, as you know, to highlight the fact that working women still earn only 78 cents on a dollar. First law the President signed when he became President was the *Lilly Ledbetter Act,* but that is not enough.

And that is why, as part of what the President did last year, he proposed—he directed us to issue an NPRM, which we have done, which proposes that covered employers would have to submit information relating to employee compensation. Lilly Ledbetter only found out she was getting taken advantage of when someone passed her an anonymous note, and so we have gotten a lot of comments on this proposed rule and we are working through those with an eye toward getting that finalized as soon as possible.

With respect to paid leave, I have traveled the world on this issue—Australia, Canada, U.K., Germany, and elsewhere—and whether it is a conservative ruling government or a progressive ruling government, they all embrace it. They recognize that we all succeed when women succeed.

If our labor force participation rate was even, women—female labor force participation, U.S. and Canada, in 2000 we had the same rate. Now they are eight points higher than us, roughly. That translates to, if we had kept pace we would have 5.5 million more women in the workplace.

That is why we are working with states to—and local governments to help correct this. And through our grant-making and technical assistance we are going to continue to do just that.

Ms. CLARK. Thank you.

Chairman KLINE. Gentlelady's time has expired.

Mr. Allen, you are recognized for four minutes.

Mr. ALLEN. Thank you, Mr. Chairman.

And, Mr. Secretary, thank you for—

Secretary PEREZ. Morning.

Mr. ALLEN.—being here. I, too, am a new member of Congress.

Secretary PEREZ. Congratulations.

Mr. ALLEN. I, for 30 years, had the privilege of allowing folks to have a good job and be able to support their families, and I can think of no greater privilege for anyone to have that opportunity to create jobs and give folks the dignity of a good job.

And with that respect, one—course, I am from Georgia, and we have, of course, had tremendous job growth. We lost about 360,000 jobs in 2008 because we were so dependent on one particular industry, and we have just about replaced those jobs with a diversity of jobs.

And one of the things that we run into—two questions I want to ask you. One of things we are running into right now because of the growth in our state is getting skilled workers. And everybody I talk to—I don't know—welders are needed everywhere, apparently.

And the other issue in our state is in our agriculture program. And, of course, we use the H–2A temporary agricultural worker visas.

And, you know, I talk to our farmers and it is a real hassle to deal with that program. I mean, your folks seems to be making it almost impossible to use that program. And have you talked to any of our farmers about that program and how that program could be improved so that it is a little easier to use that program in our fruit and vegetable industry?

Secretary PEREZ. I haven't talked to farmers in Georgia, but look—I am always looking for ways to make every program we operate more effective, and that is why I sat down with Congressman Guthrie's constituents to talk about ESOPs. They educated me a lot and I always look forward to listening and learning, whether it is H–2A, whether it is any issue before this committee that affects working people.

As it relates to your skills issue, I hear that everywhere. And the challenge for us in the implementation of WIOA is really the challenge of we have got a lot of promising practices out there; we have got to take them to scale. We also have to build some new—build and/or fortify on-ramps to this skills superhighway, because we have five million job openings right now, and—

Mr. ALLEN. And these are not minimum-wage jobs.

Secretary PEREZ. No, no, 500,000 are in I.T.

Mr. ALLEN. We are spending energy talking about raising the minimum wage when we have got great-paying jobs out there. We just need to get folks to learn those skills to fill those jobs.

Secretary PEREZ. I don't think those are either/or strategies. I think those are both and then some. There are 500,000 I.T. jobs right now, and that is why what we are trying to do through our investments in apprenticeship and elsewhere to build those pathways to prosperity.

And again, this is not partisan stuff. If we fortify our community college system, if we build solid on-ramps for people to go into apprenticeship in I.T. or apprenticeship in health care—in South Carolina they are using tax credits—CVS is using tax credits—

Mr. ALLEN. We are doing the same in Georgia.

Secretary PEREZ.—and put them into pharmacy tech programs, where they are paying, you know, good, solid jobs. So a lot of opportunity—

Mr. ALLEN. Yes. We have got a number of those programs going on, but also, if you would make time available for my farmers I think they would like to talk to you about that program.

Secretary PEREZ. I would look forward to it.

Mr. ALLEN. Good. Thank you.

I yield back my time.

Chairman KLINE. Gentleman yields back.

Mr. Courtney, you are recognized.

Mr. COURTNEY. Thank you, Mr. Chairman.

And thank you, Mr. Secretary—

Secretary PEREZ. Morning, Congressman.

Mr. COURTNEY.—for your great service.

Yes, good morning.

Again, just want to thank you for, on page three and four of your testimony, telling the story of Katherine Hackett, my constituent who was, you know, in my opinion, almost an iconic example of

how, number one, her determination combined with the assistance that the Department of Labor provided, you know—

Secretary PEREZ. Match.com at work.

Mr. COURTNEY. It reset her life. You know, and I think it is also important just to flesh out a little more of her story.

She is the mother of two sons who are serving in our military—one is Special Forces and another who is a physician down at Fort Hood. Again, at one point she and her family were feeling a little sort of let down because her unemployment ran out, but again, because of a lot of concerted effort by your team and—

Secretary PEREZ. And you, sir.

Mr. COURTNEY.—and, you know, we were able to get her at Norwich Orthopedics, where—I just wanted to read to you—I sent her a quick note that you mentioned her in today's hearing, and this is the note that her employer just gave her a couple days ago, which is, "You have exceeded my expectations as the operations manager. I can honestly say that you are the best operations manager we have ever had. Keep up the good work."

You and I visited that facility. It is a sprawling orthopedic practice. I mean, it is just a beehive of activity, and she is kind of the quarterback, making sure people find their way.

Again, a year ago she was basically living at home with 58 degree temperatures trying to save money and electricity costs because she was, again, disconnected from the workforce for no fault of her own. And it just shows that supportive employment, which is what you guys stepped up with to get that sort of bridge for her to establish herself, is a model that can work.

So WIOA obviously was all about trying to use that kind of collaboration, and I think you called it partnerships with employers. And maybe if you could just spend a minute talking about the implementation of the regs and the rollout that is hopefully going to take place this year?

Secretary PEREZ. Well, will take place. And, you know, the proposed rules are at the Federal Register. Those rules will not be a surprise to people, I think, because they are the product of a tremendous amount of collaboration. The Thanksgiving and religious holidays of December were nonexistent for a lot of our staff because they were working day and night to get those done, doing a lot of listening at the state and local levels, here with your teams.

And I—again, I think we have to—this is what we have to do now with WIOA implementation, it is partnership at scale, match.com at scale, building these new on-ramps. Because we met with 50 employers at the White House last week to figure out this strategy for tech, because we have got 500,000 tech jobs right now.

And employers were saying, you know, "We have on-ramps that aren't existent right now, and if we don't do this, shame on us, and we can do it." And so I am looking forward to taking the WIOA framework and making sure that we can scale—because, you know, Katherine Hackett is a great success story, and there are literally millions of Katherine Hacketts out there that we need to reach, and millions of employers who want to hire the Katherine Hacketts, and we have got to do that match.com work at scale.

Mr. COURTNEY. The appetite for this, in terms—because most employers I talk to have no idea WIOA was signed into law. I

mean, it was amazing. Mr. Kline was there. I think there was one TV camera. The media just don't like to see—

Secretary PEREZ. We have a marketing challenge, yes. We have got to get the word out.

Mr. COURTNEY. But when the word gets out I think it is going to be just a smashing success.

I yield back.

Chairman KLINE. I thank the gentleman.

Mr. Messer, you are recognized for four minutes.

Mr. MESSER. Thank you. Thank you, Mr. Chairman.

Secretary PEREZ. Morning, Congressman.

Mr. MESSER. How you doing?

Secretary PEREZ. I am doing well, sir.

Mr. MESSER. I had a couple different topics—I am trying to find it here, but a couple different topics I wanted to chat with you about briefly. And thank you, again, for your testimony in front of the committee.

First I wanted to ask you a quick question about stop-loss insurance. As you know, it is a financial risk management tool that allows self-insuring employers to protect themselves against unusually high health care claims.

Over the past few years this administration has repeatedly signaled interest in regulating stop-loss insurance as health insurance even though this coverage does not pay medical claims directly, doesn't have a network of physicians, or perform any of the traditional functions of health insurance. And I was wondering, are you aware of any attempts to regulate stop-loss coverage by this administration?

Secretary PEREZ. I would have to get back to you on that. Our Employee Benefits Security Administration is the entity in the Department of Labor that addresses issues relating to, you know, health care, and ERISA plans, and things of that nature. And what I would like to do is talk to them so that I can give you an accurate answer.

Mr. MESSER. Okay. Thanks. If you could get that back to us in writing—

Secretary PEREZ. Sure.

Mr. MESSER.—I would appreciate it. You know, stop-loss insurance is important sort of umbrella coverage for those that provide self-insured plans.

The second question I would like to ask you about is, with so much of the burden for accumulating retirement assets shifting to the individual, as well as understanding how to convert those assets to guaranteed income that can't be outlived through increasingly longer times in retirement, it strikes me that more advice is needed for American workers, not less. I worry about expanding the definition of—I worry about what expanding the definition of "fiduciary" will mean to fewer—that it could mean fewer advisors will offer advice on retirement assets and fewer people will receive it.

It is that simple to me: more need and less capacity. And people want advice about all of their financial picture, not just their nonretirement assets.

Secretary, what assurances can you give that the rule your office is on the verge of releasing will lead to more advice for American workers and not less?

Secretary PEREZ. Well, I agree with you that we want to make sure that more people have access to good advice. And it has to be sound advice.

And, you know, I have had a—I have participated in many, many outreach sessions and they have all been very, very helpful, with industry and others. And, you know, folks have said that—and these are folks who have been doing this for a living, and they are fiduciaries right now, and they deal with large investors and small investors, and they say, "We treat them the same."

And the concern that they express to me is, consumers don't know when they walk in the door whether someone has taken an oath to look out for their best interest or whether they haven't. Now, that is not true for lawyers and that is not true for doctors. You know, when you go to your doctor they—you know the oath they have taken.

And that creates uncertainty. And I think for small investors it is doubly important that the advice they are getting is in their best interest.

And as I said earlier, Jack Bogle, the founder of Vanguard, who has been in this business 64 years, said, "I learned early on when you take care of your customer and put their interest first it helps the customer—it is good for the customer and it is good for business."

Mr. MESSER. Well, yes. I think we all agree with that. I think the question is, will the unintended consequences of this decision be that people get less advice, not more?

Chairman KLINE. The gentleman's time has expired.

Mrs. Davis, you are recognized.

Mrs. DAVIS. Thank you, Mr. Chairman.

And, Mr. Secretary, thanks for being here, for always standing up and working hard for the—

Secretary PEREZ. Look forward to coming out to your neck of the woods.

Mrs. DAVIS. Yes, absolutely.

Just for the record, and as background, as well, we talked earlier today, but I wanted to ask you to respond to what is a time-sensitive issue in California. As you know, in 2013, the Department of Labor held up public transit grants to all California transit systems because of a dispute over whether or not a 2012 state-passed pension law violated the so-called Section 13(c) labor protections for transit workers.

So all of those transit grants, as you know, were put on hold, pending the outcome of a Federal court case. And that case, *California v. the U.S. Department of Labor,* was decided in California recently and the funds were ordered to be released, but the department has plans, as I understand it, to appeal that.

I wanted you to, if you could respond and perhaps get back to us in a timely fashion. What does the department plan to do with the transit funds in the interim as the appeals process makes its way to the court?

Secretary PEREZ. Well, thank you for your question, and we did chat briefly about this earlier, and I certainly understand the importance of FTA transit grants. I think I was three days on the job when I had my first conversation with Governor Brown. And if it wasn't three days it was early on. I knew where the bathroom was, but I was still learning the job.

And I have learned a lot about 13(c) since then. It is really, you know, it is a law from Congress which says—it is really a promise to bus drivers and other employees who work for federally funded transit agencies.

We have been in litigation, as you know, for some time. We have not denied any certifications to any transit agencies since the court issued its opinion.

Our team has been in touch with California as recently as yesterday. Our goal is to work out a solution that works for everybody, and I personally—as I said, I have spoken to the governor, I have spoken to his chief of staff.

And while it is still in litigation so there are limits to what I can say, I can certainly tell you that we are looking for solutions that will allow us to certify transit grants during the pendency of the litigation, because I recognize, as a local government guy, that is pretty important.

Mrs. DAVIS. Yes. Is it realistic to look at a timeframe of about two weeks to have a written response, at least to the committee, in terms of where we are and what the plans are—

Secretary PEREZ. Well, I will do my best to get you a response that is accurate and expeditious.

Mrs. DAVIS. Okay. Thank you. Thank you, Mr. Secretary.

And, as well, there is, as you know, another issue in California. California is helping to develop an automatic IRA, and I would like to ask for your help in doing that so that we are true to ERISA, as I know we need to be, and are able to move forward with that.

Secretary PEREZ. I have had a number of conversations with stakeholders in California and elsewhere, including Maryland, who want to certainly help promote alternative ways of encouraging people to retire—or save for retirement, and we want to make sure that we do that in a manner that ensures the proper consumer protections, and that has been a very robust and I think productive and constructive process. And I look forward to continuing that.

Mrs. DAVIS. That is great.

And finally, I know you have dealt with the conflict of interest rule while you have been here today, and certainly there are lots of best practices that are out there in the industry, as you noted earlier, as well as work that consumer groups have done. And so I hope that we can move forward and try and get the best result out of that.

Secretary PEREZ. I agree. I think we can thread the needle—

Mrs. DAVIS. Thank you.

Secretary PEREZ.—as long as we listen.

Chairman KLINE. Gentlelady yields back.

Mr. Secretary, I think we are going to make it. Pending the length of the ranking member's closing remarks, we will be out of here before 12:00.

Mr. Scott, you are recognized for any closing remarks?

Mr. SCOTT. Thank you, Mr. Chairman, and I will be brief.

I just wanted to thank the secretary. Particularly, he mentioned the sensitivity of H–2B visas on the eastern shore. Certainly in Hampton, West Virginia, it is a huge issue and we appreciate your expeditious work on that, and on pensions.

Having people get ripped off of their life savings by unscrupulous advice I think is something we need to protect against—and pensions generally, because you mentioned the multiemployer, all the pension—many pension funds are at risk and we need to make sure that they are protected.

The economy is on the right track. We are going in the right direction. The growth has been consistent but, as we have said, not quite robust enough, so we still need to do more work.

But we don't want to go backwards, and we need to make sure that we have an effective Department of Labor so that you can continue the good work that you have been doing. That is going to require appropriate budget, and we will be reviewing that budget on your behalf.

So thank you, Mr. Secretary, for being here.

Yield back.

Chairman KLINE. I thank the gentleman.

Thank you again, Mr. Secretary, for being here. I think we have had a pretty robust discussion, covered a lot of ground.

I appreciate your prompt and frank responses to questions on a wide variety of issues. Your department covers so many areas.

It is very clear that we are going to disagree—probably you and I, and on each side of the aisle—on some of the issues about whether minimum wage should be established by states or the Federal Government, and so forth. But, I think the level of cooperation is very encouraging.

We have got some very, very big jobs in front of us, including the continuing work to complete the work on the solvency of the PBGC and the multiemployer pension plans. I am looking forward to that work, and I thank you very much for being here today.

There being no further business, committee stands adjourned.

[Additional submission by Chairman Kline follows:]

ACLI
Financial Security...for Life.

Statement for the Record
U.S. House Committee on Education and the Workforce Hearing
"Reviewing the President's Fiscal Year 2016 Budget Proposal for the Department of Labor"

March 18, 2015

The American Council of Life Insurers (ACLI) is pleased to submit this statement for the hearing record regarding the Department of Labor's (DOL) fiduciary rulemaking efforts. We share the DOL's interest in seeing that plans, plan participants, and individual retirement account (IRA) owners who seek out and are promised advice that is impartial and disinterested ultimately receive advice that adheres to the rigorous standards imposed by Employee Retirement Income Security Act (ERISA). In pursuit of this objective, however, the DOL must be careful not to interfere with investment sales and distribution practices that are customary in the marketplace, well understood, and commonly relied upon by financial services providers, plans, plan participants, and IRA owners alike. The DOL's efforts must avoid leaving plans, plan participants, and individual retirement accounts (IRA) owners with less access to investment education and information.

The ACLI is a Washington, D.C.-based trade association with more than 300 legal reserve life insurer and fraternal benefit society member companies operating in the United States. Its members represent more than 90 percent of the assets and premiums of the U.S. life insurance and annuity industry. In addition to life insurance, annuities, long-term care, and disability income insurance, ACLI member companies offer insurance contracts and investment products and services to employment-based retirement plans (including defined benefit pension plans, 401(k), SIMPLE, SEP, 403(b), and 457(b) plans) and to individuals (through IRAs and annuities). Our members also are employer sponsors of retirement plans for their employees. As service and product providers, as well as employer sponsors, life insurers believe that saving for retirement, managing assets throughout retirement, and utilizing financial protection products are all critical to Americans' retirement income and financial security.

In October 2010, the DOL proposed changes to the definition of fiduciary that has been in place since 1975, soon after passage of the ERISA. The overly-expansive definition in the 2010 proposal would have resulted in limiting, and in many cases eliminating, access to meaningful investment services for millions of retirement savers. In September 2011, the DOL withdrew the proposal to provide additional time for stakeholders to submit input, responding to almost 200 House and Senate Members of Congress from both parties who urged the DOL to coordinate rulemaking with the Securities and Exchange Commission, provide a robust economic analysis, and provide workable prohibited transaction exemptions. On February 23, 2015, the DOL submitted a new proposal for review by the Office of Management and Budget.

ACLI member companies and their representatives are at the forefront of helping people save for retirements that may last decades and providing guaranteed lifetime income that supplement Social Security. Seniors need the income protection life insurers provide. Many people first learn of the benefits of annuities and other guaranteed lifetime income products from a life insurance agent or broker. Rollovers provide retirees a way to secure guaranteed lifetime income with their retirement

savings. Unfortunately, today, too few defined contribution plans offer retiring workers an annuity option. In 2010, the DOL, Department of Treasury, and Internal Revenue Service initiated joint regulatory efforts to facilitate access to, and use of, lifetime income. Continued access for workers and retirees to information and education on lifetime income products would be consistent with this initiative.

The current ERISA fiduciary rules have been in place for almost forty years. Official guidance on the line between investment and educational activities has been in place for close to twenty years. Service providers, agents, and financial advisers need unambiguous rules to confidently determine their duties and obligations in order for the marketplace to function efficiently and to ensure that plans, plan participants, and IRA owners continue to have a broad range of investment products and services available to them, including investment guidance and educational services. A rational response to ambiguous and broad rules that could lead to large liabilities is for financial service professionals to forego meaningful educational activities.

American families count on life insurers' products for protection, long-term savings, and a guarantee of lifetime income when it is time to retire. It is critically important that the DOL's fiduciary rule work to increase, not reduce, much needed financial guidance and education to workers and retirees.

[Additional submission by Mr. Sablan follows:]

GREGORIO KILILI CAMACHO SABLAN
NORTHERN MARIANA ISLANDS

COMMITTEE ON NATURAL RESOURCES
VICE RANKING MEMBER
SUBCOMMITTEE ON INDIAN, INSULAR, AND ALASKA NATIVE AFFAIRS
SUBCOMMITTEE ON WATER, POWER, AND OCEANS

COMMITTEE ON EDUCATION AND THE WORKFORCE
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Del. Gregorio Kilili Camacho Sablan

Statement for the Record of the Hearing on

"Reviewing the President's Fiscal Year 2016 Budget Proposal for the Department of Labor."

March 18, 2015

Welcome, Secretary Perez, and thank you for the work of your Department in and for the Northern Mariana Islands.

My primary concern at last year's budget hearing was your pending decision on whether to extend for another five years the Commonwealth-only Transitional Worker (CW) program established under Public Law 110-229. You did subsequently extend that program and I would like to thank you for making that decision. This additional five years will help insure there can be an adequate workforce in the Northern Marianas, as we begin to see an upsurge in business activity following a long period of economic decline.

Five years will go by quickly, however; and in that time the Commonwealth government, Northern Marianas businesses, and our local educational institutions are going to have to work very hard and very effectively to adopt policies that encourage workforce participation, to identify and train U.S. workers, and to educate young people and those who want to develop new skills to fill the jobs now held by CW workers.

The Workforce Innovation and Opportunity Act, which was a product of this Committee and which the Department of Labor will be administering, will provide assistance to the Commonwealth. Beyond and in addition, though, the Department of Labor must be actively involved in this transition from an economy dependent on foreign workers to one that provides full and well-paid employment for U.S. workers.

I know that there is already engagement between your Department and stakeholders in the Commonwealth, and I want to encourage you to do everything you can to provide technical assistance, financial resources, and the advice and expertise of the Department of Labor to the problem of making this transition in the very short time available. I would also very much appreciate your Department keeping me informed of your activities in this regard, so that, if Congress can help you, I know what you need.

Putting U.S. workers to work is not solely an issue for the Northern Mariana Islands, it is a national goal, as well. The President's FY16 budget reflects that, requesting funding for new programs to get the unemployed back to work, to increase apprenticeship opportunities, and to expand youth activities. Sometimes, however, in pursuing our national goals, the situation of Americans in "territories" is overlooked. So, I want to ask that in establishing eligibility criteria and requirements for any of these new initiatives, the Department ensure they extend equally to all Americans no matter how far from the mainland U.S. we may be.

For example, the President has proposed an American Technical Training Fund, which is to be jointly administered by the departments of Labor and Education. According to the descriptions available to me, the program would build on and expand activities previously funded by Trade Adjustment Assistance Community College and Career Training (TAACCCT) grants, which ended in FY14. The problem is that educational institutions in the territories were ineligible to receive the maximum points for applications for the TAACCCT, because workers in the territories are not eligible for Trade Adjustment Assistance certification. So using TAACCCT as the foundation for the newly proposed American Technical Training Fund will start the Northern Marianas off at an immediate disadvantage, unless specific remedies are put into place to ensure that we can participate on an equal footing with every other jurisdiction in America.

So here is the general principle: in creating new programs or administering those already on the books we have to be sure that Americans living in non-state areas of our nation, who face economic challenges as great or greater than other Americans, receive from the Department of Labor equivalent assistance to improve their lives.

I want to end with one more thank-you. Assistant Secretary Joseph Main of the Mine Safety and Health Administration met with me recently to inform me of the Administration's plans to begin oversight of those workplaces in the Northern Marianas that are subject to the Federal Mine Safety and Health Act. Federal regulators are often the butt of criticism. But Assistant Secretary Main is demonstrating a sensitivity in extending these health and safety regulations, which belies the usual complaints of heavy-handedness and misunderstanding of local conditions. I appreciate the personal briefing he has given to me and to Commonwealth government officials and the opportunity he provided for our feedback, while he is in the early stages. Of course, I support having a safe and healthy environment for mine workers. I also support the Assistant Secretary's efforts to minimize any disruption of local mine operations in the Northern Marianas by providing extensive training and compliance assistance to mine operators and their employees on application of the Mine Safety and Health Act.

Thank you.

[Questions submitted for the record and their responses follow:]

COMMITTEE ON EDUCATION
AND THE WORKFORCE
U.S. HOUSE OF REPRESENTATIVES
2181 RAYBURN HOUSE OFFICE BUILDING
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June 11, 2015

The Honorable Thomas E. Perez
Secretary
U.S. Department of Labor
200 Constitution Avenue
Washington, D.C. 20210

Dear Secretary Perez:

Thank you for testifying at the March 18, 2015, Committee on Education and the Workforce hearing entitled "Reviewing the President's Fiscal Year 2016 Budget Proposal for the Department of Labor." I appreciate your participation.

Enclosed are additional questions submitted by Committee members following the hearing. Please provide written responses no later than June 25, 2015, for inclusion in the official hearing record. Responses should be sent to Zachary McHenry of the Committee staff, who can be contacted at (202) 225-7101.

Thank you, again, for your contribution to the work of the Committee.

Sincerely,

John Kline

JOHN KLINE
Chairman
Committee on Education and the Workforce

Enclosure

cc: The Honorable Robert C. "Bobby" Scott, Ranking Member, Education and the Workforce Committee

Chairman Kline (MN)

Retirement and Pension Security

1. DOL has a key role to play in implementing the *Multiemployer Pension Reform Act,* along with the Treasury Department and the Pension Benefit Guaranty Corporation. The law requires a full implementation date of June 15th. Do you expect the administration to meet this deadline? What issues present the biggest implementation challenges?

2. DOL recently held a hearing regarding an application from a financial services firm to waive certain technical requirements to providing "qualified professional asset manager" services to employee benefit plans under the *Employee Retirement Income Security Act*. Does DOL have standardized processes for deciding when to have administrative hearings in these situations and for determining who should be allowed to testify?

"Blacklisting" Executive Order

1. Please explain DOL's budget proposal for the creation of a new Office of Labor Compliance to implement Executive Order (EO) No. 13673. How much will it cost to create this office? Will the $2.6 million included in the Departmental Management section of DOL's proposed budget cover this or will there be other related costs? How will the office be staffed and what sort of experience will these individuals have? Where will the office fall within the structure of DOL?

2. EO No. 13673 calls for the newly created position of a Labor Compliance Advisor to be placed at each agency. According to DOL's March 5, implementation memo, the advisors must be designated by June. How many advisors are projected to be hired government-wide and what will their training entail? How will DOL ensure these advisors will be sufficiently knowledgeable to answer contractors' questions on hundreds of federal and state labor laws? What sort of analysis will DOL do to investigate the impact these new advisors will have on government procurement?

3. The President signed EO No. 13673 to ensure federal contractors understand and comply with federal and state labor laws. However, according to the administration, an overwhelming majority of federal contractors play by the rules and do not have federal workplace violations. For those contractors who do not play by the rules, the current federal contracting system has remedies to address unsatisfactory labor records: suspension and debarment. Yet, during Fiscal Years 2012 and 2013, DOL registered no suspensions or debarments of federal contractors, though other agencies had active suspension and debarment referrals during that time. Can you explain why DOL had no suspension or debarment referrals for those two years? Are there internal issues that should be addressed at DOL with your suspension and debarment system before a new and redundant system is implemented?

4. With regard to EO No. 13673, one of the most significant concerns voiced by employers is how non-final adjudications – such as administrative merits determinations – may be required to be reported during the responsibility determination process; even though it could later be found that there was no contractor wrongdoing. Such determinations could include a National Labor Relations Board complaint that has not yet been subject to any sort of administrative or judicial review. Will these non-final adjudications in fact be considered? You have stated the executive order is meant to "level the playing field." How does consideration of mere allegations against an employer make the competition for federal contracts fairer?

Fair Labor Standards Act

1. In December of 2013, the Government Accountability Office (GAO) issued a report entitled, "The Department of Labor Should Adopt a More Systematic Approach to Developing Its Guidance." GAO found that substantial increases occurred over the last decade in the number of civil lawsuits filed in federal district court alleging violations of the *Fair Labor Standards Act* (FLSA). That finding is bolstered by the most recent data from the Administrative Office of U.S. Courts. A total of 8,160 FLSA cases were launched during FY 2014 — an 8.8 percent increase and the highest annual registered number by the court's administrative office in more than 20 years. GAO's report found that many factors have contributed to this trend. It determined that DOL does "not compile and analyze relevant data to help determine what guidance is needed, as recommended by best practices previously identified by GAO." The report noted that the Wage and Hour Division (WHD) has since 2009 reduced the number of FLSA-related guidance documents it has published. As per GAO's recommendation, what steps has the WHD taken to develop a systematic approach for identifying areas of confusion about the FLSA's requirements? What are the WHD's plans, especially in light of the Obama administration's decision early on to stop issuing fact-specific opinion letters, for increasing guidance to employers to facilitate compliance?

2. In October 2014, DOL published in the Federal Register a final rule implementing the executive order *Establishing a Minimum Wage for Contractors*. The *Congressional Review Act* requires a 60 day delay in the effective date of a major rule from the date of publication in the Federal Register or receipt of the rule by Congress, whichever is later. GAO, which is charged with assessing your agency's compliance with the procedural steps required by the law, noted that DOL did not have the required 60-day delay in the effective date. The rule was received by the House on November 14, 2014, and received by the Senate on November 13, 2014; as such, GAO noted that DOL did not comply with the required 60-day delay, when it set an effective date of December 8, 2014. Could you explain why DOL failed to follow the procedural steps required with respect to the rule? Does DOL intend to follow the correct procedural steps with respect to rules that will be promulgated going forward?

Office of Federal Contract Compliance Programs

1. The Office of Federal Contract Compliance Programs (OFCCP) relies heavily on statistics when enforcing nondiscrimination requirements. Federal contractors may respond to these enforcement practices by instituting a quota system in hiring and advancement in order to avoid running afoul of what OFCCP expects. Are there any safeguards in place to make sure OFCCP's reliance on statistics in enforcement does not lead to quotas?

2. There is a lack of clear understanding of how OFCCP selects contractors for auditing. Sometimes a single company is selected for multiple simultaneous audits while others go for years with no audits. How can we know selections are made neutrally and objectively? Does OFCCP share the selection criteria, factors and formula with contractors and the public?

3. In August, DOL issued a proposed rule requiring federal contractors to report summary data on compensation broken down into categories of race, sex, and ethnicity. The rule fails to follow a recommendation made by the National Academy of Sciences that DOL collaborate with the Equal Employment Opportunity Commission (EEOC) and the Department of Justice (DOJ) to develop a comprehensive data collection plan. According to the proposed rule, DOL did not follow this recommendation because EEOC's process for developing a pay data requirement would take too long, and the President in April 2014 directed the DOL to issue a rule by last August. Other than this artificial deadline, was there any reason DOL failed to develop this rule through a deliberative and collaborative process with other relevant agencies?

Labor-Management Relations

1. DOL has received numerous comments from a wide variety of stakeholders, including 14 state attorneys general and the American Bar Association (ABA), that the "persuader" regulation will have a chilling effect on the attorney-client privilege and employers' fundamental right to counsel. The 2014 Fall Unified Agenda stated final action on the "persuader" rule would occur in July 2015. Has the DOL discussed the attorney-client privilege issue with the state attorneys general or the ABA? What have you done to ensure the "persuader" rule does not chill the attorney-client privilege?

2. In 2013, the Committee sent multiple letters seeking information on "worker center" filing requirements under the *Labor-Management Reporting and Disclosure Act* (LMRDA). Traditionally, "worker centers" are "defined as community-based and community-led organizations that engage in a combination of service, advocacy, and organizing to provide support to low-wage workers." However, they have also taken direct action to alter conditions of employment and organize employees. A credible case can be made that "worker centers" are labor organizations under section 2(i) of the LMRDA and therefore subject to the LMRDA's filing requirements. DOL has disagreed. However, in 2014, it appears a number of "worker centers" filed LM-2s with DOL, including the St. Louis Organizing Committee, the Fast Food Workers Committee, the

Carolina Workers Organizing Committee, and the Workers Organizing Committee of Chicago. Clearly, these organizations believe they are labor organizations under the LRMDA and have chosen to file the required reports. Were these LM-2s filed in error? Has or does DOL have plans to audit these organizations?

Temporary Worker Programs

1. On March 4, 2015, DOL announced it would no longer accept or process requests for prevailing wage determinations or applications for labor certifications in the H-2B visa program. DOL said it was suspending the program because of the order in *Perez v. Perez*, No. 3:14-cv-682 (N.D. Fla. Mar. 4, 2015), vacating DOL's 2008 H-2B regulations, even though the court did not order the Department to stop processing requests and applications. Please explain why DOL made this decision. What was the legal authority for suspending the program?

2. DOL seems to have been caught flat-footed when the district court ordered the 2008 H-2B regulations to be vacated in *Perez v. Perez*, No. 3:14-cv-682 (N.D. Fla. Mar. 4, 2015). However, the court's decision in *Perez v. Perez* could not have been a surprise, given the same district court's previous decision in *Bayou Lawn & Landscape Services v. Perez*, No. 3:12-cv-183, 2014 WL 7496045 (N.D. Fla. Dec. 18, 2014), which vacated DOL's 2012 H-2B regulations on the same grounds as in *Perez v. Perez*. Were contingency plans in place prior to the district court's decision on March 4, 2015, to ensure the H-2B program continued to function? If not, why not?

3. Congress directed DOL to consult with the Department of Homeland Security (DHS) with respect to the H-2B program. DOL performed its consultative role in the H-2B program for decades until 2008 without issuing formal rules. What is your understanding of what Congress expected of DOL in fulfilling this role? What changed that made formal rules necessary? Can DOL perform its role without issuing formal rules?

4. The *Wagner-Peyser Act of 1933* and the *Workforce Investment Act of 1998*, as amended, authorize state workforce agencies to operate a labor exchange of unemployed workers. These laws allow state workforce agencies to identify unemployed workers who are available for a particular job, including a job for which an employer is seeking H-2B workers. Why couldn't state workforce agencies have performed this work without DOL's 2008 or 2012 H-2B rules in place? Did DOL direct state workforce agencies to stop processing H-2B applications? If so, why?

5. DOL has the ability to issue H-2B prevailing wage determinations using the Occupational Employment Statistics (OES) program's wage levels pursuant to the 2013 interim final rule issued by DHS and DOL (RIN 1205-AB69). Why couldn't DOL have continued to provide DHS with OES-based prevailing wage determinations in the absence of the 2008 H-2B rule?

6. DHS's 2008 H-2B rule contains program integrity protections and places substantive requirements on U.S. employers seeking to hire H-2B workers. If DOL provided OES-based wages to DHS, and if state workforce agencies conducted job postings and performed a labor market test for unemployed U.S. workers, what would prevent DHS from processing H-2B petitions? Why can't DHS operate the H-2B program without DOL-issued rules?

Occupational Safety and Health Administration

1. The Occupational Safety and Health Administration (OSHA) must promulgate regulations based on technologic and economic feasibility. Stakeholders assert that the proposed silica permissible exposure limit does not meet either test. Specifically, at the proposed permissible exposure limit, silica cannot be accurately measured. Comments outlining this problem assert that the accredited commercial laboratories designated to measure silica samples for employers may not be able to provide accurate and reliable results. OSHA appears to know this is a problem. Under the proposed rule, laboratories would have two years to improve their sampling systems. However, companies would not receive a two year grace period and would be reliant on samples of which they have no confidence represent their employees' actual exposure levels. Further, these faulty samples would serve as enforcement tools for OSHA inspections. Will any final rule address this conflict?

2. Effective January 1, 2015, OSHA changed employer reporting requirements for injury and illnesses. One way employers are allowed to contact OSHA is through a web portal or online form. This requirement has been in effect for almost three months; however, the online form remains unavailable. Do you know when OSHA will have this aspect of the regulation ready?

3. Last year in testimony before the Subcommittee on Workforce Protections, Ms. Randy Rabinowitz highlighted that employers can refuse OSHA access to a jobsite for an inspection and require the agency to seek a warrant. It is worth noting that employers might be reluctant to do this because it could engender animosity with the inspector. At issue, however, is that OSHA would be seeking a warrant to allow participation by a third party, who is not a designated representative of the secretary. Do you believe OSHA will be successful in obtaining a warrant that allows a third party to accompany an inspector? Has OSHA had to obtain a warrant with a third party? If not, is that because OSHA walks away from the inspection?

4. OSHA created a chemical exposure toolkit with sources other than OSHA's own regulations for exposure limits. OSHA's press rollout of the toolkit was critical of the agency's inability to update its own permissible exposure limits. Is it appropriate for an agency to undermine its own standards through guidance? Do you believe the toolkit creates certainty and confidence for the regulated community? Will companies be cited under the general duty clause for failing to comply with the toolkit rather than OSHA's regulations?

Mine Safety and Health Administration

1. The Mine Safety and Health Administration (MSHA) recently finalized proximity detection regulations for continuous mining machines. These detectors are designed to power down equipment when a miner is in close proximity, preventing the possibility of crush accidents. A second phase of this regulation is planned for other underground mining machines. Will this requirement extend to the metal/nonmetal sector which has seen an increase of injuries and fatalities?

2. According to MSHA's most recent data, the metal/nonmetal sector experienced an increase in injuries and fatalities in 2013 and 2014, relative to previous years. This occurred while injury and fatalities rates in the coal sector have sharply declined. What is MSHA doing to ensure better health and safety within the metal/nonmetal sector? Does DOL's budget reflect the needs of this sector?

Rep. Walberg (MI)

1. Employers are utilizing wellness plans to help improve employees' health and reduce health care costs. In fact, the *Patient Protection and Affordable Care Act* (PPACA) encourages employers to offer wellness programs by allowing incentives for employees who participate. In implementing the law, DOL, together with the Departments of Health and Human Services (HHS) and Treasury, wrote final regulations instructing employers how these programs should be set up in accordance with PPACA. The law and rule incorporates *Health Insurance Portability and Accountability Act* nondiscrimination protections, providing that participatory wellness programs are compliant as long as they are made available to all similarly situated individuals. Yet, the Equal Employment Opportunity Commission (EEOC) has taken enforcement action against PPACA-compliant employer wellness programs. Although the EEOC does not fall within DOL's purview, its actions seem to conflict directly with actions DOL has taken. Even Josh Earnest, the President's press secretary expressed concerned with EEOC's actions and stated that "wellness programs are good for both employers and employees." Can you tell me, does the administration support employer wellness plans or not? Assuming it does, can you offer any explanation regarding EEOC's actions to the contrary?

Rep. Rokita (IN)

1. Please provide a breakdown of resources and Full-Time Equivalents (FTE) used from the Occupational Safety and Health Administration's Federal Compliance Assistance budget used for the Voluntary Protection Program (VPP) for FY 2009 – 2014, an estimated breakdown for FY 2015, and an anticipated breakdown for FY 2016. For each fiscal year, please use prorated estimates for FTE and resources used for more purposes than VVP.

Rep. Messer (IN)

1. During your March 17, 2015, appearance before the House Labor/HHS/ED Subcommittee hearing that you had spoken with Securities Exchange Commission (SEC) Chair Mary Jo White "eight or nine" times on the fiduciary rulemaking. I am very concerned – absent seeing both rules at the same time – that one rule would superimpose on the other. This could lead to confusion causing the education and guidance marketplace to dry up or be reduced. As baby boomers are beginning to settle into retirement, now is the time to keep the current marketplace in place to ensure access to guidance that help retirees address longevity and investment risk. Please outline what information was shared between the Department of Labor (DOL) and SEC as the proposed fiduciary rulemaking was being devised.

2. Has DOL considered, and come up with an answer to, how individuals with accounts between the sizes of $10,000 to $80,000 will receive services? Individuals with accounts of that size most need the financial education that financial services companies provide. In the United Kingdom, a rule that banned commissions has negatively impacted access to financial education that financial services companies provide, particularly for investors with accounts between the sizes of $10,000 to $80,000. What steps does the proposed rule take to avoid this result?

Rep. Davis (CA)

1. In California in 2012, Governor Brown proposed, and the legislature enacted, a pension reform law called PEPRA. In 2013, DoL held up public transit grants to *all* of California because of a dispute over whether or not this new pension law violated so-called 'Section 13(c) labor protections' for transit workers. All transit grants were put on hold, pending the outcome of a federal court case. That case, *California vs US Department of Labor* was decided in California's favor recently and the funds were ordered to be released. Now I understand the Department plans to appeal.

   What does the Department plan to with the transit funds in the interim as the appeal process makes its way through the courts? Will the Department of Labor commit to reissuing 13(c) certifications and allow *both* the pending and new transit funds to be released, as the Federal District Court in California ordered the Department to do, pending further appellate review?

   And can you please report back to us in two weeks on this urgent matter?

2. After many years of careful study and research, the State of California is about to move forward with its state automatic IRA program. While full implementation is still at least a year away, can you commit to me here today to continue working with the State to make sure the plan succeeds and does not, in any way, run afoul of ERISA?

3. Finally, I wanted to praise you for your bold work on reintroducing the Conflict of Interest Rule – which is so critical to making sure retirees are protected from predatory brokers. As you have heard today, a lot of my colleagues on the other side of the aisle argue that you *must* let the SEC move first before moving ahead with your own rule.

   Why is it so important that the Department of Labor issue its *own* Conflict of Interest Rule independent of the SEC?

   Isn't it true, in fact, that the SEC's jurisdiction is different from the Department of Labor, and thus both agencies must move forward on their own *distinct* rules if we want to truly protect *all* retirees?

Rep. Polis (CO)

1. I recently heard, yet again, from a contractor who was underbid on a major contract. This is not because this contractor is less efficient or doesn't work as hard, but because they were underbid by contractors that cut corners by stealing wages, not paying overtime or finding workers who are not certified in their trade. Can you please inform us of your work to level the playing field between good and bad actors, and the difficulty of enforcement?

2. You recently submitted a new "Conflict of Interest Rule" to the OMB for review. This rule is a new version of rule that you retracted in 2010. During the comment period there were widespread concerns that the rule would prevent access to lower and middle-income investors. Can you please speak to any work you did in outreach to the industry which will be impacted by this new rule? Can you also speak to changes you have considered in response to the widespread concern about access to investment advice?

U.S. House of Representatives
Committee on Education and the Workforce
Hearing on "Reviewing the President's Fiscal Year 2016 Budget Proposal for the Department of Labor"
March 18, 2015
Questions for the Record

Chairman Kline (MN)

Retirement and Pension Security

1. DOL has a key role to play in implementing the *Multiemployer Pension Reform Act,* along with the Treasury Department and the Pension Benefit Guaranty Corporation. The law requires a full implementation date of June 15th. Do you expect the administration to meet this deadline? What issues present the biggest implementation challenges?

   Response: Staff from the Department, the Department of the Treasury, and the Pension Benefit Guaranty Corporation (PBGC) have been working collaboratively since the passage of the *Kline-Miller Multiemployer Pension Reform Act* (Kline-Miller) to meet the statutory deadline for issuing guidance. Working groups from the agencies met weekly to discuss Kline-Miller implementation and individual or smaller group communications occurred as needed outside of those formal meetings. The agencies worked closely to try to balance the interests of all interested parties, including participants, beneficiaries, and plan sponsors, and we believe that balance is reflected in the recently-issued guidance.

   PBGC and the Department of the Treasury issued guidance concurrently on June 17, 2015, with the Department of the Treasury issuing a proposed regulation, a temporary regulation, and a revenue procedure, and PBGC issuing an interim final rule. The guidance provides specific information on how to submit an application for benefit suspension or partition, including the necessary supplemental documentation to show that the plan has met the statutory requirements and model notices to provide participants as required by the law. One of the most challenging issues was how to coordinate applications to Treasury for benefit suspension with applications to PBGC for partition. The guidance sets forth a process intended to maximize coordination and avoid duplication as much as possible to conserve scarce plan resources. Interested parties will have an opportunity to comment on the guidance, but plans will be permitted to rely on the guidance to submit applications for benefit suspensions and/or partitions immediately. The agencies look forward to reviewing comments and making any necessary improvements. In addition, the Department will continue to consult with the Department of the Treasury and PBGC on the review of applications.

2. DOL recently held a hearing regarding an application from a financial services firm to waive certain technical requirements to providing "qualified professional asset manager" services to employee benefit plans under the *Employee Retirement Income Security Act*. Does DOL have standardized processes for deciding when to have administrative hearings in these situations and for determining who should be allowed to testify?

Response: Yes. The Department's procedures for processing an individual exemption, including determining when to have an administrative hearing and who may be allowed to testify, can be found at 29 CFR section 2570.46 and 47 (76 FR 66637 (Oct. 27, 2011)).

"Blacklisting" Executive Order

1. Please explain DOL's budget proposal for the creation of a new Office of Labor Compliance to implement Executive Order (EO) No. 13673. How much will it cost to create this office? Will the $2.6 million included in the Departmental Management section of DOL's proposed budget cover this or will there be other related costs? How will the office be staffed and what sort of experience will these individuals have? Where will the office fall within the structure of DOL?

   Response: The Department of Labor will establish an office to help contractors and subcontractors understand their responsibilities under the Executive Order and comply with relevant law, and work with dedicated personnel at contracting agencies to share information and ensure consistency across the Government. The Department's FY 2016 Budget request of $2.6 million will ensure that we have the resources we need to provide assistance to the contracting community, including contractors and contracting officers across the government. Our assistance will focus on ensuring contractors have the support they need to understand their obligations under the Executive Order and that procurement officials across the government can make efficient, accurate and consistent decisions about contractors' ethics and business integrity. We do not anticipate additional costs to DOL at this time.

   On March 6, 2015, Beth Cobert, Deputy Director for Management, OMB and Christopher Lu, Deputy Secretary, DOL issued a memorandum to the heads of executive departments and agencies. The memo, in relevant part, describes the broad range of responsibilities of the Labor Compliance Advisors (LCAs) and attaches a sample description of their responsibilities and skills. You can access a copy of the memo at: https://www.whitehouse.gov/sites/default/files/omb/memoranda/2015/m-15-08.pdf.

   DOL has not yet determined where the office will fall within the Department's current structure. The Department is working diligently to ensure smooth implementation of all facets of the Executive Order, including the central function to manage it.

2. EO No. 13673 calls for the newly created position of a Labor Compliance Advisor to be placed at each agency. According to DOL's March 5, implementation memo, the advisors must be designated by June. How many advisors are projected to be hired government-wide and what will their training entail? How will DOL ensure these advisors will be sufficiently knowledgeable to answer contractors' questions on hundreds of federal and state labor laws? What sort of analysis will DOL do to investigate the impact these new advisors will have on government procurement?

Response: Under the EO and the accompanying OMB memo, each contracting agency is directed to designate a senior agency official to serve as a Labor Compliance Advisor. The OMB memo also allows agencies, particularly small agencies, that wish to build the LCA capabilities through a shared services arrangement to work with DOL and OMB on the best way to do so. We expect the staffing of these offices will differ based on each agency's contracting volume and structure. The Department of Labor is working with OMB to develop training for these staff, but we also expect they would have a certain amount of expertise coming into the job.

Changes required by the EO build on the existing procurement system and will fit into established contracting practices that are familiar to contractors. The Administration is working to make it easy and efficient for contracting officers to implement and for businesses to comply, by setting up systems to report violations only once, by allowing companies to identify and remedy potential problems before bidding on contracts, by ensuring that determinations of contractor responsibility are made as promptly as possible, and by phasing-in the requirements over time.

3. The President signed EO No. 13673 to ensure federal contractors understand and comply with federal and state labor laws. However, according to the administration, an overwhelming majority of federal contractors play by the rules and do not have federal workplace violations. For those contractors who do not play by the rules, the current federal contracting system has remedies to address unsatisfactory labor records: suspension and debarment. Yet, during Fiscal Years 2012 and 2013, DOL registered no suspensions or debarments of federal contractors, though other agencies had active suspension and debarment referrals during that time. Can you explain why DOL had no suspension or debarment referrals for those two years? Are there internal issues that should be addressed at DOL with your suspension and debarment system before a new and redundant system is implemented?

   Response: Suspension and debarment procedures play an important role in the procurement process. They serve to exclude from the federal contracting process those contractors whose performance on a federal contract is so poor that it serves the public interest to preclude them completely from receiving additional contracts. The processes and tools DOL and the FAR Council will establish under the Fair Pay and Safe Workplaces Executive Order are designed to help in identifying and addressing labor violations before they require consideration of suspension and debarment and will help contractors avoid the extreme consequences of those remedies.

   When discussing suspension and debarments (S&D), it is important to distinguish the two types of S&D: statutory and discretionary (also known as administrative). Statutory S&D provisions are created by Congress principally to further statutory enforcement or compliance goals, and are often mandatory.

   In 1933, the Buy American Act became the first statute to include a debarment provision, providing for exclusion from public building construction contracts, for failure to use American produced building materials on government funded projects. *See* 41 U.S.C. §

8303. Shortly thereafter, Congress enacted additional statutory debarment provisions in the labor context, including the Davis-Bacon Act of 1931, currently at 40 U.S.C. §§ 3141-3148, and the Walsh-Healey Public Contracts Act of 1936, currently at 41 U.S.C. § 35-45.

Discretionary/administrative debarment is a remedy that springs from the inherent authority of the Government acting in its capacity as a purchaser and consumer of goods and services. It serves the purpose of protection not punishment. The focus is on business risk where the Government learns of information indicating that a potential contractor or award participant lacks business honesty, integrity, or has evidenced poor performance. The action is forward looking. It serves best to head off the participation of problem actors in federally funded activities rather than to remediate misconduct after occurrence of misconduct.

We do not believe DOL's suspension and debarment office is failing its responsibilities. In FY 2014, the Department executed 74 statutory suspension and debarments (S&Ds). In addition, DOL is in the process of taking the following steps to improve its discretionary S&D program:

- Issuing a detailed policies and procedures manual that outlines the structure of the S&D program, which is expected to increase the number of referrals;
- Actively engaging the Department's acquisition professionals, the Solicitor's office, the Office of the Inspector General, and other departmental stakeholders on the requirement to protect the government from bad contractors;
- Working closely with the Interagency Suspension and Debarment Committee (IDSC) on the implementation of best S&D practices/templates, and samples; and
- Facilitating meetings with and among all DOL programs and contracting activities about the S&D process and on the policies and procedure manual.

4. With regard to EO No. 13673, one of the most significant concerns voiced by employers is how non-final adjudications – such as administrative merits determinations – may be required to be reported during the responsibility determination process; even though it could later be found that there was no contractor wrongdoing. Such determinations could include a National Labor Relations Board complaint that has not yet been subject to any sort of administrative or judicial review. Will these non-final adjudications in fact be considered? You have stated the executive order is meant to "level the playing field." How does consideration of mere allegations against an employer make the competition for federal contracts fairer?

Response: Administrative merits determinations are the products of expert government investigators doing extensive fact finding and exercising informed judgment that a violation of the law has taken place. The complaints issued by enforcement agencies that are included in the definition of "administrative merits determination" are not akin to complaints filed by private parties to initiate lawsuits in federal or state courts. Each complaint included in the definition represents a finding by an enforcement agency—following a full investigation—that a labor law was violated.

The prospective contractor will have the opportunity to provide additional information as it deems necessary to demonstrate its responsibility, such as mitigating circumstances, remedial measures and other steps taken to achieve compliance with the relevant labor laws. The proposed DOL guidance provides direction on weighing violations, including taking into account good faith efforts to remedy past violations, internal processes for expeditiously and fairly addressing reports of violations, and/or plans to proactively prevent future violations. In addition, the proposed guidance provides that where a violation has not resulted in a final judgment, determination, or order, it should be given lesser weight.

Fair Labor Standards Act

1. In December of 2013, the Government Accountability Office (GAO) issued a report entitled, "The Department of Labor Should Adopt a More Systematic Approach to Developing Its Guidance." GAO found that substantial increases occurred over the last decade in the number of civil lawsuits filed in federal district court alleging violations of the *Fair Labor Standards Act* (FLSA). That finding is bolstered by the most recent data from the Administrative Office of U.S. Courts. A total of 8,160 FLSA cases were launched during FY 2014 — an 8.8 percent increase and the highest annual registered number by the court's administrative office in more than 20 years. GAO's report found that many factors have contributed to this trend. It determined that DOL does "not compile and analyze relevant data to help determine what guidance is needed, as recommended by best practices previously identified by GAO." The report noted that the Wage and Hour Division (WHD) has since 2009 reduced the number of FLSA-related guidance documents it has published. As per GAO's recommendation, what steps has the WHD taken to develop a systematic approach for identifying areas of confusion about the FLSA's requirements? What are the WHD's plans, especially in light of the Obama administration's decision early on to stop issuing fact-specific opinion letters, for increasing guidance to employers to facilitate compliance?

   Response: The Wage and Hour Division (WHD) is committed to providing employers with the tools they need to operate in compliance with the variety of labor laws enforced by the Division. WHD offers a number of useful compliance resources intended to provide employers with readily accessible, easy-to-understand information relevant to both their rights and to their responsibilities under the law. These resources, from an interactive E-laws advisor to a complete library of fact sheets, and free, downloadable workplace posters, can be found at http://www.dol.gov/WHD/foremployers.htm#ca. From 2009 through 2014, WHD issued 327 public sub-regulatory documents on a wide range of topics.

   WHD's efforts to provide compliance assistance are constantly evolving. Most recently, as part of its misclassification initiative, WHD issued an Administrator's Interpretation to provide the public with additional guidance on the proper classification of employees and independent contractors. The environment in which WHD operates combined with the scope of workers and workplaces covered by the FLSA requires a strategic approach to achieve the agency's mission—including enforcement, compliance assistance, as well as

the use of outreach, media, and guidance. WHD uses a number of different approaches to identify areas of the FLSA that could benefit from the development of guidance or revisions to existing guidance. This includes using analytics from our website, regularly reviewing media articles from employer and employee blogs and associations, and seeking stakeholder input not just in the identification of materials but also in the development and assessment of compliance assistance and outreach materials.

GAO's 2013 Report recommended that WHD develop a systematic approach for identifying FLSA issues that could benefit from additional guidance. WHD agreed that it could institute additional processes to identify these issues, and is currently developing its work plan for providing additional guidance to the regulated community. In the past year, WHD staff met with employer representatives, including but not limited to the Chamber of Commerce and HR Policy Association, in addition to advocacy and stakeholder organizations, and the agency's enforcement staff, to solicit their ideas about where WHD guidance and compliance assistance is most needed. This input will be used as WHD develops its work plan. These efforts, including ongoing, substantial rulemaking activities, continue to inform how the agency will eventually implement a more systematic process for reviewing areas where guidance is needed more broadly.

2. In October 2014, DOL published in the Federal Register a final rule implementing the executive order *Establishing a Minimum Wage for Contractors*. The *Congressional Review Act* requires a 60 day delay in the effective date of a major rule from the date of publication in the Federal Register or receipt of the rule by Congress, whichever is later. GAO, which is charged with assessing your agency's compliance with the procedural steps required by the law, noted that DOL did not have the required 60-day delay in the effective date. The rule was received by the House on November 14, 2014, and received by the Senate on November 13, 2014; as such, GAO noted that DOL did not comply with the required 60-day delay, when it set an effective date of December 8, 2014. Could you explain why DOL failed to follow the procedural steps required with respect to the rule? Does DOL intend to follow the correct procedural steps with respect to rules that will be promulgated going forward?

   Response: The Department's final rule implementing Executive Order 13658, Establishing a Minimum Wage for Contractors, published on October 7, 2014, included a 60-day delayed effective date, consistent with the Administrative Procedure Act. 79 FR 60634. In addition, while the rule provided an effective date of December 8, 2014, in actual effect the rule applies only to "new contracts," *i.e.*, contracts resulting from solicitations issued on or after January 1, 2015, or that are awarded outside the solicitation process on or after January 1, 2015.

   The Department provided a copy of the rule to the House and Senate as required under the Congressional Review Act (CRA). The Department is committed to complying with the requirements of the CRA.

Office of Federal Contract Compliance Programs

1. The Office of Federal Contract Compliance Programs (OFCCP) relies heavily on statistics when enforcing nondiscrimination requirements. Federal contractors may respond to these enforcement practices by instituting a quota system in hiring and advancement in order to avoid running afoul of what OFCCP expects. Are there any safeguards in place to make sure OFCCP's reliance on statistics in enforcement does not lead to quotas?

   Response: OFCCP regulations neither create nor enforce hiring quotas. To assess compliance with Executive Order 11246 and its nondiscrimination and affirmative action requirements, OFCCP reviews a subset of federal contractors each year to assess their hiring, promotion, compensation, termination and other employment practices. As part of those reviews, OFCCP not only performs quantitative analyses but also assesses a variety of other evidence, including anecdotal evidence. Following Supreme Court precedent, statistical evidence in this context means a statistically-significant race or sex-based difference in hiring rates among individuals who are qualified and available for the position. A difference is statistically significant if its probability of being produced by a fair employment process is less than 5%, as estimated by tests generally accepted in the statistics profession. *Hazelwood School Dist. v. U.S.*, 433 U.S. 299, 309 n. 14 (1977).

   In cases with statistical disparity, OFCCP investigators will review documents and interview managers and workers. In general, OFCCP would not pursue a matter solely on the basis of a statistical disparity where a contractor establishes a legitimate and valid explanation for that difference or where the contractor has established that the statistical disparity does not exist. OFCCP will issue a notice of violation where there is an ample evidentiary record supporting the findings of discrimination. If OFCCP issues a notice of violation, it will negotiate conciliation agreements with contractors that wish to voluntarily correct the violations.

   OFCCP does not insist on hiring quotas in entry-level hiring or any other hiring cases. The agency requests and considers any information that contractors provide to explain a disparity in hiring rates or any other employment practice. OFCCP investigators will review documents and data and also interview employees and company officials regarding these decisions. When contractors provide credible, legitimate, nondiscriminatory and legally sufficient explanations for violations or potential violations that OFCCP has identified, the agency will adjust its findings accordingly. This includes explanations that address portions of the violation or information that would properly mitigate some portion of the back pay owed to affected workers.

2. There is a lack of clear understanding of how OFCCP selects contractors for auditing. Sometimes a single company is selected for multiple simultaneous audits while others go for years with no audits. How can we know selections are made neutrally and objectively? Does OFCCP share the selection criteria, factors and formula with contractors and the public?

   Response: OFCCP's Federal Contractor Selection System (FCSS) is a neutral selection system that identifies supply and service federal contractor establishments for compliance

evaluations. The FCSS process uses multiple information sources, such as federal acquisition and procurement databases, EEO-1 employer information reports, Dun & Bradstreet data, and Census data. The list is further refined and sorted by applying a number of neutral selection factors such as contractor dollar amount, number of employees, contract expiration date, and industry. These factors are administratively "neutral" since they apply to all contractors rather than any one particular contractor. It is important also to note that OFCCP's list is not, nor is it required to be, random, which would require an equal probability of selection from the full population of federal contractors. Rather, OFCCP focuses its list and its resources according to neutral criteria such as those listed above.

The number of establishments selected for a compliance review in a scheduling cycle for any one company has varied over time. A federal contractor may have hundreds or even thousands of establishments. The number that would appear on any one scheduling list typically represents a very small percentage of a contractor's total establishments eligible for review.

OFCCP has increased the transparency of its selection system by posting extensive FAQs on its website at http://www.dol.gov/ofccp/regs/compliance/faqs/fcssfaqs.htm.

3. In August, DOL issued a proposed rule requiring federal contractors to report summary data on compensation broken down into categories of race, sex, and ethnicity. The rule fails to follow a recommendation made by the National Academy of Sciences that DOL collaborate with the Equal Employment Opportunity Commission (EEOC) and the Department of Justice (DOJ) to develop a comprehensive data collection plan. According to the proposed rule, DOL did not follow this recommendation because EEOC's process for developing a pay data requirement would take too long, and the President in April 2014 directed the DOL to issue a rule by last August. Other than this artificial deadline, was there any reason DOL failed to develop this rule through a deliberative and collaborative process with other relevant agencies?

   Response: The Notice of Proposed Rulemaking (NPRM) issued by OFCCP on the proposed Equal Pay Report solicited public comment, as well as review and comment by the Equal Employment Opportunity Commission (EEOC) and other federal agency stakeholders. Through the NPRM process, OFCCP received feedback that continues to enrich its information sharing and coordination with EEOC on the collection and use of employer compensation data. This level of ongoing sharing and coordination is consistent with the general intent of the National Academy of Sciences study recommendation; that is, that federal agencies find appropriate ways to coordinate their efforts to minimize duplication and costs and maximize their effectiveness. In addition, the NPRM specifically requests public comment on the feasibility and possible design of an alternative reporting framework that would utilize a single report that would fulfill contractors' reporting obligations under this rule and the EEO–1.

Labor-Management Relations

1. DOL has received numerous comments from a wide variety of stakeholders, including 14 state attorneys general and the American Bar Association (ABA), that the "persuader" regulation will have a chilling effect on the attorney-client privilege and employers' fundamental right to counsel. The 2014 Fall Unified Agenda stated final action on the "persuader" rule would occur in July 2015. Has the DOL discussed the attorney-client privilege issue with the state attorneys general or the ABA? What have you done to ensure the "persuader" rule does not chill the attorney-client privilege?

   Response: The Notice of Proposed Rulemaking stated that "privileged matters are protected from disclosure." The Department will fully consider all of the materials contained in the rulemaking docket, which include submitted comments that raise the confidentiality issue. Furthermore, any final rule will comply with Section 204 of the Labor Management Reporting and Disclosure Act, which exempts from reporting any information lawfully communicated to an attorney by a client in the course of a legitimate attorney-client relationship. .

2. In 2013, the Committee sent multiple letters seeking information on "worker center" filing requirements under the *Labor-Management Reporting and Disclosure Act* (LMRDA). Traditionally, "worker centers" are "defined as community-based and community-led organizations that engage in a combination of service, advocacy, and organizing to provide support to low-wage workers." However, they have also taken direct action to alter conditions of employment and organize employees. A credible case can be made that "worker centers" are labor organizations under section 2(i) of the LMRDA and therefore subject to the LMRDA's filing requirements. DOL has disagreed. However, in 2014, it appears a number of "worker centers" filed LM-2s with DOL, including the St. Louis Organizing Committee, the Fast Food Workers Committee, the Carolina Workers Organizing Committee, and the Workers Organizing Committee of Chicago. Clearly, these organizations believe they are labor organizations under the LRMDA and have chosen to file the required reports. Were these LM-2s filed in error? Has or does DOL have plans to audit these organizations?

   Response: In making a determination as to whether an entity is a labor organization, the Office of Labor-Management Standards (OLMS) applies the statutory test as provided for in section 3(i) of the LMRDA:

   > Labor organization "means a labor organization engaged in an industry affecting commerce and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment. . ."

   Therefore, an entity constitutes a labor organization covered by the LMRDA if it (1) is an organization engaged in an industry affecting commerce; (2) has employees who

participate in the organization; and (3) exists for the purpose, in whole or part, of dealing with employers concerning terms and conditions of employment.

OLMS has applied this test for over 50 years to all organizations, regardless of type, including worker centers, based on the unique facts and circumstances in each case. For this reason, OLMS cannot make a general conclusion concerning the LMRDA filing requirements of worker centers in general. Rather, OLMS considers the facts on a case-by-case basis when determining whether an organization is covered by the LMRDA.

OLMS regulations establish that the filing of a report by an organization, and its consequent appearance on the OLMS public disclosure site, does not reflect a governmental determination that the organization is a labor union. See 29 C.F.R. 402.7 (Effect of Acknowledgement and Filing). OLMS would make such an authoritative determination only after an investigation. See 29 U.S.C. 521 (Investigations). It is OLMS's enforcement policy not to disclose the names of organizations that it plans to audit.

Temporary Worker Programs

1. On March 4, 2015, DOL announced it would no longer accept or process requests for prevailing wage determinations or applications for labor certifications in the H-2B visa program. DOL said it was suspending the program because of the order in *Perez v. Perez*, No. 3:14-cv-682 (N.D. Fla. Mar. 4, 2015), vacating DOL's 2008 H-2B regulations, even though the court did not order the Department to stop processing requests and applications. Please explain why DOL made this decision. What was the legal authority for suspending the program?

   Response: On March 4, 2015, the Federal District Court vacated DOL's 2008 H-2B rule on the ground that the agency lacks independent authority under the Immigration and Nationality Act, as amended, to issue regulations governing the H-2B program. The Court also permanently enjoined DOL from enforcing the 2008 H-2B rule. At the time of the Court's decision, the DOL 2008 rule was the only mechanism in place for processing temporary labor certification applications, and for assessing whether there are available United States workers to fill the employer's job opportunity. As a result of the vacatur of the 2008 rule, DOL had no authority to process labor certification applications or to issue prevailing wage determinations. To comply with the Court's order, DOL immediately ceased operating the H-2B program. The Department requested a temporary stay of the court order in *Perez v. Perez*, which was granted on March 18, 2015. Upon receiving the temporary stay, DOL immediately resumed issuing labor certifications and prevailing wage determinations.

2. DOL seems to have been caught flat-footed when the district court ordered the 2008 H-2B regulations to be vacated in *Perez v. Perez*, No. 3:14-cv-682 (N.D. Fla. Mar. 4, 2015). However, the court's decision in *Perez v. Perez* could not have been a surprise, given the same district court's previous decision in *Bayou Lawn & Landscape Services v. Perez*, No. 3:12-cv-183, 2014 WL 7496045 (N.D. Fla. Dec. 18, 2014), which vacated DOL's

2012 H-2B regulations on the same grounds as in *Perez v. Perez*. Were contingency plans in place prior to the district court's decision on March 4, 2015, to ensure the H-2B program continued to function? If not, why not?

Response: The Department's primary goal for the H-2B program is its effective and consistent operation of the program. As you know, the H-2B program has been subject to numerous legal challenges and conflicting legal opinions, including those upholding DOL's independent authority to issue temporary labor certifications, making it very difficult to predict court decisions. DOL shares Congress's interest in the continued operation of the H-2B program and knowing of the possible consequences of an adverse decision in *Perez v. Perez,* sought legislative solutions to prevent any suspensions of the program since an earlier decision in 2012 (*Bayou Lawn & Landscape Services, et al. v. Solis*, 12-cv-00183, *aff'd by Bayou Lawn & Landscape Servs. v. Sec'y of Labor*, 713 F.3d 1080 (11th Cir. 2013)) cast doubt on DOL's authority to issue regulations governing H-2B labor certifications. However, on March 4, 2015, the Federal District Court for the Northern District of Florida vacated DOL's 2008 H-2B rule, and DOL was left with no alternative but to immediately cease operating the H-2B program to ensure compliance with the Court's order. To restore stability to the program, DOL and DHS worked expeditiously to issue an interim final rule governing the issuance of temporary labor certifications, which was published on April 29, 2015.

3. Congress directed DOL to consult with the Department of Homeland Security (DHS) with respect to the H-2B program. DOL performed its consultative role in the H-2B program for decades until 2008 without issuing formal rules. What is your understanding of what Congress expected of DOL in fulfilling this role? What changed that made formal rules necessary? Can DOL perform its role without issuing formal rules?

   Response: Section 214(c)(1) of the Immigration and Nationality Act (INA), as amended, requires DHS to consult with "appropriate agencies of the Government" before adjudicating an H-2B petition. DHS, in conjunction with DOL, determined that the best way to provide this consultation is by requiring the employer to first apply for a temporary labor certification from DOL before filing an H-2B petition, and DHS has put this requirement in its regulation. Courts have invalidated past DOL subregulatory actions in the temporary labor certification programs, including the issuance of guidance in the absence of rulemaking. Therefore, DOL and DHS worked expeditiously to issue an interim final rule governing the issuance of temporary labor certifications on April 29, 2015.

4. The *Wagner-Peyser Act of 1933* and the *Workforce Investment Act of 1998*, as amended, authorize state workforce agencies to operate a labor exchange of unemployed workers. These laws allow state workforce agencies to identify unemployed workers who are available for a particular job, including a job for which an employer is seeking H-2B workers. Why couldn't state workforce agencies have performed this work without DOL's 2008 or 2012 H-2B rules in place? Did DOL direct state workforce agencies to stop processing H-2B applications? If so, why?

Response: H-2B applications for temporary labor certifications are processed only by DOL's Office of Foreign Labor Certification (OFLC), rather than different state workforce agencies (SWA) throughout the country, in order to ensure uniformity and consistency in the H-2B program. The SWAs are responsible for posting employer-submitted job orders that fulfill some, but not all, of the H-2B employer's recruitment obligations under the 2008 regulation. As noted above, however, on March 4, 2015, the Federal District Court decision in *Perez v. Perez* vacated DOL's 2008 H-2B rule on the ground that the agency lacks independent authority under the Immigration and Nationality Act, as amended, to issue regulations governing the H-2B program. Without an H-2B regulation there was no regulatory structure setting the parameters under which SWA job order could be used in the H-2B program. As a result, during the regulatory hiatus, even though the SWAs could continue to accept job orders from all employers, including H-2B employers, such job orders could not be used to fulfill H-2B program requirements.

5. DOL has the ability to issue H-2B prevailing wage determinations using the Occupational Employment Statistics (OES) program's wage levels pursuant to the 2013 interim final rule issued by DHS and DOL (RIN 1205-AB69). Why couldn't DOL have continued to provide DHS with OES-based prevailing wage determinations in the absence of the 2008 H-2B rule?

   Response: Please note that DOL does not submit prevailing wage determinations directly to DHS. DHS regulations require that a petition for H-2B workers be accompanied by an approved temporary labor certification from DOL, stating that qualified workers in the United States are not available and that requested foreign workers will not adversely affect wages and working conditions of similarly employed United States workers. See 8 C.F.R. 214.2(h)(iv)(A) (2015).

6. DHS's 2008 H-2B rule contains program integrity protections and places substantive requirements on U.S. employers seeking to hire H-2B workers. If DOL provided OES-based wages to DHS, and if state workforce agencies conducted job postings and performed a labor market test for unemployed U.S. workers, what would prevent DHS from processing H-2B petitions? Why can't DHS operate the H-2B program without DOL-issued rules?

   Response: Section 214(c)(1) of the Immigration and Nationality Act requires DHS to consult with "appropriate agencies of the Government" before adjudicating an H-2B petition. In recognition of DOL's institutional and historical expertise in determining matters related to the U.S. labor market, DHS, in conjunction with DOL, determined that the best way to provide this consultation is by requiring the employer to first apply for, and obtain approval of, a temporary labor certification from DOL before filing an H-2B petition, and DHS has put this requirement in its regulation. *See* 8 CFR 214.2(h)(6)(iii) and (iv). The interim final rule jointly issued the U.S. Department of Labor (DOL) and the Department of Homeland Security (DHS) on April 29, 2015 is consistent with the role of each agency under the Immigration and Nationality Act (INA).

Occupational Safety and Health Administration

1. The Occupational Safety and Health Administration (OSHA) must promulgate regulations based on technologic and economic feasibility. Stakeholders assert that the proposed silica permissible exposure limit does not meet either test. Specifically, at the proposed permissible exposure limit, silica cannot be accurately measured. Comments outlining this problem assert that the accredited commercial laboratories designated to measure silica samples for employers may not be able to provide accurate and reliable results. OSHA appears to know this is a problem. Under the proposed rule, laboratories would have two years to improve their sampling systems. However, companies would not receive a two year grace period and would be reliant on samples of which they have no confidence represent their employees' actual exposure levels. Further, these faulty samples would serve as enforcement tools for OSHA inspections. Will any final rule address this conflict?

   Response: OSHA's technological feasibility analysis for the proposed silica rule was based on the best information available to the Agency at the time the proposal was issued. The Agency requested additional information and comment from representatives of affected industries and other stakeholders. In response, over 70 organizations presented testimony on the proposed rule and OSHA received more than 1,700 comments from stakeholders. OSHA will carefully review and fully consider all of the materials contained in the rulemaking record concerning the Agency's proposed silica standard, including the issue of accurately measuring silica.

2. Effective January 1, 2015, OSHA changed employer reporting requirements for injury and illnesses. One way employers are allowed to contact OSHA is through a web portal or online form. This requirement has been in effect for almost three months; however, the online form remains unavailable. Do you know when OSHA will have this aspect of the regulation ready?

   Response: OSHA expects the on-line form to be available in the upcoming months. Employers have successfully been using our toll free 1-800 number to report severe injuries and fatalities since January. They also have the option of contacting their Area Office directly.

3. Last year in testimony before the Subcommittee on Workforce Protections, Ms. Randy Rabinowitz highlighted that employers can refuse OSHA access to a jobsite for an inspection and require the agency to seek a warrant. It is worth noting that employers might be reluctant to do this because it could engender animosity with the inspector. At issue, however, is that OSHA would be seeking a warrant to allow participation by a third party, who is not a designated representative of the secretary. Do you believe OSHA will be successful in obtaining a warrant that allows a third party to accompany an inspector? Has OSHA had to obtain a warrant with a third party? If not, is that because OSHA walks away from the inspection?

Response: Allowing non-employee third-party representatives to accompany OSHA inspectors on walk-around inspections, as was clarified by OSHA in 2013, is not a new OSHA policy. OSHA has traditionally, through policies and regulations, interpreted Section 8(e) of the OSH Act to mean that, subject to the Secretary's regulations, it is up to the employees to choose a representative who will accompany the compliance officer during a workplace inspection.

As with any warrant application, OSHA would need to show the underlying facts necessary for the warrant. In the case of a third party, it would be appropriate for the third party to accompany the Compliance Officer on an inspection if the Compliance Officer determines that the representative will help achieve an effective and thorough health and safety inspection, for example because they need the foreign language assistance, knowledge of workplace conditions in similar workplaces, or simply their support, especially in the case of immigrant workers who may be intimidated by government officials.

There have been times when workers without collective bargaining agreements have selected outside individuals or organizations to act as their walk-around representatives during OSHA inspections. Additionally, workers with collective bargaining agreements have selected experts from within their union (such as an industrial hygienist from the national headquarters) to act as the walk-around representative. Other examples include a 2011 inspection of a Hershey warehouse in Hershey, Pennsylvania where members of the National Guestworkers' Alliance served as walk-around representatives, and a 2012 asbestos inspection in Washington DC, where the Laborers International Union served as walk-around representatives at the request of the workers.

4. OSHA created a chemical exposure toolkit with sources other than OSHA's own regulations for exposure limits. OSHA's press rollout of the toolkit was critical of the agency's inability to update its own permissible exposure limits. Is it appropriate for an agency to undermine its own standards through guidance? Do you believe the toolkit creates certainty and confidence for the regulated community? Will companies be cited under the general duty clause for failing to comply with the toolkit rather than OSHA's regulations?

Response: On October 2013, OSHA launched two resources to better protect workers from hazardous chemicals. One resource was a toolkit that walks employers and workers step-by-step through information, methods, tools and guidance to either eliminate hazardous chemicals or make informed substitution decisions in the workplace by finding a safer chemical, material, product or process (http://www.osha.gov/dsg/safer_chemicals/). The second resource was the annotated PELs tables, which present a side-by-side comparison between OSHA's permissible exposure limits and other occupational exposure limits, including the California Division of Occupational Safety and Health PELs, the NIOSH Recommended Exposure Limits (RELs) and the American Conference of Governmental Industrial Hygienists (ACGIH) Threshold Limit Values (TLVs) (https://www.osha.gov/dsg/annotated-pels/).

When launching these resources, the Agency acknowledged that OSHA's exposure standards are out-of-date and are inadequately protective and that OSHA's PELs represent only a fraction of the thousands of hazardous chemicals that are used in the workplace. The Agency intended to provide information and tools to help employers make better chemical management decisions, while not creating new legal obligations or altering existing obligations under OSHA standards or the Occupational Safety and Health Act. This guidance does not change OSHA's burden of proof for issuing citations under the OSH Act's General Duty Clause.

Mine Safety and Health Administration

1. The Mine Safety and Health Administration (MSHA) recently finalized proximity detection regulations for continuous mining machines. These detectors are designed to power down equipment when a miner is in close proximity, preventing the possibility of crush accidents. A second phase of this regulation is planned for other underground mining machines. Will this requirement extend to the metal/nonmetal sector which has seen an increase of injuries and fatalities?

   Response: We cannot comment on proposed rules currently in development; however, the second phase of the proximity detection proposed rule will be published for public notice and comment.

2. According to MSHA's most recent data, the metal/nonmetal sector experienced an increase in injuries and fatalities in 2013 and 2014, relative to previous years. This occurred while injury and fatalities rates in the coal sector have sharply declined. What is MSHA doing to ensure better health and safety within the metal/nonmetal sector? Does DOL's budget reflect the needs of this sector?

   Response: In 2014, there were forty-five mining deaths, sixteen of which occurred at coal mines—the lowest number of coal mining fatalities ever recorded in a year. The other twenty-nine were at metal and nonmetal mines, an increase from last year and part of a trend that began in October 2013. A common cause of these deaths involved the machinery that is used at mining operations. For example, a 21-year old warehouse bagger was killed at a clay mine when the forklift he was driving overturned. All of the deaths are a matter of great concern and reverse a trend where the metal and nonmetal sector had experienced fewer fatalities in 2011, 2012, and FY2013. In response to the increase in metal and nonmetal fatalities, MSHA launched several actions to reduce mining deaths.

   Those actions have included increased surveillance and strategic enforcement through impact inspections at troubled mines; enhancing pattern of violation actions at chronic violator mines; and implementing special initiatives, such as "Rules to Live By," which focuses on the most common causes of mining deaths and engaging in outreach efforts with the mining community. MSHA has prepared extensive information on the best practices to prevent fatalities, which include effective operator safety and health management programs; workplace examinations to identify and eliminate hazards that

kill and injure miners; and effective and appropriate training, including task training to ensure miners recognize and understand hazards and how to control or eliminate them. . This information was used in many of the stakeholder outreach events and was widely distributed to miners, mine operators, industry trainers, and MSHA inspectors. Additionally, MSHA called on industry and labor leaders to support the efforts.

Furthermore, in February 2015, MSHA launched an online tool to assist miners, operators, and inspectors in monitoring "Rules to Live By" (RTLB) violations—the violations of standards most commonly cited by MSHA related to mining fatalities. As a result, operators are now able to better track their compliance with those important standards and take corrective action when necessary.

Through June 2015, there have been ten metal and nonmetal sector fatalities, five fewer than there were at this point last year. We believe that the President's Budget adequately addresses the needs of MSHA's Metal and Nonmetal enforcement activities, and MSHA has and continues to shift resources, as appropriate, within the agency to address metal and nonmetal sector related issues.

Rep. Walberg (MI)

1. Employers are utilizing wellness plans to help improve employees' health and reduce health care costs. In fact, the *Patient Protection and Affordable Care Act* (PPACA) encourages employers to offer wellness programs by allowing incentives for employees who participate. In implementing the law, DOL, together with the Departments of Health and Human Services (HHS) and Treasury, wrote final regulations instructing employers how these programs should be set up in accordance with PPACA. The law and rule incorporates *Health Insurance Portability and Accountability Act* nondiscrimination protections, providing that participatory wellness programs are compliant as long as they are made available to all similarly situated individuals. Yet, the Equal Employment Opportunity Commission (EEOC) has taken enforcement action against PPACA-compliant employer wellness programs. Although the EEOC does not fall within DOL's purview, its actions seem to conflict directly with actions DOL has taken. Even Josh Earnest, the President's press secretary expressed concern with EEOC's actions and stated that "wellness programs are good for both employers and employees." Can you tell me, does the administration support employer wellness plans or not? Assuming it does, can you offer any explanation regarding EEOC's actions to the contrary?

   Response: Consistent with the Affordable Care Act, the tri-agency (Departments of Labor, Health and Human Services, and the Treasury) rules effective January 1, 2014, support workplace health promotion and prevention. The rules:

   - Ensure flexibility for employers by increasing the maximum reward from 20 percent to 30 percent of the cost of health coverage (up to 50 percent for wellness programs designed to prevent or reduce tobacco use);

- Protect consumers by requiring that health-contingent wellness programs must be reasonably designed to promote health or prevent disease and be available to all similarly situated individuals; and
- If an individual's medical condition makes it unreasonably difficult or medically inadvisable to meet the specified health-related standard necessary to receive a reward, the program would have to offer reasonable alternative means of qualifying for the reward.

Recognizing that many other laws may also regulate plans and issuers in their provision of benefits, including the ADA requirements enforced by the EEOC, the final tri-agency Affordable Care Act wellness rules reiterate the Department's position that compliance with the tri-agency final regulations does not automatically mean an employer has complied with every other applicable legal requirement. On March 20, 2015, the EEOC sent to the Office of Management and Budget (OMB) a draft NPRM that addresses the ADA's application to employer wellness programs. As part of this process, the agency coordinated with the Departments of Labor, Health and Human Services, and Treasury, which are the federal agencies with responsibility for enforcing and implementing the provisions of HIPAA and the Affordable Care Act related to wellness programs. On April 20, 2015, the EEOC issued a NPRM on how Title I of the Americans with Disabilities Act (ADA) applies to employer wellness programs that are part of a group health plan, after consultation with the Departments of Labor, HHS, and Treasury.

The Labor Department continues to coordinate with other Departments, including the EEOC, when appropriate, in order to provide helpful guidance and assist employers as they implement wellness programs.

Rep. Rokita (IN)

1. Please provide a breakdown of resources and Full-Time Equivalents (FTE) from the Occupational Safety and Health Administration's Federal Compliance Assistance budget used for the Voluntary Protection Program (VPP) for FY 2009 – 2014, an estimated breakdown for FY 2015, and an anticipated breakdown for FY 2016. For each fiscal year, please use prorated estimates for FTE and resources used for more purposes than VVP.

   Response: Because there is no individual line item for funding VPP, OSHA does not break out the program's annual costs within the overall Federal Compliance Assistance budget activity. The Federal Compliance Assistance budget activity has been funded at the following levels since FY 2009.

Fiscal Year	Funding ($000)	FTE (Ceiling)
2009	$72,659	315
2010	$73,380	315
2011	$73,383	291
2012	$76,355	295

2013	$61,444	281
2014	$69,433	262
2015	$68,433	254
2016*	$73,044	254

*FY 2016 Request

Rep. Messer (IN)

1. During your March 17, 2015, appearance before the House Labor/HHS/ED Subcommittee hearing that you had spoken with Securities Exchange Commission (SEC) Chair Mary Jo White "eight or nine" times on the fiduciary rulemaking. I am very concerned – absent seeing both rules at the same time – that one rule would superimpose on the other. This could lead to confusion causing the education and guidance marketplace to dry up or be reduced. As baby boomers are beginning to settle into retirement, now is the time to keep the current marketplace in place to ensure access to guidance that help retirees address longevity and investment risk. Please outline what information was shared between the Department of Labor (DOL) and SEC as the proposed fiduciary rulemaking was being devised.

   Response: As you have noted, Secretary Perez has discussed relevant aspects of the draft proposal with Securities and Exchange Commission (SEC) Chair White on at least eight occasions. Other senior officials and staff from the Department consulted extensively with SEC staff throughout the development of the draft proposal. These collaborative discussions were wide-ranging and spanned topics such as the draft proposed rule, the exemptions, and the economic analysis and supporting data. The discussions have helped the Department draft a proposal that strikes a balance between protecting individuals looking to build their savings and minimizing disruptions to the many good practices and good advice that the financial services industry provides today. Our aim is for consumers to receive the full protection of ERISA, the Internal Revenue Code, and the securities law.

2. Has DOL considered, and come up with an answer to, how individuals with accounts between the sizes of $10,000 to $80,000 will receive services? Individuals with accounts of that size most need the financial education that financial services companies provide. In the United Kingdom, a rule that banned commissions has negatively impacted access to financial education that financial services companies provide, particularly for investors with accounts between the sizes of $10,000 to $80,000. What steps does the proposed rule take to avoid this result?

   Response: Many retirement investment advisers already put their customer's interests first, proving that you can provide advice that is in the best interest of all kinds of savers — including those with small balances — while running a successful business. And there are many low-cost options already available, with more becoming available due in part to advancements in financial technology. But complicated and hidden fees (often buried in fine print) and supposedly free advice that is conflicted may make it difficult for

new investment advisors providing quality, affordable advice to compete. The proposal would level the playing field for all the firms providing quality, affordable advice.

In addition, the Department's proposed rule does not treat general retirement and investment education as fiduciary advice, so employers and advisers can continue to provide general information on things like the mix of stocks and bonds a person should have in their portfolio based on their expected date of retirement and how much is needed to be saved for retirement without triggering fiduciary duties.

A key aspect of the proposal gives firms the flexibility to determine how to provide quality advice that is in their clients' best interest in a way that will also minimize the disruption to their business model. Other countries, such as the United Kingdom and Australia, have gone significantly further than the Department's proposal and fully banned commissions. So far, those countries appear to be achieving their aim of greatly improving advice without significantly disrupting access to it. Given the proposal's different approach to compensation, and the requirement that advisers provide advice that is in their client's best interest, we believe the proposed rule preserves and expands access to good retirement advice for small savers and helps them lay the groundwork for a secure retirement.

Several post-implementation independent reviews in the UK found little evidence to suggest that investors have been injured by the reforms or that its costs outweigh its benefits. Investors with low-balance accounts continue to be serviced by retail advisers, even after some of the large UK banks pulled out. Reforms are resulting in better products for consumers, as well as increased competition in the marketplace and lower fees. In addition, it may be the case that with increased transparency on charges some consumers now have a better understanding of the cost of advice and, having considered cost against the benefits, have chosen not to take it. Previously the cost of advice was hidden in the product charges and had a significant negative impact on the value of an investment over time.

Rep. Davis (CA)

1. In California in 2012, Governor Brown proposed, and the legislature enacted, a pension reform law called PEPRA. In 2013, DoL held up public transit grants to *all* of California because of a dispute over whether or not this new pension law violated so-called 'Section 13(c) labor protections' for transit workers. All transit grants were put on hold, pending the outcome of a federal court case. That case, *California vs US Department of Labor* was decided in California's favor recently and the funds were ordered to be released. Now I understand the Department plans to appeal.

   What does the Department plan to with the transit funds in the interim as the appeal process makes its way through the courts? Will the Department of Labor commit to reissuing 13(c) certifications and allow *both* the pending and new transit funds to be

released, as the Federal District Court in California ordered the Department to do, pending further appellate review?

And can you please report back to us in two weeks on this urgent matter?

Response: In September 2013, the Department of Labor determined that California's Public Employee Pension Reform Act (PEPRA) did not adequately protect the collective bargaining rights of transit employees as required by section 5333(b) of the Federal Transit Act (known as 13(c)). In early October 2013, California passed a law exempting transit workers from PEPRA until "a federal district court rules that the United States Secretary of Labor, or his designee, erred in determining that the application of this article [PEPRA] precludes certification under that section [13(c)]," or until January 2016, whichever came first. Parties in California sued the Department over its determination. On December 30, 2014, in *State of California v. U.S. Department of Labor*, -- F.Supp.3d ----, 2014 WL 7409478 (E.D.Cal. 2014), the District Court vacated the Department's determination and remanded the matter to the Department to take into consideration factors that the Court found necessary for the Department's determination of the issues. Subsequent to the Court's remand order, CalPERS, as well as various transit agencies, have nevertheless stated publicly that the exemption of transit employees from the PEPRA is no longer in effect. The Department has chosen not to appeal the court's decision and it is reexamining its certification determination in light of the court's opinion.

As of July 16, 2015, OLMS has certified 72% of all California grant funds that have been submitted since January 1, 2015 (when the PEPRA exemption may have ended). To do so, OLMS has coordinated with the Federal Transit Administration to identify transit agencies seeking funds for non-capital projects during the exemption period or prior to January, 2015. These grants were immediately processed and certified. OLMS also identified grants where employees were not covered "public employees" under PEPRA or were not covered by CalPERS and promptly processed and certified those grants.

More recently, OLMS has referred to the parties' new 13(c) labor protections. These protections take into account the problems caused by PEPRA and provide a path to certification for all transit agencies with employees subject to PEPRA. Under these new proposed protections, if DOL's position – that PEPRA is inconsistent with 13(c) – is uncontested or survives any future judicial challenge, the transit authority will retroactively restore collective bargaining rights for its transit workers, including any rights, privileges and benefits under all collective bargaining agreements that existed directly prior to the implementation of PEPRA. If the transit authority, on the other hand, fails to take these steps, it risks that FTA will require de-obligation of the remaining balance in the grant and will pursue reimbursement to the FTA of grant funds already previously dispersed. OLMS has already certified five grant applications under these terms. Unless the parties provide a substantive objection, which has not yet occurred, this procedure will ensure that PEPRA does not prevent or delay certification, while simultaneously protecting workers' collective bargaining rights and benefits, as required by section 13(c).

I would like to clarify a few factual misstatements in your question. The question asserts that "All transit grants were put on hold, pending the outcome of a federal court case." On the contrary, OLMS has been certifying all California transit grants since September 2013, when California exempted transit workers from PEPRA. Even prior to that, OLMS was certifying many California transit grant applications because they were unaffected by PEPRA. OLMS decided these matters by close scrutiny of each case at all times, and never made a blanket determination with regard to "all" California grants. The question also claims that Federal District Court in California ordered the Department to allow transit funds to be released. The U.S. District Court was asked by the plaintiffs to "remand the matter to the Department with specific instruction to enter certification decisions" but the court chose instead to simply remand the matter to the DOL "for further proceedings." *State of California v. U.S. Department of Labor*, -- F.Supp.3d ----, 2014 WL 7409478 (E.D. Cal. 2014); See Plaintiff's Motion for Partial Summary Judgment, p2. Additionally, the Department is not appealing the court's decision but is proceeding consistent with the court's remand order.

2. After many years of careful study and research, the State of California is about to move forward with its state automatic IRA program. While full implementation is still at least a year away, can you commit to me here today to continue working with the State to make sure the plan succeeds and does not, in any way, run afoul of ERISA?

   Response: As the President announced at the White House Conference on Aging on July 13, the U.S. Department of Labor will publish a proposed rule by the end of the year clarifying how states can move forward, including with respect to requirements to automatically enroll employees and for employers to offer coverage. We will also continue to provide individualized technical assistance to States exploring options for creating automatic retirement accounts for workers in the private sector without access to a workplace retirement plan.

3. Finally, I wanted to praise you for your bold work on reintroducing the Conflict of Interest Rule – which is so critical to making sure retirees are protected from predatory brokers. As you have heard today, a lot of my colleagues on the other side of the aisle argue that you *must* let the SEC move first before moving ahead with your own rule.

   Why is it so important that the Department of Labor issue its *own* Conflict of Interest Rule independent of the SEC?

   Isn't it true, in fact, that the SEC's jurisdiction is different from the Department of Labor, and thus both agencies must move forward on their own *distinct* rules if we want to truly protect *all* retirees?

   Response: Retirement savings plans and IRAs receive special tax treatment and also receive special protections under federal retirement and employee benefits law. The SEC has a separate related authority to regulate securities markets. And while securities in tax-preferred retirement savings accounts are regulated by both the Department and SEC,

there are many transactions involving retirement savings over which the SEC has no jurisdiction to protect consumers. The same is true of FINRA. The proposed rule uses the Department's authority to ensure that investment advice for retirement plans and IRAs will be uniformly treated as fiduciary advice.

The Employee Retirement Income Security Act of 1974 (ERISA) gives the Department broad authority to regulate employer-sponsored employee benefit plans as well as persons who provide services to those plans. In 1978, authority over certain aspects of the prohibited transaction rules (including the definition of "fiduciary") under both ERISA and the Internal Revenue Code (IRC) with respect to IRAs was transferred from the Secretary of the Treasury to the Secretary of Labor.

ERISA expressly defines a person who provides investment advice to an employee benefit plan for a fee or other compensation, direct or indirect, as a fiduciary subject to standards of prudence and loyalty and prohibited from having certain conflicts of interest. A similar definition applies to investment advisers to IRAs under the IRC. The Federal securities laws do not impose a fiduciary standard on broker-dealers who provide investment advice incidental to their other services. Instead, under SEC and FINRA rules, broker-dealers are generally required to have a reasonable basis to believe that a recommended transaction is "suitable" for a customer. The Supreme Court has interpreted the anti-fraud provisions of the securities laws to impose a fiduciary standard on investment advisers, *i.e.*, those in the business of providing investment advice on securities. This standard requires such professional advisers to act in the best interest of their clients. It is not, however, the same as the fiduciary standard in ERISA. For example, the securities laws allow an investment adviser to act on a conflict of interest as long as the adviser appropriately discloses the conflict to the investor. ERISA and the IRC, by contrast, flatly prohibit a fiduciary from engaging in a transaction involving assets of the plan or IRA, if he or she has a conflict of interest, unless an existing exemption applies or DOL grants a new exemption administratively.

As reflected in the detailed Regulatory Impact Analysis that the Department has published as part of its new proposal, a careful review of the available data suggests that IRA holders receiving conflicted investment advice can expect their investments to underperform by an average of 100 basis points per year over the next 20 years. The underperformance associated with conflicts of interest – in the mutual funds segment alone – could cost IRA investors more than $210 billion over the next 10 years and nearly $500 billion over the next 20 years. These ongoing losses to retirement investors under the current regulatory structure support the need for change. The Department's proposed regulation and exemptions are aimed at reducing the harmful impact of conflicts of interest by ensuring that advisers act in the best interest of retirement investors. The proposed regulation and exemptions also provide additional enforcement avenues for plan fiduciaries, participants, and IRA owners. Under the proposal, individual investors would be able to bring suit to enforce the terms of the contract required under the proposed Best Interest Contract Exemption. Sponsors, participants, and beneficiaries of ERISA-covered plans would also have a private cause of action under ERISA. Under the proposal, investors would not be required to prove that the adviser acted with the intent to

deceive them in order to be successful in their complaint. In addition, the Best Interest Contract Exemption would permit the resolution of individual contract claims through binding arbitration, rather than court proceedings.

In addition, the scope of the securities laws (and the corresponding SEC authority to regulate) is not coextensive with the scope of ERISA. With certain exceptions, the SEC regulates securities. The classes of assets invested in retirement plans and IRAs under the Department's regulatory purview include both securities regulated by the SEC and other investments as well. For instance, retirement plans and IRA investments often include non-securities, such as certain insurance products, real estate, and interests in bank collective trusts.

Finally, this proposal brings much-needed transparency to the regulation of investment advice to retirement savings. In most cases right now, either the SEC best interest or suitability standard will apply and many investors will not know the differences between them. Under the new proposal, ERISA's stricter fiduciary and best interest standards and accountability provisions would be applicable in many more instances for retirement savers, regardless of whether the investment advice was provided by a broker-dealer, a registered investment adviser, or any other type of paid investment advice provider.

Rep. Polis (CO)

1. I recently heard, yet again, from a contractor who was underbid on a major contract. This is not because this contractor is less efficient or doesn't work as hard, but because they were underbid by contractors that cut corners by stealing wages, not paying overtime or finding workers who are not certified in their trade. Can you please inform us of your work to level the playing field between good and bad actors, and the difficulty of enforcement?

   Response: While the vast majority of Federal contractors play by the rules, every year tens of thousands of American workers are denied overtime wages, not hired or paid fairly because of their gender or race, or have their health and safety put at risk by companies contracting with the federal government. On July 31, 2014, President Obama signed the Fair Pay and Safe Workplaces Executive Order, which will require prospective federal contractors to disclose labor law violations and will give agencies more guidance on how to consider labor violations when awarding federal contracts. This EO is designed to give a full picture of a contractor's labor compliance record so that contracting agencies are not awarding contracts to employers who do not provide basic workplace protections. Additionally, some companies may not be deterred by existing penalties for violations of labor laws, viewing them as merely the "cost of doing business." By requiring federal agencies to evaluate compliance with labor laws as part of the contracting process, the EO provides such companies with a strong incentive to come into compliance.

2. You recently submitted a new "Conflict of Interest Rule" to the OMB for review. This rule is a new version of rule that you retracted in 2010. During the comment period there were widespread concerns that the rule would prevent access to lower and middle-income investors. Can you please speak to any work you did in outreach to the industry which will be impacted by this new rule? Can you also speak to changes you have considered in response to the widespread concern about access to investment advice?

   Response: The Department has taken the time to carefully consider the hundreds of comments received on the 2010 proposal, including the testimony heard at two days of public hearings. Furthermore, the Administration has engaged extensively with stakeholders, meeting with industry, consumer groups, employers, Members of Congress, and academics—anyone who can help us determine the best way to craft a rule that adequately protects consumers and levels the playing field for the many advisers doing right by their clients, while minimizing compliance burdens.

   The new proposal reflects careful consideration of all that input and addresses key concerns raised about the 2010 rule:

   - Provides a new, flexible, principles-based exemption that can accommodate and adapt to the broad range of evolving business practices. Industry commenters have emphasized that the existing exemptions for fiduciary investment advice are too rigid and prescriptive, leading to a patchwork of exemptions narrowly tailored to meet specific business practices and unable to adapt to changing conditions. Drawing on these and other comments, the best interest contract exemption adopts a broad, flexible, and principles-based approach intended to streamline compliance and give industry the flexibility to figure out how to serve their clients' best interest.

   - Includes other new, broad exemptions. For example, the new principal transactions exemption also adopts a principles-based approach. And the Department is asking for comments on whether the final regulatory package should include a new exemption for advice to invest in the lowest-fee products in a given product class, that is even more streamlined than the best interest contract exemption.

   - Expressly treats rollover and distribution recommendations as fiduciary investment advice. In the 2010 proposal, the Department sought comments on whether rollover and distribution recommendations should be treated as fiduciary investment advice. The proposed rule does so in response to comments that continuing to exclude these types of recommendations from fiduciary protections would leave millions of individuals vulnerable to conflicted advice on one of the most significant financial decisions that they make.

   - Carves out investment education to IRA owners. The proposal includes a carve-out from fiduciary status for providing investment education to IRA owners, and not just to plan sponsors and plan participants as under the 2010 proposal. It also updates the definition of education to include retirement planning and lifetime income information. In addition, it strengthens consumer protections by classifying materials

that reference specific products that the consumer should consider buying as advice.

- Determines who is a fiduciary based not on title, but rather the advice rendered. The 2010 proposal stated that anyone who was already a fiduciary under ERISA for other reasons or who was an investment adviser under federal securities laws would be an important factor in determining whether they were also an investment advice fiduciary under the 2010 proposal. The new proposed rule looks not at the title but rather whether the person is providing retirement investment advice.

- Limits the seller's carve-out to sales pitches to large plan sponsors with financial expertise. The 2010 proposal included a carve-out from fiduciary status for sales pitches to IRA investors, plan participants, and plan sponsors. The new proposal limits this carve-out to large plans and large money managers in light of their financial expertise. This change is in response to comments that differentiating investment advice from sales pitches is very difficult in the context of investment products and, unless the advice recipient is a financial expert, the carve-out would create a loophole that would fail to protect investors.

- Excludes valuations or appraisals of the stock held by ESOPs from the definition of fiduciary advice. The proposed rule clarifies that such appraisals do not constitute retirement investment advice subject to a fiduciary standard. DOL may put forth a separate regulatory proposal to clarify the applicable law for ESOP appraisals.

- Includes other new carve-outs from fiduciary status for swap transactions with independent plan fiduciaries; mandatory plan reporting and disclosure filings; and certain communications with plan fiduciaries by the plan sponsor's employees.

[Whereupon, at 11:50 a.m., the Committee was adjourned.]

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