HEARING ON EXAMINING THE POLICIES AND PRIORITIES OF THE U.S. DEPARTMENT OF LABOR

HEARING

BEFORE THE

COMMITTEE ON EDUCATION
AND LABOR
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C O N T E N T S

HEARING ON EXAMINING THE POLICIES AND PRIORITIES OF THE U.S. DEPARTMENT OF LABOR

Wednesday, May 1, 2019
U.S. House of Representatives,
Committee on Education and Labor,
Washington, DC.

The Committee met, pursuant to notice, at 10:16 a.m., in room 2175, Rayburn House Office Building, Hon. Robert C. "Bobby" Scott [Chairman of the Committee] presiding.

Present: Representatives Scott, Davis, Courtney, Fudge, Sablan, Wilson, Bonamici, Takano, DeSaulnier, Norcross, Jayapal, Morelle, Wild, Harder, McBath, Schrier, Underwood, Hayes, Shalala, Levin, Omar, Trone, Stevens, Lee, Trahan; Foxx, Roe, Thompson, Walberg, Guthrie, Byrne, Grothman, Stefanik, Allen, Rooney, Smucker, Banks, Walker, Comer, Cline, Fulcher, Taylor, Watkins, Wright, Meuser, Timmons, and Johnson.

Staff present: Alli, Tylease, Chief Clerk; Barab, Jordan, Senior Labor Policy Advisor; Brown, Nekea, Deputy Clerk; Brunner, Ilana, General Counsel—Health and Labor; Dailey, David, Senior Counsel; Hernandez, Itzel, Labor Policy Fellow; Hughes, Carrie, Director of Health and Human Services; Hovland, Eli, Staff Assistant; Lalle, Stephanie, Deputy Communications Director; Lee, Bertram, Policy Counsel; Lindsay, Andre, Staff Assistant; McClelland, Katie, Professional Staff; McDermott, Kevin, Senior Labor Policy Advisor; Miller, Richard, Director of Labor Policy; Moore, Max, Office Aide; Onwubiko, Udochi, Labor Policy Counsel; Pluviose, Veronique, Staff Director; Ronis, Carolyn, Civil Rights Counsel; Vassar, Banyon, Deputy Director of Information Technology; Walker, Katelyn, Counsel; West, Rachel, Senior Economic Policy Advisor; Yu, Cathy, Director of Labor Oversight; Artz, Cyrus, Minority Parliamentarian; Boughton, Marty, Minority Press Secretary; Butcher, Courtney, Minority Director of Coalitions and Member Services; Chougule, Akash, Minority Professional Staff Member; Green, Rob, Minority Director of Workforce Policy; Jones, Amy Raaf, Minority Director of Education and Human Resources Policy; Martin, John, Minority Workforce Policy Counsel; Martin, Sarah, Minority Professional Staff Member; Matesic, Hannah, Minority Director of Operations; McNabb, Kenney, Minority Communications Director; Middlebrooks, Jake, Minority Professional Staff Member; Murray, Alexis, Minority Professional Staff Member; Renz, Brandon, Minor-

ity Staff Director; Ridder, Ben, Minority Legislative Assistant; Schellin, Meredith, Minority Deputy Press Secretary and Digital Advisor; Thomas, Brad, Senior Education Policy Advisor; Wadyka, Heather, Minority Staff Assistant; and Williams, Lauren, Minority Professional Staff.

Chairman SCOTT. We want to welcome everyone here today. I know the quorum is present. The Committee is meeting today to examine the policies and priorities of the U.S. Department of Labor. Pursuant to Committee Rule 7(c), opening statements are limited to the Chair and Ranking Member. This will allow us to hear from our witness sooner and provides all members with adequate time to ask questions. I now recognize myself for the purpose of making an opening statement.

Mr. Secretary, before we begin, I want to express our profound sadness over the shooting that took place yesterday at the University of North Carolina in Charlotte. This is yet another tragic reminder of our responsibility to address the gun violence that impacts communities across the country. I also want to acknowledge the absence of our colleague, the gentlelady from North Carolina, Ms. Adams, who traveled home to be with her constituents in this difficult time.

Mr. Secretary, I want to begin by thanking you for appearing before the Committee today. This hearing is an important opportunity to discuss the Department of Labor's budget request for Fiscal Year 2020 as well as the many other important issues under your jurisdiction. I am particularly interested in the bonding program that you mentioned earlier today in our discussion. It looks like a great program for both workers and business, we will hopefully have an opportunity to discuss it.

As its mission statement makes clear, the Department of Labor's responsibility is to "foster, promote, and develop the welfare of the wage earners, job-seekers, and retirees of the United States." Unfortunately, the proposed Fiscal Year 2020 budget for the department cuts programs and policies that are designed to serve this mission.

The President's budget, which reduces the Department of Labor's funding by 10 percent or $1.2 billion, reflects less support for hard-working people who are struggling to get ahead. For example, our economy increasingly demands and rewards high-skilled employees, but the President's proposed budget falls hardest on work force development programs that provide workers with a path to financial security.

For example, the Job Corps is cut 41 percent, and the Reentry Employment Opportunities Program, which provides a second chance to formerly incarcerated individuals, suffers a 16 percent cut.

This budget also seeks to expand untested work force training programs at the expense of proven, high-quality registered apprenticeships. For example, the registered apprenticeship program has long offered generations of Americans work force training opportunities that provide good wages and benefits and a pathway to a rewarding career.

However, the department's industry-recognized apprenticeship programs are not accountable to quality standards that protect the

interests of workers and taxpayers. This has the effect of undermining work force training programs that are now recognized anywhere in the country, from Virginia to Washington State, and can reshape the future of individuals, their families, and their communities.

The Occupational Safety and Health Administration, OSHA, which is responsible for protecting Americans' right to safe working conditions, is also in desperate need of increased funding. Nearly 3 million workers experienced a serious workplace injury or illness in 2017, and more than 5,000 workers were killed on the job.

At current staffing levels, OSHA only has enough resources to inspect workplaces once every 165 years. There are now fewer OSHA inspectors today than at any time in its 49-year history, yet the President's budget allocates no additional funding to improve workplace safety. Compared to the massive tax cut recently given to corporations and the top 1 percent, the administration's refusal to support workers and middle-class families is a disappointment to hardworking people across the country.

For example, the Department of Labor has opposed two of the most significant efforts to immediately raise wages and improve living conditions for millions of American workers. After 10 years with no increase, the Federal minimum wage has lost more than 15 percent of its value, and today there is no place in America where a full-time minimum wage worker making $7.25 an hour can afford even a modest two-bedroom apartment.

But the administration's only response has been to criticize our efforts to gradually raise the minimum wage without offering any alternative. A wide body of rigorous research and the experience of States and cities across the country demonstrates that gradually raising the minimum wage to $15 an hour will be good for workers, good for businesses, and good for the economy. I hope the administration will follow the evidence and join our effort to give millions of low-wage workers a raise that is long overdue.

The department has not only opposed raises for low-wage workers, it has undermined raises for middle-class workers as well. Under your leadership, the department abandoned the Obama-era overtime rule that would have expanded overtime pay protections to an estimated 4.2 million salaried workers and strengthened protections for an additional 8.9 million salaried workers.

In its place, the administration is offering a new overtime proposal that is better than nothing but leaves behind more than 8 million workers and erases the department's obligation to update the rule to keep up with inflation. That failure will deny even more workers overtime protections in the years to come. Compared to the Obama overtime rule, the administration's proposal will cut middle-class workers' wages every year by $1.2 billion.

The department's record on workplace safety, workers' right to organize, and workers' access to affordable healthcare has also undermined the health and well-being of the American public. OSHA has moved to weaken workplace safety standards, including protections against exposure to beryllium, a metal that can cause cancer and severe lung disease.

This is the first time in OSHA history that protections against known carcinogens have been actually rolled back. It has removed

standards covering toxic chemicals and combustible dust from the regulatory agenda, while relegating to the back burner standards to protect healthcare workers from exposure to infectious diseases such as Ebola, pandemic flu, and MRSA.

After decades of declining rates of black lung disease, the scourge has returned at epidemic levels. Experts point to silica exposure as the culprit. But while we have developed new technologies to monitor exposures, the Mine Safety and Health Administration, charged with safeguarding miners, is failing to act. Meanwhile, the Black Lung Disability Trust Fund, which provides most of the funding for miners' black lung benefits, is going broke. The administration's budget fails to extend the excise tax on coal, which is needed to ensure the solvency of that fund. That tax expired December 31st of last year.

And the department has played a central role in the administration's sabotage of the Affordable Care Act by expanding the use of junk healthcare plans. These plans not only put participants at risk of losing key consumer protections, they increase costs for all Americans who are not buying such plans by diverting younger, healthy Americans away from the general insurance pool, increasing the cost for everybody else.

The department has repeatedly attempted to erase the contraceptive coverage benefit that an estimated 62 million women currently enjoy under the Affordable Care Act. Despite failing to withstand multiple legal challenges, the department has attempted to implement rules that would leave many female employees, students, and their dependents with no insurance option for contraceptive coverage.

Finally, last August the department's Office of Federal Contract Compliance Programs, the OFCCP, quietly issued a directive that would expand the right of Federal contractors to justify employment-based discrimination based on their religiously held beliefs. Directive 2018–03 grossly undermines Executive Order 11246, which was issued by President Lyndon Johnson, to ensure that Federal contractors are not discriminating on the basis of race, color, religion, national origin, gender, or other factors, and in fact the Johnson directive required businesses to have affirmative action initiatives to ensure that equal opportunity existed. The department's indefensible directive turns the Executive Order on its head to provide Federal contractors with a religious-based defense to allow them to discriminate in employment with Federal taxpayers' money.

Mr. Secretary, for too long we have acted as though the growing economy means that what is good for the economy is inherently good for all workers. But evidence and experience demonstrate that benefits of economic growth are not being shared by all workers and their families. Even as the stock market hits record highs, one in nine workers is paid a wage that leaves them in poverty, even when working full-time and year-round. More than four in 10 American households still cannot cover a $400 emergency medical bill. Four in five workers are still living paycheck to paycheck.

These numbers are not cause for celebration. They are cause for action to address the inequality that continues to plague workers, families, and communities across the country. We must recognize

that what is good for workers is good for the economy, not the other way around. In other words, a really strong economy exists only when everyone is succeeding.

Mr. Secretary, I look forward to the opportunity to discuss the important issues in your department. And I now yield to the Ranking Member for the purpose of an opening statement.

[The statement by Chairman Scott follows:]

Prepared Statement of Hon. Robert C. "Bobby" Scott, Chairman, Committee on Education and Labor

Mr. Secretary, I want to begin by thanking you for appearing before this Committee today. This hearing is an opportunity to discuss the Department of Labor's budget request for Fiscal Year 2020 as well as the many important issues under your jurisdiction.

As its mission statement makes clear, the Department of Labor's responsibility is to "foster, promote, and develop the welfare of the wage earners, job seekers, and retirees of the United States."

Unfortunately, the proposed Fiscal Year 2020 budget for the Department of Labor cuts programs and policies that are designed to serve this mission.

The President's budget proposal, which slashes the Department of Labor's funding by 10 percent, or $1.2 billion, reflects the Administration's lack of support for hardworking people who are struggling to get ahead.

For example, our economy increasingly demands and rewards high-skilled employees, but the President's proposed budget cuts fall hardest on work force development programs that provide workers a path to financial security.

Specifically, the Job Corps is cut by 41 percent and the Reentry Employment Opportunities Program, which provides a second chance to formerly incarcerated individuals, receives a 16 percent cut.

This budget proposal also seeks to expand untested work force training programs at the expense of proven, high-quality apprenticeships.

For example, the Registered Apprenticeship program has long offered generations of Americans work force training opportunities that provide good wages and benefits and a pathway to a rewarding career. However, the Department's new industry-recognized apprenticeship programs, or IRAPs, are not accountable to quality standards that protect the interests of workers and taxpayers. This has the effect of undermining work force training programs that are recognized anywhere in the country from Norfolk to Seattle and can reshape the future for individuals, their families, and their communities.

The Occupational Safety and Health Administration, or OSHA—which is responsible for protecting Americans' right to safe working conditions—is also in desperate need of a funding increase. Nearly 3 million workers experienced a serious workplace injury or illness in 2017—and more than 5,000 workers were killed on the job.

At current staffing levels, OSHA only has enough resources to inspect workplaces once every 165 years. There are now fewer OSHA inspectors today than at any time in its 49-year history. Yet, the president's budget allots no additional funding to improve workplace safety.

When compared to the massive tax cut recently given to corporations and the wealthiest Americans, the Administration's refusal to invest in workers and middle-class families is an insult to hardworking people across the country.

Regrettably, the priorities articulated in the Fiscal Year budget request are consistent with the Department's actions over the past two-and-a-half years.

The Department of Labor has opposed two of the most significant efforts to immediately raise wages and improve the standard of living for millions of American workers.

After nearly 10 years with no increase, the Federal minimum wage has lost more than 15 percent of its value. Today, there is no place in America where a full-time minimum wage worker making $7.25 an hour can afford a modest 2-bedroom apartment.

But the Administration's only response has been to criticize our efforts to gradually raise the minimum wage without offering any alternative. A wide body of rigorous research and the experience of States and cities across the country demonstrate that gradually raising the minimum wage to $15 an hour will be good for workers, good for businesses, and good for the economy.

I hope the Administration will follow the evidence and join our effort to give millions of low-wage workers a raise that is long overdue.

The Department has not only opposed raises for low-wage workers, it has undermined raises for middle-class workers as well.

Under your leadership, the Department abandoned the Obama-era overtime rule that would have expanded overtime pay protections to an estimated 4.2 million salaried workers and strengthened protections for an additional 8.9 million salaried workers.

In its place, the Administration is offering a new overtime proposal that leaves behind more than 8 million workers and erases the Department's obligation to update the rule to keep pace with inflation, which will deny even more workers overtime protections in the years to come. Compared to the Obama-era overtime rule, the Trump Administration's proposal will cost middle-class workers $1.2 billion in wages every year.

The Department's record on workplace safety, workers' right to organize, workers' access to affordable health care has also undermined the health and wellbeing of the American work force.

OSHA has moved to weaken workplace safety standards, including protections against exposure to beryllium, a metal that can cause cancer and severe lung disease. It has removed standards covering toxic chemicals and combustible dust from the regulatory agenda, while relegating to the back-burner standards to protect health care workers from exposure to infectious diseases such as Ebola, pandemic flu, and MRSA.

After decades of declining rates of black lung disease, the scourge has returned at epidemic levels. Experts point to silica exposure as the culprit. But while we have developed new technology to monitor exposures, the Mine Safety and Health Administration, charged with safeguarding miners, is failing to act.

Meanwhile, the Black Lung Trust Fund that provides most miners' black lung benefits is drowning in red ink and the Administration has failed to support funds for black lung benefits.

And the Department has played a central role in the Trump Administration's sabotage of the Affordable Care Act by expanding the use of junk health care plans.

These plans not only put participants at risk of losing key consumer protections, they increase health care costs for all Americans by diverting younger, healthier Americans away from the general insurance pool.

The Department has repeatedly attempted to erase the contraceptive coverage benefit that an estimated 62.4 million women currently enjoy under the ACA. Despite failing to withstand multiple legal challenges, the Department has attempted to implement rules that would leave many female employees, students, and their dependents with no insurance options for contraceptive coverage.

Finally, last August, the Department's Office of Federal Contract Compliance Programs, the OFCCP, quietly issued a directive that would expand the right of Federal contractors to justify employment-based discrimination based on their religiously held views. Directive 2018–03 grossly undermines Executive Order 11246 which was enacted by President Lyndon B. Johnson to ensure that Federal contractors enact affirmative action programs and not discriminate on the basis of race, color, religion, national origin, gender, and other factors. The Department's indefensible directive turns the Executive Order on its head to provide Federal contractors with religious-based defense to discriminate with taxpayer funded dollars.

Taken together, it is clear that hardworking Americans across this country cannot count on the Department of Labor to advocate on their behalf.

Mr. Secretary, for too long, we have acted as though a growing economy means what is good for the economy is inherently good for all workers. But evidence and experience demonstrate that the benefits of economic growth are not being shared by workers and their families.

Even as the stock market hits record highs, one in 9 workers is paid a wage that leaves them in poverty, even when working full time and year-round. More than 4 in 10 American households still cannot cover a $400 emergency medical bill. Four in 5 workers are living paycheck to paycheck.

Those numbers are not cause for celebration; they are cause for action to address the inequality that continues to plague workers, families, and communities across the country.

We must recognize that what's good for workers is good for the economy, not the other way around. In other words, a strong economy exists only when everyone can succeed. This is achievable when the Department fulfills its duty to put workers first.

Mister Secretary, I look forward to this opportunity to discuss the important issues under your Department. Now, I will yield to the Ranking Member for the purpose of an opening statement.

Ms. FOXX. Thank you, Mr. Chairman, for yielding. Thank you, Secretary Acosta, for coming before the Committee today. It is a pleasure having you here to talk about the Department of Labor's policies and priorities on the heels of such excellent news about the booming U.S. economy.

With record low unemployment and a job-seeker's market, it is a good time to be an American worker. The Department of Labor is responsible for keeping many commitments to the American work force, and it is my hope that today we will hear more about the Department's efforts to prepare workers, ensure that men and women are protected on the job, and the Department's work to fuel our continued economic growth.

Right now, there are more than 7 million unfilled jobs in the United States, many of which remain open because there are not enough workers with the necessary skills to fill them. It is predicted that by 2022 we will have a shortage of 11 million workers who will not have the necessary education to thrive in the economy.

This is an urgent concern, and we need work force development solutions that connect disenfranchised workers with the skills they need to fill good-paying in-demand jobs. Over the last several years, Committee Republicans have worked hard on legislation to improve our national work force development efforts and expand on-the-job learning opportunities to help workers gain the skills they need to succeed in the workplace.

In 2014 the Workforce Innovation and Opportunity Act became law, and last year we sent the Strengthening Career and Technical Education for the 21st Century Act to the President's desk, where it received his signature. These laws address ways to fill job vacancies at the local level and strengthen students' access to apprenticeships and other on-the-job learning opportunities. It is our hope that you will use your authority to supplement these efforts to help the American work force flourish.

In conjunction with Department efforts to prepare workers, it is important for Committee members to learn about what actions the department is taking to safeguard workers and wisely steward taxpayer dollars. Contrary to Democrats' claims, it is possible to protect and promote the well-being of workers while being fiscally responsible, and the President's Fiscal Year 2020 budget proposal for the Department of Labor does just that by vigorously enforcing labor laws and proposing important cost-saving measures whenever possible.

The Department's policy of strong enforcement paired with enhanced compliance assistance is an especially effective way of protecting workers and bringing businesses into full compliance. This approach is a complete departure from the previous administration's policy of treating employers as adversaries instead of partners.

DOL should also be commended for seeking opportunities to strengthen union transparency, ensure compliance with wage and hour laws, enhance retirement security, and expand access to affordable health care options for job creators and workers. These efforts, paired with the Department's deregulatory agenda, have already helped drive the surge of economic growth we see today.

These policies will be key to ensuring the economy's continued progress, too.

Today the U.S. economy has added jobs for more than 100 consecutive months. And since President Trump assumed office, the number of job opportunities available across the country has grown from 5.6 million to more than 7 million. Unemployment recently hit its lowest point in 49 years, and wages are up and experiencing sustainable organic growth thanks to the Republican Tax Cuts and Jobs Act and sweeping deregulation over the last 2 years, much of which has come from the Department of Labor. Median weekly earnings are up more than 30 percent for Latino and Asian workers and more than 20 percent for Black and White workers since the end of 2007.

The progress cannot be overstated, and it is vital that the Secretary champion policies that keep this momentum going. Secretary Acosta, you have been dedicated in your leadership to the Department of Labor, and I hope we can remain focused today on what matters most, securing greater opportunities and prosperity for American workers.

Thank you again, Mr. Chairman. I yield back.

[The statement by Mrs. Foxx follows:]

Prepared Statement of Hon. Virginia Foxx, Ranking Member, Committee on Education and Labor

Thank you for yielding.

Thank you, Secretary Acosta, for coming before the Committee today. It's a pleasure having you here to talk about the Department of Labor's policies and priorities on the heels of such excellent news about the booming U.S. economy.

With record-low unemployment and a job seekers' market, it's a good time to be an American worker. The Department of Labor is responsible for keeping many commitments to the American work force, and it's my hope that today we will hear more about the Department's efforts to prepare workers, ensure that men and women are protected on the job, and the Department's work to fuel our continued economic growth.

Right now, there are more than 7 million unfilled jobs in the United States, many of which remain open because there aren't enough workers with the necessary skills to fill them. It's predicted that by 2022, we will have a shortage of 11 million workers who will not have the necessary education to thrive in the economy. This is an urgent concern, and we need work force development solutions that connect disenfranchised workers with the skills they need to fill good-paying, in-demand jobs.

Over the last several years, Committee Republicans have worked hard on legislation to improve our national work force development efforts and expand on-the-job learning opportunities to help workers gain the skills they need to succeed in the work force. In 2014, the Workforce Innovation and Opportunity Act became law, and last year, we sent the Strengthening Career and Technical Education for the 21st Century Act to the President's desk where it received his signature. These laws address ways to fill job vacancies at the local level and strengthen students' access to apprenticeships and other on-the-job learning opportunities. It is our hope that you will use your authority to supplement these efforts to help the American work force flourish.

In conjunction with Department efforts to prepare workers, it's important for Committee Members to learn about what actions the Department is taking to safeguard workers and wisely steward taxpayer dollars. Contrary to Democrats' claims, it is possible to protect and promote the wellbeing of workers while being fiscally responsible, and the President's Fiscal Year budget proposal for the Department of Labor does just that by vigorously enforcing labor laws and proposing important cost-saving measures wherever possible. The Department's policy of strong enforcement paired with enhanced compliance assistance is an especially effective way of protecting workers and bringing businesses into full compliance. This approach is a complete departure from the previous administration's policy of treating employers as adversaries instead of partners.

DOL should also be commended for seeking opportunities to strengthen union transparency, ensure compliance with wage and hour laws, enhance retirement security, and expand access to affordable health care options for job creators and workers. These efforts paired with the Department's deregulatory agenda have already helped drive the surge of economic growth we see today. These policies will be key to ensuring the economy's continued progress, too.

To date, the US economy has added jobs for more than 100 consecutive months, and since President Trump assumed office, the number of job opportunities available across the country has grown from 5.6 million to more than 7 million. Unemployment recently hit its lowest point in 49 years and wages are up and experiencing sustainable, organic growth thanks to the Republican Tax Cuts and Jobs Act and sweeping deregulation over the last 2 years, much of which has come from the Department of Labor.

Median weekly earnings are up more than 30 percent for Latino and Asian workers and more than 20 percent for Black and White workers since the end of 2007. This progress cannot be overstated, and it's vital that the Secretary champion policies that keep this momentum going.

Secretary Acosta, you have been dedicated in your leadership of the Department of Labor, and I hope we can remain focused today on what matters most: securing greater opportunities and prosperity for American workers.

I yield back.

Chairman SCOTT. Thank you, Dr. Foxx.

I will now introduce our witness. The Honorable Alexander Acosta was confirmed as the 27th U.S. Secretary of Labor on April 28, 2017. He previously held positions as a member of the National Labor Relations Board, Assistant Attorney General for the Civil Rights Division of the U.S. Department of Justice, U.S. Attorney for the Southern District of Florida, and Dean of the Florida International University College of Law.

Mr. Secretary, let me remind you that we have read your opening statement and it will appear in full in the record.

So under Committee Rule 7(d) and committee practice, you are asked to try to limit your oral presentation to about 5 minutes or so in summary of your written statement.

After your presentation we will move to member questions.

I now recognize Secretary Acosta.

STATEMENT OF HON. ALEXANDER ACOSTA, SECRETARY, UNITED STATES DEPARTMENT OF LABOR

Secretary ACOSTA. Mr. Chairman, thank you, and Ranking Member Foxx, thank you as well for your opening statement. I think the two opening statements presented very different perspectives; suffice to say that I would adopt many of the Ranking Member's comments and disagree with some of your comments, Mr. Chairman. But I think rather than go through those seriatim that I think we are better served if we just proceed to questions. And so I yield my time.

[The statement of Secretary Acosta follows:]

STATEMENT OF R. ALEXANDER ACOSTA

SECRETARY OF LABOR

BEFORE THE

COMMITTEE ON EDUCATION AND LABOR

UNITED STATES HOUSE OF REPRESENTATIVES

May 1, 2019

Chairman Scott, Ranking Member Foxx, and Members of the Committee, thank you for the invitation to testify today. I am pleased to appear before this Committee and to represent President Trump and the hardworking men and women of the Department of Labor in reporting to you the progress of our work on behalf of all Americans, and to outline the Administration's vision for the Department of Labor in Fiscal Year (FY) 2020 and beyond.

The President has put forth a responsible and well-reasoned budget for FY 2020 that reflects Administration priorities to support the American workforce. Indeed, although the budget reflects a 10% decrease over FY 2019, the budget proposes greater investment in programs that work, eliminates programs that do not, and generally bolsters opportunities for working Americans through commonsense reforms. The budget reflects a continued focus on comprehensive compliance assistance for those seeking help to comply with the law paired with vigorous, fair, and effective enforcement against those who violate the law and reflects our priority of putting American workers first, including ensuring that labor protections in trade agreements are enforced to prevent unfair competition. As the information below shows, the Department of Labor has proven its ability to do more with less and to maximize the value of taxpayer dollars. The budget balances fiscal responsibility, sound management, and focus on priorities.

Overview

The dedication, ingenuity, and innovation of our American workforce—the greatest workforce in the world—is unparalleled. No one does it better than the hardworking men and women of our nation who farm, mine, make, build, transport, innovate, design, create, provide services, and engage with other Americans to make our lives healthier, safer, easier, and more productive.

The President's vision for America and the American workforce is straightforward: to empower our economy to each day create jobs, more jobs, and even more jobs that are safe and family sustaining. The Department is hard at work to keep Americans safe in the workplace; prevent discriminatory employment practices; safeguard retirement savings; increase employment opportunities for all Americans; level the playing field for working Americans through fair trade; collect, analyze, and disseminate essential economic information; promote private-sector union democracy and financial integrity; protect the interest of workers, and their families, who are injured or become ill on the job; and ensure workers are paid what they are owed—in full and on time. The Department is also working diligently to identify and eliminate regulations that unnecessarily eliminate jobs, hinder job creation, or impose costs that outweigh the benefits.

The first two years of the Trump Administration were marked by remarkable growth for our economy, increased opportunity for the American workforce, and a renewed confidence exemplified by investment in our nation by job creators. In part due to a commonsense approach to deregulation, I am pleased to report on just a few notable milestones:

- In FY 2018, according to the Office of Management and Budget, the U.S. Department of Labor's deregulatory efforts totaled $3.28 billion in present value cost savings;
- Since January 2017, the American economy has created 5.1 million jobs, 3.2 million of those new jobs have been created since the President signed the Tax Cuts and Jobs Act;
- At the time this testimony was prepared, there were 7.1 million job openings, over one million more than the 6.2 million job seekers in the United States—American job creators are looking to hire;
- In 2018, average hourly earnings increased 3.3%, the largest increase in average hourly earnings since 2009; and importantly, wage growth for the lowest decile earners was at approximately 6.5%;
- Unemployment remains near its all-time low, and the increase in the labor force participation rate may indicate that Americans who were previously discouraged are rejoining the American workforce; and
- Even as employment substantially increased over the last two years, the numbers and rates of fatal injuries and nonfatal injuries and illnesses in the workplace declined in 2017.

While these statistics document the country's success, during my travels throughout our nation over the past 21 months, it is clear that Main Street, not just Wall Street—from Indiana to California, Alaska to Florida—is deriving significant benefit from the economic growth. More Americans are working today than ever before. They are safer in the workplace. They are earning more. They have more opportunities for growth and advancement. The future of the American workforce and the American economy look bright, and the Department looks forward to working with Congress to continue that growth and opportunity.

Removing Roadblocks to Job Creation Through Regulatory Reform

The Department administers and enforces more than 180 federal laws. These laws and the regulations that implement these laws cover more than 150 million workers and retirees, and 10 million employers. Consistent with the President's priorities, the Department has worked to identify regulations that unnecessarily eliminate jobs, inhibit job creation, or impose costs that exceed benefits—and reform or eliminate them.

Our approach to regulatory reform is simple, we adhere to two core principles: respect for the individual and respect for the rule of law. The Department's rulemaking is carried out in a deliberative manner guided by fidelity to the law. Public participation in the rulemaking process through notice and comment is vital. It ensures all Americans have an opportunity to express their views before a rule is promulgated or changed.

As mentioned above, the Office of Management and Budget estimates the regulatory impact of the Department's FY 2018 regulatory reform efforts to reflect $3.28 billion in present value cost savings to the economy. Put simply, this means the Department significantly decreased the compliance burden on Americans.

In addition to these actions, we expanded access to affordable quality health care coverage options through Association Health Plans and rescinded the "Persuader Agreements" rule, which the American Bar Association and others believed inappropriately impinged on attorney-client confidentiality.

Our deregulatory actions have continued this fiscal year with two recent final actions: one ensuring continued safety of crane operations while reducing paperwork burdens and the other removing the electronic collection of certain information about workplace injuries that raised worker privacy concerns and that is unnecessary for the Occupational Safety and Health Administration's (OSHA) electronic data collection requirements. We have also issued deregulatory proposals in the last few weeks on overtime thresholds for Fair Labor Standards Act exemptions and what goes into the regular rate of pay for overtime, in addition to a proposal that addresses concerns about joint employment liability so that workers and their employers, especially small businesses like franchisees, have definitive guidance on their rights and responsibilities. There are a number of other items that should be proposed shortly, including a proposal to ensure Americans and especially our military veterans have the broadest possible networks available when they need a doctor.

Demanding Better Results Through Greater Accountability

Accountability to the American taxpayer is a priority at the Department as we design new programs and evaluate existing ones. We are focused on refining our efforts in a manner that respects principles of federalism, and best serves the American people. Where Departmental efforts and programs are working, we are looking for ways to improve them and learn from them, where Departmental programs are not working, we are looking for ways to make them work or consider whether we should refocus our efforts elsewhere.

One example I have often mentioned is the difficulty of gauging the success of federal programs when measuring inputs like dollars spent and program participants instead of outcomes like the career attainment rates of program graduates. In FY 2018, the Department redesigned the way we measure the success and efficacy of the Job Corps program. We announced that the Office of Job Corps would reform the Outcome Measurement System to focus on student performance and long-term outcomes over inputs such as dollars spent and outputs such as number of students served. More specifically, the weights given to credential attainment have been reduced from about half, to 35% in Program Year (PY) 2018 and 20% in PY 2019. New metrics that focus on initial placement, placement wage, and placement quality (job training match and apprenticeships, military, and full-time placements) are now an additional 30% of the report card for both program years, and long-term placement and placement wage after six months and 12 months account for the final 35% and 50% in PY 2018 and PY 2019.

The Department also looks closely at opportunities to eliminate duplication to bring greater efficiency to our work and allocation of resources. One such example is in the Mine Safety and Health Administration (MSHA). During FY 2018, MSHA leadership examined the capacity and utilization of its field inspectors and discovered that there was significant overlap between the duties performed by metal/non-metal mine inspectors and coal mine inspectors, but different training and an imbalance in capacity relative to the actual utilization of inspectors. As a result, MSHA leadership developed a plan to cross-train mine inspectors and reallocate resources. The Department expects that this will result in significant savings to MSHA in FY 2019 with no impact on the health and safety of American miners.

Finally, beginning in FY 2018 and continuing on into FY 2019, the Department is working to reduce the number of improper payments made through the state-run Unemployment Insurance (UI) Program. The President's FY 2020 budget request includes $126 million in additional resources to address improper payments made through the state-run UI program and improve interstate communication to reduce such payments. The UI program is important to those Americans who need a helping hand during unemployment, and individuals that abuse the system may place added strain on these resources. The Department is committed to reining in improper payments in the UI program.

Returning Flexibility to the States

The Department recognizes that the workforce development needs of Alaska, New York, Arizona, and Vermont differ widely. The Department has made it a priority to work with States to help them customize their workforce programs. An example is the exercise of the Secretary's waiver authority under the Workforce Innovation and Opportunity Act (WIOA) to grant flexibility where possible. To date, the Department has granted 67 waivers to 28 states and territories to better tailor approaches to the needs and opportunities present in their states and communities.

Providing States greater flexibility to administer programs efficiently and effectively is one way to better serve the individualized needs of Americans in various states and localities. To that end, the President's FY 2020 Budget proposes broader waiver authority for the core WIOA programs, allowing the Department to trust our nation's governors with the responsibility of how best to operate their workforce systems.

Bringing Clarity to Employers and Employees

After meeting with many American job creators, one of the things most important to them that affects working Americans is stability and understanding how an agency interprets its statutes and regulations. Clarity and consistency in agency interpretations allow the regulated public to comply with the law in a way that is not unduly burdensome or costly and ensure a level playing field.

One of the ways the Department can best do that is by answering specific questions from the regulated community and making those answers known publicly. Accordingly, in June 2017, the Department's Wage and Hour Division (WHD) announced it was resuming its longstanding

practice of issuing opinion letters. Opinion letters are official, written opinions provided by the Department that address the application of statutes and regulations in specific circumstances presented by an employer, employee, or other entity. The letters were previously a Department practice for more than 70 years and specifically allowed in statute, until the practice was discontinued in 2010.

In FY 2018, WHD reissued 18 previously withdrawn opinion letters and has issued 14 new opinion letters. These are now more readily available to the public on the WHD website via a searchable tool. Among other areas, one of the more recent opinion letters addressed a longstanding question as to whether organ donors can avail themselves of the Family and Medical Leave Act. Thanks to this opinion letter, it is now clear that they can. Following on this success, the Office of Federal Contract Compliance Programs (OFCCP) also recently announced the institution of an opinion letter program.

Expanding Access to High-Quality Health and Retirement Coverage for Americans

On June 21, 2018, the Department published a final regulation expanding the ability of employers to participate in Association Health Plans (AHPs).[1] The rule allows employers, including self-employed individuals and sole proprietors, to band together to offer group health coverage to their employees. AHPs provide more affordable, high-quality health care coverage choices to consumers, while maintaining important consumer protections to safeguard against discrimination on the basis of the perceived health of a company's workforce and individuals' pre-existing conditions. To date, more than 30 major organizations in 14 states have set up, or announced their intent to set up, AHPs to offer quality, affordable health care coverage options to their members' employees.

Building on this momentum, on August 31, 2018, President Trump signed Executive Order 13847 on Strengthening Retirement Security in America. Recognizing that all Americans deserve access to retirement savings opportunities, President Trump instructed the Department to examine opportunities to expand access to workplace retirement plan options and increase retirement security for all Americans.

On October 23, 2018, the Department proposed a regulation clarifying the circumstances under which a group or association of employers, or a professional employer organization (PEO) can act as an employer and sponsor workplace retirement plans under the Employee Retirement Income Security Act (ERISA). If published as a final rule, this regulation has the potential to expand Americans' access to affordable, quality retirement savings options.

The Department is currently reviewing the public comments to the proposed regulation submitted before the comment period closed on December 24, 2018.

[1] On March 28, 2019, the U.S. District Court for the District of Columbia entered an order that vacated certain provisions of the final rule. We disagree with the Court's ruling and are considering all available options to defend the legal viability of the provisions ruled upon by the Court.

Expanding Career Opportunities in America Through Reskilling, Upskilling, and Apprenticeships

In FY 2018, President Trump established the National Council for the American Worker and charged it with developing a national strategy to prepare Americans for careers in high-demand industries. As part of the work of the National Council for the American Worker, more than 200 companies, associations, and labor organizations have pledged to provide enhanced career opportunities by expanding programs that educate, train, and reskill American workers from high school age to near retirement. As of the time of this writing, these organizations have pledged to create 7,452,470 new opportunities for Americans.

The Department is continuing to promote increased adoption of the apprenticeship model as a pathway to good, family-sustaining jobs for all Americans. Since January 2017, nearly 500,000 new apprentices have taken the first steps toward lifelong careers.

In May 2018, the President's Task Force on Apprenticeship Expansion—comprised of governors, and leaders from companies, trade and industry groups, unions, educational institutions, workforce advocates, and nonprofit organizations—transmitted its final report to the President outlining its recommendations on how to best expand high-quality apprenticeship programs across industries.

On July 27, 2018, the Department adopted the overwhelming majority of the Task Force's recommendations through Training and Employment Notice 3-18 (TEN), providing a framework for industry recognized apprenticeships (IRAPs) to form alongside the more traditional registered apprenticeship program. The TEN sets out, at a high level, the policies and procedures that certifiers will be expected to have in place to establish standards, establish certification intervals, evaluate and certify programs focused on outcomes and process, report results, and maintain records.

Also last year, the Department launched the first-ever sector-based apprenticeship grant funding opportunity to invest $150 million to expand apprenticeships in those in-demand industry sectors most often filled by individuals on H-1B visas, such as information technology, health care, and advanced manufacturing. This grant funding opportunity introduced an innovative approach: a 35% private-sector match requirement. This brings the total investment to $202.5 million, $57.7 million coming from the private sector. As a result of this private sector match requirement, educators have a greater incentive to join with industry to ensure curricula address the needs of our ever-changing workplace, investing in the latest technologies and techniques, and providing more in-demand opportunities for Americans.

In FY 2020, the Department's budget includes $160 million to continue our expansion of apprenticeship programs, along with a proposal to increase H-1B fee revenues to fund additional apprenticeship activities.

Helping our Heroes and their Spouses Find Good, Family Sustaining Careers

Through the Veterans' Employment and Training Service (VETS), the Department helps America's veterans succeed in civilian careers when they conclude their military service and protects their employment rights under the Uniformed Services Employment and Reemployment Rights Act (USERRA). The Department also helps eligible spouses of military service members navigate state licensing requirements and find meaningful employment, and advocates for the elimination or temporary suspension of occupational licensing requirements for military spouses. In 2018, thanks to a growing economy and VETS' efforts, the overall veteran unemployment rate dropped to 3.5%, an 18-year low, and the lowest annual unemployment rate for veterans since 2000.

The Department is currently engaged with the Departments of Defense and Veterans' Affairs to improve the Transition Assistance Program (TAP) as part of the National Defense Authorization Act for Fiscal Year 2019 (NDAA). NDAA directs these agencies to establish at least three pathways for transitioning service members, and the Department will alter the delivery of employment related workshops in FY 2020 to align with the new legislative requirements. The Department will also enhance the quality of employment support services for transitioning service members, with a focus on improved outcomes. Additionally, the Department is also developing components of TAP for military spouses as they transition from base to base or to civilian life when their active duty spouse leaves the military.

Finally, the Department is committed to recognizing the many American job creators that employ veterans. In 2018, the Department implemented the Honoring Investments in Recruiting and Employing American Military Veterans (HIRE Vets) Act program one year earlier than the statute contemplated through a demonstration program. On November 8, 2018, the Department recognized 239 employers that employ and offer growth opportunities to our nation's veterans. Collectively, these 239 employers hired more than 8,350 veterans.

Bringing Americans with Disabilities into the Workforce

The Department, through the Office of Disability Employment Policy (ODEP), provides Americans with disabilities with opportunities to join and succeed in the workforce. ODEP develops policy recommendations and offers tools and technical assistance to American job creators so they can hire and retain employees with disabilities.

In FY 2018, ODEP expanded its Stay at Work/Return to Work (SAW/RTW) initiative to support early intervention pilot projects and research initiatives, work with states to promote effective SAW/RTW policies, and address the need for early intervention for young people with disabilities to transition to gainful employment. In September 2018, DOL awarded nearly $19 million in grant awards to eight state workforce agencies for the Retaining Employment and Talent After Injury/Illness Network (RETAIN). Jointly funded and developed by ODEP, the Department's Employment and Training Administration (ETA), and the Social Security Administration (SSA), the primary goal of RETAIN demonstration projects is to help Americans who are injured or ill remain in or return to the workforce, through early coordination of health care services and employment-related supports and services.

ODEP also connects employers and skilled workers with disabilities through its technical assistance centers, such as the Job Accommodation Network (JAN) and the Employer Assistance and Resource Network on Disability Inclusion (EARN), and partnerships such as the Partnership on Employment and Accessible Technology (PEAT) which provides a free tool for employers to optimize online job applications and outreach efforts.

In FY 2018, JAN provided technical assistance to more than 42,000 employers, individuals with disabilities, and service providers, and conducted more than 107 trainings. EARN provided technical assistance to more than 5,000 employers and ODEP's Public Service Announcements supporting its efforts aired approximately 32,000 times on more than 650 television stations nationwide.

Helping Americans Reenter the Workforce After Incarceration

When Americans who commit crimes have paid their debt to society and leave prison, it is important to find ways to reintroduce those individuals into society and the workforce. Simply put, individuals that have made mistakes in life and paid their debts to society deserve the opportunity to find good, safe, family sustaining careers and become contributing members of society. Long-term success at lowering recidivism rates requires that we offer Americans a second chance to pursue paths to opportunity. These concepts were part of the bipartisan First Step Act passed late last year.

In FY 2018, to address this important issue, the Department awarded Reentry Projects grants to 43 nonprofits and local and state governments focusing on two major groups: young adults (ages 18 to 24) who have been involved in the juvenile or adult justice system and adults (ages 25 and older) formerly incarcerated in the adult criminal justice system. These grants offer communities the chance to deploy evidence-based, comprehensive strategies to facilitate the reintegration of ex-offenders into the workforce. In FY 2019, the Department will award an additional $83 million in Reentry Projects grants.

The Department is also engaging with the Bureau of Prisons to develop apprenticeship programs. These programs seek to offer skills instruction and develop credentials that address the geographical issue associated with prison-based programs—federal inmates are often incarcerated in one state, transferred, and released in another. As part of this new apprenticeship program, education and training in more than 120 skilled trades will be offered.

Also, to address the stigma that employers associate with formerly incarcerated individuals, the Department is expanding its Federal Bonding Program which provides employers with access to $5,000-$25,000 of fidelity bond coverage for the first six months of employment for formerly incarcerated individuals.

Protecting Working Americans by Confronting Visa Fraud and Abuse

Companies that commit visa fraud, and abuse the temporary worker system hurt working Americans and American job creators that play by the rules. These bad actors cut costs by not providing legally required wages and working conditions and, in some instances, foreign workers' lives are at stake.

In June 2017, I directed the Department to confront non-immigrant visa program fraud and abuse, including making criminal referrals to the Office of the Inspector General (OIG). The Department also made changes to the H-1B application forms to ensure greater transparency and better protect American workers from employers seeking to misuse the program.

In FY 2018, the Department concluded 649 non-immigrant visa program cases and found violations in 553 of those cases. In FY 2018, the Department issued 37 debarments in the H-2A, H-2B, and PERM visa programs—precluding those employers from obtaining visas or doing work with the Department—a 61% increase over FY 2017. In total, Department has recovered almost $11.6 million in back wages on behalf of 6,061 non-immigrant visa employees in FY 2018 and issued almost $4.2 million in civil money penalties—under 27% of dollars recovered. By way of comparison, in FY 2016, the Department concluded only 526 non-immigrant visa cases, and recovered only $7.8 million in back wages for 5,161 employees. At the same time, the Department assessed approximately $4.8 million in civil money penalties—nearly 38% of dollars recovered.

Leveling the Playing Field for Working Americans Through Fair Trade

U.S. labor laws guarantee that working Americans be paid a minimum wage and overtime, that workplaces abide by health and safety standards, and restrict child labor. U.S. free trade agreements and preference programs require our trade partners to adopt, maintain, and effectively enforce labor laws addressing similar areas of protection. When trading partners fall short of their labor standards responsibilities under trade agreements, they create an uneven playing field that can hurt working Americans. The Budget strategically focuses efforts to make U.S. trade agreements fair for U.S. workers by monitoring and enforcing the labor provisions of free trade agreements and trade preference programs, combatting the reprehensible use of child labor and forced labor abroad, and providing technical assistance to countries seeking to improve labor standards.

In addition to the Department's direct work on international labor issues, the Department also provides detailed research products and tools that help foreign governments and employers improve compliance with international child labor and forced labor standards. On September 20, 2018, the Department released its 17th annual child labor report, Findings on the Worst Forms of Child Labor, representing the most comprehensive research product to date on the state of child labor in 132 countries worldwide. Simultaneously, the Department released an updated version of its Comply Chain app, which is designed to help businesses identify and root out abusive child labor and forced labor from global supply chains. Comply Chain is now also available in Spanish and French.

Women's Bureau

The Department's Women's Bureau assists in the development of policies and initiatives that promote the interests of the more than 74 million women in the United States labor force. Women's Bureau collaborates with Department program agencies and other federal partners to provide policy guidance, including on initiatives such as apprenticeships, military spouses, and occupational licensing, to better support the needs of women and their families.

Women's Bureau is holding listening sessions across the country with military spouses in an effort to design a TAP specific to military spouses, 92% of whom are women. The Department leveraged its work with military spouses to aid efforts to redesign the workforce reentry components of TAP, focusing on assisting military spouses.

Women's Bureau is also holding nationwide events and listening sessions—several of which were attended by Advisor to the President Ivanka Trump—to discuss the challenges, best practices, and potential solutions to help all working families access affordable, quality child care.

Finally, the Department is conducting data analysis to better understand the impact of the opioid crisis on women in the labor force. This includes identifying and correcting the lack of information related to the opioid epidemic's effect on women in the labor force, relative to the existing research on its impact on men in the labor force. Building on this effort, the Department piloted a reemployment program grant in Maryland for women impacted by the opioid epidemic.

The Budget focuses the Bureau's work on high priority areas like childcare, military spouses, entrepreneurship, and paid leave while eliminating unnecessary regional offices and eliminating grants.

A Strategy of Vigorous Enforcement Coupled With Compliance Assistance

The vast majority of employers are responsible actors, fully committed to following worker protection laws and to providing good, safe jobs for their employees. There are, however, those that fail to comply with their legal obligations. In those instances, the Department enforces our nation's laws that protect working Americans—and does so vigorously. By way of example, in FY 2018 the WHD's work resulted in a record $304 million in back wages recovered for more than 265,000 workers across America. Fully enforcing the law levels the playing field for the majority of American job creators who play by the rules and supports the Nation's most important asset – working Americans.

As a parallel to enforcement, there is significant value in compliance assistance programs that help working Americans and American job creators understand their rights and responsibilities under the law. Cooperation between the private sector and government can yield strong results at a quicker pace and lower cost than adversarial enforcement actions. Parties acting in good faith should have the help of the government to do so and should not be penalized for proactively requesting assistance.

In August 2018, the Department launched the Office of Compliance Initiatives (OCI) to bring together agencies' compliance assistance efforts into a single, concerted program. The office, led by a career employee team, will help working Americans and American job creators understand their rights and responsibilities under the law and has launched the websites employer.gov and worker.gov to provide plain language guidance.

The Department's FY 2020 budget request includes additional resources for this office, as well as funding increases for every worker protection agency.

Employee Benefits Security Administration

EBSA helps ensure the security of the retirement, health, and other workplace related benefits of almost all American workers who have private-sector employer-sponsored plans. EBSA's enforcement authority extends to an estimated 694,000 private retirement plans, 2.2 million health plans, and similar numbers of other welfare benefit plans which together hold $9.5 trillion in assets. These plans provide critical benefits to America's workers, retirees, and their families.

In safeguarding and clearly delineating fiduciaries' responsibilities on behalf of participants, on April 23, 2018, EBSA issued a Field Assistance Bulletin (FAB) laying out the Department's position that fiduciaries may not sacrifice investment returns, or assume greater risk, in order to promote collateral social goals, and must exercise care before incurring significant expenses to fund advocacy in the proxy voting space.

In FY 2018, EBSA recovered more than $1.16 billion in enforcement actions—a 70% increase over FY 2017—and EBSA's criminal program resulted in 142 indictments. A large portion of this increase is attributable to EBSA's Terminated Vested Participants Program, which recovered over $807 million in benefit payments for participants and beneficiaries in defined benefit plans. During the same time period, EBSA's Benefits Advisors recovered an additional $443.2 million on behalf of participants and beneficiaries through informal dispute resolution, assisting 170,909 Americans.

The President's FY 2020 budget request for EBSA stands at $193.5 million, a nearly seven percent increase from the FY 2019 revised enacted budget, and includes additional enforcement resources of $10.0 million and 45 FTE that will focus on investigating self-insured AHPs and self-insured Multiple Employer Welfare Arrangements.

Mine Safety and Health Administration

MSHA's enforcement strategy is grounded in its mandate to inspect all active mines in the United States and its territories regularly. MSHA's enforcement mandate is essential to protect miners and advance a culture of safety and health in the mining industry.

In support of its mission, MSHA also provides grants and compliance assistance to the mining community. In FY 2018, MSHA's annual Training Resources Applied to Mining (TRAM) conference drew more than 300 mining stakeholders to learn about training techniques, new technology, and best practices in mining. The MSHA Academy provided 443 course days of compliance assistance training to the mining community. Educational Field and Small Mine Services, with support from Educational Policy Development personnel, provided 69,186 hours of additional compliance assistance in the field.

In FY 2018, MSHA fulfilled its statutory mandate to inspect all underground mines four times per year and all surface mines twice per year which, combined with non-mandatory inspections, helped foster a more safe mining industry. Notably, the mining industry overall experienced the lowest number of fatalities in FY 2018. The Department remains focused on reducing the

numbers of mining injuries and fatalities even more, because our goal must be zero mining deaths.

The President's FY 2020 Budget request for MSHA stands at $376 million, an increase over the FY 2019 revised enacted budget, and proposes a new enforcement structure that combines the Coal Mine Safety and Health and Metal/Non-Metal Safety and Health budget activities. This consolidated budget activity will provide the flexibility to address industry changes and maximize the efficient use of MSHA's resources.

Occupational Safety and Health Administration

OSHA helps ensure that employers provide safe and healthful working conditions for working men and women by setting and enforcing standards and by providing training, outreach, education, and assistance. OSHA also administers the whistleblower provisions of more than 20 whistleblower statutes. Compliance assistance and enforcement—driven by workplace inspections and investigations—play a vital role in OSHA's efforts to reduce workplace injuries, illnesses, and fatalities.

In FY 2018, and in FY 2017, OSHA conducted more than 32,000 inspections each year, exceeding the FY 2016 number. These results are impressive particularly given that OSHA dedicated substantial resources in FY 2018 to hiring and training new inspectors. In August 2017, OSHA was provided blanket approval to hire needed inspectors to carry out its important work. The result was the hiring of 76 new inspectors in FY 2018. The timeframe for new inspectors that join the Department to be prepared to conduct inspections can vary between one to three years depending on their prior experience and complexity of the inspections they may carry out. During this time, these new hires do not generally conduct independent inspections. OSHA has been hard at work to onboard and train new inspectors and expects to have a significant increase in inspectors in FY 2019.

In FY 2018, in addition, OSHA personnel made 26,362 compliance assistance visits covering more than 970,000 workers and ensuring that 135,021 hazards were identified/corrected. The estimated savings in injuries and costs prevented by this program exceed $1.3 billion.

Late in 2018, the Bureau of Labor Statistics released the injury and fatality data for calendar year 2017. Even as employment substantially increased and less-experienced workers were onboarded, the numbers and rates of fatal injuries and nonfatal injuries and illnesses in the workplace declined. With 43 fewer workplace fatalities in 2017, reversing a three year upward trend, the fatality rate fell to 3.5 per 100,000 full-time equivalent workers. The incidence rate for private industry nonfatal cases fell to 2.8 per 100 full-time equivalent workers after employers reported 45,800 fewer cases. This overall decrease occurred against a backdrop of a substantial increase in fatalities due to unintentional overdose from nonmedical use of drugs or alcohol, which increased from 217 to 272 workplace fatalities nationwide.

The Department is committed to fostering an environment that promotes disclosure of dangerous work conditions and protects whistleblowers. OSHA's Whistleblower Program prevents retaliation against workers that report injuries, safety concerns, or engage in other protected

activity. In FY 2018, OSHA implemented internal measures, such as expedited case processing and streamlined case documentation requirements, to increase the efficiency of the Whistleblower Protection Program. FY 2018 saw 9,387 new complaints under the program, a 9% increase over FY 2017, and processed 9,308 complaints, an 8.4% increase over FY 2017.

The President's FY 2020 budget request for OSHA stands at $557.5 million, a slight increase over the FY 2019 revised enacted budget, and proposes additional funding for staff, including 30 additional Compliance Safety and Health Officers and five additional whistleblower investigators.

Office of Federal Contract Compliance Programs

OFCCP is tasked with ensuring that Federal contractors and subcontractors comply with their equal employment opportunity obligations.

OFCCP supports compliance through assistance tools, resources, and incentives. Indeed, in FY 2018, OFCCP held 346 events to inform and educate the regulated community and handled 2,797 help desk requests via telephone calls and email. Also in FY 2018, OFCCP issued its "Town Hall Action Plan" and "What Contractors Can Expect" to engage with the regulated community and demystify OFCCP's work. Specifically, the agency sought to develop the broad understanding that contractors and subcontractors seeking OFCCP's assistance with satisfying their nondiscrimination and equal employment opportunity obligations can expect clear, accurate, and professional interactions with OFCCP's staff.

In FY 2018, the OFCCP conducted 812 compliance evaluations, entered into 168 conciliation agreements, and obtained over $16 million in monetary remedies for more than 12,000 affected employees and applicants.

The President's FY 2020 budget proposal for OFCCP stands at $103.6 million, a slight increase from the FY 2019 revised enacted budget, and includes funding for IT modernization efforts which is largely offset by gains obtained through operational efficiencies in OFCCP.

Office of Labor Management Standards

The Office of Labor Management Standards (OLMS) administers and enforces most of the provisions of the Labor-Management Reporting and Disclosure Act (LMRDA). The LMRDA promotes union democracy and financial integrity in private sector labor unions, and transparency for labor unions and their officials, employers, labor relations consultants, and surety companies through reporting and disclosure requirements. In FY 2018, OLMS conducted 16,968 participant hours of compliance assistance instruction—the highest since FY 2012.

The Department is also currently working on a new transparency regulatory proposal for union trust accounts so that union members can see where their money is going when it becomes part of a covered trust.

In FY 2018, OLMS investigated 128 union elections after complaints of violations, supervised 28 rerun elections due to election violations, and conducted 223 criminal investigations which resulted in 73 convictions.

The President's FY 2020 budget for OLMS stands at $49.1 million, a 15.8% increase over the FY 2019 revised enacted budget, and includes a proposed increase of $4.2 million in staffing increases to support enforcement programs that ensure union transparency and financial integrity, both of which inure to the benefit of the hardworking men and women that make up the membership of unions.

Office of Workers' Compensation Programs

The Office of Workers' Compensation Programs (OWCP) administers four major disability compensation programs covering more than two million Federal employees, and a significant number of private sector workers, which provide wage replacement benefits, medical treatment, vocational rehabilitation, and other benefits to certain working Americans, or their dependents, who experience work-related injuries or occupational disease.

Among those programs, OWCP oversees prescription benefits for injured federal workers and is taking aggressive measures to control fraud. OWCP implemented measures in FY 2018 to target and intercept abusive billing patterns, resulting in a $5 million per month average savings in overall pharmaceutical spending.[2] These savings are in addition to the $19 million per month average savings in overall pharmaceutical spending realized in FY 2017 from addressing compounded drugs.[3]

In 2017, the President rightfully declared the opioid crisis a public health emergency. Opioids are affecting how job creators hire, how job holders work, and how job seekers find family-sustaining jobs. This crisis is far-reaching and touches far too many Americans. The Department is doing its part to combat the opioids crisis. OWCP has taken aggressive steps to prevent the over-prescribing of opioids for the approximately 200,000 federal employees or dependent beneficiaries each year who receive workers compensation benefits. Specifically, OWCP issued prescription guidelines for medical providers, and will monitor billing patterns and multi-party networks of interest using predictive analytics and risk metrics.

OWCP is also updating its computer resources and acquiring a Pharmacy Benefit Manager to assist in these efforts. Since January 2017, OWCP has seen a significant drop in the number of claimants prescribed high-dose opioids, with a 59% drop in claimants prescribed a morphine-equivalent dose (MED) of 500 or more, and a 31% drop in claimants prescribed an MED of 90 or more as of the end of February 2019. Additionally, when comparing 20 months of data – January 2017 to August 2018 and the same time period in 2015 to 2016 – there was a 24% drop in new opioid prescriptions and a 51% decline in new opioid prescriptions lasting more than 30 days.

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[2] Comparing the seven months following implementation of measures in 2018 (June 2018 – December 2018) to the months prior in fiscal year 2018 (October 2017 – May 2018).

[3] Comparing the first six months of 2016 to the fiscal year 2017 months after the primary compounded drug control was implemented (November 2016 – September 2017).

The Department is resolute in its commitment to ensuring that injured federal employees access opioids only with adequate medical supervision. OWCP now requires that the prescribing physician complete a medical evaluation and attest to the medical necessity of continued opioid treatment for all new opioid prescriptions that extend beyond an initial period of time, requires prior authorization and a letter of medical necessity for all new opioid prescriptions that extend beyond an initial grace period, and has imposed fill and re-fill prescription limits.

OWCP has also worked closely with the OIG to eliminate Federal Employees' Compensation Act (FECA) fraud. In cooperation with the OIG, OWCP created documents that facilitate interagency investigation and prosecution efforts by providing guidance to the government-wide OIG community on how to request FECA data and submit reports of investigation that implicate waste, fraud, and abuse. In FY 2018, OWCP submitted 62 medical provider referrals to the OIG—covering more than 100 individual providers—for possible fraudulent medical billing. These referrals were due in large part to the establishment of OWCP's Program Integrity Unit housed in the Division of Federal Employees' Compensation.

The President's FY 2020 request for OWCP's discretionary salaries and expenses amount stands at $117.8 million, a slight increase over the FY 2019 revised enacted budget.

Wage and Hour Division

WHD is tasked with ensuring compliance with, and enforcement of, many of the nation's fundamental Federal labor laws, including minimum wage, overtime, and child labor laws. To accomplish its mission, WHD employs enforcement and compliance assistance strategies, along with evidence-based and data-driven approaches to allocate resources in a manner that maximizes its impact on behalf of workers in the United States.

FY 2018 also saw record enforcement numbers from WHD resulting in the recovery of more than $304 million in back wages for more than 265,000 workers across America. Enforcement is a critical part of WHD's overall strategy and is employed rigorously when compliance assistance, alone, is not enough. WHD's enforcement efforts are tailored to safeguard workers' rights and obtain due compensation for violations of the law.

In FY 2018, WHD conducted a record 3,643 outreach events and presentations, providing valuable information and compliance assistance to participants across the United States. As part of this effort, WHD employs Community Outreach and Resource Planning Specialists (CORPS) in nearly all district offices nationwide. The CORPS have been successful in establishing partnerships with industry associations and employers to offer compliance assistance and educate stakeholders on labor standards.

In FY 2018, WHD recovered more than $304 million in back wages for more than 265,000 working Americans and other workers—more than any other year in the agency's history, and an average of $1,147 per person.

The President's FY 2020 budget request for WHD stands at $232.6 million, a slight increase over the FY 2019 revised enacted budget, and proposes additional funding for staff to modernize compliance assistance efforts.

Helping Americans Get Back to Work After Natural Disasters

This fiscal year, the states of Florida, Georgia, North Carolina, South Carolina, and territories of Northern Mariana Islands endured an active and destructive hurricane season. At the same time, Puerto Rico and the U.S. Virgin Islands continued their recovery from last year's storms. For a second year in a row, California suffered destructive wildfires.

The Department of Labor worked with federal, state, and local agencies to provide much-needed support to those affected. The Department:

- provided more than $100 million in grants to help affected states and territories assess their workforce needs;
- sent personnel and donated equipment to assist in recovery efforts; and
- oversaw Disaster Unemployment Assistance aid to those unemployed as a result of the hurricanes.

In addition to funding and direct support, the Department also worked to reduce barriers to rebuilding and aid efforts, and reduce the burdens on survivors by providing much-needed regulatory flexibility. The Department:

- temporarily waived certain retirement plan and group health plan requirements and deadlines;
- temporarily suspended select federal contractor requirements, allowing businesses involved in hurricane relief the ability to prioritize recovery efforts;
- temporarily eased reporting and other regulatory burdens on labor organizations, labor relations consultants, and employers affected by the hurricanes; and
- provided other regulatory flexibility requested by individual states.

The Department continues to support the Federal Emergency Management Agency (FEMA) with hurricane and wild fire recovery efforts. In the wake of the 2017 and 2018 hurricanes, Department staff conducted more than 2,229 outreach activities, providing critical information and compliance assistance to more than 14,000 workers in affected areas; more than 2,276 safety and health interventions reaching more than 11,494 workers, of which more than 6,391 individuals were removed from hazards; and served more than 24,907 working Americans. The Department is also conducting investigations to ensure workers employed in recovery efforts are receiving the wages to which they are legally entitled and ensure a level playing field for law-abiding businesses.

The hardworking men and women of the Department also donated 13,659 hours, or more than 1,707 days, and more than $47,000 in gift cards to their colleagues who suffered significant property damage or loss as a result; and more than 500 DOL employees volunteered to travel to affected areas to support the recovery efforts.

Conclusion

In closing, I hope my statement today makes clear the depth and breadth of the Department's accomplishments this past year. The Department is hard at work supporting Americans' efforts to find, and excel in good, safe, family-sustaining jobs.

We look forward to working with Congress on these important goals.

Chairman SCOTT. Thank you. We will begin with the gentlelady from California, Mrs. Davis.

Mrs. DAVIS. Thank you, Mr. Chairman. And Secretary Acosta, thank you for joining us today. Before we get started on our questions related to your agency's proposed budget, I just wanted to actually reinforce the point that Chairman Scott made when he read DOL's mission statement.

What I think is important is that DOL's mission focuses solely on workers and their rights and protections. Your testimony speaks to how well the economy is doing. But the economy doing well does not necessarily always mean that workers are doing well. And so I hope you do not lose sight—I hope the department does not lose sight—of the fact that the mission of the Department of Labor is to protect and support workers first, foremost, and above all else.

Yet despite this, department's proposed budget calls for cuts of $1.2 billion, or 10 percent, of its current appropriation. And these cuts, combined with numerous policies advanced by the department, seem to weaken or undermine areas of worker protections and enforcement. Mr. Secretary, I am actually struggling to see how these cuts to programs supporting workers are in line with the DOL's mission as it is currently stated.

So this brings me to my first set of questions around apprenticeships. The National Apprenticeship Act makes clear that Congress delegated to the Secretary alone—Secretary alone—the authority to formulate and promote labor standards to safeguard the welfare of apprentices. Despite this, I understand the department is moving forward with a new regulation to allow for the creation of industry-recognized apprenticeship programs, or IRAPs.

This policy shift allows the DOL to delegate its authority to establish standards to accreditors. Chairman Scott and I made an oversight request recently about DOL's rationale for granting third parties this authority and how that is justified given the requirements of the National Apprenticeship Act.

Your March 14th response letter was not responsive on this point. So can you please confirm that the Department of Labor will not take regulatory action that hands over the department's statutory role in establishing the labor standards to third parties, including setting the quality standards that have made registered apprenticeships the gold standard for work force training? Would you want to comment quickly?

Secretary ACOSTA. Well, so Congresswoman Davis, first, thank you for the opening comments. And going to the first part of your question, I do think it's important that all individuals in the economy benefit. And something that I—a statistic that I was made aware of that I think is important to share is the increase in wages really has gone across the board—

Mrs. DAVIS. Mr. Secretary, I just wonder if you could respond, though, just to whether the DOL is instead playing that role, is going to continue to play its role to keep that authority.

Secretary ACOSTA. Certainly. But your first question had to do with the mission and wages. And so I just wanted to, if I could, point out that wages have increased, and if one looks at the lowest decile, one sees that the lowest decile wages are up about 6.5 percent, which is higher than the median. Now—

Mrs. DAVIS. Mr. Secretary—

Secretary ACOSTA.—moving to the apprenticeship question.

Mrs. DAVIS. Yes, please, because—

Secretary ACOSTA. I understand the apprenticeship question is the focus of many of your comments. The registered apprenticeship program has worked well in construction and related building trades industries, and that is going to continue. That works well.

But that has not expanded to other industries. There was a Presidential commission; on that commission were representatives from labor, representatives from business, representatives from various groups—

Mrs. DAVIS. Secretary Acosta—

Secretary ACOSTA. I'm—

Mrs. DAVIS. I understand. Unfortunately, I have limited time, and I just wanted to bring out—because I know we both looked at other models, Switzerland and Germany. And the reality there is that the government does play a central role in approving programs and their quality standards, and it brings together industry as well. And so that's why I wanted to continue here for a minute because this is important, as you acknowledge.

I want to ask you about IRAPs. Will they require wage progressions? Will they be required to abide by the Equal Employment Opportunity in Apprenticeship regulations? And will there be protections for the participants, including workplace safety supervision, and a method for filing discrimination or other equal opportunity complaints, as all registered apprenticeships do? So will IRAPs cover those critical issues?

Secretary ACOSTA. So, Congresswoman, those critical issues are covered by the law. And so IRAPs of course will cover those critical issues because those are required in any employment relationship. And IRAPs at their heart, like all apprenticeships, are about employment relationships.

Mrs. DAVIS. Well, I look forward to working with you on these issues—

Secretary ACOSTA. Absolutely.

Mrs. DAVIS.—because I think these are critical and we need to address them. Thank you very much.

Chairman SCOTT. Thank you.

Dr. Foxx?

Ms. FOXX. Thank you, Mr. Chairman. And thank you, Mr. Secretary, for pointing out that all of these people in these apprenticeship programs will be covered by the existing laws.

Committee Republicans have long supported the expansion of association health plans, and we're pleased to see the Department's final rule expanding access to health coverage, especially for small business employees. Organizations such as the National Restaurant Association, Land O' Lakes, Mason Contractors Association of America, many local and regional chambers of commerce, have announced plans to establish or expand existing association health plans.

In these new or revised plans, to your knowledge, do workers have access to comprehensive benefit packages? On average, do these plans have lower costs than workers may be able to otherwise purchase in the individual market?

Secretary ACOSTA. Congresswoman, in these new plans, workers absolutely have access to comprehensive plans. One way to think of these association health plans is, the health care market is divided into two parts: the market for small businesses, less than 50, and the market for big corporations, more than 50.

And what the association concept does is it says to small businesses, you can band together and you can have access to the lower prices that are available to the corporations. But it is the same insurance that is available to the corporations, the same restrictions that are put on the corporations, the same safeguards as the corporations.

So what this is saying is that mom and pop small business can play by the same rules as IBM, no more and no less.

Ms. FOXX. Thank you, Mr. Secretary. Since you last came before this committee, a March 2018 Office of the Inspector General report found that the Job Corps program could not demonstrate the extent to which the programs help participants enter meaningful jobs.

I know you have made efforts to improve the programs by suspending operations of centers that do not meet expectations. But it is clear there is still work to be done. How do you plan to continue reforms to this program to improve its effectiveness?

Secretary ACOSTA. Congresswoman, thank you. Thank you for the question. First let me say safety is critical in Job Corps, and we have put in place a zero tolerance standard for safety issues. And so, as a result, Job Corps centers across the country are getting tougher with respect to discipline. If there is a safety issue, individuals are separated. We have installed more than 10,000 security cameras. We have installed more than 5,000 security doors with key guards.

Something that we are doing as well, though, is Job Corps has not changed in decades. The economy has changed. Workforce programs have changed. And so we are looking at ways to modernize Job Corps, to establish pilot programs. Something that I wanted to share is something that I'm excited about. I think it is very important, and it is what we're calling Job Corps Scholars.

We have pilot project authority, and under that pilot project authority we are starting Job Corps Scholars. We are going to request bids from community colleges around the Nation—this is going to be for up to 1,600 students—and the community college will establish, in essence, mini Job Corps within that community college.

They will have approximately $15,000 per student, not only to cover tuition and to cover room and board, and I should say that is higher than the median tuition and room and board for community colleges across the Nation. But also they will be required to hire counselors and provide other services that are available to the Job Corps. We are trying to find alternative mechanisms to really provide Job Corps-style education to more individuals. And this would be at half the cost.

One final point. We have changed the criteria by which we rank Job Corps centers. It used to be that the focus was on: Was a certificate obtained? Was a piece of paper obtained? And the criteria over a 2-year period has changed to: Did they get a job? Was it a job in the area for which they were educated? And is the resulting

wage higher? And was that job retained after 6 months and after 12 months?

Ms. FOXX. Thank you, Mr. Secretary. Very quickly, as you know, the radical 2016 Obama Administration overtime rule has not been invalidated by a final court decision. The Trump administration appealed the district court's ruling that nullified the rule, and asked the Fifth District to stop the litigation pending further regulatory action.

We were pleased to see the Department's recent notice of proposed rulemaking for a modernized overtime rule. Given that the 2016 Obama rule still has a lifeline, what assurances can you provide that the Department will issue a new final overtime rule in a timely manner?

Secretary ACOSTA. I see that time is expired. Let me just say the notice of proposed rulemaking issued, and the notice and comment period is live at this time.

Ms. FOXX. Thank you, Mr. Chairman. I yield back.

Chairman SCOTT. Thank you.

The gentleman from Connecticut, Mr. Courtney.

Mr. COURTNEY. Thank you, Mr. Chairman. Thank you, Mr. Secretary, for being here today. Again, I just want to followup on the mission of the department which has been discussed already, which is to "foster, promote, and develop the welfare of wage earners."

I read your 17 pages of testimony, and again, it was pretty notable to me that there was actually not one reference to the value of collective bargaining in terms of helping achieve the department's mission, which is unlike some of your predecessors. I have been around long enough to hear some of these hearings in the past.

I thought I would give you a chance to redeem yourself. On Easter Sunday, 31,000 employees of Stop & Shop Grocery Stores, after an 11-day strike, reached an agreement, which again protected their health benefits, which according to, again, the public disclosure, the employer was seeking to increase health plan deductibles from $300 a year to $5,000 a year. It proposed more than doubling health insurance premiums, removing spousal coverage from health insurance premiums, eliminating time and a half pay on Sundays, and slashing pension contributions for full-time employees by half.

The company obviously gambled in thinking they could win that job action, and they badly miscalculated. Customers actually adhered to the picket lines, and the settlement, which was announced on Easter Sunday evening, again, pretty much restored all of those benefits which had been hard fought over for many years by the United Food and Commercial Workers Union for those employees.

So again, so far the only thing in your testimony was on the persuader rule. There has been a host of other initiatives by the Trump administration to weaken collective bargaining. With all due respect, what the UFCW did for its employees far exceeds the value of anything that was in association health plans in terms of their health benefits, and any wage increase would have been just decimated if that employer position—which again is a Danish company—had prevailed.

So again, can you at least indicate for a moment what the department's position is in terms of the value of collective bargaining,

which again we saw succeed for 31,000 employees up in New England?

Secretary ACOSTA. Congressman, thank you for the question. I was actually up in Connecticut—

Mr. COURTNEY. I know.

Secretary ACOSTA.—looking at Electric Boat and some amazing, really, really—

Mr. COURTNEY. Yes. I am going to mention that because actually, the metal trades are benefiting from registered apprenticeships. You did not mention that. But go ahead on the Stop & Shop.

Secretary ACOSTA. Yes. So I read a little bit about that. So to be clear, higher wages is a good thing, whether it happens through collective bargaining, whether it happens because of a growing economy, whether it happens through any other mechanism. Higher wages are a good thing. To the extent that the United Food Workers helped those workers, that is a good thing.

The point that I made earlier with Congresswoman Davis's question is, we are seeing wages increase, and we all benefit when wages go up, and so if it happens through collective bargaining and if it happens through other mechanisms.

Finally, you mentioned association health plans, and I do think it is important. You are correct. They would not benefit from association health plans because they are part of a large corporation. And the idea of association health plans is to give those same benefits to small businesses that do not have the advantage of that collective bargaining in that large—

Mr. COURTNEY. Right. And again, just for the record, there are over 600 association health plans that were in existence prior to your rule that went into effect. All your rule did was basically create a loophole to avoid essential health benefits, which is something that they had to accommodate.

Again, I just want to move on to another question. Last time you were here I asked you about the rising incidence of workplace violence in the healthcare sector. Again, we had a GAO report which a few of us had ordered a number of years ago which showed a 69 percent increase from 2006 to 2017.

The CEO of Cleveland Clinic, which is one of the largest healthcare systems in the U.S., again just a few weeks ago had a speech where he described what is happening in emergency rooms as a "national epidemic," and that the violence that they are seeing, the number of weapons that are being seized at the emergency room entrance, has just skyrocketed.

Again, we have been waiting for the department to move forward on an OSHA rule that creates a national standard. Can you describe what you have done since the last time you testified before this committee in that area?

Secretary ACOSTA. Certainly, Congressman. The regulatory agenda that is forthcoming will show that the first step in an OSHA rule is the creation of a SBREFA panel. And it will show that we are in the process of creating that SBREFA panel to look at this issue.

Let me also say, as we talk about workplace violence, drugs is an important part that we need to look at. And maybe we will have more time to talk about that.

Chairman SCOTT. Thank you.

The gentleman from Tennessee, Dr. Roe.

Dr. ROE. Thank you, Mr. Chairman. And thank you, Mr. Secretary, for being here. And since the Tax Cuts and Jobs Act, in my State of Tennessee we have seen personal income rise significantly in the last year. There are "Help Wanted" signs literally everywhere. The unemployment rate in the State of Tennessee is 3.2 percent, and our biggest problem is finding an adequately trained work force. And that is going to be the questions I have.

Seventy percent of the workers gaining employment during this time came from outside the labor force in the first quarter of 2019, which means that people getting off—that now have an opportunity who did not have a job before. And this is a good thing. And I could not agree with you more: Whatever creates an increased wages for workers is a good thing. Just this past month, in April, 275,000 jobs created by this economy.

Mr. Secretary, I do not remember in my lifetime a better time for a young person to graduate from school with skills. I do not remember. I ran into a truck driver at a Wendy's the other day and made $164,000 last year. He said this is the best he has done in his life, ever.

We have students that are going to our technical school to train in welding that are being paid $16 an hour to go to school so that when they get out and complete their apprenticeships, they are going to make $23-plus an hour. So again, I cannot think of a better time to be out of school.

I want to know a little bit about apprenticeships because I think we are missing a phenomenal opportunity. We had the electrical contractors in my office yesterday talking about the apprenticeships. Could you tell us how the Department of Labor is encouraging this? And there are more than 200 company associations and labor organizations have pledged to create 7–1/2 million new opportunities to Americans through apprenticeships, re-skilling, and unskilling. Could you comment on that, please?

Secretary ACOSTA. Congressman, thank you for the question. So certainly apprenticeships are a phenomenal opportunity. Going back to the earlier question about collective bargaining, unions have put together some amazing apprenticeships in the building trades. The building trades as a group spends about a billion a year investing in apprenticeships, and you mentioned some of the results.

I was with Senator Blunt in Missouri at a carpenters apprenticeship program, and the individuals that were leaving from there were starting salaries in the 40's and only up from there. I saw an article just recently about individuals that are working on oil rigs and pipefitters that are making well into the six digits.

And so what we are looking to do is to expand apprenticeships beyond the traditional trades. The registered apprenticeship program has worked in some industries, and we are just about at 500,000 registered apprenticeships in the past 2 years. And so we are going to see it exceed half a million if it hasn't already, and we are going to only see it grow, but only in some industries.

So we need to expand it to other industries, and that is where the industry-recognized apprenticeship program comes in. We need

apprenticeships in areas like coding. We need apprenticeships in high tech. We need apprenticeships in healthcare in areas such as nursing and nurse's aides. We should have apprenticeships in advanced manufacturing. This should not be limited to the building trades because it provides valuable skills, and skills that lead to good, safe, high-paying jobs.

Dr. ROE. We saw each other yesterday, and you mentioned something to me that was shocking to me. One of the dangers in the workplace today were drug overdose deaths. Could you comment on that?

Secretary ACOSTA. Absolutely. And this is what I was talking about with respect to workplace violence. If we look at the fatality data for workplace fatalities over the last 5 years, the fastest-growing area of workplace fatalities is overdoses. And so it has gone from 82 a year to 114 to 165 to 217 to 272 this past year.

And so the fastest-growing area has to do with overdoses associated with illegal drugs in the workplace. And this is something—I had a conversation with some individuals in industry that were very concerned about this. And it is something that I have also asked OSHA to look at because when you have gone from 84 to 272 in the span of 5 years, that is indicative of a problem.

Mr. ROE. I agree, Mr. Secretary. And I think that is something that is a societal problem.

Secretary ACOSTA. It is.

Mr. ROE. It is not just the Department of Labor. It is a societal problem.

I yield back, Mr. Chairman.

Chairman SCOTT. Thank you.

The gentlelady from Ohio, Ms. Fudge.

Ms. FUDGE. Thank you very much, Mr. Chairman. Thank you, Mr. Secretary.

Mr. Secretary, for far too long certain—not all—certain retirement advisors have put their own financial interests above their clients'. Workers across this country are demanding a higher standard of care. They deserve peace of mind when planning for their retirement.

The Department of Labor owes it to the workers of America to fully implement current rules and regulations put in place to ensure that they receive unbiased and fair advice. What is your plan to protect these workers?

Secretary ACOSTA. Congresswoman, thank you for the question. First let me say, you are correct. Like all industries, the investment industry has some bad actors, and individuals need to be protected. As you are aware, the fiduciary rule was struck down by a court. It was held to exceed the statutory—

Ms. FUDGE. I just want to know what you are going to do, sir.

Secretary ACOSTA. I am getting to that, Congresswoman. I am trying to—

Ms. FUDGE. I have 5 minutes. So if you could just—

Secretary ACOSTA. I understand. So it was struck down by the court. And so the department is working with the SEC. The SEC was asked by Congress to look at modernizing the protections in these—

Ms. FUDGE. Sir, I am asking: What are you going to do? What is your Department of Labor going to do?

Secretary ACOSTA. Congresswoman, if you will let me finish my sentences or paragraph.

Ms. FUDGE. But you just—I need to reclaim my time. I have more questions to ask.

Secretary ACOSTA. So the Department of Labor is working with the SEC. The SEC was asked by Congress to come up with appropriate responses to protect these individuals. We are communicating with them, and based on our collaborative work, we will be issuing new rules in this area.

Ms. FUDGE. When will that be?

Secretary ACOSTA. Well, the SEC is in the process of producing those rules. The SEC is—

Ms. FUDGE. Just a time would be great.

Secretary ACOSTA. Congresswoman, we are working with an independent agency that has its own time—

Ms. FUDGE. Okay. So you do not have a time. Let me just move to my next question.

It is rare that I actually agree with our Ranking Member, but today I do. The Ranking Member talked about the need to prepare workers. She talked about work force development. But as I look at the President's budget and what you all have proposed, you are cutting discretionary funding by $1.2 billion for the Department of Labor, which includes: $700 million to Job Corps, $15 million to Reentry Employment Opportunities, and $5 to Youth Build. So it does not look like you are preparing to do more with work force development. You want now to cut work force development. So I am confused because I actually do agree with her that we should.

Tell me what is the role of Job Corps.

Secretary ACOSTA. So Congresswoman, Job Corps' role is to provide skills and education to younger Americans ages 16 to 24. It has about 120 centers around the country. It has operated much the same way for decades, and I think those are important skills. And in fact we are working with Governors around the Nation to—

Ms. FUDGE. I just wanted to know what the role of Job Corps is, sir.

So if the role is to prepare young people for the work force, why are we cutting the budget?

Secretary ACOSTA. So Congresswoman, as you are aware, the budget that is submitted is submitted within certain constraints. I would note that just yesterday, a different committee of the House proposed a different budget—

Ms. FUDGE. I just want to know why you are cutting it.

Secretary ACOSTA. Congresswoman, there are budget constraints that inform the budget. The budget is a process, as you are well aware, because—

Ms. FUDGE. The budget is an indication of what you believe is important. So if you are cutting work force development, you do not think work force development is important.

Secretary ACOSTA. Congresswoman, the amount of time and energy and effort that this administration is spending on work force development speaks for—

Ms. FUDGE. Could you tell me what that is? Tell me what they are spending.

Secretary ACOSTA. So certainly. We are, for example, expanding apprenticeships. We have got a record number of registered apprenticeships and we are expanding them to industry-recognized apprenticeships. And that is one area, for example.

Ms. FUDGE. How much are they spending? You said that they are spending all this money. How much are we spending?

Secretary ACOSTA. I believe I said the amount of time and effort that this administration is spending because we should not judge success merely by dollars, but also by time and by effort.

Ms. FUDGE. You cannot judge it by dollars. But if you are going to cut 40 percent from Job Corps, 16 percent from other employment opportunities, then time and effort is nothing. It is talk. It is not action. We need young people to have an opportunity, especially children who are homeless, children who are in difficult situations. You want to protect kids? Then help them. Do not cut their budgets.

I yield back, Mr. Chairman.

Chairman SCOTT. Thank you.

The gentleman from Pennsylvania, Mr. Thompson.

MR. THOMPSON. Mr. Chairman, thank you. Mr. Secretary, thank you for being here. It is always a pleasure to have you here before this committee, to be able to work with you, be able to reach out to you and now you reach back. It is appreciated.

And I know my good friend from Ohio, my neighbor to the West, her questions about budget—budgets are important, and quite frankly, certainly I support Job Corps and those types of things. But I also point out where—and they are always difficult. They are always just difficult. But I would point out my colleagues across the aisle have not produced a budget. So a little bit of irony with a question on budgets.

My question really has to do with a piece of legislation. It is something that we signed into law in 2014. It should be up for reauthorization here, I would hope, in the near future. That is WIOA, the Workforce Innovation and Opportunity Act. We updated the nation's—at that point, 2014, the Nation's primary assistance for unemployed and underemployed workers in the United States. And even though unemployment is under 4 percent, it is still obviously incredibly important to help people get those skills that you have made reference to.

WIOA-supported work force development programs provide a combination of education and occupational preparation to prepare individuals for work and help them improve their prospects in the labor market. Specifically, the law requires that these work force development programs are coordinated and complementary so that job-seekers acquire skills and credentials that meet employers' needs.

I love the fact that we brought the employers to the table with WIOA; that was the first of a series of three bills that we did that, really engaging people who sign the front of a paycheck, not the back, so that at the end of the day, with education, there's a great family sustaining job sitting there.

So Secretary Acosta, as we look forward to reauthorizing WIOA, any recommendations can you provide us that will further help match employers with skilled workers that they need to compete in a global economy?

Secretary ACOSTA. Congressman, that is a very important question. We have asked for increased flexibility in WIOA for multiple budgets now. And let me say that this is—Governors on both sides of the aisle on a regular basis have conversations with me, saying, "For our State it would be helpful if we can move WIOA dollars from this category to that category. Will you allow us?"

And I believe Governors know best how to develop work force programs within their States, and that Virginia is different than Connecticut, which is different than California, which is different than Ohio, and that Governors should be given that discretion. My answer invariably is: If I have the discretion, then I am glad—I would gladly give it to you.

I am thinking of one Governor, who happens to be a Democrat from a small State, pointed out that the dollars spent complying with making sure that the funds from one category are spent only in that category and the other category is spent only in the other category almost exceed the total WIOA dollars given to this particular Governor. And this Governor keeps asking, "Can we not get flexibility so I can put them in larger funds?"

And so I understand that Congress has particular preferences on how the money is spent. But I think it would be helpful to have a conversation as to what specific flexibilities can be provided.

MR. THOMPSON. Thank you, Mr. Secretary. This committee did that with the Every Student Succeeds Act on the education side, Elementary and Secondary Education Act. We eliminated a bunch of siloes so that we trusted the school districts and the States to determine where the needs were. So great thoughts going forward as we approach reauthorizing WIOA.

My congressional district is pretty rural. It is about 24 percent of the land mass of Pennsylvania, about 11,000 square miles, 14 counties. As I travel back to my district, I consistently hear from employers who are concerned about the future of the work force and are facing problems filling jobs due to a skills gap that we have seen for some time.

Private payroll surged by 275,000 in April. It was just amazing. Our limiting factor on the economy today truly is finding that qualified and trained work force. For continued economic growth, I think that is really what it comes down to. GDP growth has been great. Unemployment is great. But that is our largest threat, is work force.

And so going forward, what do you feel are the most important aspects of our fight to prepare the work force for careers involving the economy of tomorrow?

Secretary ACOSTA. Congressman, I think it is—and I see the time is ticking down—I think it is very important that we provide young Americans with all their options and let them choose for themselves. And I think the system provides a lot of benefits to community colleges, for example—Pell and other grants if you get a degree.

But if you want to go into welding, you may make more money. You may have a better job, a more secure job. But those same levels of assistance are not available. We do not have an unbiased system.

MR. THOMPSON. Thank you. Thank you, Chairman.

Chairman SCOTT. Thank you. The gentleman from Northern Mariana Islands, Mr. Sablan.

Mr. SABLAN. Thank you very much, Mr. Chairman. Mr. Secretary, welcome. I am going to be—my questions are going to be particularly about territories, the Northern Mariana Islands.

But on March 22nd, you issued an overtime rule proposal. Of course, the proposed rule formally rescinded the Obama-era overtime rule. But what struck me is that for the first time ever, your proposal creates a special rate for the Northern Marianas, for Puerto Rico, the Virgin Islands, and Guam, at $455 a week, and even for American Samoa, at $380 a week.

Why is it different for the insular areas?

Secretary ACOSTA. Congressman, thank you for the question. Let me just say that is something that I think you deserve an answer on. And let me get back to you on that. Perhaps we can come in and brief you and your staff on that question.

Mr. SABLAN. I appreciate that, Mr. Secretary. I take it that we are going to do that?

Secretary ACOSTA. We will do that. We will do that. How about this: Let's put a time so that we both know that it happens. How about no sooner than next Friday, than a week from this Friday?

Mr. SABLAN. We will find—I will open something up. Thank you.

Mr. Secretary, also, again, last year I introduced the Northern Marianas Workforce Act, which became Public Law 110–218. So I want to know if that law is working as intended. The purpose of—one purpose of the law is to make sure that the education fee that employers of foreign workers pay is used effectively to train and place U.S. workers in jobs. And it should be about $2.5 million in Fiscal Year 2020.

The Workforce Act requires the Governor to submit an annual plan for training funds. What factors will be used in assessing and approving a plan, one? Has the department provided guidance to the commonwealth Governor's office as to their requirement necessary for approval of a plan?

Secretary ACOSTA. Congressman, we have talked with the commonwealth Governor on a number of issues. In all candor, a lot of them have to do with work force issues and visa issues and whatnot. I know that those plans are pretty typical, that the criteria are set out. And I will confirm to you that our Employment and Training Administration has been in communications with the Governor regarding that plan and what status, whether it has been submitted, and if so, where that is within the ETA.

Mr. SABLAN. Okay. Because there is a June 30th timeline there, sir. Thank you.

On H–2B, Mr. Secretary, I continue to be concerned about the department's position that it is unable to prevent employers from laying off similarly employed U.S. workers and replacing them with non-immigrant guest workers under the H–2B program.

Mr. Chairman, I ask unanimous consent to enter into the record our letter to Secretary Acosta of September 13, 2018, and the department's December 14, 2018 response.

So Mr. Secretary—

Chairman SCOTT. Without objection.

[The letters described follow:]

COMMITTEE ON EDUCATION
AND THE WORKFORCE
U.S. HOUSE OF REPRESENTATIVES
2176 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6100

September 13, 2018

The Honorable R. Alexander Acosta
Secretary
U.S. Department of Labor
200 Constitution Ave NW
Washington, DC 20210

Dear Secretary Acosta:

We write to request information on the legal basis upon which the Department of Labor (DOL) has apparently determined that it is unable to prevent employers from laying off similarly employed U.S. workers and replacing them with nonimmigrant guestworkers under the H-2B program. This inquiry is predicated on recent conference calls and meetings[1] between our offices and the Department, where DOL staff has clearly stated that it is prohibited from investigating or bringing enforcement actions for violations of the nondisplacement prohibitions under the H-2B program.

The H-2B program, authorized under the Immigration and Nationality Act (INA), allows employers to hire nonimmigrant workers in temporary or seasonal non-agricultural employment if no qualified U.S. workers are available.

In administering the H-2B program, the Department of Homeland Security (DHS) relies on the Department of Labor's temporary labor certification process, which is carried out by the Office of Foreign Labor Certification (OFLC), to ensure that no qualified U.S. workers are available and the employment of H-2B workers will not adversely affect wages and working conditions for U.S. workers.

[1] July 19 teleconference between staff for Congressman Sablan and DOL Congressional Affairs, Wage and Hour Division and Employment Training Administration; July 26 meeting in 2411 Rayburn House Office Building between Congressman Sablan and staff, House Education and Workforce Democratic staff and Assistant Secretary of Labor Katherine Brunett McGuire and Employment Training Administration officials; August 8 teleconference between Congressman Sablan staff, House Education and Workforce Democratic Staff, and Labor Department Congressional Affairs, Wage and Hour Division and Employment Training Administration.

As part of the labor certification, an employer must attest it "has not laid off and will not lay off any similarly employed U.S. worker in the occupation that is the subject of the *Application for Temporary Employment Certification* in the area of intended employment within the period beginning 120 calendar days before the date of need through the end of the period of certification."[2] This employer nondisplacement obligation protects both U.S. workers from being displaced and prevents exploitation of guestworkers made vulnerable by their status.

Under joint DOL/DHS regulations, DOL's Wage and Hour Division (WHD) is delegated authority to conduct investigations, including whether the employer failed to meet requirements attested to under their labor certification. OFLC has discretion to conduct audits of certifications.

As you may know, DOL recently approved a series of labor certifications for Imperial Pacific International (IPI) to hire 1,668 H-2B guestworkers to perform construction work in the Northern Marianas. According to reports, an IPI contractor, Pacific Rim Constructors, is now laying off its U.S. workforce.[3]

Through communications with DOL staff regarding this matter, it has come to our attention that it is the Department's position that is does not currently have authority to enforce nondisplacement obligations with respect to any employer, due to restrictions imposed by an appropriations rider prohibiting the enforcement of the definition of the term "corresponding employment" found in 20 CFR 655.5. [4] This interpretation appears inconsistent with the express statutory requirements in the INA.

We are encouraged that the Department has recently entered into a Memorandum of Understanding (MOU) with the Department of Justice's Civil Rights Division to help address discrimination against U.S. workers and combat visa abuse. This MOU, however, does not relieve the Department from its responsibilities to enforce nondisplacement protections. These nondisplacement protections are foundational to the DOL's role in ensuring the validity of employer representations that no qualified U.S. workers are available and the employment of H-2B workers will not adversely affect wages and working conditions for U.S. workers.

Given these concerns, please provide the following by September 30, 2018:

1. A full explanation of the Department's position regarding its ability to enforce employer nondisplacement obligations under 20 CFR 655.22(i) and 20 CFR 655.20(v), including an explanation of how the Department is interpreting "similarly employed U.S. worker" under these sections and how the Department believes its position adheres to INA section

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[2] 20 CFR § 655.20(v).
[3] Erwin Encinares, *Construction continues even with Pacific Rim workers out*, Saipan Tribune (July 27, 2018), available at https://www.saipantribune.com/index.php/construction-continues-even-with-pacific-rim-workers-out/
[4] This rider was first included in the Department of Labor Appropriations Act, 2016, Division H, Title I, Sec. 113 of Public Law 114-113. The rider states: "None of the funds in this Act shall be used to enforce the definition of corresponding employment found in 20 CFR 655.5. . . ."

101(a)(15)(H)(ii)(b). As part of this explanation, provide the date the Department adopted its nonenforcement position and suspended enforcement as a result.

2. Documents and communications that form the legal basis for the Department's position, including guidance documents, legal memorandums or opinions, letters of interpretation, or other analysis, including the application of "corresponding employment" under current regulations, and appropriations provisions prohibiting use of any funds to enforce the regulatory definition of "corresponding employment."

3. Communications among and between the DOL's Office of Solicitor, OFLC, WHD, the Office of the Secretary, and with other relevant agencies, including DHS, regarding the Department's position on employer nondisplacement obligations. Such communications should include, but not be limited to, emails, letters, faxes, and any other written materials, as well as a list of any meetings, calls, or other oral communications that took place between the aforementioned parties. In the case of meetings, calls, and other oral communications, please include the date, time, and location at which such communications took place, as well as a list of individuals who participated.

We appreciate your prompt response to this request. If you have any questions, please have your staff contact Seth Maiman with Congressman Sablan at Seth.Maiman@mail.house.gov or 202-225-2646 or Udochi Onwubiko of the Committee on Education and the Workforce Democratic Staff at Udochi. Onwubiko@mail.house.gov or 202-225-3725.

Sincerely,

GREGORIO KILILI CAMACHO SABLAN
Ranking Member
Health, Employment, Labor, and Pensions
Subcommittee

ROBERT C. "BOBBY" SCOTT
Ranking Member

cc: The Honorable Kristjen M. Nielsen, Secretary, U.S. Department of Homeland Security
The Honorable L. Francis Cissna, Director, U.S. Citizenship and Immigration Services

U.S. Department of Labor

Assistant Secretary for
Congressional and Intergovernmental Affairs
Washington, D.C. 20210

DEC 1 1 2018

The Honorable Robert "Bobby" C. Scott
Ranking Member
Committee on Education and the Workforce
US. House of Representatives
Washington, DC 20515

Dear Ranking Member Scott:

I am responding to your letter concerning the Department of Labor's (the Department) enforcement of the H-2B nonimmigrant temporary worker visa program, specifically with regard to the non-displacement and corresponding worker provisions.

Your letter requests that the Department explain its position that it "does not currently have the authority to enforce the non-displacement obligations" due to an appropriations rider prohibiting the enforcement of corresponding employment. You further state this interpretation appears inconsistent with the Immigration and Nationality Act (INA).

As you know, the H-2B regulations contain provisions to ensure that the employment of H-2B workers will not adversely affect the job opportunities of U.S. workers. The H-2B regulations also prohibit any negative impact on the wages and working conditions of similarly-employed U.S. workers. The Department has the authority to enforce its regulatory provisions that protect U.S. workers. Due to an appropriations rider, however, the Department is prohibited from enforcing the corresponding employment protections, but can—and does—enforce employers' non-displacement obligations. Elimination of the appropriations rider by Congress would allow the Department to again enforce the corresponding employment provision to protect U.S. workers.

The prohibition of recent or future layoffs of similarly-employed U.S. workers requires that the employer requesting the H-2B worker attest that it has not laid off and will not lay off any similarly-employed U.S. worker. Consistent with the INA's emphasis on the protection of U.S. workers, the Department enforces and ensures that employers have not and will not lay off any similarly-employed U.S. worker in the occupation that is the subject of temporary labor certification. This prohibition begins 120 days before the date of the H-2B worker is needed by the employer, and runs until the worker is scheduled to leave.

The corresponding employment provision generally requires that the employer's U.S. workers who perform substantially the same work as the employer's H-2B workers are entitled to the same wages and working conditions as the H-2B workers. The Department, however, is currently prohibited from enforcing the protections for U.S. workers in corresponding employment. Section 113 of the Consolidated Appropriations Act of 2018, Pub. L. 115-141

(Sept. 28. 2018) prevents the Department from using any funds to enforce the corresponding employment provision.[1]

Elimination of the appropriations rider by Congress would allow the Department to fully enforce this regulation and ensure that U.S. workers who perform substantially the same work as the employer's H-2B workers are entitled to the same wages and working conditions as the H-2B workers. Allowing the Department to fully and fairly enforce corresponding employment would greatly benefit U.S. workers. The Department looks forward to working with Congress to strengthen H-2B enforcement to ensure U.S. citizens working for employers participating in the H-2B program—and who perform substantially similar work as H-2B workers—are treated fairly and in accordance with the law.

Thank you for your commitment on this issue and your interest in this matter. I look forward to continuing to work with you to ensure that all workers continue to be served by the laws administered and enforced by the Department.

Sincerely,

Katherine B. McGuire

[1] Similar riders have been included in the Department's appropriations since fiscal year 2016. *See* Sec. 113, Consolidated Appropriations Act, 2018, Pub. L. 115-141 (March 23, 2018); Sec 113, Consolidated Appropriations Act, 2017, Pub. L. 115-31 (May 5, 2017); Sec. 113, Consolidated Appropriations Act, 2016, Pub. L. 114-113 (Dec. 18, 2015).

U.S. Department of Labor

Assistant Secretary for
Congressional and Intergovernmental Affairs
Washington, D.C. 20210

DEC 17 2018

The Honorable Gregorio Kilili Camacho Sablan
Ranking Member
Subcommittee on Health Employment, Labor, and Pensions
Committee on Education and the Workforce
US House of Representatives
Washington, DC 20515

Dear Ranking Member Sablan:

I am responding to your letter concerning the Department of Labor's (the Department) enforcement of the H-2B nonimmigrant temporary worker visa program, specifically with regard to the non-displacement and corresponding worker provisions.

Your letter requests that the Department explain its position that it "does not currently have the authority to enforce the non-displacement obligations" due to an appropriations rider prohibiting the enforcement of corresponding employment. You further state this interpretation appears inconsistent with the Immigration and Nationality Act (INA).

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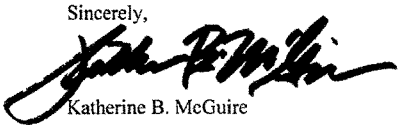
Thank you for your commitment on this issue and your interest in this matter. I look forward to continuing to work with you to ensure that all workers continue to be served by the laws administered and enforced by the Department.

Sincerely,



Katherine B. McGuire

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Mr. SABLAN. Thank you.

Mr. Secretary, putting aside the department's position that it cannot enforce corresponding worker provisions due to congressional appropriation riders, it is clear to me that the department should at least be enforcing nondisplacement provisions, and that would correct actions such as when employers at a Marianas constructionsite laid off its U.S. work force in favor of H–2B workers.

Why has the department failed to conduct an investigation of this matter?

Secretary ACOSTA. Congressman, I cannot speak to the specific investigation. But I will—let me just say generally, we have directed the Wage and Hour Division, whenever it discovers an issue, to refer it to the Inspector General because we are investigating these matters. We are investigating them vigorously using every authority that we have. And if we can refer it for criminal investigation, we are doing so. And those referrals have gone up.

One of the issues around nondisplacement has to do with the law set a cutoff, and a cutoff salary. And so the law is different for those individuals making less than $60,000 versus those making more than $60,000.

I would love to work with the Congressman to address this because to the extent we have authorities, we want to use those authorities to enforce nondisplacement of U.S. workers vigorously.

Mr. SABLAN. Right. My time is up, Mr. Secretary. But I will submit some additional issues for you. And in our next meeting, no later than next Friday, we could discuss the other issues as well.

Secretary ACOSTA. Absolutely.

Mr. SABLAN. Thank you, Mr. Secretary.

Mr. Chairman, my time is up. I yield back.

Chairman SCOTT. Thank you.

The gentleman from Michigan, Mr. Walberg.

Mr. WALBERG. Thank you, Mr. Chairman. And Mr. Secretary, it is good to see you always. And thanks for bringing back some of the finest work force staff that you hired well. It is good to see them also.

I would want to hitchhike on some of my colleagues' support for your efforts to work alongside of the excellent registered apprenticeship programs and bring industry apprenticeship programs into play as well. Especially my concern has been expressed by some in the industry that there is a variance in how we use those appendices on the work site. So all I am asking is that we look at making it equal, both in industry as well as the registered apprenticeship programs. But they both can be extremely valuable to what we need.

On an issue of great concern to me, sitting in Central States area, as you know multiemployer pension plans are in crisis, looking at PBGC data in 2016, of being underfunded by $638 billion. There is some tremendous humanitarian problems that can develop with that.

What steps has DOL taken to examine funding practices in these plans? And second, can you describe DOL practices with regard to auditing monthly employer pension plans?

Secretary ACOSTA. Congressman, thank you for the question. The issue around multi-employer pension plans is acute and serious. The PBGC is projecting that when Central States reaches crisis—if it is not already at crisis; it is no longer able to make payments—the PBGC is going to face some very, very difficult—and likely, if Congress does not act before then, a lot of folks are going to be hurt. And that is at this point about 6 years out.

Now, I will note, on a positive note, just last night—we have been waiting to have our confirmed head of the PBGC, the Pension Benefits Guaranty Corporation, confirmed for months and months now. And just last night he was confirmed. And so it is my hope that we can work with Congress.

I know that there was a bipartisan working group. I believe it was called a special committee, or whatever the appropriate name was, of the House and the Senate that was put together to address this. And at the end of the day, there was no—

Mr. WALBERG. It failed.

Secretary ACOSTA. No. It failed. There was no path forward.

This needs to be solved. And the longer Congress waits to address this, the more expensive it is going to get. And at the end of the day, it needs to be solved, understanding there is going to have to be shared pain because there are a number of individuals involved, a number of sides to this, and so there is going to have to be some room for compromise and consensus as we find a solution. But a solution does need to be found by Congress.

Mr. WALBERG. It has to be, and we appreciate any assistance, any help, any ideas auditing all of that because it truly does need to be done, or otherwise, we have a significant problem that taxpayers will pay for anyway.

Secretary ACOSTA. Congressman, let me add—because you mentioned auditing—as a solution is found, my opinion is it should not just be financial. But there should be reforms that are put into place that provide flexibilities and authorities so this does not happen again.

Mr. WALBERG. It cannot be a band-aid that we pull off and find the same—

Secretary ACOSTA. That is correct.

Mr. WALBERG.—infection underneath. Okay.

Associated health plans provide a number of consumer protections for workers and their families. We have discussed a bit already today. HPs must comply with the same HIPAA and ACA nondiscrimination rules so that other large employers must follow in addition to COBRA coverage requirements, and in certain circumstances, applicable State laws.

Can you discuss how these laws shape AHP benefit offerings, and whether these consumer protections are consistent with similar plans offered by large employers?

Secretary ACOSTA. Congressman, whenever I hear that association health plans do not offer quality plans, my question is: Does that mean that every corporation in the United States does not offer a quality plan? Because association health plans are subject to the same protections and the same requirements as those of any corporation that has more than 50 individuals. And that is an important point to make.

Mr. WALBERG. An important point that often we miss. So I appreciate you making that clear.

I would also state that while a budget is not always appreciated the way it comes out, as was mentioned by my colleague as well as the Speaker of the House, a budget is an indication of what you value. Well, it is about time that the other side offers us a budget as well to find out what they value. And I yield back.

Chairman SCOTT. Thank you.

The gentlelady from Florida, Ms. Wilson.

Ms. WILSON. Secretary Acosta, we wear red today and every Wednesday to protest sexual abuse against kidnapped girls in Nigeria by the terrorist group Boko Haram, who is affiliated with ISIS.

Secretary Acosta, you claim to respect the rule of law. But as the Miami Herald has reported in detailed accounts, while a U.S. Attorney in my home State of Florida, you made questionable decisions during the prosecution of sex trafficker Jerry Epstein, and in the process violated the Crime Victims' Rights Act.

This makes it difficult for me to seriously believe that as Labor Secretary, you are putting our workers and the vulnerable first. In fact, your budget, which favors the powerful and wealthy over the little guy, makes it clear where your values and priorities lie.

You propose large cuts to the Department of Labor bureau charged with preventing exploiting workers. Courts have struck down rules in your deregulatory agenda. And you consistently promote regulations that limit employer liability when they mistreat their workers.

This hearing will delve into all of that. But I want to start by asking you how you justify violating the Crime Victims' Act in the Epstein case.

Secretary ACOSTA. Congresswoman, going to your question about the Crime Victims' Act, the department has taken the position for the last 12 years that in fact the Crime Victims' Act was not violated in that case. The office followed the protocol set out by the Attorney General, a protocol that has been—that has been confirmed by the Office of Legal Counsel.

And so it is the Department's position in litigation that in fact, the Crime Victims' Protection Act was not violated. I understand that the judge disagreed with the Department's position. But we acted consistent with DOJ protocol, rules, and regulations. And that is the position of the Department, based on my understanding of the litigation, across multiple administrations, across multiple Attorneys General.

Ms. WILSON. My question to you is about the unsavory way in which this case led the Southern District of Florida to find that you specifically violated the law. Judge Marra cited how you actively hid from the victims who had been sexually abused details about the plea agreement. You did not want them to know.

He also cited how in blatant violation of the Crime Victims' Rights Act, you met with defense attorney Jay Lefkowitz and assured him that you would not reveal details of the plea agreement to the victims, some of whom were as young as 13. And although the prosecution was required to notify the victims of the odious deal you made before it was finalized, you sent a letter to another

one of Epstein's attorneys, Ken Starr, citing that you were directing your prosecutors to not issue victim notification letters until the terrible deal was done.

When faced with criticism about this case, you have hidden behind prosecutorial discretion. You were just part of the team, you have argued, but your actions suggest that you experienced some confusion about exactly which team you were on—either that you just did not care about Mr. Epstein's victims, little, young girls, which included scores of them, underage girls whom he had molested.

How else do you explain the fact that as a prosecutor charged with protecting the vulnerable, not defending the indefensible, you bent over backwards to protect the abuser? How do you do that?

Secretary ACOSTA. Congresswoman, first let me say that this matter was appealed all the way up to the Deputy Attorney General's office, and not because we were not doing enough but because the contention was that we were too aggressive.

The background to this case is the State Attorney—the police—

Ms. WILSON. I will just end by saying—

Secretary ACOSTA. Congressman, if I could—

Ms. WILSON.—that if you could so heartlessly cast aside your duty to protect the vulnerable in favor of a wealthy sex offender, I am extremely concerned that we can expect a similar pattern of indifference in your role as labor secretary. And I want to remind you, Mr. Secretary, that your job is to protect workers and not working businesses. And I yield back.

Chairman SCOTT. Secretary, did you want to respond?

Secretary ACOSTA. I will just move on. Thank you.

Chairman SCOTT. The gentleman from Kentucky—oh, excuse me, the gentleman from Georgia, Mr. Allen.

Mr. ALLEN. Thank you, Mr. Chairman. And thank you, Mr. Secretary, for being here and enduring some of these comments. Well, we are here to talk about jobs, and obviously the country is—you have got quite a challenge ahead of you, and the Department of Labor has quite a challenge ahead, because as my colleagues have said, everywhere we go, everybody needs skilled people.

In fact, I believe the economy could grow more rapidly if we had a way to snap our fingers and make that happen. But I was at the White House when the President signed up, I think, that day about 4 million apprenticeships. Various—all the labor groups were there. It was quite a scene. And then I saw Ivanka sometime later, and she said, I believe, it was to 6 million.

Now, how many total apprenticeships have we committed there?

Secretary ACOSTA. That's right. Congressman, at last count the number of re-skilling opportunities that businesses have committed to, which includes apprenticeships, has exceeded 6 million, and it is growing.

Mr. ALLEN. Yes. Good. Well, that's good. Obviously, the government can only do so much, and so it's nice to see the business community and the labor groups step up and let's fix this problem.

One thing that I wanted to ask you about. A constituent of mine has received a contract to build the new Job Corps center in Atlanta. And can you provide me with an overview of any problems that the DOL contract administration group is having admin-

istering these contracts in the construction of projects throughout the country?

Secretary ACOSTA. Congressman, I know that there are a number of construction programs that are going forward. There are often challenges to bids. There are often a number of issues that arise at a local level. I know that you have inquired as to one, and I think it—I'm happy to have your office briefed or to brief you.

Mr. ALLEN. Yes. If you could do that, I would really appreciate that.

As far as the Workforce Innovation and Opportunity Act, Congress empowered businesses to lead the way in work force development, and we took a step toward increased innovation and efficiency. What steps can we take to encourage further competition and expand on the options that are currently available to businesses?

Secretary ACOSTA. So Congressman, I think again one of the issues there is increased flexibility. Allow localities to decide what works for that locality.

Mr. ALLEN. Right.

Secretary ACOSTA. For example, in-school youth versus out-of-school youth—sometimes the best way to keep youth in school is to provide work force education around the school or while in school. And so we have asked for those flexibilities, and I would be happy to further the conversation.

Mr. ALLEN. Good. As far as looking at the current need across the country, obviously the Department of Labor is trying to come up with some way to ramp up. We talked about apprenticeships, other things. What else are we trying to do to get this problem solved?

Secretary ACOSTA. Well, one area let me highlight. I mentioned the Job Corps Scholars program earlier, which is a pilot program for 1,600 young Americans around community colleges. Another area I want to highlight is we have discretion with respect to H–1B fee dollars. And so we put out a request for proposal, and hopefully we will be awarding $150 million soon for educational institutions.

And we did something that we have not done previously: We said, you need to find a business partner, and they need to match, and they need to match, I believe it was, 1 dollar for every 3 Federal dollars. And that is not just about the dollars, but it is about the value of having a business partner in work force education that will have input into the curriculum so that we know that it is the right kind of curriculum that will have skin in the game. So when it comes time to hire these young Americans, they are there that they are hiring them.

And so we focused those on the areas where H–1Bs are being used the most, on high-tech, on healthcare, on advanced manufacturing. And we said, these are available for apprenticeship programs. And so we're very excited that we are going to be announcing those, and it is going to be across the country.

And hopefully there will be a second round and a third round because those H–1B fees should and in fact are required to go to provide skills in the areas where H–1Bs are being given.

Mr. ALLEN. Okay. I'm out of time, but please, any time that we can be of assistance as far as the U.S. Congress in helping us achieve what we need to achieve as far as getting people skilled up and back to work in this country. I am all in, and I will be glad to help you, sir.

Secretary ACOSTA. Thank you.

Chairman SCOTT. Thank you.

The gentleman from California, Mr. Takano.

Mr. TAKANO. Good morning, Mr. Secretary.

Mr. Secretary, when you entered office, you decided to appeal the Obama overtime rule that was struck down by a Texas court in 2017. What was your reason for appealing?

Secretary ACOSTA. Well, I think it is important, when these rules are called into question, the U.S. Government should defend them more appropriately. We can disagree with the policy underlying the rule and we can still appeal the rule.

Mr. TAKANO. So you disagreed with the salary threshold that the previous administration set.

Secretary ACOSTA. Congressman, I think at my confirmation hearing, I noted that there was certainly a need to adjust for inflation, that life had gotten a lot more expensive since 2004. But my disagreement does not preclude my defending a rule that has been put into place.

Mr. TAKANO. Okay. So what was your reason for appealing it? As I recall, you wanted to preserve—you believed that the Secretary of Labor should have the authority to set the rule. Is that right?

Secretary ACOSTA. That is correct. One of the issues is whether or not the Secretary—

Mr. TAKANO. Well, yes. And why do you believe the Secretary of Labor should have that authority? Is it because you believe that the Secretary of Labor should be protecting the American worker?

Secretary ACOSTA. Well, Congressman, I believe—let's start off with Congress, I believe, has given the Secretary of Labor that authority.

Mr. TAKANO. Yes. Of course.

Secretary ACOSTA. And so—

Mr. TAKANO. Well, yes. But basically, you believe the Secretary of Labor should have that authority, and Congress did give that authority, and you disagreed with any ruling that would have said the Secretary of Labor does not have that authority. Is that right?

Secretary ACOSTA. Congressman, again, I—

Mr. TAKANO. Well, I don't want to get stuck on this point.

Secretary ACOSTA. Yes.

Mr. TAKANO. I just want to know. What was the threshold that the Obama Administration had set?

Secretary ACOSTA. The threshold was approximately $23,600, give or take.

Mr. TAKANO. That the Obama Administration had set?

Secretary ACOSTA. Yes.

Mr. TAKANO. For the threshold?

Secretary ACOSTA. I am sorry. The 2004 threshold was $23,600.

Mr. TAKANO. Right. The Obama Administration had set the threshold higher, closer to $50,000.

Secretary ACOSTA. That's right. Closer to $50,000.

Mr. TAKANO. Okay. And in 1974, what percentage of the work force was eligible for overtime pay? Do you—

Secretary ACOSTA. In 1974, I would—

Mr. TAKANO. Or 1975. Around there.

Secretary ACOSTA. 1975. I would have to look that up. But the Congressman may know the answer.

Mr. TAKANO. So EPI, the Economic Policy Institute, said it was more than 60 percent. Do you know what percentage of the salaried work force is eligible for overtime pay today?

Secretary ACOSTA. So Congressman, if the question is—well, the Congressman, I think, has the data.

Mr. TAKANO. Okay. About 7 percent. Right? Under the current salary threshold.

Under your proposal, you propose to set the salary threshold around $35,000. What percentage of the work force would be eligible under that salary threshold?

Secretary ACOSTA. The same percentage as—and maybe this goes to how we propose the current rule from NPRM—the same percentage as would have been eligible when the salary threshold was set in 2004. In essence, in 2004, if I could, Congressman—

Mr. TAKANO. Well, look. We have gone from, in 34 years, a salary threshold that made over 60 percent of the American work force eligible for overtime pay. Presently it is at 9 percent. Your salary threshold, as you propose, would make it 15 percent. And you disagreed or you did not think, obviously, that defending a 33 percent threshold, eligibility threshold, was something that was a priority for you with President Obama. So we are quibbling over 33 percent versus 15 percent, but I would say that is a significant difference.

Secretary ACOSTA. Congressman, if I could, if I could answer with at least a few sentences. The 2004 rule set the threshold at the 20th percentile of the lowest wage region, as I—

Mr. TAKANO. I get that. But nationally, we are talking about that—

Secretary ACOSTA. But Congressman—

Mr. TAKANO.—but you have to—we have to see that the American worker, the protections under the Fair Labor Standards Act under the overtime rule—do you believe in the 40-hour work week, that people should not have to work more than 40 hours a week without being paid overtime?

Secretary ACOSTA. Congressman, as I was trying to get a word in edgewise, the 2004 set it at the 20th percentile. The revised rule is—

Mr. TAKANO. I get it. You're going to take me through all these regional examples.

Secretary ACOSTA.—using the same methodology with the same percentage. And so we can talk about different percentiles, but it is the same methodology with the same percentile. There is no change since—

Mr. TAKANO. Mr. Secretary—

Secretary ACOSTA.—2004.

Mr. TAKANO.—the fact remains that we once had 60 percent of Americans protected and eligible for overtime, and we only have 9 percent. And you are only proposing to increase it to 15 percent of

the salaried work force. I do not think that is a Secretary of Labor that is protecting the American worker. I yield back.

Chairman SCOTT. Thank you.

The gentleman from Kentucky, Mr. Comer. I did not see Ms. Stefanik come in. The gentlelady from New York.

Ms. STEFANIK. Thank you, Chairman Scott. Thank you.

Secretary Acosta, I have heard from constituents in my district about challenges that are facing active duty servicemembers who are participating in the career skills program at Fort Drum. There is concern that these soldiers may not be able to be considered interns under the Fair Labor Standards Act.

And this confusion is preventing them from gaining valuable on-the-job experience while they complete their transition to civilian life. And it is of paramount importance, I believe, that we provide members of the military with effective programs that teach the skills needed to secure a safe, steady, and family sustaining career post-service.

Previously I sent a letter to you and the department at the end of February, and I wanted to know if you have any updates on clarifying classification of interns under FLSA, specifically for our military servicemembers. And if not, I am eager to hear what your ideas are, how we can work together to address this.

Secretary ACOSTA. Congresswoman, thank you for the question. First let me say the confusion was not just limited to there. There was quite a bit of confusion nationwide as to what is and is not allowed for internships. And so we have put up a website to try to clarify that.

This sounds like an important and a fact-based issue. Something that we have restarted is the practice of issuing opinion letters that had been in force for decades, where individuals that are not sure of what the law is can say, these are our facts; how do they apply?

It is used by the IRS. It is used by any number of agencies. And perhaps we can work with your office so that you have the information to suggest that someone issue a request for an opinion letter. That will provide clarity as to what is and is not allowed. Alternatively, if it is a clearer issue, we can certainly work with your office.

Providing opportunities for individuals associated with the military is incredibly important. We have worked on military spouse employment issues. They face incredible difficulty with respect to licensing as they have to move from State to State. They have, I think, a very unfair choice: Keep the family together or keep a career. And that should be a choice that spouses should not have to face.

We are working to reform the transition assistance program that individuals receive as they are leaving the military. Right now it varies base by base, and we trying to bring national standards to bear so that it is much more uniform and it is accessible in the same way not just to individuals on the large bases but the small bases. So we are very interested.

Ms. STEFANIK. Okay. Well, I want to followup specifically. I want to be able to give Fort Drum and the soldiers and the program managers specific guidance as to what they need to do because the soldiers want this experience. We want to make sure that we pro-

tect this program at Fort Drum. So I look forward to following up directly with your department.

Secretary ACOSTA. Let's set, by next Friday again, a commitment so that we can keep things moving.

Ms. STEFANIK. Great. So we can move quickly.

And I also wanted to add on the professional certification and licensing challenge, that is something that we have written three bills that have actually passed in the National Defense Authorization Act because I sit on HASC. One is a $500 reimbursement for a military spouse if they are transferring from one state to another and have to recertify.

We should make that more seamless. But in the interim, it is important to cover as much of that cost as possible. Additionally, I was able to include my bill that allows greater flexibility for the spouse to move either 6 months prior or 6 months after their spouse in the military to give them the flexibility to find a job or finish their—if they're taking college courses, for example.

The more we can do to provide flexibility, not just for the service members but their spouses, I think the better off we will be as an economy and as a Nation. So with that, I yield back.

Mrs. DAVIS. [Presiding.] Thank you.

Ms. Wild?

Ms. WILD. Good morning, Mr. Secretary. Thank you for being here.

I would like to direct my first question to the multi-employer pension crisis. And I guess my very first question is whether you believe that—and whether the administration believes that—A, there is a crisis, and B, that it needs to be addressed.

Secretary ACOSTA. It absolutely needs to be addressed, and sooner is better than later. Congress needs to come together and really find a solution to this, yes.

Ms. WILD. All right. And you are aware, of course, of H.R. 397, the Rehabilitation for the Multi-Employer Pension Act?

Secretary ACOSTA. Congresswoman, I know that there are any number of bills. I am not aware of the specifics of that particular bill, but perhaps you could inform me.

Ms. WILD. Well, let me ask you this: Are there any bills currently pending that the administration is in support of to address this crisis?

Secretary ACOSTA. Congresswoman, Congress tried to address this by creating a bipartisan commission, Republicans and Democrats, House and Senate, to find solutions. That commission ultimately could not come to an answer. An answer needs to be something that is supported by both sides. It needs to pass. And it is something that recognizes the need to compromise. And so it is certainly a bipartisan effort, and it needs to be bipartisan to come up with a solution to this as something that would be welcome.

Ms. WILD. Okay. So I think you used "bipartisan" several times in that response. And I don't think anybody in this room would disagree that it has got to be a bipartisan effort in order to get anywhere.

So my question to you is: Speaking for the administration, what kind of reforms would you support or would the administration

support that might get us to a place where we can agree on some solutions for these retirees?

Secretary ACOSTA. So putting aside the funding issue, which is one of the areas for bipartisan, something that I think we need to look at is the authority for the PBGC to have flexibility in pricing to be able to say, one pension is very well-funded and very low risk, but another pension is not as well-funded and much higher risk.

And so perhaps the premiums that get paid need to be different. This is something that is very common in the private sector, and the average American gets, if someone is a greater credit risk, they have to pay a higher mortgage. And as a matter of fact, I think this is part of our budget request.

There are any number of ways that the PBGC, going forward, can really look at individual risks, the risks of individual pensions that it is guaranteeing so that we are not in this position again.

Ms. WILD. But ultimately that is going to disadvantage the retirees who are part of the pensions who are at greater risk. Right?

Secretary ACOSTA. So I don't—in all candor, I don't see how a flexibility for premiums is going to, based on the strength of the pension, is going to disadvantage the retirees. That is a pension paying based on its risk to the system. And if anything, it incentivizes those that are funding the pension to fund the pension so that it does not get into the financial issues that have led to this crisis.

We are looking at a $50 billion deficit today and a projected bankruptcy, in essence, somewhere around 2025 plus or minus a year or two.

Ms. WILD. It is actually more than $50 billion. It is almost $54 billion when you compare the PBGC's assets to their liabilities. And the proposal of the administration to increase premiums would raise $18 billion over 10 years for the PBGC.

But it still leaves almost $36 billion in liabilities. And while it provides a little bit of a safety net for the PBGC, it only provides a fraction of a retiree's pension benefit if the retiree's underlying multi-employer pension plan fails. And that is why I say it penalizes the retiree.

Several weeks ago we had a hearing here where we heard from a retiree who had worked many jobs in an industrial bakery. His pension plan is projected to be insolvent in the next few years through no fault of his own, even though he paid into it for more than 20 years. And he is at risk of losing everything for which he worked and sacrificed.

How do we solve that problem?

Secretary ACOSTA. Congresswoman, when I was talking about that flexible pricing, I was talking about differential pricing, which is also part of the proposal.

Ms. WILD. Thank you. I yield back, Mr. Chairman.

Chairman SCOTT.

[Presiding] Thank you. Now the gentleman from Kentucky, Mr. Comer.

Mr. COMER. Thank you, Mr. Chairman. And Mr. Secretary, welcome to the Committee. I appreciate the good work that you and President Trump are doing.

I represent a rural district in Kentucky. It spans all throughout West Kentucky, Southern Kentucky, and a portion of Central Kentucky. And I am blessed that we have two very impressive Job Corps centers in my congressional district. One is the Earle Clements Job Center in Morganfield, Kentucky. The other is the Muhlenberg Job Corps Center.

I have visited both of those numerous times. I'm very impressed with the programs that they offer. They are providing exactly what industry is begging for. The biggest complaint that I receive when I travel the district from employers and job creators is, there is a shortage of workers, and there's a shortage of skilled workers.

The two Job Corps centers in my congressional district are meeting the demands of what industry wants in Kentucky, and I am a big fan of both of those Job Corps centers. One of my constituents from Union County recently testified before the House Labor Health and Human Services Subcommittee about how great a job the Job Corps center did for his foster children.

In Kentucky, we have a program that pays for free tuition for foster children, free tuition to any of the regional universities, which includes the University of Kentucky, and Murray State University in my congressional district, free tuition for any of the community colleges, vocational schools. But they chose to go to the Job Corps center because they felt like they would receive the certification that they need to make the most money in the work force.

And my question to you, Mr. Secretary, is: Has there been any effort made to integrate the administration's industry-recognized apprenticeship model, itself an alternative pathway to work, into the Job Corps?

Secretary ACOSTA. Congressman, several of the Job Corps teach many of the skills that are already covered by apprenticeships on the registered side in the building trades. And certainly as the industry-recognized apprenticeship program continues, that is something we are going to be looking at.

Let me also say that we have had very good discussions with Governor Bevin about the Job Corps centers in your State, and we are working with him because those Job Corps can certainly always be improved. And we do think it is important.

If I could just have 15 seconds because I do think it is an important distinction. The variable pricing based on risk of underlying pensions that I was talking about is used in the single-employer plan that is not facing the same financial crisis so this is not that novel. It is already used in the single—employer process.

Mr. COMER. Great. Next question. As you know, the Office of Workers' Compensation Programs is responsible for administering the Energy Employees' Occupational Illness Compensation Program Act, which provides compensation for Federal employees and contractors employed in nuclear weapons production.

A recent report by the GAO requested by members of this committee found that the department could better assist these claimants with clearer communication during the application and eligibility determination process. In the report, Director Julia Hearthway underscored the Department's renewed focus on adequate education for claims staff, improving written communications

and engagement with claimants and enhancing the transparency of the claims decisionmaking process.

Can you discuss the process the Department has made in these areas, and what other areas and what other efforts the Department plans to undertake to improve the claims process for beneficiaries?

Secretary ACOSTA. That is right, sir. Director Hearthway has implemented a number of reforms, not just in this but in other areas, to almost walk the claimants through this process. It can be very confusing. Each program is different.

And so she has directed her staff to almost—we have to receive the submissions and judge them. But that does not mean that we cannot work. These claimants have been through a lot. That does not mean we cannot work with the claimants to make it clear to them, this is exactly what we need. This is exactly what we need to do.

And so there have been 33 nonsubstantive updates to the requirement process. We have tried to avoid litigation. We have tried to just make it so that we can tell individuals up front what they need to do. There have been 35 programmatic determinations regarding the claims process.

And the advantage of programmatic determinations is they are program-wide so we do not have to revisit that individual's. And the biggest change by volume is due to conforming the regulations regarding the process to the FECA program that was implemented in 2011. A lot of times these regulations are out of date.

And so individuals do not really know what they need to do. So if there are specific questions, I can certainly address them individually. But she has done a great job.

Mr. COMER. Thank you, Mr. Secretary. I yield back.

Chairman SCOTT. Thank you.

The gentleman from New Jersey, Mr. Norcross.

Mr. NORCROSS. Thank you, Mr. Chairman. And Secretary, great to have you here as an update on what is going on at the Department of Labor.

Before I get into my primary question, I just want to talk about the multi-employer pension system and the cost not only to those who receive the pension, but to our country, the damage that will be done if we fail to act, much higher than the amount of money that would be thrown into the system to prop up PBGC.

A very important issue to make sure that we keep our eye on is that trying to charge the healthy plans astronomical increases in premiums is blaming those who have done the right thing are paying the price. We talked about the premium system that is used in the single employer. That is fair because it is that employer who caused the positive or the negative. There is a direct connection.

The multiemployer, it is other companies that are making decisions that will force those premiums to go up and the structural changes. You are still dealing with the last man standing and the bankruptcy. That has to be changed. We cannot penalize the healthy plans.

Secretary ACOSTA. Congressman, if I could because I think there is a misunderstanding as to what I am talking about and maybe I need to be more clear. What I am talking about is in the single-

employer system, there is variable pricing. So the healthy plans actually pay less, not more.

And so what I'm suggesting is that putting aside whatever the ultimate premium is going forward, something that is important is a recognition that if a plan is under-funded, it carries a bigger risk—

Mr. NORCROSS. Absolutely.

Secretary ACOSTA.—and therefore should be paying a higher premium, as opposed to a plan that is not under-funded and, if anything, that provides an incentive to not underfund these plans.

Mr. NORCROSS. We could spend hours on this one. But the idea of making the healthy plans pay for the unhealthy, now there's a risk that we would need to address. But that will just cause more plans to fail.

I want to touch base on something that I know we have spoken about before, and it is important to you. And that is the Mental Health and the Addiction Parity Act. The law was almost 10 years ago. Patrick Kennedy ushered it through, and it was signed into it.

You have testified before why it is important for the Department of Labor to have the ability to issue civil monetary penalties against the plans when those insurers are not doing the right thing. Why is that important for the Department of Labor to have that stick to address it?

Secretary ACOSTA. Well, Congressman, typically enforcement carries with it a stick.

Mr. NORCROSS. Absolutely.

Secretary ACOSTA. And so let me break this down, if I could, into two parts. One of them is how we enforce, and right now we enforce against each individual—each individual plan. And so we can have a situation where we have a hundred violations that are identical, and we would have to go a hundred times as opposed to just say, it is the same violation by the same carrier.

And so just as a matter of enforcement economy, not only is it like a stick—

Mr. NORCROSS. But you cannot go after all the employers right now because you do not have the enforcement mechanism. If we gave that to you, obviously you could.

Secretary ACOSTA. That is correct. We can go after individual by individual. But as a matter of enforcement economy—

Mr. NORCROSS. Right. You cannot do that.

Secretary ACOSTA.—that is not the better approach.

Mr. NORCROSS. So you are agreeing that you still want that enforcement ability, the tool, to go after them?

Secretary ACOSTA. I understand it is a complicated issue and there are multiple levers. But from an enforcement perspective, that would be a much better enforcement approach.

Mr. NORCROSS. Great. So we will be working with that. I think the bill is going to drop next week.

Let me just shift over to the apprenticeships. And there has been a lot talked about a registered program versus unregistered. I came through one myself that was registered, and they do a great job in the building trades.

I am a little perplexed on why a registered program for nursing, healthcare, is a problem, particularly when putting together a pro-

gram is not tough, and the standards are so critical because whether it is a nursing or a tech, at a healthcare system, it is not different than it is on the West Coast. And they actually learn from each other.

Why is it that you are—or what are you seeing that is preventing companies from creating apprenticeship programs that are registered?

Secretary ACOSTA. Well, Congressman, it actually is, for companies, quite complicated because often the standards vary by State. And so a company that wanted to have a nationwide apprenticeship program may say, "We are not going to go to 50 different States, or 40, or 30, and do their submissions. We are just going to do our own job training."

Mr. NORCROSS. Well, but if you are going to send applicants into those programs you have to set up a system that can be the same, and we do it across the board. It is not tough. I have put a program together. It is not—if you are in a position to teach those young apprentices, that means you have curriculum and you can go through it.

Your website actually points out that one of the biggest registered programs is in healthcare, and it is in manufacturing. It works. It is not really that tough. And the idea of working together—registered, the standards are the same—is an asset, not a negative.

So where is it—what evidence do you have—that it is a problem? Maybe I can hear from you later on.

Secretary ACOSTA. We will talk.

Mr. NORCROSS. Thanks.

Chairman SCOTT. Thank you.

The gentleman from Pennsylvania, Mr. Smucker.

Mr. SMUCKER. Thank you, Mr. Chairman. Thank you, Mr. Secretary, for being with us. I am really proud of the work that you have done and that the administration has done to provide more opportunity for workers all across this country, and proud to have been here in the Congress when we focused on economic policies that generated the kind of economic activity that we are seeing.

So thank you so much. You are making a difference in the lives of more workers than at any time in recent history, and we appreciate what you are doing, and we appreciate the opportunity to work with you on that.

Of course, 7 million jobs available. I meet regularly with a group of some of the large staffing agencies. One particularly meeting, they went around the room. It was half a dozen companies. 75,000 jobs available just among that small group.

They said, today companies are making decisions about where to place the next factory, where to position their headquarters on work force issues primarily, and that is still too often overseas. I think it is the biggest threat to our growing economy, is simply not being able to fill these positions.

Businesses are investing more and more. But on the government side, we are woefully under-investing compared to the amount of dollars that we are investing in higher education on 4-year degrees and so on. I have a particular bill that would address this that I would like to just mention to you.

It is the USA Workforce Tax Credit Act. It allows a tax credit for businesses who invest in their work force, invest in their communities, participate with community college, participate with companies that are providing apprenticeship programs, and so on. It is taking dollars and reinvesting right back into their work force rather than sending to the Federal Government.

It would be, I think, a tremendous way to provide an additional tool for companies. And again, we are seeing particularly larger companies are investing more and more in their work forces. But they need additional help. So I would love to be able to share that legislation with you, and would certainly love your feedback on that proposal.

Secretary ACOSTA. So, Congressman, let me just say two points. First, I agree we are under-investing in skills versus degrees, as an example. An individual can go to a community college and get a certificate in coding, and can get that for credit, and not receive much of the aid that would be available if the individual enrolls in a degree where you have got the same courses, the same skills, but one meets the criteria for aid. One does not meet the criteria for aid.

And so if individuals want to work and learn and work and learn, which I would say is the way our country is moving and the world is moving, where you do not just—the old way of doing it was, go to school, and work. The new way is earn/learn, earn/learn, lifetime earning/lifetime learning.

The second point, and I think this is why what you raise is so important, is the integration of business into education. I was in Connecticut recently, and one of the reasons I went up there is I had heard that there was a welding program a while ago. And that welding program was teaching welding—

Mr. SMUCKER. I am going to stop you, and I would love to hear that, and it is no disrespect whatsoever.

Secretary ACOSTA. Go on, please.

Mr. SMUCKER. But I do have at least one other issue I will like to raise, the issue of IRAPs. I applaud your work on this. I came from the construction industry. I understand the need to—what you are describing, on-the-job training. Earning while you are learning is very, very important.

And the concern was raised earlier that the government should approve all apprenticeship programs through the registered program, which I think is one way to do it. But is this not similar to higher education, where we decided that system didn't work as efficiently as it should, so we created accreditors. And yes, that system may not be perfect, either, but generally it is working pretty well.

Do you not see some similarities in those programs?

Secretary ACOSTA. It is very, very similar. The answer is yes.

Mr. SMUCKER. My old company was in Lancaster, Pennsylvania. Had several hundred employees. We worked very, very hard to build an apprenticeship program for our workers. Were unable to get approved in Pennsylvania. There are barriers in the construction industry to a large segment of the construction work force that is non-union.

How do we address that?

Secretary ACOSTA. So there are barriers to approving registered apprenticeships. It is more complex than folks understand. A number of businesses do not want to go through that. And the genesis of the industry-recognized apprenticeship is to provide an alternative path with accreditation just like higher education.

Mr. SMUCKER. Thank you. I appreciate your work on it.

Chairman SCOTT. Thank you.

The gentlelady from Washington, Ms. Jayapal.

Ms. JAYAPAL. Thank you, Mr. Chairman. Secretary Acosta, thank you for being with us today.

One of the most basic functions of the Department of Labor is to keep workers safe from danger on the job. I think, in this country, no child or parent or grandparent or partner should have to say goodbye to their loved one in the morning and wonder if they are going to come home safe.

I assume you would agree with that?

Secretary ACOSTA. Absolutely.

Ms. JAYAPAL. Thank you. Sadly, our country is still very far from meeting that basic standard. Over 800 people were killed and 29,000 were injured from violent assault at their place of work in 2017. And two-thirds of those who were injured were women.

If you look at the statistics, nurses are being beaten to death. Hospital employees are dodging gunfire. And a study by the American College of Emergency Physicians in 2018 found that nearly half of emergency physician respondents reported being physically assaulted.

OSHA could help put an end to this by setting specific safety standards to protect workers that are vulnerable to violence at their jobs. Without those enforceable standards, employers cannot be held to account for protecting their workers. And yet you are moving at a snail's pace on these standard-setting measures.

A small business review that was originally slated to begin in January 2019 has yet to occur. I know Representative Courtney raised this issue to you before. But with respect, I did not find your answer sufficiently acceptable. And so I wanted to give you another chance to say: What is your timeline for these standards? Why has this been moving at such a slow pace?

Secretary ACOSTA. Well, Congresswoman, two comments. First, if you were to compare this to OSHA rulemaking as a general matter, this is not moving at snail's pace. OSHA rules historically have taken even longer than this, and we are happy to provide the length of time it took to put together, for example, the silica rule or the beryllium rule or others.

But secondly, the SBREFA panel that was slated to begin in January is being put together currently. I understand that this is now, I guess, as of this morning, May as opposed to January. But we are moving forward with the SBREFA panel.

Ms. JAYAPAL. I just think this is an urgent—I appreciate that, and I just think this needs your urgent attention. And I say that in the context of your administration cutting OSHA standards budget by 10 percent in 2018. And you have dedicated the remaining funds to rolling back standards. So I think it does not show a commitment, which I believe and I hope that you have, to really ensuring these safety standards.

You have the power as Labor Secretary to do this on your own through the Administrative Procedure Act. Can you guarantee me that there will be immediate action on this front?

Secretary ACOSTA. Congresswoman, as you are aware, OSHA traditionally uses the SBREFA process for these rules. It is an important process. It has been set up by Congress.

All that said, we are continuing to enforce, and we have the general duties provision, and we have used the general duties provision to focus, in some cases that were particularly egregious, on workplace safety. And I am happy to provide the Congresswoman with the—

Ms. JAYAPAL. So how fast can you move on this? I guess that is really the question. And then I want to move on to another quick question.

Secretary ACOSTA. So, Congresswoman, I will provide your office with a timeline for a SBREFA panel. But it is moving forward.

Ms. JAYAPAL. Let me move to child labor law. You recently issued a regulation allowing 16- and 17-year-olds who work in the healthcare sector to operate power-driven hoists to lift and transfer patients without supervision. It seems incredibly dangerous to their safety.

What was your justification for rolling back this regulation, given the scientific evidence that these teenagers cannot safely do this themselves?

Secretary ACOSTA. Congresswoman, first, it has not been issued. It is a notice of proposed rulemaking seeking comment. And a review of the scientific evidence, I think, shows that, in essence, hoists are less dangerous or—

Ms. JAYAPAL. What scientific evidence are you referring to?

Secretary ACOSTA. Congresswoman, there are two ways of moving patients. One is the physical method, just putting your back into it. And—

Ms. JAYAPAL. Is there scientific evidence? You mentioned scientific evidence. Is there scientific evidence that you are referring to?

Secretary ACOSTA. Congresswoman, a review of the evidence, I think, may show that lifting someone by putting your back into it is actually—could be less risky than using a mechanical device.

Ms. JAYAPAL. Secretary Acosta, I was just asking whether there is scientific evidence for this proposal that you are putting forward.

Secretary ACOSTA. And Congresswoman, I am saying that a review of the evidence, main facts, show something that I think is also common knowledge, which is, lifting someone sometimes can be as, if not more, dangerous than using an assistive device.

Ms. JAYAPAL. Here is my concern. The only evidence that I have seen referred to here that you used is, in the official rulemaking document justifying the proposal, you relied on a 2012 survey by the Massachusetts Department of Public Health, specifically a question that was answered by only 22 of 42 respondents on a Survey Monkey online questionnaire.

Mr. Chairman, I ask unanimous consent to enter into the record a copy of the fact sheet on this.

[The fact sheet referred to follows:]

Federal Child Labor Law Hazardous Occupations Order No. 7 (HO7) and Power-driven Patient Lift Assist Devices: Revisions to the Law

According to the Bureau of Labor Statistics (BLS), in 2011, nursing aides, orderlies, and attendants reported the second highest numbers of work-related musculoskeletal disorders (WMSDs) requiring days away from work, second only to psychiatric aides.[1] 16- and 17-year-olds are especially susceptible to injury given that they have 15% less upper body strength than adults.[2]

Lift assist devices are therefore a critical tool in the healthcare industry. They are often incorporated into safe patient handling policies and laws that aim to reduce the rates of WMSDs.

Recognizing this, the U.S. Department of Labor's Wage and Hour Division has put forth certain allowances for teens to assist in the use of power-driven patient lift assist devices as part of their job tasks, despite revised changes to the federal child labor laws that now prohibit teens from using all power-driven hoists.

Overview of Revised Child Labor Law

Some Massachusetts vocational schools have voiced difficulty in placing health care services students due to perceived barriers surrounding a child labor law that prohibit the use of power-driven lift assist devices. Below is a timeline of how the law relates to these lifts:

- **Prior to July 2010**: Teens (<18 years old) were not allowed to operate or assist in the use of powered hoists exceeding a one ton capacity, under Hazardous Occupations Order No. 7, 29 CFR 570.58 (HO7). Since the capacity of powered patient lift assist devices is less than one ton, this law did not apply to their use.
- **Effective July 2010**: Teens are excluded from operating any powered hoist regardless of capacity (result of modifications to HO7). This includes powered patient lift assist devices.
- **Field Assistance Bulletin, July 2011**: Following the release of Field Assistance Bulletin No. 2011-3 in July 2011 (attached) the U.S. Department of Labor's Wage and Hour Division will *no longer assert child labor violations* involving 16- and 17-year-old employed teens who *assist* a trained adult worker in the operation of powered patient lift assist devices when certain conditions are met (see The *Teens at Work Project* Summary, attached).

Impact of Revised Law in Massachusetts

A 2012 survey of vocational schools, conducted by *The Teens at Work Project* to see how revisions to HO7 were affecting co-op placements, suggests there may still be uncertainty surrounding the changes:

- Only about half of survey respondents had seen the Wage and Hour Division's Field Assistance Bulletin, mentioned above.
- Nearly 60% of survey respondents said employers had commented about increased burden due to the teen restrictions for use of powered patient lift assist devices.
- 23% of survey respondents said their students had to change jobs because of the law revisions.

Survey respondents voiced that healthcare "employers are concerned" about the change in law; that it has "decreased employability" of their students; that some "students are concerned about the impact it has on employment;" and even that it "has put co-op placement in jeopardy."

Even in cases where employers are willing to adjust teen employee job duties, respondents reported that this involves "much more work" and that more time must be spent "explaining the law and what [students] are and are not allowed to do." Among some nursing homes willing to accommodate the change in law, there has been a noticeable decrease in positions available to co-op students.

According to survey respondents, it has not only become more difficult to place healthcare students on co-op, but some students who are hired perform more manual lifting, a concern due to teen vulnerability to WMSDs, as a result of misperceptions that they cannot work with lift assist devices.

Interpreting the Revised Law

There has been uncertainty about what tasks co-op students or other minors can legally perform related to powered patient lift assist devices. To help address this issue, the *Teens at Work Project* has compiled a short summary packet for both vocational school staff and employers that may be useful in clarifying some of the criteria.

The *Teens at Work Project* Summary, attached, includes the following:

- A summary of the conditions that must be met for co-op students/minors to work with powered patient lift assist devices, to clarify the law revisions
- Quotes from teens injured while working in healthcare settings when patient lift assist devices were not used, to help emphasize the importance of using these devices
- A copy of the official Wage and Hour Division's Field Assistance Bulletin

Programs should have familiarity with the key conditions of the bulletin in which 16- and 17-year-old students may assist in the use of (but not operate) a lift device.

Working with Employers

While some employers may feel that the conditions in the Wage and Hour Division's Field Assistance Bulletin are difficult to accommodate for students, the Occupational Safety Health Administration (OSHA) actually recommends that there *always* be teams of two people using these devices, regardless of age (OSHA 3182).[3] Similarly, the Veteran's Health Administration, the largest integrated healthcare system in the United States, and many other health care organizations around the country, have adopted lift assist device policies that require two or more people.

Below are a couple ideas on how to approach this topic with a potential co-op employer:

- Before talking to the employer, be clear on what the patient lift policy is at the specific site you are considering for employment. If a site's policy is to have teams of two or more people using lift assist devices (true for a number of facilities in MA), you can point out how closely their policy already aligns with the Wage and Hour Division's Field Assistance Bulletin, which also requires two or more people for a student to assist.
- Provide the co-op site with a copy of the Wage and Hour Division's Field Assistance Bulletin, as well as a copy of the attached *Teens at Work Project* Summary, to help clarify the many ways in which teen workers may assist in use of these devices.

For questions about this document, please contact Sara Rattigan:
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[1] BLS (Bureau of Labor Statistics) [2011]. U.S. Department of Labor, Survey of Occupational Injuries and Illnesses. http://bls.gov/news.release/osh2.t18.htm Accessed 9 Oct 2012.

[2] Waters TR, Garg A [2010]. Two dimensional biomechanical model for estimating strength of youth and adolescents for manual material handling tasks. *Applied Ergonomics* 41:1–7.

[3] OSHA (Occupational Health & Safety Adminstration) [revised 2009]. U.S. Department of Labor, Guidelines for Nursing Homes: Ergonomics for the Prevention of Musculoskeletal Disorders. http://www.osha.gov/ergonomics/guidelines/nursinghome/final_nh_guidelines.html Accessed 28 Nov 2012.

The *Teens at Work Project* Summary of the U.S. Department of Labor's Wage and Hour Division Field Assistance Bulletin No. ~~2001-3~~

This summary lays out key points from the U.S. Department of Labor's Wage & Hour Division field assistance bulletin detailing criteria which must be met for minors ages 16 or 17 to legally assist in the operation of power-driven patient lift assist devices.

The student (16 or 17 year olds) must:

- Complete 75 hours of nurse's aide training as outlined by Federal Nursing Home Reform Act[1] and complete the nurse's aide competency evaluation[2]
- Must be trained in safe operation of the lifting device being used.

The student may:

- Set up, move, position, and secure unoccupied lifting devices.
- Act as a spotter/observer and may position items under the patient/resident who is being lifted/transferred.
- Assist a trained adult employee:
  - in attaching slings to and un-attaching slings from lifting devices prior to and after the lift/transfer of the patient/resident is completed.
  - in operating the controls that activate the power to lift/transfer the patient/resident.
  - who is pushing, pulling, manipulating, guiding, rotating, or otherwise maneuvering the patient or lifting device while the patient is being lifted/transferred.

The student may not:

- Operate a mechanical lift without the assistance of an employee who is at least 18 years of age.
- Independently engage in "hands on" physical contact[3] with the patient/resident during the lifting/transferring process.
- Use a mechanical lift device if they have been injured while operating or assisting in the operation of a lifting device in the past.

~~The employer must provide to each student a copy of "Attachment A" at the end of the Wage and Hour Division Field Assistance Bulletin No. 2001-3 (pages 6 and 7).~~

[1] Federal Nursing Home Reform Act from the Omnibus Budget Reconciliation Act of 1987, as outlined in 42 CFR § 483.152, or a higher state standard where applicable..
[2] Nurses aide competency evaluation detailed in 42 CFR § 483.154, or a higher state standard where applicable.
[3] Such as placing or removing the sling, including pushing or pulling the sling under/around the patient/resident; adjusting the sling under/around the patient/resident; and manipulating the patient/resident when placing, adjusting or removing a sling under/around the patient/resident).

Below are quotes from Massachusetts teens injured on the job in health care settings, in cases where patient lift assist devices were not utilized.

"I was helping a patient get out of bed so that he could sit up in a chair. He weighed approximately 200lbs. No one was assisting me. As I was placing him in the chair he was leaning on me quite a bit. I felt a sharp pain in my right shoulder area, and difficulty breathing because of the pain."

- *17-year-old nurse's aide, skilled nursing facility*

"I had to transfer a wheelchair patient to his bed. There was a guy helping me do this. I was on the outside and the other guy was closer to the bed. When I turned, I heard a pop and then fell. I think the height difference was a problem because he was taller and I may have been carrying more weight."

- *17-year-old CNA, nursing home*

"I was getting a patient ready for bed and changing her Johnny [hospital gown]. I was rolling her on her side to remove the sheet from under her, and I felt an immediate strain in my back. I think this could have been prevented if someone was helping me lift the patient."

- *17-year-old nursing aide, nursing home*

"I was helping another aide lift a patient from a wheelchair to a bed. The patient was unsteady when we lifted him up onto the bed, and I felt a pull in my back. I felt more pain in the morning and reported it to my supervisor the next day."

- *16-year-old nurse's aide, nursing home*

"I was moving someone from the shower chair to the wheelchair when the patient became light-headed. I grabbed her to prevent a fall and I twisted my back. I'm very small, 5 feet 98 pounds and I couldn't hold her."

- *17-year-old nursing aide, nursing home*

"A co-worker and I were lifting a patient to help her sit up in bed. We were using proper body form, but there weren't enough people helping. I strained my back and fell. I had been lifting the patient using a draw sheet. I pulled my lower back and strained my ligaments."

- *17-year-old CNA, nursing home*

Source: Teens at Work: Injury Surveillance and Prevention Project

Secretary ACOSTA. I recognize that time is expired, but may I respond?

Ms. JAYAPAL. Please.

Secretary ACOSTA. Congresswoman, if I could, with due respect, that is a newspaper article that made that assertion. And if you were to actually read the underlying rule, you would note that is in one footnote of a very large document. And that is not relied upon for the truth of the matter, i.e., the underlying evidence. That is simply relied upon, as it says there have been a number of studies. Footnote. And there are a number of studies that are cited.

And so I push back because sometimes the way media covers something becomes truth because it is repeated without folks looking at the underlying record.

Ms. JAYAPAL. I appreciate that, and I will look at all of those documents that are referred to. I will just say that I think this is a very, very critical issue for us to address. Thank you, Mr. Acosta. I yield back.

Chairman SCOTT. Thank you.

The gentleman from Texas, Mr. Wright.

Mr. WRIGHT. Thank you, Mr. Chairman. Mr. Secretary, thank you for being here today.

We have already had a lot of discussion about work force development and the lack of skilled labor and the challenges that poses. I certainly got an earful last week in my district about it.

What I wanted to ask you, though, is I know there was some talk early on about, as a streamlining effort, combining Labor and Education. And what I wanted to ask, though, is to what extent the Department of Education and the Department of Labor are collaborating. I know there is a lot of overlap when it comes to work force development. And what do you see in the future as opportunities for more collaboration?

Secretary ACOSTA. Congressman, thank you for the question. Someone that is receiving work force education through a Department of Labor program, and someone that is receiving work force education at a community college, I believe are receiving similar if not the same kinds of education.

And something that Secretary DeVos feels and that I feel and that we work very closely together on is the importance of having seamless integration between our various education programs. I see Dr. Foxx up there, and she's fond of saying, "It is not training. It is education."

And so this goes to the point that one of your colleagues made. We support one system through billions of dollars. We support another system much, much less. And I think we need to stop unleveling the playing field and telling individuals there are multiple pathways to success, and it can include higher education, but it could also include a welding class. And if you want to become a small business person later, you can go back and you can get a degree later.

Mr. WRIGHT. Well, I couldn't agree with you more, and Dr. Foxx. I believe her maxim is, "We train dogs. We educate people." And certainly I think that the two departments could come up with a plan or a proposal for the President that would help streamline

some of this if you are not going to combine the departments, at least that one effort.

The other question I had to do with a company in my district. It has to do with the 2016 Silica Act. And let me preface by saying that all of us up here want American workers to work in a safe environment and that kind of thing. We all know the dangers of silica to the lungs. But this is not a terribly large manufacturer. They have spent, so far, $2.5 million, and expect to spend up to $4 million, to try and come into compliance with that act. They have never had a silica-related illness in 30 years.

And so my question has to do with that OSHA rule and if the department is doing anything or plans to do anything to help manufacturers like this one come into compliance and mitigate the economic impact of coming into compliance.

Secretary ACOSTA. Congressman, we are certainly working with manufacturers of the industry to help them come into compliance. And if you provide us the name of that manufacturer, we will be sure to work with them to the extent that they would like to. Sometimes if OSHA calls and says, "Can we work with you?", the manufacturer does not always welcome it.

But if they do welcome it, we would be more than happy. We have got a heavy compliance assistance program. I believe that our compliance assistance program saves manufacturers money by going in and telling them what they need to do, and really benefits everybody.

Mr. WRIGHT. I just question whether or not a one-size-fits-all approach is appropriate with some of these standards we have come up with.

Secretary ACOSTA. I understand.

Mr. WRIGHT. And with that, I am going to yield the remainder of my time back to Ms. Foxx.

Ms. FOXX. Thank you very much.

Mr. Secretary, the last reauthorization of WIOA went a long way toward empowering the private sector to take leadership in work force development. We have made substantial progress in aligning the system with employer needs.

As someone who is actively engaged with this system, where do you feel our reforms have been successful? And where do we need to be doing additional work? What have you heard from State leaders about the impact of the additional flexibility?

Secretary ACOSTA. Congresswoman, empowering localities to direct their work force programs, I think, is critical. The localities know best what they are doing. Everyone is saying we need additional flexibility, especially around in-school versus out-of-school youth.

Ms. FOXX. Thank you, Mr. Chairman. Thank the gentleman from Texas for yielding.

Chairman SCOTT. Thank you.

The gentlelady from Oregon, Ms. Bonamici.

Ms. BONAMICI. Thank you, Mr. Chairman. Mr. Secretary, thank you for being here.

I am going to start by saying I am disappointed that the President's budget request and recent regulatory actions from the department have failed to adequately support and protect workers. In

December of 2017, the department proposed a rule to allow employers to keep and control how to redistribute workers' tips.

A report from the Economic Policy Institute estimated that if the proposed rule were finalized, workers would lose about $5.8 billion a year in tips, nearly 80 percent of which would have been taken from women working in tipped jobs.

Last year Bloomberg Law reported that as part of the notice of proposed rulemaking, your department prepared and then withheld an economic analysis quantifying the loss of tipped income for tipped workers. Shortly after that report I joined Chairman Scott and two of my colleagues. We sent you a letter requesting a copy of each draft, interim, proposed, or completed economic analysis in connection with or related to the proposed rule. And we have yet to receive a substantive response.

Then in March of 2018, Bloomberg Law reported that the department convinced OMB Director Mulvaney to release a proposed rule without sharing that quantitative analysis that your department prepared, even though it was available. As you are aware, the department's Office of Inspector General is now investigating the agency's process in crafting the proposed rule.

Have you provided that economic analysis that the Department of Labor conducted on the proposed rule to the OIG?

Secretary ACOSTA. Congresswoman, we have provided, and we have been working with the OIG so that they have, appropriate material for their investigation. As you are aware, the OIG has authority to look at documents within the department. And we are working with the OIG on that—

Ms. BONAMICI. Have you provided the economic analysis that Department of Labor conducted on the proposed rule to the OIG?

Secretary ACOSTA. Congresswoman, we are working with the OIG so that the OIG has whatever documents it deems necessary.

Ms. BONAMICI. So in other words, you are not answering my question.

Secretary ACOSTA. Congresswoman, what I am saying is that we have provided the OIG what it has requested, and it is reviewing that. And so I imagine that—it is not for me to review what the OIG has requested. If the OIG has requested it—

Ms. BONAMICI. I am not asking you to review that. I am just asking you if you provided them with the economic analysis, which is a yes or no question.

Secretary ACOSTA. And Congresswoman, what I am saying is the OIG, as any investigator would, I am sure, has asked for a series of documents. We have worked with them so that they have the documents they need. If that is among those—

Ms. BONAMICI. Okay. I am going to assume that your answer is no.

Will you commit to being more transparent about the adverse effects of proposed rules for workers in the future?

Secretary ACOSTA. Congresswoman, I believe I have been quite transparent. As a matter of fact, I addressed this at a hearing previously where I laid out one of the issues with this. This was a notice of proposed rulemaking, not a final rule. It was a notice of proposed rulemaking where the prior notice did not have an economic

analysis, and where one of the difficulties is the—and I do not have the numbers at my fingertips, but if I could, Congresswoman—

Ms. BONAMICI. Mr. Chairman—Mr. Secretary—

Secretary ACOSTA.—because this is important. The—

Ms. BONAMICI. I know it is important but I am going to reclaim my time because I have another question.

Recently I chaired a hearing on persistent gender-based wage discrimination, and we heard witnesses describe the heavy burden of proof for holding employers accountable. And one of the challenges in enforcing antidiscrimination laws and proving a pay disparity is identifying an employee of the opposite sex in an equal position who is paid more.

So the House recently passed the Paycheck Fairness Act to try to close that loophole. The department's Office of Federal Contract Compliance Programs, or OFCCP, has an obligation to audit Federal contractors for pay discrimination. And in the past, Directive 307 allowed the OFCCP to decide which workers could be considered in making that determination about whether they were doing the same job.

But unfortunately, last year the department rescinded that directive and implemented a new policy that allows employers to decide which workers should be compared. Now, that is pretty concerning, that the department is allowing the contractors to shape the outcome of their own audits. The wage gap persists in nearly every line of work, regardless of education, experience, occupation, industry, or job.

So do you agree that detecting pay discrimination and closing the wage gap affects the lives of working families?

Secretary ACOSTA. Congresswoman, first I would say that your characterization of the department's actions are just factually incorrect. At no point has the department said that employers can determine which employees are looked at, and I just do not think that is an accurate characterization of what the department—

Ms. BONAMICI. The department did—

Secretary ACOSTA. But ultimately, going to your question, yes. I do agree that it is important to eliminate wage disparities.

Ms. BONAMICI. And do you agree that OFCCP's audits are one way to detect pay discrimination?

Secretary ACOSTA. Yes, I do.

Ms. BONAMICI. And do you agree that the department rescinded Directive 307?

Secretary ACOSTA. Congresswoman, I do not have the numbers of the directives on the top of my head. But we did attempt to provide more transparency to the employer as to what categories of employees we would be looking at.

Ms. BONAMICI. Yes. I would appreciate a followup on whether Directive 307 was rescinded. And I'm out of time. And I yield back. Thank you, Mr. Chairman.

Chairman SCOTT. Thank you. The gentleman from Kentucky, Mr. Guthrie.

Mr. GUTHRIE. Thank you very much. Thank you, Mr. Secretary, for being here today. And we've talked before. I have a lot of ESOPs in my district. One of the largest in the country is in my district. And I believe they—particularly this, the ones that I'm fa-

miliar with have provided extremely lucrative retirement plans for their employees.

Could you just share an update on the DOL's activities on ESOPs, and what Congress can do to ensure ESOPs continue to be created and thrive?

Secretary ACOSTA. Congressman, as we've discussed previously, I strongly support ESOPs. I think ESOPs are of benefit to employees. We enforce the law, and that includes ensuring that ESOPs are done appropriately, that the stock is priced fairly.

One thing that I will say, and to just update the Congressman, I think perhaps in part because of the Department of Labor's enforcement actions, the industry is, is conforming much more closely to the law. And so, I think the enforcement actions peaked sometime around 2013 and have been declining since, as industry comes into greater conformity with what pension laws require. If there are more specific issues, we're certainly trying to give a lot of compliance assistance. But at the same time, every industry has bad actors, and we do enforce in enforcement.

Mr. GUTHRIE. And you absolutely should. Because as I said, it is employees' retirement security involved in there. And the biggest issues are the small-, mid-sized trying to get—because they're closely held companies. That's why they're becoming ESOPs, to get the proper valuation, and that's important.

But the one thing that you hear though—and I do agree that there are bad actors, and absolutely need to be used the compliance rules. But I guess some questions I've had just of the clarification guidelines of the people who say, "Here are the clarification—here are the guidelines." This clarifies what we need to do pertaining to stock value to ensure that we comply with all of them. Just clearer guidelines I guess is what we're looking at.

Secretary ACOSTA. Fair. And let me suggest if there are particular areas where the guidelines need to be more clear, we'd appreciate knowing that, so that we can focus in the inquiry.

Mr. GUTHRIE. Okay. I owe you that. Thank you very much for that. And then apprenticeships, that's an area that, that we've also talked about, that a lot of us here on both sides of the aisle are very interested in.

Look, in Kentucky, we have some great growing urban areas, but we have some very rural parts of our State. And rural broadband has been important.

One of the biggest issues we hear from people wanting to deploy broadband, cell towers, all the other things, is the access to workers who are able to do this type of work. It's very critical skills, and my understanding, very lucrative pay for these types of work. Would you talk about what the Department of Labor is doing to encourage apprenticeships? Particularly the 5G Rating Workforce.

Secretary ACOSTA. So, certainly. So these are great jobs. They pay well. And you know, the skills are very much in demand. And so, in this and other areas, we are trying to encourage individuals to make a choice. "What skills do you want?", and empower them to obtain those skills. And we've got a lot of infrastructure and money and funding for the college-based skills, but less so for other skills. And so apprenticeships are a mechanism of doing that.

Mr. GUTHRIE. Okay, thanks. And also I introduced a Partners Act in this Congress which supports the creation and expansion of industry partnerships to help small- and medium-sized businesses partner together to develop work-based learning programs and apprenticeship programs.

What is the department doing to promote these size businesses to join together to form apprenticeships?

Secretary ACOSTA. Well, one of the concepts of industry-recognized apprenticeships is that small- and medium-sized businesses do not have the resources or wherewithal to, to have a registered apprenticeship. A registered apprenticeship application, we've talked about it a lot today. But sometimes they're 90 to 100 pages long. Many small businesses are just not going to do that. But if they band together as an industry, then that's different, and then we could have these industry-recognized apprenticeships where small- and medium-sized businesses can participate.

Mr. GUTHRIE. Well, thank you. And I do appreciate your focus on apprenticeships and the skilled work force. And that runs throughout the administration, runs throughout Congress.

And we want to get people the skills they need to earn the types of living that provide not just a job but a career, and one that can support their families. And I think we, everybody here in Washington agrees with that, and hopefully we can come to the right policy to make that happen. Thank you very much. And I will yield to the Ranking Member.

Ms. FOXX. I thank the gentleman for yielding. Secretary Acosta, Congress intended for the Labor Management Reporting and Disclosure Act to be applied broadly to combat union corruption. Unfortunately, the Obama Administration rescinded several important union reporting requirements, that would have provided valuable transparency for rank and file workers.

One of those pertains to so-called intermediate bodies, which are mid-level State or regional organizations in the union hierarchy, made up of public employees. These intermediate bodies do not currently have to file financial disclosure reports under the LMRDA, but they are subordinate to larger unions that are covered by the LMRDA. Re-imposing the LMRDA reporting requirements on intermediate bodies has been on DOL's regulatory agenda for nearly 2 years. It has yet to advance.

Can you discuss why this reform is important and any plans for the department to move forward with it?

Secretary ACOSTA. Congresswoman, I see that the time has expired. Let me say briefly, we are actively looking at that now.

Chairman SCOTT. Secretary, you can respond. You can respond.

Secretary ACOSTA. So, we are actively looking at this now. This is an important issue.

Ms. FOXX. Thank you.

Chairman SCOTT. Thank you. The gentleman from California, Mr. Harder.

Mr. HARDER. Thank you so much, Mr. Chairman. And thank you so much for joining us today, Secretary Acosta. I know many of my colleagues are touching around some of the real budget cuts to the Labor Department and how they're going to hurt each of our individual communities.

I actually want to put that on the side for a minute and talk about the Job Corps program. I know we've talked about that a little bit. But I want to take a little bit of a different sense of it.

This is a program that I think really works. And even the Department of Labor website says that 90 percent of Job Corps graduates go on to careers in the private sector, enlist in the military, or move on to higher education or advanced training programs. Even in your own testimony today, you talked about how you want to reform the program and make it work even better, doubling down on the parts of the program that are successful, which I completely agree with. We have some real issues in making sure that folks actually can get the career education that they need to be gainfully employed in our economy.

But here's the issue. I represent the California Central Valley, and we don't have any Job Corps centers. In fact, most of the Job Corps centers that exist are many hours away. We have one in Sacramento, which is an hour and a half, 2 hours, plus. We have one in San Francisco, two, 3 hours for most of the people in my district. Do you know the unemployment rate in Sacramento? Do you know it, Mr. Secretary?

Secretary ACOSTA. The unemployment rate in California tends to be above the national average, and so I imagine it is above the national average.

Mr. HARDER. So, in Sacramento, it's actually three and a half percent. In San Francisco, it's two and a half percent, which is pretty good.

In my district, any guess what our unemployment rate is? It's about 7 percent. In other words, we have real challenges making sure that we actually are connecting people into jobs. And yet every single job center that exists in California is in an urban area that has on average much lower unemployment rates than my district. And yet, we're not actually helping the people that need the most help.

Let me tell you why this matters. Last week I was in Tracy. I met with a guy named Ben Hatfield. He's 21. He's been out of work. He's been having trouble finding a job. He's actively trying. But he's couch surfing, relying on help from friends. He doesn't own a car. He wants to go to places like the job center in Sacramento. It's 2 hours away. He can't make it. What is he going to do?

This is somebody who has demonstrated the desire, and this is even before we're getting to the fact that we're cutting this program by 40 percent. This is somebody that really wants to work. So, you know, Chairman, you yourself have said you want to double down on this program. You're in the process of re-tooling it. What are you going to do to expand access to Job Corps programs outside of the major cities that have these low unemployment rates?

Secretary ACOSTA. Congressman, one of the—I think we might agree at the end on this. One of the issues around Job Corps is they're around these large, very expensive structures. And so, I have pilot project authority. And one of the pilot projects that I shared earlier today is something called Job Corps Scholars.

The idea is, we're putting out a request for a proposal for community colleges to set up what we'll call mini Job Corps. Cohorts of 40 students, within that community college. They would receive funding. The individuals would then go to that community college and obtain the skills. They could be residential, just like a Job Corps, or not residential, depending on what the community college thought made sense, just like some Job Corps are and some are not residential. And that would include funding for counseling and other services that are also available in Job Corps. The concept is, let's—

Mr. HARDER. Sorry to interrupt you, Secretary. But am I correct in believing that about a fifth of the current job centers for the Jobs Corps are going to be closed with this budget?

Secretary ACOSTA. So Congressman, we have been having a debate over the Job Corps budget well on several decades. And in all candor, I met with a Secretary of Labor going back to a President that is no longer with us.

Mr. HARDER. Mr. Secretary, that's a great answer to a different question. Are we cutting these centers? Are there going to be fewer centers in 5 years if this budget passes?

Secretary ACOSTA. So Congress is going to determine what the budget will be, and based on the budget, we'll determine what is and is not cut; what I'm saying is that—

Mr. HARDER. Hard for me to imagine we cut a budget by 40 percent and we don't actually cut some of the centers.

Secretary ACOSTA. But what I'm saying, Congressman, is that irrespective of where the budget ends up, we are using pilot project authority to try different approaches. And one will go to your concern which you articulated, which is how do we empower areas that don't have a center.

Mr. HARDER. Mr. Secretary, sorry. I know we're running out of time. Let me articulate again, what I think my concern is, which is the fact that this is a proven program with high success, and yet all the centers that exist are in areas that don't actually have the same needs as my district. Right? Sacramento, San Francisco, but not in an area with 7 percent unemployment like ours.

And yet you're trying to cut this budget by 40 percent, when in fact you say we should be doubling down on it. We should be expanding centers to where we need to be, going to the Central Valley and other areas that actually need to be getting people like Ben a real fair shake.

Thank you, Mr. Chairman. And I yield back my time.

Chairman SCOTT. Thank you. The gentleman from South Carolina, Mr. Timmons.

Mr. TIMMONS. Thank you, Mr. Chairman. Thank you, Mr. Secretary, for taking the time to come and answer our questions here today. I'm going to begin talking about the President's budget. It seems that the President tried to thread the needle, and fully fund the military, which I would view as our core function of government. Our government needs to have a strong national defense. But also maintain spending levels below the limits placed under the BCA of 2011.

So we have a lot of people in Congress that do not appreciate we have $22 trillion worth of debt. We had a trillion dollar deficit last

year. It seems—I'm also on the Budget Committee, where we've talked about the President's budget at length. It seems that it's not really as big a priority as it seems in my mind. Literally, this is a national security threat, and I don't understand why Congress cannot spend within its means.

Could you discuss some of the—your particular budget, it made strides toward prioritizing the country's work force development, but also consolidating some of the programs and eliminating waste and fraud. Could you discuss how you're going to do that? How you're going to do more with less?

Secretary ACOSTA. So, Congressman, thank you. First, let me say that the budget approach, first and foremost, tried to even slightly increase the enforcement side of the House. Because as we've heard so much this morning, enforcement of labor laws matters. It's important that—wage laws, the safety laws.

And so first and foremost we prioritized enforcement. Then with the remaining funds that are left within budget constraints, we focused on those work force programs that work the best. WIOA, for example, it's a formula funding. It goes straight to the States. It has very, very strong metrics.

Job Corps—and in all candor, we've talked about it a lot. There's some centers that have good metrics and there's some centers that spent tens of thousands per student and don't have the results that show. And so what we're trying to do there is try different approaches. The—the program that—the program I was commenting on, the Job Corps Scholars would actually let individuals go to community college, including residential perhaps, for half the price of a Job Corps program. And so there are ways of bringing efficiencies to the system and doing more with less.

Mr. TIMMONS. Thank you. Can you think of any ways that Congress could help be of assistance in this endeavor?

Secretary ACOSTA. So one of the areas that I'm looking at that I think is worth considering is I think it's important that we have consistent metrics throughout and across programs. Because it's very hard to compare programs and the outcomes of programs when metrics are different, right?

And so we say a program is great, a program is successful, when in fact, if we had the same metrics, you would see that some programs are more successful than other programs. And so for example I've shifted the metrics in the Job Corps program to "did the individual get a job? Was it in the area for which they actually received their education? Did they keep the job? And did the job represent a wage increase?"

Those are pretty straightforward, simple metrics. That's why individuals go through a job education program. And so I think, as something I'm trying to look within the department is, can we bring consistent metrics to all these? And I do think that to the extent that the metrics are statutory, there is a value to having consistent metrics, so you really can judge programs side by side and say which ones work and which ones don't.

Mr. TIMMONS. Thank you. I'm going to touch base on something Dr. Foxx mentioned earlier, that overtime proposed rule. So 2004, there's $23,600. 2016, President Obama made it $47,476. And the proposed rule that is not filed yet is $35,307. That's all great. I

have a lot of businesses in my district that are trying to plan long-term, and I realize that there's no deadline on when the rule becomes final. But I just want to convey to you that it is something that is very important to small businesses, to businesses of all sizes, and the more quick—the faster we can get to a final rule, the better off the country will be and my district will be. And with that, I will yield back the remainder of my time.

Secretary ACOSTA. Thank you.

Chairman SCOTT. Thank you. Okay. The gentlelady from Georgia, Mrs. McBath.

Mrs. MCBATH. Thank you, Mr. Chairman. And thank you, Secretary Acosta, for being here today. I'd like to take some time today to bring attention to a rapidly increasing problem in our Nation. It's maternal health.

As you may know, the maternal matort—mortality rate in the United States is among the highest in the developed world, and it continues to rise. Georgia, which I represent, Georgia's reported rate is also on the rise, and higher than the national average. There are racial disparities to address as well, and I'm thankful for my colleagues, Representative Adams and Representative Underwood, for leading the Black Maternal Health Caucus, so that we can focus on solving this growing problem.

Secretary Acosta, the Newborns and Mothers Health Protection Act provides protections for mothers and their newborn children, in relation to the length of their hospital stays following childbirth. This is vital to ensuring that both mother and baby have access to the care that they need. The Department of Labor is responsible for ensuring that employer-provided group health plans comply with this legal requirement, one that has been in law for over 20 years.

Secretary Acosta, can you provide the committee with an update on enforcement efforts in this specific area?

Secretary ACOSTA. Congresswoman, I can certainly provide the committee with detailed enforcement efforts in that area. I do not have those with me, but I share your concern and I will be more than happy to provide both the committee and you with detailed enforcement efforts.

Mrs. MCBATH. Okay. Thank you very much, Mr. Secretary. Secretary Acosta. And let me go on then.

The ACA amended the Fair Labor Standards Act to provide critical protections for breastfeeding mothers. Under this provision, employers can no longer prevent breastfeeding moms from taking breaks to pump or force them to pump breast milk in the bathroom.

Yet a study conducted in 2016, well after the passage of the ACA, shows that more than half of women are still denied private space, break time to pump, or both. Given that more than half of the women continued to be denied these protections under this provision, how many enforcement actions did the Department take related to this provision last year?

Secretary ACOSTA. Congresswoman, I can provide you with the specific number of enforcement actions. And let me just say, I'd appreciate if you can share that study. And if you have specific thoughts for what we can do to inform the employer community,

this is something that I agree with you is an important issue to address.

And in addition to enforcement, something that I have found is very effective is a compliance campaign. Some way of calling publicity to the matter. And I certainly welcome your input as to how we should go about doing that. Because that may be a way to, on a broad basis, ensure that if in fact employers are not aware of their requirements, the employers need to be made aware of those requirements.

Mrs. MCBATH. So, in other words, Secretary Acosta, then really you have no idea whether or not these provisions have been put in force?

Secretary ACOSTA. No, Congresswoman. What I said is I can give you any number of enforcement statistics. I can tell you, for example, that the Wage and Hour Division, this past year, had its best enforcement year ever. It collected more than $300 million in back wages.

I can tell you that OSHA as a whole exceeded 32,000 inspections for the second year in a row, which is more inspections than it has in previous years. I can tell you that on the pension side, we collected and returned to plans $1.7 billion. Now, if you ask me to itemize that by each specific enforcement category, I don't have that information right here and right now, but I'm happy to try to provide that information to you, to the extent we track it by enforcement category.

Mrs. MCBATH. So, just, let me just say this, though, that if the mator-—mortality rates here in the United States is among the highest in the developed world, then definitely we are not doing enough. Let me ask another question.

If more than half of the women are still being denied the care that they're entitled to under the law, then I imagine that, you know, the enforcement efforts are still not up to the levels that they should be. Would you support increased funding to increase inspections and compliance with this protection?

Secretary ACOSTA. Congresswoman, first let me just say, my staff just informed me that as an example, and we're happy to provide this, we just brought an enforcement action in Phoenix against an employer that in fact was violating the breastfeeding statute. And so the point I made earlier—and I'm happy to provide you with details of that enforcement action—is we are enforcing. And I can provide you with details. Now, with respect to funding, as you well know, the funding and the budget issue is an administration-wide question, and we defer, obviously, to OMB on that matter.

Mrs. MCBATH. Thank you for being here. I yield back the balance of my time.

Chairman SCOTT. Thank you. The gentleman from North Carolina, Mr. Walker.

Mr. WALKER. Thank you, Mr. Chairman. Thank you, Mr. Acosta for being here. We're glad to have you. I've got six or seven questions, so I'm going to move pretty quickly through this, so we could get through them. Apprenticeships are an extremely important tool for work force training, as we would both agree. I want to thank the Secretary for the department's recent guidance on the industry-recognized apprentice program, or IRAP. This will provide flexi-

bility to businesses and ensure workers receive the most applicable and relevant work force training.

And here's my question. Would you agree that the creation of the IRAP program would expand, or will expand apprenticeship opportunities for the next generation of our work force?

Secretary ACOSTA. I would agree.

Mr. WALKER. Okay. How would those expanded opportunities translate to our economy?

Secretary ACOSTA. Our economy needs workers. For the first time since we've been keeping this data, we have more open jobs than we have individuals looking for jobs. And one of the issues we have is a skills gap. And so providing the skills to individuals to fill those jobs will increase wages and increase our economy.

Mr. WALKER. Every Member of Congress, if they were to agree on one thing, it would be that all the industries and businesses that we visit are asking one thing. "We need helpers. We need more workers here." The IRAP program would put industry leaders in charge who are best equipped to determine the skills and techniques necessary to meet the needs of varying industries.

How would you respond to the claims made by my Democratic colleagues that the IRAP program would offer lower-quality training programs, and essentially impose additional burdens on these workers?

Secretary ACOSTA. So Congressman, I think it's important to recognize, we are not eliminating or doing away with registered apprenticeships. We're creating an alternative for those industries that have found that registered apprenticeship programs don't work for them.

And what we are doing is, we're not putting the industry in charge. We are, in essence, saying that the industry should create a third party, often an association, that creates, that almost becomes an accrediting body. I don't want to use "accrediting" because that's higher education. But a body that creates standards, that enforces those standards, that basically says, "This is what a quality apprenticeship program looks like in our industry", and recognizes, you know, an apprenticeship program in nursing is very different than one in advanced manufacturing. And it's not about time, it's about skills.

Mr. WALKER. That's very well-articulated. I recently visited Machine Specialties. This is a locally owned manufacturing company in my district. They're in central North Carolina. They offer apprenticeship programs to provide workers with individualized training.

Can you expand on the unique benefits of industry-based apprenticeship programs such as Machine Specialties and why it is necessary for us in Congress to consider both registered and industry-based programs when developing the legislative proposals?

Secretary ACOSTA. Well, Congressman, there are any number of businesses out there that are saying, "We're offering apprenticeship programs." And in fact they're not registered apprenticeship programs. They're just apprenticeship programs. So what we're trying to do is, for those businesses that say, "We have an apprenticeship," or for those businesses that are offering work force education, we're trying to bring about industry-wide standards, so that

industries can say, "this is our standard within the industry and we now have industry-recognized apprenticeships.".

Businesses across the board are recognizing, for them to hire educated, skilled work, they need to be part of the equation, and we want to give them a way to be part of that equation in a way that creates skills that are transferrable from business to business, because that transferability will empower the individual.

Mr. WALKER. No question about it. Similar to the financial resources needed to attain a 4-year college, such as Pell Grants, students participating in apprenticeship programs need financial assistance. We agree.

What would you say are some of the burdens faced by low-income workers seeking to join an apprenticeship program? Let me add to that, if you could put the two together. How would expanding Pell Grants to include short-term training programs empower and strengthen future generations of the work force?

Secretary ACOSTA. Congressman, I've talked previously about the importance of expending, extending programs like Pell to include all skills acquisition, both those that meet the formal requirements of Pell—but there are any number of students who are taking the same classes, the same courses, maybe even at the same institution, but because it's a certificate that doesn't meet the hours requirement, they don't have access to that student support. And I think that un-levels the playing field. We need to tell all Americans, all pathways to success are good and should be empowered and you choose.

Mr. WALKER. Secretary, I appreciate the Department of Labor's work on the new proposed rule clarifying joint employment. Can you explain where the four-part joint employer test was derived from, and how it will provide uniformity when debated in our court system?

Secretary ACOSTA. Certainly. So the courts of appeals differed sharply on exactly what the joint employer test should look like. And so in essence what our rule did was it said let's look at the plurality, that which is shared by the most courts of appeals, and let's make that into a formal rule, so that businesses know what the rules of the road are, so businesses can plan accordingly.

Mr. WALKER. Thank you. Mr. Chairman, I yield back.

Chairman SCOTT. Thank you.

The gentlelady from Washington, Dr. Schrier.

Ms. SCHRIER. Thank you, Mr. Chairman. Thank you, Secretary Acosta, for being here today. I'm speaking today as a pediatrician, healthcare professional, about protecting our frontline healthcare workers from what seem to be more and more threats to our health and safety.

And I know that a health and safety standard that would protect frontline healthcare workers is sort of on hold. It's been on hold for about 5 years. And I've got to tell you that from my standpoint, we don't really know who the frontline person is going to be. We think about our emergency room staff. We think about nurses and doctors there.

But it could be the person at the front desk, when somebody walks in the front door and coughs in their face. And as we are see-

ing, we've seen SARS. We have C-diff. We have MRSA, Ebola, that is still present in Africa and that could come to our front doors.

I wanted to ask you about what's being done to protect healthcare workers, and even this year's flu is particularly lengthy. And we can reflect on the Spanish Flu in 1918 that killed 3 to 5 percent of the global population. And so there's a certain degree of, of a need to protect doctors, because if doctors die then we can't protect everybody else. But there's also protecting doctors because if, if we feel that our own lives are in jeopardy, we may not show up to work. And you know, it is our duty to protect our patients and do no harm. But I can tell you that our families do worry sometimes when we go to work.

And so I wanted to ask you about a timeline for getting those standards to protect frontline healthcare workers.

Secretary ACOSTA. So, Congresswoman, thank you. Thank you for acknowledging that this has been in the works for a while. As I mentioned earlier, we're in the process of putting together a SBREFA panel. And so we are moving forward with this. It is one of the SBREFA panels that we're putting together. A SBREFA panel, it's a panel that OSHA puts together to receive input from various stakeholders as it develops a rule. And I'm happy to provide you a timeline, but this is not "we're kicking the can down the road." This is, "we are moving forward." And if I could just—

Ms. SCHRIER. Excuse me. Was that one about violence prevention or is that about infection prevention?

Secretary ACOSTA. I'm sorry. So that is about violence. And so my apologies. Often when we talk about healthcare workers, one of the issues is the violence. And so I inadvertently thought you were merging the two. And so my apologies.

With respect to infection, I will have to—and I am happy to work with your office and in followup if there are specific questions or let you know where we are on that. I am less familiar with that.

Let me, if I could, though, raise a related area, which is I shared the numbers of workplace fatalities associated with the use of drugs, typically drug overdoses, that has gone from 82 to 272 in the span of just under 5 years. And so if there are specifics around that, I would also appreciate any input in that area.

Ms. SCHRIER. Sure. I would be happy to work with you and happy to work on a timeline. You just never know what diseases are around the corner.

I had another question for you about the 2017 tax plan. We typically refer to it as something slightly different than that, which I believe you are a pretty strong proponent of. When it was signed into law, you issued a statement that said that this tax reform was, quote, "great news for any American who has a job, is looking for a job, or creates jobs." And you even said that everyone is winning with these tax cuts.

And I recall days after the tax cuts this big windfall for corporations, that 86 percent of the benefit went to the top 1 percent into corporations, that $1,000 bonuses were being handed out. It seemed like a windfall. We all kind of were holding our breath to see if this would actually translate into something meaningful for workers, like increased wages, more jobs. And, in fact, the numbers came out a little differently.

So GM has shed roughly 3,000 hourly and salaried jobs in Ohio since the tax cuts became law. And, in addition, AT&T has eliminated over 11,000 jobs since the tax cuts became law. And so they got this moment of great PR with a $1,000 bonus, but then the real effect on American workers is that they are losing their jobs. And so as the person who is there to protect American jobs, I wonder if you could comment about what you are going to do to keep these jobs at home.

Secretary ACOSTA. Congressman—Congresswoman. I apologize. It is, you know, a few hours.

So, first, let me just say OSHA does have rules regarding bloodborne pathogens and is looking at our hazard rule regarding influenza. And so we are happy to followup.

With respect to the second question, we have an amazing economy right now. And that doesn't just happen. And so I understand that it is always possible to pull out one anecdote and one story, but I do think we need to acknowledge that we have an amazing economy, whether that is tax cuts, whether that is deregulation, whether that is folks feeling confident about America. Something is working, and it is working well because unemployment is lower than it has been in a long, long time; wages are going up more than they have gone in a long, long time.

Ms. SCHRIER. The data there, again, you can look at how in a lot of ways. I can tell you in the State of Washington, Amazon is doing great, Microsoft is doing great, Starbucks is doing great. But if you get out, outside of Seattle, we have pockets where unemployment is 50 percent. And so it is really important to think about the whole picture. The number, the overall number, tells only part of the story in that if people are underemployed or their wages are not increasing, we need to stand up for workers.

Secretary ACOSTA. Congresswoman, thank you.

Chairman SCOTT. Thank you.

I understand the gentleman from Virginia is going next. And, by the way, I appreciate your conveying my condolences for not being able to make our meeting yesterday. Thank you.

Mr. CLINE. Mr. Chairman, thank you. I covered as best I could, but I am no replacement for you.

Chairman SCOTT. Well, I appreciate it. Thank you.

Mr. CLINE. Secretary Acosta, thank you for being here and for the work you have done thus far in your time as Secretary.

The Department of Labor currently administers and enforces more than 180 Federal laws affecting approximately 10 million employers and 143 million workers. But under your leadership, you have been rolling back an unprecedented amount of burdensome regulations and saving taxpayers over $400,000,000, more than any other Federal agency. So thank you.

In addition to increasing opportunities for employers to make the working world more hospitable to all, unemployment has struck its lowest point in 49 years. Your work impacts working Americans that are the backbone of this country.

As a Virginian, I am proud that my State is a right-to-work State, which is one of the many factors as to why Virginia frequently ranks among the top States in which to do business. Unfortunately, this is being threatened, not only by uninformed State

legislators who advocate socialist ideologies and are beholden to unions and the contributions that they provide but also several Presidential candidates, including some from right down the hall in the U.S. Senate, who seek to drag the economies, drag vibrant economies, like the economy of my commonwealth, down to the level of underperforming States, like Vermont, Massachusetts, New York, New Jersey, and California.

I believe that every American deserves the right to create their own success from their own volition, free of the requirement that they join a labor organization simply to get or to keep a job. And Virginia is strongly defensive of its right-to-work law and does not wish to repeal it.

Can you please outline the administration's position on maintaining State right-to-work laws and address how repealing or banning these laws at the Federal level would impact a State or a country's economic performance and competitiveness?

Secretary ACOSTA. Congressman, thank you for the question. As you are aware, there have been a number of states recently that have considered these statutes, these laws. And, ultimately, this is a State-by-State issue. And some states, like the commonwealth, choose to go in one direction. Other states—and I think you mentioned some of them—choose to go in another. And so this really is a State issue.

And I think one of the strengths of our nation is to allow states to decide many issues for themselves, whether it is how to proceed on work force education or whether it is how to proceed on right-to-work.

Mr. CLINE. And what are you doing to ensure that the freedom for workers is kept intact for all Americans, regardless of occupation?

Secretary ACOSTA. Well, Congressman, so if your question is, what are we doing to enforce State law, that is not one of the Federal laws that we enforce. Certainly if your question is regarding OLMS, OLMS is very active. I believe it brought over 200 investigations last year. And it had an incredibly high number of convictions regarding fraud or other types of inappropriate action and criminal action that took place regarding unions. The specific figures I believe are 223 investigations, and I forget how many convictions.

Mr. CLINE. Do you share the views of the President that many unions rip off their membership with ridiculously high dues? And are you working through the Department to try and address these excessively high union dues that in closed union shop states are burdening workers and their families?

Secretary ACOSTA. So, Congressman, if the question is what are we doing on Janus—and it sounds like that might be where the question is going—you know, obviously, the Department and the administration took the position that it did in Janus. The Supreme Court issued the case. And then I believe that the decision was a correct and appropriate decision. It is, in essence, what we had argued. And certainly that is now the law of the land and the law that unions will have to follow.

Mr. CLINE. And are you working to enforce that law?

Secretary ACOSTA. To the extent it comes within our authority, yes, we are.

Mr. CLINE. Thank you.

Mr. Chairman, I yield back.

Chairman SCOTT. Thank you.

The gentlelady from Illinois, Ms. Underwood.

Ms. UNDERWOOD. Thank you, Mr. Chairman.

Secretary Acosta, for women, reproductive healthcare is healthcare. But your department has issued rules that deny the science of women's healthcare and allow employers to deny workers health insurance that covers contraceptives. Despite the fact that the courts have repeatedly blocked these rules, you and this administration are continuing your efforts to deny women contraceptive coverage.

I am curious. Do you know how much on average contraception costs for women if it is not covered by their insurance?

Secretary ACOSTA. Congresswoman, I certainly am aware it is expensive and the price likely will vary.

Ms. UNDERWOOD. Okay. So if you want to just make a best guess, what would that be?

Secretary ACOSTA. Congresswoman, I don't think it is appropriate to speculate. It is expensive. And I can tell you that whether it is contraception or drugs, often it is beyond the ability of many individuals to pay.

Ms. UNDERWOOD. That is right. It is very expensive. Without insurance coverage, birth control pills can cost $600 a year. Plus, the appointment to get a prescription can cost another $250.

Do you know that women use contraceptives not just to prevent pregnancy but also to treat medical conditions?

Secretary ACOSTA. Congresswoman, I am not a physician. I imagine if it is being used for medical conditions, that would be pursuant to a physician-supervised—

Ms. UNDERWOOD. So I will take that as a yes. Do you know what those medical conditions are?

Secretary ACOSTA. Congresswoman, I am not a physician. So I really couldn't opine as to what those medical conditions would be.

Ms. UNDERWOOD. Okay. So let me tell you. Women use birth control to treat polycystic ovary syndrome, endometriosis, and anemia. These conditions are painful. They are linked to ovarian cysts, heavy bleeding, and infertility. And that is not all.

I am a nurse. And I am the cofounder of the Black Maternal Health Caucus. And I can tell you that for far too many women in this country, pregnancy can be dangerous or even deadly. One of the judges who blocked your rules wrote that they would cause over 70,000 women to lose contraceptive coverage, 70,000 women. Women's lives and women's health depend on their ability to access contraceptives. Your actions, your actions, sir, are denying science and putting American women at risk.

Moving on, last year, your department approved a rule extending the limit for short-term, limited-duration health insurance plans from 3 months to 3 years. These plans are commonly called junk insurance because, although they are very profitable for insurance companies, the coverage that they provide to patients is trash.

Now, Secretary Acosta, I only have a few minutes. So I need you to stick with a "Yes" or "No" only, please. Yes or no, are you aware that junk insurance plans are not required to cover people with preexisting conditions?

Secretary ACOSTA. Congresswoman, I would hesitate to use the word "junk" insurance.

Ms. UNDERWOOD. Sir, I am not asking you to characterize. I am asking you if you know whether they are required to cover people with preexisting conditions. Yes or no?

Secretary ACOSTA. Congresswoman, to some extent, your question characterized, and so I have to push back. If the question is whether short-term, limited-duration plans have all of the protections of other plans, such as those available through association health plans, then the answer is yes. They do not—

Ms. UNDERWOOD. That is not the reference.

Secretary ACOSTA. Then the answer is they—

Ms. UNDERWOOD. Reclaiming my time, sir.

Secretary ACOSTA. Yes, they do not have all of the protections.

Ms. UNDERWOOD. Okay. Yes or no, are you aware that they are not required to cover prescription drug costs?

Secretary ACOSTA. Congresswoman, I do not. I certainly can provide the list of the areas of coverage for association health plans, whether they be in—

Ms. UNDERWOOD. I am not asking about—sir, I am not asking about association health plans. The question is about short-term, limited-duration insurance plans. Yes or no, are they required to cover prescription drug costs?

Secretary ACOSTA. I would have to consult to see which are the requirements that they have to cover.

Ms. UNDERWOOD. Okay. Are you aware that they are not required to offer maternity coverage, yes or no?

Secretary ACOSTA. Congresswoman, as a general rule, the coverage of short-term, limited-duration plans is less than that of other plans.

Ms. UNDERWOOD. Okay. Yes or no, are you aware that junk plans can allow insurance companies to retroactively cancel coverage after a patient files a claim?

Secretary ACOSTA. Again, Congresswoman, I am aware that the protection offered is less than that of other plans.

Ms. UNDERWOOD. Okay.

Secretary ACOSTA. I could not go to this—

Ms. UNDERWOOD. So, just for the American people to understand what we were outlining, these short-term, limited-duration insurance plans are not required to cover preexisting conditions. They are not required to cover prescription drugs. They are not required to cover maternity coverage. And no, they are not required to cover inpatient hospitalizations.

Now, sir, you have been an attorney interacting with the Federal Government for several decades now. So it is fair to say that you are familiar with the Administrative Procedures Act. Right?

Secretary ACOSTA. I am familiar with the Administrative—

Ms. UNDERWOOD. Okay. Yes or no, are you aware that this Act requires you to consider comments from the public when making rules?

Secretary ACOSTA. I am sorry?

Ms. UNDERWOOD. Are you aware that this Act requires you to consider comments from the public when making rules, issuing regulations?

Secretary ACOSTA. Yes, I am.

Ms. UNDERWOOD. Okay. Yes or no, are you aware that 98 percent of the comments from healthcare groups oppose the rule that you approved?

Secretary ACOSTA. Congresswoman, the rules were primarily reviewed by HHS. So I cannot speak to the—

Ms. UNDERWOOD. It's a tri-department rule, sir. Yes or no?

Secretary ACOSTA. Congresswoman, again, I could not speak to the percentage. I will say—and I think it is important—that we have, through associational health plans and others, tried to provide—

Ms. UNDERWOOD. I am not asking about association health plans.

Secretary ACOSTA.—tried to provide low-cost—

Ms. UNDERWOOD. Sir, reclaiming my time, I am not asking about association health plans. This line of questioning is about short-term, limited-duration insurance plans. Yes or no?

Secretary ACOSTA. I cannot confirm your percentage.

Ms. UNDERWOOD. Okay. Thank you.

This administration has been relentless in its attempts to undermine access to healthcare. In nursing school, we are taught how important it is to listen to our patients. And, instead of listening, this administration is ignoring patients and nurses and doctors. The administration is not protecting moms or kids or people with preexisting conditions. It is attacking them. And let me tell you, sir, not on my watch.

Mr. Chairman, I yield back. Thank you.

Chairman SCOTT. Thank you.

The gentleman from Texas. The gentleman from Pennsylvania, Mr. Meuser.

MR. MEUSER. Thank you, Chairman Scott and Dr. Foxx, for holding this hearing. And thank you very much, Secretary Acosta.

The Trump administration has done some fantastic work over the last 2 years. Unemployment hit the lowest point in 50 years. The economy has added 4.6 million jobs over the last 2 years, which also means that millions more are receiving health care than were before. And I have recently learned that the veterans unemployment of our veterans is only 2.9 percent, also the lowest in decades.

I represent Pennsylvania's 9th Congressional District, a very hard-working, somewhat rural district with great potential for revitalization and economic growth. I know my district has already benefited from the wage growth and job creation that we have seen as a result of the Republicans' Tax Cuts and Jobs Act. And topics that I want to talk about today—some have been covered, but some have not—that will benefit my district include the Opportunity Zones that are part of the Tax Act; the access to association health plans, primarily the idea of just lowering deductibles and premiums, which obviously will add to people's disposable income; and work force development.

So, starting with Opportunity Zones, which is a huge priority for me and my district, I am working with HUD, the administration, the Treasury, and private sector on making sure the communities in my district can benefit from this program. Rules continue to be written by Treasury, should be out in June. Is this something that we can work on together? Is this something on your priority list?

Secretary ACOSTA. Absolutely, Congressman.

MR. MEUSER. Okay. All right. Well, good. I will look forward to that, then.

I am sure you are aware, despite your Department's and the Trump administration's desire to expand the association health plans, there are barriers that continue in various states to its participation. Consumer choice, access, competition, which could lower, again, premiums and deductibles, is very, very important on the AHPs or even if you would want to expand on what is being done to help lower premiums. Maybe you could discuss that.

Secretary ACOSTA. So association health plans—and, you know, again, I think it is important to emphasize these are quality plans. It just lets small employers come together and play by the same rules as the big corporations. So these are quality plans, but one of the things is when you bring in—so I am thinking of one association health plan that, in particular, brought together more than 400 small businesses.

And when you bring more than 400 small businesses together, you create bargaining power and you create scale. And so they saw, you know, they told me that they saw, a reduction of about 30 percent in premiums moving from that individual small business, small group price to they now have a large, diverse risk pool. And they are now in the large group market.

And so a 30 percent reduction is a game-changer. The Congressional Budget Office scored this in a way that they said that hundreds of thousands of people could receive coverage. So this is a very important approach and one that I think we should support. Certainly it would be wonderful if it could be legislatively confirmed.

MR. MEUSER. Great. I agree. We have discussed here today work force development. Like I am sure in other districts, we have got some really terrific vo-tech schools, career development institutes. Your department has already done a lot. What more can we do?

Secretary ACOSTA. So, Congressman, something that I do think is worth considering is this imbalance that we have between what I will call our formal and our informal educational system, between higher education and a system of education that so many individuals rely on that provide skills. And I think it even starts earlier. It starts in high schools. You know, if someone is being told—individuals sometimes are told, there is only one pathway to success and if they don't follow that pathway, they have failed. Why not say there are multiple pathways and everyone can succeed? And if that means college and higher education, that is wonderful, but if that means another pathway, well, that can lead to a great job. And maybe later on, folks can choose to go from pathway B to pathway A or A to B. Let's not even say which is above the other, but let's empower every individual to make choices for themselves

and to follow the path that they believe will lead to a great job that is safe and that supports their family.

MR. MEUSER. Excellent. Thank you, Mr. Secretary.

Chairman, I yield back.

Chairman SCOTT. Thank you.

The gentleman from Michigan, Mr. Levin.

Mr. LEVIN. Thank you, Mr. Chairman. Welcome, Mr. Secretary.

Do you know what holiday 66 countries are formally observing today and scores more are observing informally?

Secretary ACOSTA. I do.

Mr. LEVIN. What is it called?

Secretary ACOSTA. I believe it is the first of May or a worker holiday or—

Mr. LEVIN. Yes. It is called International Workers' Day—

Secretary ACOSTA. Yes.

Mr. LEVIN.—or May Day. And I think the irony of you—I don't know how the timing of this worked out, but the irony of you testifying before us today is—

Secretary ACOSTA. The Chairman and I worked it out.

Mr. LEVIN.—rich indeed given what you have said about the importance of worker voice and power and your actions on worker voice and power in society, which is what International Workers' Day actually represents.

I want to talk to you about health and safety. Sunday was Worker Memorial Day. And from 2009 to 2016, every year, OSHA or the Labor Department had an observation of Worker Memorial Day. And, as you pointed out earlier, it is not just money that shows your priorities. It is your actions and what you do. And so I think it is really unfortunate that you and your department have chosen not to have any events to observe this really solemn and important occasion where we observe, remember workers who have died on the job and commit/recommit ourselves not to let that happen.

Most of OSHA's regulatory focus under this administration seems to have focused on rolling back protections for workers in general, instead of increasing protection for workers, which is at odds with your mission. I was particularly upset about OSHA's rollback of its regulation that required employers to submit anonymous aggregated injury and illness information to the agency. And that would then be made public.

These data would have been extremely helpful for researchers looking at the causes of workplace injuries and illnesses as well as measures to prevent them. But OSHA rescinded it earlier this year. I actually have a CRA on this issue, House Joint Resolution 44, disapproving the final rule of the OSHA act titled Tracking of Workplace Injuries and Illnesses. So my question is, how do you justify this rollback of worker protections?

Secretary ACOSTA. Congressman, thank you for the question.

And, first, let me just say, going to the first part of your comments, you know, I took a look at the fatality and the injury and illness data for the past year and more fatalities than anyone would want, but let me just note that the workplace is safer, that there were 43 fewer workplace fatalities than—

Mr. LEVIN. Yes, I understand, but I have very little time. I need you to answer this question.

Secretary ACOSTA. I understand, but you are talking about the emphasis on safety. I do think it is important to note that the workplace is—

Mr. LEVIN. Maybe next year, you will observe it with an event. In any event, go ahead.

Secretary ACOSTA. So the tracking issue, you know, it is interesting. We are actually being sued by both the Chambers of Commerce and the labor unions or labor on this side because what we did is there are three different pieces of information that we obtained. And we said we want the aggregate data because it is important that we have the aggregate data so that we can target our enforcement efforts. So if a particular business has—

Mr. LEVIN. Let me just—

Secretary ACOSTA. But—

Mr. LEVIN. I am sorry. I don't have time for you to tell a long story. Let me just be specific here. You rescinded this regulation. Did any worker group or union ask you to rescind the regulation or only employers?

Secretary ACOSTA. Congressman—

Mr. LEVIN. Are you aware?

Secretary ACOSTA. We rescinded the regulation in part. I am not aware who may or may not have asked. I can—

Mr. LEVIN. Okay. So no worker organization. I will just—

Secretary ACOSTA. I can tell you both sides seem a little unhappy with our outcome because we are still collecting some of the data. We are just not collecting—

Mr. LEVIN. It is not a matter of collecting data.

Secretary ACOSTA.—the individual-specific data.

Mr. LEVIN. It is a matter of what you gather. It is not what they have to keep. It is what you pull together.

You must be aware that the regulation that you rescinded would not have required employers to send confidential information into OSHA. And, in fact, the data base and computer forms that your employees created for employers does not even allow employers to send confidential information into the agency. So there was no way they could do so. So, given all of this, how can you explain how worker confidentiality or, you know, those kinds of concerns were even involved when you wouldn't have even had confidential information at all?

Secretary ACOSTA. Congressman, it was asking for very detailed information about worker-specific injury, if they were injured, what part of the body was injured, whether they lost a part of their body.

Mr. LEVIN. Yes. Without that information, researchers couldn't do any effective work, could they, to figure out if it is—they wouldn't know about repetitive injuries to wrists or legs if you just made it so generic. Really, it is a question of basic science. And it seems to me that the record clearly shows that you are simply trying to give cover to employers with bad records.

MSHA has obtained this information for decades. There have been zero problems with confidentiality with MSHA, zero, doing the same thing. So I am very sorry that you are reducing your protections of workers in this way.

I yield back, Mr. Chairman.

Chairman SCOTT. The gentlemen from Texas.

Mr. TAYLOR. Thank you, Mr. Chairman. Mr. Secretary, I appreciate you being here.

I was in the State legislature for 8 years. And I am unaccustomed to seeing people asking questions, giving you 2 seconds to answer, cutting you off, and then telling you didn't answer the question. Is there anything you want to add to the record? I am happy to yield my time.

Secretary ACOSTA. I think I addressed it. Thank you.

Mr. TAYLOR. Okay. Well, again, I appreciate you enduring this. Again, I guess I am used to a more collegial setting.

So in my time in the State legislature, I worked on a bipartisan basis to make it easier for public education, for high schools to have instructors to teach students life skills, work skills. So, for instance, we had a problem where welders who were master welders had 20 years of experience, extremely good at welding, could not teach a class in welding in high school. Because they did not have a 4-year college degree, they did not have a teaching certificate, they couldn't teach welding.

So we actually worked, again, on a bipartisan basis. The bill was authored in the Texas House by a Democrat, and I carried it in the Texas Senate, you know, into law to allow welders/robot programmers to teach robot programming so that upon graduation from high school, they could begin to enter the work force immediately, welding or programming robots or what have you. Do you see opportunities similar to that within the Federal system as you look at job force training efforts?

Secretary ACOSTA. Congressman, absolutely. And you also touch on an issue that is incredibly important, which is licensing. And at what point is a license—for example, a requirement that someone have a college degree to teach when they are teaching welding, which is their master craft—

Mr. TAYLOR. Sure.

Secretary ACOSTA.—something that they are expert in, at what point is licensing preventing individuals from obtaining good jobs?

Mr. TAYLOR. And so certainly in the State of Texas, we worked on that, again, on a bipartisan basis. I mean, everybody agreed we want to have people entering the work force that are trained, ready and so they don't have to go to community college, you know, work two jobs to pay for that, et cetera. Are there opportunities that you see? If there are opportunities you see in the Federal work force, I would be interested in hearing about those to, again, try to make it easier for people to start working.

And I certainly agree. Certainly, you struck a chord with me, the comment that you have made several times about the importance of having or recognizing all paths to success, that it is not just about a 4-year college degree, that we are in a country where only 27 percent of Americans have a four-year college degree. You know, there are many good paths to success that do not include a college degree.

Secretary ACOSTA. One of the issues that I think the Federal Government is and should be looking at is their own requirements. So, for example, there are individuals that may have had something in their past going back 10, 15, 20 years. Does that mean they need to be precluded from a job? For example, I was at Elec-

tric Boat that builds some of our Navy's submarines. And it requires a security clearance. Are individuals necessarily precluded from those jobs because they might have had a conviction when they were 18 or 19? And so that is an area where I do think we should be looking and we can certainly make some progress.

Mr. TAYLOR. Shifting over to health care, so as I go around the 3d District, you know, the No. 1 complaint I hear from my constituents is that the Affordable Care Act insurance is just not affordable with the premiums and deductibles being as high as they are. It is reassuring that over the last 2 years, the number of Americans that have ERISA-based insurance or employer-based insurance has actually gone up two and a half million. So we actually saw some very substantial increases in healthcare coverage through employer-based insurance. What steps are you taking to further enhance or improve those programs?

Secretary ACOSTA. I am sorry, Congressman. I—

Mr. TAYLOR. So as far as ERISA goes, that is very important. I mean, look, more Americans have ERISA insurance than everything—

Secretary ACOSTA. Correct.

Mr. TAYLOR.—else combined. That is the most—

Secretary ACOSTA. Correct.

Mr. TAYLOR.—important health care coverage program—

Secretary ACOSTA. Absolutely.

Mr. TAYLOR.—we have in this country.

Secretary ACOSTA. Absolutely.

Mr. TAYLOR. And certainly I am one to stand to defend it against people that might want to take that away from people.

Secretary ACOSTA. Right.

Mr. TAYLOR. And it protects people with pre-existing conditions. It provides—

Secretary ACOSTA. Yes, it does.

Mr. TAYLOR.—affordable insurance. And that is—and we have had substantial increases in ERISA insurance. What plans do you have to further enhance or improve ERISA?

Secretary ACOSTA. So, Congressman, I think one of the—you know, we are now exploring whether ERISA can be used to create these associations. And I know we have talked about it. But it is our view that ERISA does allow associations of employers acting on behalf of an employer to act like an employer. And that is important because these ERISA plans are quality plans.

Mr. TAYLOR. Absolutely.

Secretary ACOSTA. And there are a number of small businesses that just can't afford them.

Mr. TAYLOR. Yes.

Secretary ACOSTA. And so by allowing them to band together, we are giving them access just like large corporations. You know, we talk about whether something is a quality plan or not a quality plan.

And we forget that—that IBM doesn't have to give a lot of—a lot of the things that it does or any other large corporation, but it does so because it's large enough and has the skill that it can offer these plans. And so empowering smaller businesses to act like large corporations under ERISA, I think, is incredibly important and a

game-changer for many employees receiving their healthcare through ERISA plans.

Mr. TAYLOR. It certainly is.

I am sorry, Mr. Chairman. Just a few seconds.

As I go around my district, I talk about the expansion of ERISA access by allowing groups of people, whether it is the State Bar, the State Farm Bureau, the Texas Association of Business, allowing those organizations to create ERISA pools that then, in turn, allows people to use pretax dollars to buy their healthcare from the single biggest source of healthcare that we have in this country today. So I am very excited to hear that you are working on that. Thank you, Mr. Chairman.

Secretary ACOSTA. Thank you.

Mr. TAYLOR. Thank you, Mr. Chairman. Appreciate you indulging me.

Chairman SCOTT. Thank you.

The gentlelady from Minnesota, Ms. Omar.

Ms. OMAR. Thank you, Chairwoman—Chairman Scott and Ranking Member Dr. Foxx on this International Workers' Day. I was excited to hear you State in your testimony that the goal of the department is to level the playing field for working Americans through fair trade. In your testimony, I was also happy to hear that in your budget that you are prioritizing American workers by monitoring and enforcing labor provisions of free trade agreements and combating the reprehensible use of child labor and helping other countries improve their labor standards.

But I also am a little confused and trying to find where the credibility is because in the proposed budget, you are proposing a 78 percent cut. I find that to be astonishing through the Bureau of International Labor Affairs. And so I am wondering how can you really think a 78 percent cut through the budget is going to help level the playing field.

Secretary ACOSTA. So, Congresswoman, thank you for the question. As we approach the budget, earlier I talked about the importance of enforcement and that the enforcement agencies were not cut. And so the cuts took place typically in the grant programs or the nonenforcement side. And within that, we prioritize domestic over international. And so those reductions are in international programs. Now, I understand that we proposed those reductions last year. And I understand that Congress put the money right back in last year. And I understand that the House budget that I think was just marked up yesterday restores many of those programs. Let me also say as—

Ms. OMAR. But I think, you know, it is fair for me to say that when you are stating that to be a priority and proposing a 78 percent cut, then it truly cannot be a priority, so that is the credibility I was speaking to. And we also know that the Government Accountability Office is saying that they are already facing challenges in enforcement with the limited resources that they already have.

And so I am asking how do you reconcile that these cuts that you all are proposing and what that department is saying and in doing enforcement? How could we trust that you would be able to monitor the new trade agreement with USMCA?

Secretary ACOSTA. So, first, let me say I do—I will say we are prioritizing domestic over international. But let me also say Congress last year restored that money, and we used that money and we used it well. And in ILAB, which is the—the International Labor Division that you are referencing, does some great work.

I am going to be—I was—when I was in Argentina, I visited some of the ILAB grantees that are doing great work. I am going to be in Colombia talking. I am meeting some of the ILAB grantees, and I am also going to be talking with the Colombian government because they have made progress on labor rights in Colombia and so—

Ms. OMAR. I suppose, Secretary, with all due respect—

Secretary ACOSTA. Yes.

Ms. OMAR.—the question is how could we trust if they are saying that there is already limitations with the resources that they have that the new agreement that we are getting into with the USMCA that we will have the resources to be able to reinforce and roll that out.

Secretary ACOSTA. So USMCA—so going specifically to USMCA, you know, it has, for the first time, labor protections. And those labor protections need to be enforced. Previously, the labor protections were not in the USMCA. This time, they are. And in implementing legislation, something that has been discussed is USMCA will have to be adopted through implementing legislation, in that implementing legislation, having specific funding to ensure that enforcement is sufficient and available for that specific provision.

The labor provisions there are stronger. I was with the head of the ILO in a joint presentation recently. And he said that those labor provisions were stronger than he has seen in any U.S.-based agreement and so—

Ms. OMAR. With the little time that I have, I know that we have strong provisions, but the problem and the disappointment that we see is that you would have to enforce them. And if you are continuing to propose cuts to that enforcement, we are not going to be able to do the work with just saying that is important and having the mechanisms in place. We have to make sure that we make the resources available for there to be accountability and enforcement.

Secretary ACOSTA. I understand.

Ms. OMAR. We have to follow action with our words, and that is where the credibility challenge is, and that is why we find this proposal to be very disappointing. I yield back my time. Thank you for your time.

Chairman SCOTT. Thank you.

The gentleman from Wisconsin, Mr. Grothman?

Mr. GROTHMAN. Thank you. First of all, Mr. Secretary, thanks for being here. I really appreciate you doing what far too many people in this building do. And that is trying to get a handle on our Federal deficit and realizing that we are spending too much money here.

And I know it's always a difficult thing to say no. But I really appreciate what you are doing, what the whole administration is doing and try to get a handle on things. And I just wish they would get a little support out of Congress. So I just want to lead off by saying that.

The second thing I am going to say, because I want to talk a little bit about 14(c) certificates, which, you know, deal with subminimum wage. And I think you are familiar with that issue; right?

Secretary ACOSTA. Yes.

Mr. GROTHMAN. I guess one of my concerns is there are people out there who are trying to reduce them or get rid of them. And I tour places where they use the 14(c) certificates all over my district. I see so many happy, productive people that we could all learn from. And the idea that someday they could lose their jobs just scares me.

You know, taking away a choice from people who are the most vulnerable in our society—but I know in the past, there might have been some people in your agencies who—in your agency who didn't understand the importance of a 14(c). Have you done any looking around or seeing what happens to individuals with disabilities when the 14(c) certificates are eliminated?

Secretary ACOSTA. So, Congressman, we have brought several enforcement actions where, unfortunately, like all programs, you know, 14(c) has some bad actors. And we brought some enforcement actions. And when we brought those enforcement actions, we were very careful to work with the State to provide those individuals alternative employment opportunities because everyone wants, you know, the ability to work and to earn a living and to support themselves. And so, in that context, yes.

Mr. GROTHMAN. Yes, that we were always able to find—were we able to find jobs for people in not a formal setting or in an independent work force, or did they have to take subminimum wage or what did we find?

Secretary ACOSTA. So I am sorry. Your question was am I familiar with those jobs. And so in the context of—I do not know if the individuals in those 14(c) companies where the enforcement actions were brought found other employment in or outside of 14(c). I can certainly tell the Congressman that 14(c), although it is still used and it is the law, and any change will have to come from Congress, the number of 14(c) certificates is reducing, in part, because the economy is improving, in part, because technology is making it easier to accommodate individuals. And so we are seeing the number of 14(c) certificates going down, although any change in the 14(c) program would have to come from Congress.

Mr. GROTHMAN. My fear is, just so you are aware insofar as you have any flexibility, I have run into people who have lost their jobs. And they are not going to find other jobs. You know, some of these people, they automatically—they just have this preconceived notion that if you are using a 14(c), you are being taken advantage of. And that's not—just not true.

I would like to ask do you understand the importance of the 14(c), and have you had any chances to tour any of the—I guess they are now—the politically correct term is "work centers." Have you had a chance to tour any work centers to see these 41(c) certificates in action?

Secretary ACOSTA. I have not toured any of the individuals—any of the sites that hold these 14(c) certificates.

Mr. GROTHMAN. Would you ever like to tour one sometime?

Secretary ACOSTA. Yes, no, I am certainly willing to. I welcome the opportunity to travel and to tour and will followup with your office.

Mr. GROTHMAN. Okay. Very good. And I'll yield the rest of my time to Ranking Member Foxx.

Secretary ACOSTA. Thank you.

Ms. FOXX. Thank you.

Secretary Acosta, the Office of Labor Management Standards plays a critical role in empowering workers by requiring union reporting, which allows workers to see how their union dues are spent. Unfortunately, we continue to see rampant union corruption, such as the ongoing UAW scandal in Michigan where union dealers spent workers' dues that were intended for a work force development fund on excesses like a Ferrari, a $1,100 pair of shoes, two $37,000 gold pens.

Tens of thousands of dollars in dues were also spent on what the Detroit News called "trinkets and trash" as part of a potential kickback scheme between union leaders and business executives currying favor with one another. The OLMS Form T–1 regulation on union trusts is currently under review at the Office of Management and Budget, intended to prevent future scandals like the one at the UAW.

Secretary ACOSTA. Congresswoman, transparency obviously prevents these scandals. I should also say, as I mentioned, that the OLMS, which looks into union corruption—like every industry, there are bad actors, and I believe there were more than 200 criminal investigations last year.

Ms. FOXX. Thank you.

Thank you, Mr. Chairman.

Chairman SCOTT. Thank you.

The gentleman from Maryland, Mr. Trone?

Mr. TRONE. Thank you very much, Mr. Chairman.

First, I want to thank you, Secretary, for your comments regarding opioids deaths in the workplace, 84 to 272. This is certainly bipartisan, and we just love to have your help. The current prescribing guidelines for opioids under the Federal Employees' Compensation Act allows for patients to receive two concurrent opioid prescriptions for up to 60 days each without any prior agency approval. So that's two prescriptions, up to 60 each, which means only after 120 days, 120 days, is a letter of medical necessity required.

CDC—I met with the CDC director last week in Atlanta. Definitive study shows 40 days of opioid use, a bit more than your agency would allow, a bit less, results on an average of 40 percent of those patients a year later still taking opioids or, in other words, addicted, likely addicted. This problem was made clear in your budget. Your budget request cites 27,000 participants in FECA receiving opioids in 2017.

The Inspector General analysis found that more than half of the FECA's monthly pharmacy claims include opioid prescriptions. The same analysis found the DOL policies lag years behind those adopted at State-level worker's compensation agencies, which have followed the CDC guidelines allowing 7 days or fewer without a letter

of medical necessity. Now, that said, none of us wants to block access to needed pay relief.

And we know curbing opioid use should not be done lightly for those that have a debilitating illness. But allowing patients to have two different prescriptions or 2 months without prior authorization, 120 days, I think, is dangerous and can be deadly and contrary to the medical establishment's recommendations. So are you aware of the FECA regulation?

Secretary ACOSTA. Congressman, thank you. Thank you for the question. And the short answer is yes, and we have done something about it. And so, if I could, because, you know, I had similar observations to yours. And so we put in place a new system that involves—and I am going to give you the results in a second—effective controls, tailored treatment. We are above a certain prescription level, we have a specialized team that will actually notice the prescription levels and contact the providers.

Meaningful communications—we are in the process of changing the company that monitors prescriptions so we can tell multiple prescriptions. I had them do—I had them look at results. And, so far, we have had a 31 percent decline in overall opioid use. I am happy to share this with your office. We recently put this out in a website, a 52 percent decline in new opioid prescriptions lasting more than 30 days. We started off by focusing on the higher dosage, the morphine-equivalent dosage of 500 or more, which is quite high. We had a 62 percent decline in—

Mr. TRONE. I would like to reclaim my time. I think that's fantastic and I really appreciate that, but at the end of the day, 84 deaths, straight-up hockey stick to 272. So I am just asking—keep up the good work. Do more. Think about that 120 days. Take it down to seven. Follow the CDC. That is all I have got on that question.

My next question for you is could you—you clearly said earlier it is so important for people to earn more. It is great for the workers. It is great for employee—employers. It is great for the economy. We agree. That being said, I am a cosponsor of wage—Raise the Wage Act. I think it is a really good bill. But that being said, what do you think the federal minimum wage should be after 10 years at $7.25 not indexed to inflation? Just give me a number, not a long diatribe.

Secretary ACOSTA. So, Congressman, you know, the issue around federal minimum wage is as follows. And I know you want a number, but it's not quite that simple. If it were, it would already be adopted. You know, there are 29—basically, three-fifths of the States have adopted a minimum wage that is higher than the federal minimum wage.

Mr. TRONE. A hundred and thirty-eight different instances have happened since 1979 where States and municipalities have raised their minimum wage and there has been zero job loss. That's in the service industries where everybody is apples-to-apples. I mean, I own a company that's 7,000 employees. We do 3-to $4 billion in sales. I understand business and—but we have higher wages. Everybody else has higher wages. There is no discernible job loss. But those folks at the bottom of the ladder, they win. Can we get a number to be able to raise it to somewhere?

Secretary ACOSTA. Congressman, I believe there was a study by Washington State when Seattle raised its minimum wage that—that actually did show job loss. So I am not sure you can really say zero job loss. And I think there are a number of studies that go in the other direction. We can argue over which study is right. But to say zero job loss is, I think, an oversimplification, in all candor.

Mr. TRONE. Let's see if we can get a raise, and your leadership would really be helpful. Thank you.

Secretary ACOSTA. Thank you.

Mr. WATKINS. Thank you. I want to start off today by thanking the Secretary for being here and for your selfless, patriotic contribution to our country. My constituents clearly see that the economy is doing well, the best that it has been for years, largely because of the pro-growth policies, to include lower taxes and deregulation.

Investment productivity and workers' wages are all on the rise across America. And it is true that the American worker is far better off today than a decade ago. In fact, the Bureau of Labor Statistics say that in my home State of Kansas, unemployment is at a decade low of 3.4 percent. As a result, employers across the Nation are now struggling to fill over 7 million job openings. In recent weeks, your Labor Department released statistics showcasing how this hiring competition has raised the average hourly pay 3.4 percent from last year, the largest gain in a decade.

And just last week, we all learned the first quarter GDP growth for 2019 is an incredible 3.4 percent increase, beating all expectations and projections. Combine that quarterly growth statistic with the prevailing logic that the first quarter GDP is typically the weakest of the year, and Americans certainly have good reason to be optimistic in the months to come. All this economic news is welcome for small businesses and resurgent main streets of so many small and rural communities that I represent in Kansas.

Kansas has over 600,000 employees, people who are employed by small businesses, and that's 99.1 percent of all Kansas businesses are small. Sadly, we have seen the economic proposals offered by the other side of the aisle, and these clearly miss the mark. Liberal policy proposals like free college, government-mandated healthcare, 70 percent marginal tax rates, and, recently, a dramatic and instant 107 percent federal minimum wage increases are not the right policies for Kansas, and they are not the right policies for our country.

We must confront the real economic harm these proposals would have on working families, students, veterans, and chronically underemployed individuals finally seeking to reenter the job market. It is clear that the American economy is back in business, and our local economies are well on their way to thriving as well. Now, sir, my question is what—I agree that our—I agree—so, Mr. Secretary, I agree that our Department of Labor, our economy, is strengthening and with each passing day—and a remarkable number of jobs have been created during the Trump administration .

I hear every day from Kansans about the need to fill jobs and concern about skilled—skills gaps keeping many positions unfilled. What do you see as the most important part of the challenge to prepare America's work force for 21st century jobs?

Secretary ACOSTA. Congressman, thank you for the question. And let me just say briefly, you know, the most important part is to really empower individuals for skills that are in demand. We call it demand-driven education, education that acknowledges the modern workplace requires certain skills, and let's empower them to get those, whether it be welding, whether it be nursing, whether it be medicine. Let's just make sure that—that our education system and our businesses are communicating so that we are providing education for what is currently being required. That is critical.

Mr. WATKINS. Thank you, Mr. Secretary.

And I yield back. Sorry. I yield back the remainder of my time.

Chairman SCOTT. Thank you. We have five members left in 10 minutes. If people could be very—as quick as possible with their questions, we may be able to get through without a recess. The gentleman from New York, Mr. Morelle?

Mr. MORELLE. Thank you, Mr. Chairman, for making this hearing possible.

And thank you, Mr. Secretary, for taking the time to be here. I just want to make, first, just an observation. Some of my colleagues have raised the absence of a budget or responsive concerns about the draconian cuts made to work force development, including a 40 percent cut to the Jobs Corps in the President's budget. I serve on the House Budget Committee and would note just two things for—just for people's information.

First, we have adopted on the floor a resolution setting top lines for discretionary appropriations. And, following that, the Labor HHS Appropriations Subcommittee, I believe, yesterday reported a bill that reverses the cuts, adds an additional $100 million to the President's request for apprenticeships and bolsters key work force protection agencies such as the Wage and Hour Division and OSHA to restore enforcement personnel that have been depleted during the previous 8 years. So we have not stood still. Others have said that a budget is a setting of priorities. And I agree. We have put our money where our values lie with the American worker. I also just want to—a couple really quick questions.

Mr. Secretary, I grew up in a union household, and I know how important that is for advancing the interests of families and communities. And I wanted to just touch on and go back to the comments you made regarding the associated—or the—

Secretary ACOSTA. Association health plans.

Mr. MORELLE.—association health plans. And I was disappointed. Obviously, the decision to implement the rule, that weakened, in my view, the protections for workers and undermines the Affordable Care Act. Last month, after a lawsuit led by the attorney general, Federal court found the department's final rule to expand association health plans was unlawful, determining that it was designed as a, quote, end-around around the ACA and does violence to ERISA.

It seems to me there is three ways to get at this if you are going to reduce costs. One is by cherry-picking better workers in terms of what their healthcare costs would be, often younger workers; secondly, by cutting benefits that would be associated with those, part of the essential benefit package; or establishing underwriting

rules either that underwrite for age or other conditions like pre-existing conditions. So I am disappointed with the department's position. Tell me which of those three things benefits folks in the association? Is it the cherry picking? Is it the cutting benefits? Is it underwriting rules? What is it that allows them to reduce costs and improve care?

Secretary ACOSTA. Congressman, there is something else to add to that, which is called bargaining power. A small business can't bargain. When you have 4-or 500 small businesses coming together under one association or Chamber of Commerce, that association can put out a request for proposal, and it can ask for very competitive bids. And so, again, association health plans play by the same rules as large corporations. And they have the advantage of scale that goes to those large corporations—

Mr. MORELLE. Typically.

Secretary ACOSTA.—in terms of risk pool and bargaining power.

Mr. MORELLE. Well, let me—and I apologize for interrupting. But I actually think what the advantage of large groups are is that they are able to pool large groups of workers together. I don't know that it is bargaining power. I think it is a question of whether or not they can share that risk.

But, typically, what you have and under the Affordable Care Act and in my State of New York, you have community rating, which allows people to not be underwritten, have protections against age underwriting and other underwriting conditions. And that's what the Federal law is. So I would only see this if there was an ability to increase utilization of primary care and to do the kinds of things necessary, to have screenings and wellness programs.

I don't see that as a mandate for these plans. What I see instead is the stripping away of benefits, which is, I think, why the court has—has imposed their order. So I am troubled by that, and I am troubled by the fact that I think what it's going to do is leave people without coverage. I do want to ask also, in my remaining minute, if you have—if you are a part of an associated health plan and you are a worker—let's say you come down with cancer and you are in the middle of treatment, radiation/chemotherapy, et cetera. If the business that you are part of—if it no longer is in the plan because it goes bankrupt or it somehow is out of business, what happens to that worker? Are they continued to be covered? Is there joint and several liability by the remaining or surviving members of the trust or the plan, rather?

Secretary ACOSTA. Congressman, first let me go to your point about the association health plans, the anti-discriminatory issues that you raise with respect to cherry-picking, there are anti-cherry-picking rules in that so to address exactly your concern. And so, in the rule, your concern was addressed. With respect to joint and several, I would have to confer, but my impression is it is not joint and several.

Mr. MORELLE. Well, thank you. I will yield back the balance of my time and would like to come back to you offline, perhaps have additional conversations about these coverages.

Thank you, Mr. Chairman.

Chairman SCOTT. Thank you. The gentlelady from Nevada, Ms. Lee—

And I think several members have indicated a desire to come back so I apologize.

Mr. Secretary, I think we are going to have to take a break to vote after Ms. Lee. And if—we will do the best we can to get back as soon as we can.

Mrs. LEE. Thank you, Mr. Chairman, and thank you, Secretary, for your testimony today. I wanted to now turn to a topic that's especially important in my home State, Nevada, the future of work. And, clearly, I welcome innovation and the entrepreneurial spirit that makes our Nation a leader in so many different areas. We are all aware of the impending effects of that deployment of newer technology on our workers.

And recently, the GAO released a report highlighting the effects of advanced technologies on jobs and went on to direct the Department of Labor to develop better methods of leveraging data to track these work force impacts. This is a particularly important issue in Nevada, especially the city of Las Vegas. We are one of the cities most at-risk of losing jobs as a result of automation. Can you please just talk about what the Department of Labor is currently doing to better evaluate these impacts?

Secretary ACOSTA. Congresswoman, thank you. We are certainly, you know, tracking this issue. And the Bureau of Labor Statistics, I believe is also looking at this. Technology is always changing and one of the challenges is, you know, the jobs, I believe, will be there. But they will be different types of jobs.

And this goes to the question of skilling, which is why earlier I said it is so important that we change from a—we educate and then work economy to a—we educate and work simultaneous economy as we go forward, so that individuals are always receiving more skills. As the jobs change, let the skills and education also change.

Mrs. LEE. I agree with you. But can you talk about what data, what you are doing to track this? Like what are you doing, specifically, to track what is happening with the work force?

Secretary ACOSTA. So what data we are—I am sorry, your question is, what kind of data?

Mrs. LEE. Basically, you know, we know that this is happening. What are you doing to measure it?

Secretary ACOSTA. And so we do know that this is happening. One of the difficulties around measuring it is when a job changes or when a job, you know, is it because of technology or is it not because of technology? So, for example, is it because manufacturing is going overseas or is it because the type of manufacturing is changing? And so we know about it, we are—

Mrs. LEE. But we do know that there are instances where businesses are employing automation to replace workers in jobs that were traditionally done by humans.

Secretary ACOSTA. So, yes—

Mrs. LEE. You know, I am just asking, I hope we can find a way of better tracking that. It is really just important to what we do in Nevada in terms of how we are looking at what type of people are going to be displaced. So just if we can work on that, I would greatly appreciate that.

Secretary ACOSTA. Fair enough, Congresswoman.

Mrs. LEE. The second question I have is about your 2020 budget that requests a $14.7 million cut from $93 million for Reentry Employment Opportunities programs. You know, these funds are used to support community faith-based organizations that run programs helping young adult offenders, you know, at-high-risk members of our society reintegrate.

And in Las Vegas, we have a great organization called Hope for Prisoners.

Secretary ACOSTA. I know it well. I have visited it, as a matter of fact.

Mrs. LEE. It is great, yes. And, you know, I mean, a 2016 study found the recidivism rate of 6 percent, which was incredibly low for an 18-month period. And given that we live in the Nation with the highest incarceration rate in the world, you know, working together to fund programs like this, I think, is incredibly economical, let's say.

Secretary ACOSTA. So, Congresswoman, let me say I believe in these programs. Hope for Prisoners is an interesting one, in that it is incredibly successful at most things. Except it does not ask for Federal dollars from the department. And so, I say that to say that our funding is not always aligned with the most successful of programs because that is one that I think does it right. And one of its strengths is working with local businesses and also getting into the prison system and starting to work with individuals while they are in prison so there is a continuity.

Mrs. LEE. So let's say we have programs that are successful like that, that do that. I am just wanting to know, do you—you obviously believe in those programs. So why the cut of, you know, clearly 16 percent?

Secretary ACOSTA. Congresswoman, the budget proposal, I am sure, is going to be thoroughly vetted and it is something that we can talk about.

Mrs. LEE. Great. I agree. I think that these are incredibly important programs in our community. And, you know, when you look for return on investment, given—granted, I am all for accountability and making sure that we are getting what we pay for. So with programs like that, I hope that we can look at ways to continue that investment. Because not only is it the right thing to do, it is also the economical thing to do. Thank you.

I yield.

Chairman SCOTT. Mr. Secretary, I apologize. We have to recess for a few minutes. It will be about 15 minutes before we can get back.

Secretary ACOSTA. Thank you.

[Recess from 1:51 to 2:33 p.m.]

Chairman SCOTT. The committee will come to order. The gentleman from Alabama, Mr. Byrne.

Mr. BYRNE. Thank you, Mr. Chairman. Mr. Secretary, thank you for your unparalleled patience and thank you for what you do for the working men and women in America. Thank you for that.

The Department of Labor has one of the largest workers' comp programs in the Nation. And the IG reported earlier that there have been some issues with regard to the overuse of opioids, which

we see in other parts of society. Have you been able to do anything about that? If so, what?

Secretary ACOSTA. Congressman, thank you for that question. We are facing a crisis with opioids today. You know, if we look at the number of adult workers, and we have good data on men and we are getting the data on women, 25 to 54, nearly one-third of individuals who are not in the work force took an opioid yesterday. Not last week or last month but yesterday. And that really is a measure of how serious this crisis is.

And so we reformed our workers' compensation program. We put in effective controls, tailored treatment, where we look at individuals and how they are treated, and work with their physicians, and new fraud detection. And here are the results, a 31 percent decrease in overall opioid use, a 24 percent decrease in new prescriptions, a 52 percent decrease in prescriptions over 30 days. On the prescriptions with the highest doses, the highest likelihood of addiction, morphine equivalent dose of 500 or more, a 62 percent decrease. And in terms of referrals for criminal prosecution, we went from three in 2016 to 64 for fraud.

And I say this, not only is it important for us but it places, you know, this says to the public other similar programs can implement these measures and get the same results. So thank you for the question.

Mr. BYRNE. Well, thank you. And I know that you have been working very hard on this joint employer rule and I know you are in process with that and getting feedback from people. Do you think that the proposed rule will provide clarity for small businesses and workers so that they can understand what they are actually dealing with?

Secretary ACOSTA. Congressman, that is right. So the different Federal circuits, the different courts of appeal had each developed their own rule. And so what we tried to do with this rule is survey the circuits and say, what is the plurality rule? What is the rule that is shared by the majority of the circuits? And in essence, we are proposing the plurality rule. It is common sense, it is straightforward. And it gives businesses and individuals throughout the Nation clarity as to what exactly the rule is so they can follow it.

Mr. BYRNE. Well, I appreciate that. Because we have heard an awful lot from small businesses around the country about how that—the prior rule would have adversely affected them. So I appreciate your taking a look at that.

Let me bring one other issue to your attention that came up in February on the Workforce Protection Subcommittee that I sit on. We held a hearing on workplace violence impacting healthcare and social service workers. And I did not vote for the bill, did not sponsor that bill, but I share the concerns of my colleagues on the other side of the aisle that we need to move forward, OSHA needs to move forward with rulemaking in this area.

I just want to let you know that there is sort of a joint feeling we need to move forward with that. Do you have anything you can report to us on that?

Secretary ACOSTA. So I appreciate—first, thank you for letting me know. And OSHA is, in fact, moving forward. The first step is to convey what is known as a SBREFA panel, a panel that brings

together various stakeholders and solicits input. And we are in the process of putting that SBREFA panel forward.

Mr. BYRNE. Thank you very much for that. I think the one thing that we all shared on that panel after the hearing was that this is a real problem and needs to be resolved. I know we have had some problems getting some people through the Senate that would help you with that. But it is my hope that you all will move forward on that expeditiously, because those workers do need the protection we can give them.

Secretary ACOSTA. Right.

Mr. BYRNE. Once again, thank you for your service. And I yield back.

Chairman SCOTT. Do you yield to the Ranking Member? You yield back?

Mr. BYRNE. I yield back.

Chairman SCOTT. The gentlelady from Connecticut, Mrs. Hayes.

Mrs. HAYES. Good afternoon. And thank you, Secretary Acosta, for being here today.

Earlier in this hearing, Congresswoman Fudge asked you about overall cuts to the Job Corps program, something like $700 million in cuts. And you talk about revolutionary Job Corps pilot programs. But I do not understand how we are going to have revolutionary programs if we are having such large cuts that would really attack the basic needs of the program. And I am particularly shocked to see a call for an immediate closure of about 25 different Job Corps centers operated by the U.S. Department of Agriculture, with no explanation of a closure plan or requests for funding to support the wind-down process. Do you know where exactly those 25 programs would close?

Secretary ACOSTA. So, Congresswoman, first with respect to the closures of the Job Corps operated by the Department of Agriculture, ultimately the question is, are those Job Corps programs focused on the skills that are currently most required by the economy and is the Department of Agriculture in a position and do they wish to continue those Job Corps programs.

Let me go to the budget question and why pilot programs. The Job Corps budget has been a matter of contention going back several presidencies. And I have talked to former secretaries of labor for presidents who are no longer with us that pointed this out. And so I think it is important to look at reforms and at optimizing the program and at pilot projects, irrespective of where that budget ends up. And that is why we are looking at pilot projects, to try different methodologies in Job Corps centers. And we are focusing on States where the Governors want to try out different approaches and we are empowering the Governors to do that.

Mrs. HAYES. Okay, so, but if this budget were to go into effect, I guess my challenge is, because I was a teacher before I came to Congress, what happens to all of the students who are displaced by the closures of these centers? So I guess my question, let me just give you the question first, does the Department of Labor have a plan for those students? Because, once again, pilot programs are not going to catch all of those students whose only option would be to go into a skills training program.

Secretary ACOSTA. Congresswoman, I understand your question and, certainly, if any—when any Job Corps center is closed, there is a teach-out process, where we would ensure that the students that are currently there have the ability to complete their programs and their education. We would not just close it and tell those students, oh, good luck. That would not be our approach.

Mrs. HAYES. But what about the next group of students? With these decreases in funding, we are closing the door to opportunity for future students.

Secretary ACOSTA. So I share your concern, Congresswoman. I will give you an example. One of the pilot programs that we are trying out is called Job Corps Scholars. Currently, we are spending well over $30,000 per student, which is quite a bit. And so we are putting out a request for proposal for community colleges that want to do cohorts of 40 students at a time, to set up mini-Job Corps within their community colleges. And we are funding it for about half the cost, about 15,000 per year per individual, to cover tuition, to cover counseling, to cover room and board if the community college so chooses.

And so the point that I am raising—and this would be a small pilot. It would be only 1,600 students, to see if it works. But the point that I am sort of raising is, there are many ways of approaching work force education and I do think it is important to try different methods to see what works best. Job Corps has not changed in decades. And Job Corps reform is appropriate.

Mrs. HAYES. And I appreciate that answer, thank you. But when we talk about the many methods, we see cuts to the Department of Education, cuts to the Department of Labor. You know, these young people will hit the system again if they do not have the systems and the structures in place to help them become self-sufficient. So as your cut—1,600 is less than the number of kids that were in my high school. So I don't think that number is significant to talk about the work force that we are trying to educate, that we are trying to train for the jobs of the future.

I was very impressed this morning to hear my colleagues on the other side of the aisle talk about jobs like welding and skills training jobs. Those are all unionized jobs that really are the drivers of this work force. So I am glad we are on the same page about that.

But if we are not educating young people to go into those jobs, and 1,600 in a pilot program for the United States of America just doesn't seem sufficient. So I would just encourage you to think about that.

Secretary ACOSTA. Thank you, Congresswoman. And, you know, so a Job Corps center is only about 150 on average. And so a 1,600 pilot is about the size of 10, 10 Job Corps. But it is only a pilot, I know it is small. But we are just trying different approaches.

Mrs. HAYES. Mr. Chair, I yield back.

Chairman SCOTT. Thank you. The Ranking Member has an additional question.

Ms. FOXX. Thank you, Mr. Chairman. I appreciate it.

Mr. Secretary, full compliance is our goal for the laws the department enforces. For our wage and hour laws, we want workers to be paid the amount that they are owed when they are owed it. The Payroll Audit Independent Determination Program or the PAID

Program has been up and running for over a year. Under the PAID Program, business owners are encouraged to conduct audits and, if they discover violations, to self-report those violations. Business owners may then work in good faith with the department to correct their mistakes and quickly pay 100 percent of the back wages owed to the affected workers.

What feedback have you received from workers and business owners who have participated in the PAID Program? In your opinion, has the program been a success so far?

Secretary ACOSTA. So, Congresswoman, thank you for the question. As you rightly noted, wage enforcement is incredibly important. You know, in this past year, our Wage and Hour Division actually collected more money and returned it to American workers than any year in the history of wage and hour. And I say that and I preface the answer by pointing out, our enforcement is strong, as evidenced by the fact that we had our best enforcement year ever.

Now, there are a number of programs throughout government that allow individuals that identify a mistake to self-report and the PAID Program is one of those. It is not open to an individual if you have already been sued, if someone brought a claim against you. It is genuinely for those individuals that said, I identified a problem, I want to pay the money that is due to my employees. And in those cases, they can go forward.

Now, one of the issues we face is that attorneys general in some States have said if they do that, they will then face prosecution at the local level. And so we are working our way through that. But so far, we have had companies that have come forward and the money has gone back to employees and that is a good thing.

Ms. FOXX. Thank you, Mr. Chair.

Chairman SCOTT. Thank you. I now recognize myself for 5 minutes for questions.

Mr. Secretary, you indicated the differential between what we invest in technically qualified education plans and what we do in job development funds, the most frequently suggested response to this would be using Pell Grants for short-term programs. The challenge there is to make sure they are quality programs.

Do you have a specific plan to guarantee quality for these programs? Or do we need to work on that?

Secretary ACOSTA. Mr. Chairman, I recognize the importance of that. That is something that I think we should bring in Secretary DeVos and others into the conversation. But I think we should work on it because extending these Pell programs would be important. And if we can find a solution, I think everyone will win.

Chairman SCOTT. Okay, now, registered apprenticeship programs are eligible for Federal financial support; is that right?

Secretary ACOSTA. They do receive Federal dollars, yes.

Chairman SCOTT. Do the IRAPs get Federal support?

Secretary ACOSTA. Federal dollars are not used to support IRAP programs. Chairman, let me be specific. This committee and the Budget Committee appropriates apprenticeship dollars that go to support apprenticeships. I believe it is about $160 million per year. Those, by legislation, are specifically directed to the registered program.

Chairman SCOTT. The multi-employer pension crisis, has the department done any research on the cost of doing nothing? We know, for example, there would be less income tax paid, more access, more utilization of food stamps and Medicaid. Has the Department done an analysis of what the cost of doing nothing would be?

Secretary ACOSTA. Congressman, the PBGC has certainly done extensive analysis in the cost of not addressing this issue with respect to it is going to get more and more expensive. The dynamic impact beyond just the expense of the PBGC is something, if we have that data, I am not aware of it.

Chairman SCOTT. Could you provide for the record an update on the status of the beryllium regulations?

Secretary ACOSTA. So, Congressman, with respect to the beryllium, the PEL, which is the level, the exposure limit, has gone into effect for both general industry and construction and shipyards. There is also something called the STEL, which is the short-term exposure limit. That has also gone into effect. And so the exposure limits are now live and in effect throughout the Nation.

Separate from that are the ancillary provisions that are associated with beryllium. And those have to do with some of the equipment that is used, some of the medical monitoring. And so there is a notice of proposed rulemaking that was issued. We have received comments. We are in the process of going through those comments.

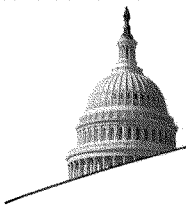
Let me just inform the Chairman, those comments were fulsome and actually quite helpful. Sometimes, rules collect comments and the comments do not bring new information. In this case they did, and so we are taking a little bit of time to fully consider those comments before developing a final rule.

Chairman SCOTT. It is a very important issue, particularly as it pertains to shipyards. So we will be following that.

On the association plans, as you have pointed out, those that can get into an association plan will always pay less because if the bids come in higher, nobody is going to buy it, they will stay in the marketplace. But if they come in lower, if they have got an association of young, healthy males, they can pay less. The problem is, if some pay less, others are going to pay more.

And I would like to introduce for the record a CBO report showing significant increases in premiums for everybody if the association plans and the junk plans are allowed.

[The information referred to follows:]



Congressional Budget Office

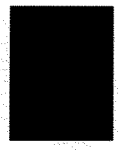
How CBO and JCT Analyzed Coverage Effects of New Rules for Association Health Plans and Short-Term Plans

JANUARY 2019

Notes

This analysis was conducted in August 2018 using projections of federal revenues and spending for fiscal years 2019 through 2028. Estimates of health insurance coverage reflect average monthly enrollment during a calendar year and include spouses and dependents covered under family policies. Those estimates are for the noninstitutionalized civilian population under age 65.

Numbers in the text, tables, and figure may not sum to totals because of rounding.



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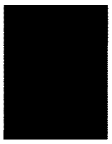


How CBO and JCT Analyzed Coverage Effects of New Rules for Association Health Plans and Short-Term Plans

Summary

During the summer of 2018, the Administration issued final rules governing coverage offered through association health plans (AHPs) and short-term, limited-duration insurance. (AHPs are legal arrangements that allow associations or unrelated employers to jointly offer fringe benefits to members or employees.) The rules were designed to increase enrollment in such plans, which may be sold in the small-group and nongroup insurance markets. AHPs and short-term plans are exempt from many of the regulations that govern other insurance offerings in those markets.

This report describes how the Congressional Budget Office and the staff of the Joint Committee on Taxation (JCT) analyzed the new rules and determined how those rules would affect the agencies' projections of the number of people who obtain health insurance and the costs of federal subsidies for that coverage. It also provides details about the projected effects.

CBO and JCT's current findings are similar to those from an analysis of the two rules as they were proposed. Those findings were published in a report on federal subsidies for insurance coverage that CBO released with its spring 2018 baseline.[1]

The agencies' two main findings from the current analysis are as follows:

- Each year over the next decade, roughly 5 million more people are projected to be enrolled in AHPs or short-term plans as a result of the two rules. Almost 80 percent are people who would otherwise have purchased coverage in the small-group or nongroup markets. The remaining 20 percent (roughly 1 million people) are projected to be newly insured as a result of the rules.

- Once the two rules take full effect, premiums for coverage in the fully regulated small-group and nongroup markets are projected to be roughly 3 percent higher than they would have been without the rules. In 2028, for example, such an increase would raise average annual premiums by roughly $350 to $400 for single coverage and by $900 to $950 for family coverage. Premiums for fully regulated coverage are projected to rise because people who continue to purchase coverage in the fully regulated markets are expected to have higher average health care costs than those who purchase AHPs or short-term plans. Because federal subsidies defray some of the higher costs, CBO and JCT do not expect that premium increase to spur a noticeable decline in insurance coverage.

What Are the New Rules?

In June 2018, the Administration published a final rule that modified the definition of "employer" under title I of the Employee Retirement Income Security Act, or ERISA. In August, it published a final rule to amend the definition of "short-term, limited-duration insurance."[2]

1. See Congressional Budget Office, *Federal Subsidies for Health Insurance Coverage for People Under Age 65: 2018 to 2028* (May 2018), pp. 10–11, www.cbo.gov/publication/53826.

2. See Definition of "Employer" Under Section 3(5) of ERISA—Association Health Plans, 83 Fed. Reg. 28912 (June 21, 2018), https://go.usa.gov/xPf4M; and Short-Term, Limited-Duration Insurance, 83 Fed. Reg. 38212 (August 3, 2018), https://go.usa.gov/xEcKs.

Association Health Plans

The first rule makes it easier for business associations and other entities to offer health insurance through AHPs. Although such coverage existed before that rule was issued, the rule established a new, less restrictive pathway for groups to form associations that offer plans, and it broadened the definition of "small employer" to include self-employed people.[3]

The rule also specifies that AHPs formed under the new pathway would be regulated as though they offered large-group coverage—rather than nongroup or small-group coverage—regardless of the size of member businesses. (Large-group coverage is generally for businesses with more than 50 employees; small-group coverage is for businesses with 50 employees or fewer. Nongroup coverage is purchased directly by an individual from an insurer or through a health insurance marketplace rather than through an employer.) Although large-group coverage is subject to federal and state regulations, it is exempt from some requirements that are specific to the nongroup and small-group markets, notably the following:

- Insurance plans must cover what are termed essential health benefits—that is, 10 categories of health care services that federal law defines as essential; and
- Within a given geographic region, premiums must be community rated—they may vary only within a predefined range and only on the basis of age and tobacco use.

All other factors being equal, coverage of essential health benefits increases the financial protection associated with health insurance by increasing the scope of coverage but also the cost of premiums. Community rating makes it easier for people who are older or less healthy to afford health insurance, but it tends to lead to higher premiums for people who are younger and healthier.

Short-Term, Limited-Duration Insurance

The new rule for short-term plans extends their maximum duration from three months to 364 days and allows people to renew their policies for up to three years. Federal law exempts short-term plans from compliance with most regulations that govern nongroup coverage, including those that require coverage of essential health benefits and community rating but also guaranteed issue—the requirement that insurers offer policies to all applicants regardless of health status. Guaranteed issue makes it easier for people with preexisting conditions to gain access to health insurance, but it leads to higher premiums for other people.

Similarities Between AHPs and Short-Term Plans Offered Under the New Rules

Because coverage sold under either of the two new rules need not comply with all of the requirements governing the nongroup and small-group markets, CBO and JCT expect that, on average, premiums for coverage under both types of plans will cost less than premiums for coverage in the fully regulated nongroup and small-group markets. That is particularly the case for the new types of coverage that will be available for younger and healthier people.

Differences Between AHPs and Short-Term Plans Offered Under the New Rules

Although the two new types of coverage share some features, there are important distinctions concerning the types of plans that insurers may offer and the characteristics of people who might purchase those plans.

Availability and Pricing. For AHPs, premiums may reflect the expected health care spending of each association, but insurers cannot refuse coverage to association members. For short-term plans, insurers may charge premiums that reflect the expected health care spending for individual applicants and may refuse to cover people with high expected health care spending or preexisting conditions.

Scope of Benefits. Although neither type of plan must cover all essential health benefits, AHPs tend to cover most of them. Short-term plans, however, are more likely to exclude many of those benefits and often exclude coverage for preexisting conditions. On the basis of

3. The rule retained the original pathway for groups to form associations and offer AHPs but created a new pathway that has less stringent requirements for the "commonality of interest" test for associations. In particular, groups of employers are considered to meet that requirement if they share an industry (real estate, law, or hospitality, for example) or are based in the same geographic area. Under the original pathway, employer groups must have both attributes in common. AHPs formed under the new pathway will operate under a different set of regulations. For example, unlike AHPs formed under the original pathway, they will not be able to vary premiums on the basis of health status for each member of the association. For more information, see Fritz Busch and Jason Karcher, *Association Health Plans After the Final Rule* (Milliman, August 2018), http://tinyurl.com/y7nmfoyv.

interviews with insurers and other stakeholders, CBO and JCT expect that most of the new short-term plans will provide coverage that is more similar to AHP coverage than it is to coverage in short-term plans that predate the new rule but that, overall, AHPs will continue to provide broader coverage than short-term plans.

Eligibility. To be eligible to purchase AHP coverage, one must either work for a small employer that offers AHP coverage or be self-employed and a member of an association that sponsors an AHP. No similar requirements apply to purchasers of short-term plans.

How Does CBO's Baseline Reflect Administrative Actions?

CBO's baseline budget and economic projections are constructed to reflect an assumption that current laws governing taxes and spending would generally remain in place during the current fiscal year and for the ensuing 10 years. The baseline projections are not intended to predict budgetary outcomes; rather, they reflect the agency's best assessment about how the economy and the federal budget would evolve under existing laws. The baseline serves as a neutral benchmark against which Members of Congress can measure the budgetary effects of proposed legislation.

Each year, CBO provides the Congress with updated baseline projections of federal revenues, spending, and the resulting deficits. It adjusts those projections throughout the year to account for enacted legislation and for other changes in law, including new regulations that are issued between formal baseline updates.

Those projections include the costs of federal subsidies for health insurance, which reflect CBO's estimates of the number of people with various types of coverage. The agency uses that coverage baseline to estimate the effects of proposed legislation on people's sources of health insurance and on the number of people who would be without insurance.

The new rules for AHPs and short-term plans had been proposed but were not yet final in May 2018, when CBO last reported on federal subsidies for insurance coverage.[4] In keeping with CBO's practices for estimating the effects of proposed rules, those projections incorporated an assumption reflecting a 50 percent chance that the final rules would be the same as those proposed and a 50 percent chance that no rules like those proposed would be issued. A final rule, once issued, becomes CBO's basis for estimating the effects of legislation. After the two rules were made final, CBO incorporated 100 percent of the estimated effects of each into its baseline projections.

The final rules were similar to the proposed rules. The most significant difference that affected CBO and JCT's estimate was that both rules were implemented earlier than the agencies had assumed for their spring estimates. The earlier implementation dates would—in isolation—have increased CBO and JCT's estimates of enrollment in AHPs and short-term plans. However, several states enacted laws that prohibited the sale of short-term plans or required short-term plans to comply with all regulations that govern the nongroup health insurance market. Those laws are expected to reduce enrollment in short-term plans. As a result, CBO and JCT estimate that enrollment in AHPs and short-term plans under the final rules will be similar to the estimated enrollment described in CBO's May 2018 report on federal subsidies for health insurance coverage.

How Did CBO and JCT Approach the Analysis?

To estimate the effects of the new rules for AHPs and short-term plans, CBO and JCT analyzed the incremental increase in coverage in both types of plans that will result from the rules (rather than assessing total enrollment in those plans, which were available before the final regulations were issued). The agencies followed several steps in completing their analysis, beginning with a comparison of estimated premiums for the new plans with those for the lowest-cost insurance otherwise available to individuals and small employers.

Then, CBO and JCT adjusted that comparison to reflect any differences in the portion of medical expenses paid by the insurer (often called a plan's actuarial value) and the scope of services covered.[5] Although a premium for a new plan might be as much as 90 percent below the

4. See Congressional Budget Office, *Federal Subsidies for Health Insurance Coverage for People Under Age 65: 2018 to 2028* (May 2018), pp. 10–11, www.cbo.gov/publication/53826.

5. CBO and JCT estimated actuarial values on the basis of data from existing AHPs and short-term plans and after accounting for information gathered in interviews with insurers and other stakeholders about how the AHPs and short-term plans offered as a result of the rules would compare with existing products.

premium of the lowest-priced plan currently available to someone with low expected health care spending, a new plan need not offer comparable benefits. (For many people, the premium amount for a new plan could be higher than their existing premium. Moreover, insurers can deny coverage in the new plans to an applicant or association with particularly high expected health care costs.)

The estimated average differences in premiums also reflect the expected health care spending for purchasers of AHPs and short-term plans. CBO and JCT used CBO's health insurance simulation model to estimate potential purchasers' expected health care costs under the new types of AHPs and short-term plans and to project those costs relative to costs for other people with small-group and nongroup coverage.[6] On the basis of that analysis and other research, CBO and JCT projected that roughly 40 percent of people either would prefer fully regulated coverage to that offered by AHPs or short-term plans or would have health conditions that might prompt insurers to deny them coverage under a new plan. The remaining 60 percent of people would be candidates for coverage offered under the new rules.

Potential purchasers are people who have no preexisting condition that would cause an insurer to deny them coverage entirely, those without a preexisting condition that requires continuing treatment that might not be covered under the new types of plans, and those who do not expect to use essential health benefits that are covered under fully regulated health plans but not under the new types of AHPs and short-term plans.

After identifying potential purchasers, CBO and JCT estimated a measure known as elasticity: the percentage change in the number of people who would choose different health coverage in response to a 1 percent change in a premium. In this case, elasticity is used to arrive at an estimate of how readily someone would respond to the availability of lower-priced insurance. In general, CBO and JCT expect that lower premiums are more likely to attract people and employers who already purchase coverage than they are to convince a person or employer to purchase coverage for the first time. That is, the estimated elasticity is higher among people and employers currently in the insurance market. That expectation reflects both a thorough review of the literature and interviews with insurers and other stakeholders about what types of people and employers would be most likely to take up the new types of coverage offered under the two rules. (Specific elasticities, the research involved, and the basis for other key inputs to the estimate are discussed below in "What Key Technical Inputs Did CBO and JCT Use?")

CBO and JCT estimated the effects of the two rules jointly because each provides an alternative way for people to purchase coverage that does not comply with the regulations governing other insurance sold in the nongroup and small-group markets. For many self-employed people, AHPs and short-term plans can be seen as substitutes for one another: If one type of plan is not available, people can instead purchase the other.[7] CBO and JCT expect that if there had been no rule increasing the availability of short-term plans, more people would enroll in an AHP offered by their employer. In developing the estimates, CBO interviewed national and regional insurers, policy and legal experts, people who work for industry associations, and state insurance regulators.

Association Health Plans

CBO and JCT began by estimating premiums for the new AHPs and comparing those estimates with estimates of premiums for coverage currently sold in the small-group market.[8] On the basis of their analysis of existing

6. For more information about CBO's current health insurance simulation model, see Congressional Budget Office, "The Health Insurance Simulation Model Used in Preparing CBO's 2018 Baseline" (presentation, February 2018), www.cbo.gov/publication/53592. CBO will use an updated version of that model to develop the agency's spring 2019 projections and subsequent cost estimates. For more information, see Jessica Banthin and Alex Minicozzi, "Updating CBO's Health Insurance Simulation Model (HISIM)" (presentation at the Bipartisan Policy Center, Washington D.C., June 19, 2018), www.cbo.gov/publication/54063.

7. Because people who do not work for small employers and are not self-employed can purchase short-term plans but not AHPs, their choice of coverage is affected only by the rule on short-term plans.

8. Although some self-employed people may purchase coverage through AHPs as a result of the rule, others may purchase short-term plans. CBO and JCT expect that such people will compare the AHP and short-term plan premiums with premiums for fully regulated nongroup coverage. CBO and JCT therefore modeled the decisions of self-employed people as a choice to move from fully regulated nongroup coverage into either AHP or short-term plan coverage.

premiums and as a result of interviews with insurers and other stakeholders, CBO and JCT estimate that premiums for AHPs sold under the new rules will be, on average, roughly 30 percent lower than premiums for fully regulated small-group coverage.

That difference reflects two considerations: First, AHPs need not cover all essential health benefits, and second, AHPs are permitted to set premiums on the basis of each association's expected or actual health care spending rather than at the community level. CBO and JCT estimate that the majority of the difference in premiums will stem from lower expected health care spending for AHP enrollees and not from differences in the scope of coverage. Indeed, CBO and JCT expect that the coverage provided by the newly offered AHPs will be similar to that under AHPs sold before the new rule, many of which need not cover all of the essential health benefits but still offer coverage that is similar to comprehensive employment-based coverage. According to insurers and other stakeholders, although AHPs may exclude some benefits that are required in the nongroup and small-group markets, they sometimes offer wider provider networks or lower deductibles than are available through other types of nongroup and small-group coverage. CBO and JCT expect that, on balance, the scope of benefits offered by AHPs will be somewhat narrower than the scope of benefits offered by other plans in the small-group market.

The primary factor driving lower premiums for AHPs is the ability to price premiums on the basis of each association's expected health care spending and thereby attract employers with relatively low-risk employees and avoid those with higher-risk employees. In the existing nongroup and small-group markets, insurers must use community rating to set premiums that reflect average costs across all enrollees within the markets. By offering coverage outside of those markets, AHPs can selectively cover people with lower expected health care costs and thus offer lower premiums.

Because expected health care costs for people who purchase the newly created AHPs are likely be lower than those of the average small-group enrollee, CBO and JCT anticipate that the departure of such people from the regulated small-group market will result in an increase of roughly 3 percent for premiums among the plans offered by the remaining employers. However, because premiums for AHPs will be lower than premiums small employers are currently paying, premiums for the small-group market as a whole are projected to decline as a result of the rule.

Short-Term Plans

To estimate enrollment in newly offered short-term plans, CBO and JCT compared expected premiums with the lowest premiums available in the fully regulated nongroup market. That analytical choice reflects an assumption that people who are expected to purchase a short-term plan would compare the premium for that plan with the lowest-cost alternative otherwise available (including any premium tax credits).[9] For most people who have nongroup coverage or are uninsured, the lowest-cost premium for available coverage generally corresponds to that for a bronze health plan (for which the insurer pays, on average, 60 percent of covered expenses).[10]

The difference in premiums between short-term plans and plans sold in the fully regulated nongroup market occurs because short-term plans are not required to cover all essential health benefits, insurers can price premiums on the basis of an individual's expected health care spending, and short-term plans are permitted to exclude coverage of preexisting conditions or to refuse to provide or renew a plan for someone who uses costly health care services. That ability to exclude people with higher expected health care costs is a significant contributor to the lower premiums charged by short-term plans. Because people who purchase the newly created short-term plans will have lower average health care costs than other nongroup enrollees, CBO and JCT estimate that their departure from the regulated nongroup market will raise premiums for the rest of that market by roughly 3 percent.

The difference between premiums for short-term plans and for the lowest-cost option available through the marketplaces depends on the applicant's characteristics, including age, health status, and income. Net premiums

9. Under current law, tax credits are available to defray the cost of premiums for people whose income is generally between 100 percent and 400 percent of the federal poverty guidelines (the federal poverty level) who have no other affordable source of health insurance.

10. In most marketplaces, people can choose a plan on the basis of its actuarial value On average, bronze, silver, and gold plans pay about 60 percent, 70 percent, and 80 percent, respectively, of covered expenses.

(premiums paid after accounting for federal subsidies for health insurance) for the lowest-cost plan available in the marketplaces vary significantly depending on the size of the premium tax credit purchasers are eligible to receive. For example, some people can obtain bronze plans while paying a negligible net premium even though their total or gross premium might be significantly higher. CBO and JCT estimate that premiums for plans newly offered as a result of the short-term rule also will vary significantly because insurers will set premiums on the basis of a person's health status and in some cases will deny coverage to an applicant. As a result, premiums for short-term plans will be less than premiums for the lowest-cost marketplace plan for some people and higher for others.

On the basis of interviews with insurers and other stakeholders, CBO and JCT expect that a range of new short-term insurance products will be sold as a result of the new rule. For this estimate, CBO and JCT modeled two categories: traditional short-term plans (TSPs) and insured short-term plans (ISPs).

TSPs would be similar to the short-term plans that were available before August 2018 but would provide coverage for up to 364 days rather than for three months. The terms of such plans vary widely, but most offer limited benefits and cover only a fixed amount for large expenses, such as inpatient hospital care. TSPs do not cover high-cost, low-probability events and therefore do not meet CBO's definition of private health insurance.[11] Estimating the actuarial value of such products is challenging because the scope of coverage is so varied and because coverage generally completely excludes services for any preexisting condition. CBO and JCT estimate that uninsured people with low expected health care costs who are ineligible for premium tax credits may be able to enroll in a TSP with premiums that are as much as 90 percent below those of the lowest-cost bronze plan available through a nongroup marketplace. However, many people who are eligible for premium tax credits or who are older or have higher expected health care spending would probably pay more for a TSP than for the lowest-cost bronze plan.

CBO and JCT project that ISPs, unlike TSPs, will offer financial protection against high-cost, low-probability events. ISPs thus meet CBO's definition of insurance. CBO and JCT expect that ISPs will resemble a typical nongroup insurance plan offered before 2014, when many federal regulations—for example, those governing essential health benefits and guaranteed issue—took effect. Although ISPs may exclude some benefits that other nongroup plans must cover, they may have lower deductibles or wider provider networks than plans in the fully regulated nongroup market. Premiums for ISPs will vary with individuals' health characteristics but may be as much as 60 percent lower than premiums for the lowest-cost bronze plan for people with low expected health care costs who are ineligible for premium tax credits.

How Are the New Rules Expected to Change Coverage?

CBO and JCT estimated the number of people who would newly enroll either in an AHP or in a short-term plan as a result of the two final rules. The estimates account for increased enrollment resulting from the two rules but not for total enrollment in AHPs or short-term plans. The agencies' analysis was confined to the effects of the rules and did not account for other recent administrative actions that could change the types of health insurance available to individuals or to employers.[12]

CBO and JCT anticipate that roughly 5 million more people will be enrolled in an AHP or a short-term plan each year over the next decade as a result of the new rules (see Table 1). Of that group, roughly 3 million would otherwise have been insured in the small-group market, 1 million would have had insurance through the nongroup market, and 1 million would have been uninsured. Almost three-quarters of the 5 million people who change coverage will purchase an AHP, CBO and JCT estimate, and the rest will purchase a short-term plan.

11. CBO broadly defines private health insurance coverage as a comprehensive major medical policy that, at a minimum, covers high-cost medical events and various services, including those provided by physicians and hospitals. See Congressional Budget Office, *How CBO Defines and Estimates Health Insurance Coverage for People Under Age 65* (May 2018), www.cbo.gov/publication/53822.

12. In particular, CBO and JCT did not consider the effects of the proposed rule on health reimbursement arrangements because their analysis was conducted in August 2018 before the notice of proposed rulemaking was published. See Health Reimbursement Arrangements and Other Account-Based Group Health Plans, 83 Fed. Reg. 54420 (October 29, 2018), https://go.usa.gov/xP6tC. Similarly, the agencies did not account for the October 2018 guidance issued to states on waivers under section 1332 of the Affordable Care Act; see State Relief and Empowerment Waivers, 83 Fed. Reg. 53575 (October 24, 2018), https://go.usa.gov/xPz5Z.

Table 1.

Projected Average Annual Enrollment With and Without the New Rules for AHPs and Short-Term Plans, 2019 to 2028

		With the New Rules		
	Without the New Rules[a]	Coverage Status Changes[b]		Coverage Status Stays the Same
	(Millions of people)	(Millions of people)	(Percent)	(Millions of people)
Uninsured	35.2	1.1	3	34.1
Insured in the Small-Group Market	23.2	3.1	13	20.1
Insured in the Nongroup Market With a Premium Tax Credit	6.9	0.2	3	6.7
Insured in the Nongroup Market Without a Premium Tax Credit	5.2	0.7	12	4.6
Total	**70.5**	**5.1**	**7**	**65.5**

Sources: Congressional Budget Office; staff of the Joint Committee on Taxation.

AHP = association health plan.

a. The four categories are the groups that CBO and JCT identified as potentially affected by the new rules for AHPs and short-term plans. The numbers of people are CBO and JCT's coverage projections before accounting for any likely effects of the new rules.

b. CBO and JCT expect that some short-term plans will not cover high-cost, low-probability events and therefore will not meet CBO's definition of private health insurance. For more information, see Congressional Budget Office, *How CBO Defines and Estimates Health Insurance Coverage for People Under Age 65* (May 2018), www.cbo.gov/publication/53822.

Those movements represent a small share of the total number of people in each category. Specifically, CBO and JCT expect that of the people who would otherwise be uninsured altogether or who would be insured and receiving a premium tax credit for nongroup coverage, fewer than 5 percent will change their coverage status. The agencies anticipate that among people who would otherwise be insured in the nongroup market without a premium tax credit or who would otherwise be insured in the small-group market, fewer than 15 percent will switch to a new type of coverage. Those findings are consistent with estimates provided by other organizations (see below, "How Do CBO and JCT's Estimates Compare With Other Analyses?").

Movement From the Small-Group Market

The largest estimated change occurs for people who would otherwise be insured in the small-group market and who will move into a new AHP (see Figure 1). CBO and JCT estimate that, on average, roughly 3 million people who would have had small-group coverage in the regulated market will instead have AHP coverage under that rule (see Table 2). That group is the largest of those projected to change their coverage status, primarily because the small-group market is roughly twice the size of the nongroup market. Furthermore, enrollment in AHPs is expected to be higher among employers that already offer coverage than it is among employers that do not.

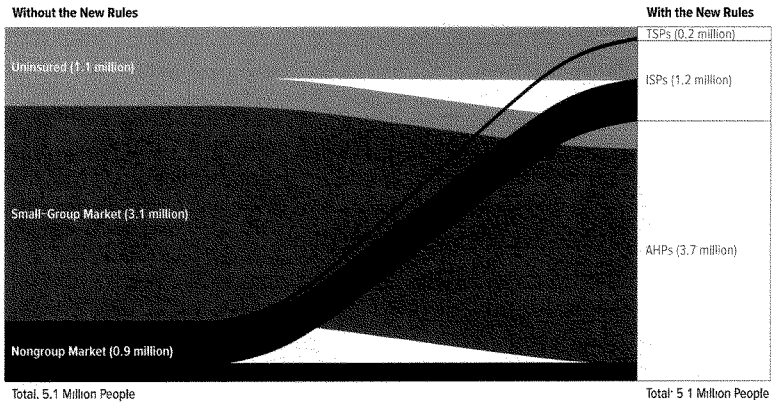
Movement From the Nongroup Market

The estimated movement among people with nongroup coverage is smaller in part because subsidies are available for nongroup coverage as long as that coverage is purchased through the marketplaces. People whose income is generally between 100 percent and 400 percent of the federal poverty guidelines (also called the federal poverty level, or FPL) are eligible for tax credits that reduce the price of the premium on the basis of income if they purchase nongroup coverage through a marketplace. Such individuals represented almost 60 percent of all people with nongroup coverage in 2018, CBO and JCT estimate. Those credits provide the most extensive subsidies to lower-income recipients and to recipients who are older and have higher premiums; they decrease as income rises and as premiums decrease.

Because of the credits, CBO and JCT estimate, net premiums for TSPs and ISPs generally will be higher than those for bronze plans for people whose income is below 300 percent of the FPL. CBO and JCT therefore expect that people with income below 300 percent of the FPL will be unlikely to purchase short-term plans.

Figure 1.

Estimated Average Annual Enrollment of People Who Are Projected to Change Their Insurance Coverage Because of the New Rules for AHPs and Short-Term Plans, 2019 to 2028



Sources: Congressional Budget Office; staff of the Joint Committee on Taxation.

The estimated 5.1 million people whose coverage will be affected by the new rules represent less than 10 percent of people who otherwise would be uninsured or would be insured through the small-group or nongroup market.

TSPs do not cover high-cost, low-probability events and therefore do not meet CBO's definition of private health insurance. For more information, see Congressional Budget Office, *How CBO Defines and Estimates Health Insurance Coverage for People Under Age 65* (May 2018), www.cbo.gov/publication/53822

AHP = association health plan; ISP = insured short-term plan, TSP = traditional short-term plan

Even for people whose income is between 300 percent and 400 percent of the FPL, CBO and JCT expect, bronze plans generally would be less costly than any short-term plan. Although most people who receive premium tax credits will pay less for a bronze health plan than for a short-term plan, CBO and JCT estimate that some young people with very low expected health care spending might pay less for a short-term plan and, therefore, switch coverage. The agencies estimate that in an average year, fewer than 50,000 people who would otherwise have purchased nongroup coverage with a tax credit will instead enroll in a short-term plan.

Effects are anticipated to be larger among people whose income is too high to receive subsidies: CBO and JCT estimate that roughly 600,000 people who would otherwise have purchased nongroup coverage without a premium tax credit (about 10 percent of that population) will enroll in a short-term plan. The agencies also estimate that 95 percent of people moving from fully regulated nongroup coverage into short-term plans will purchase ISPs and that the remaining 5 percent will purchase TSPs. (Because TSPs are not expected to cover high-cost, low-probability events and therefore do not meet CBO's definition of private health insurance, people moving from the nongroup market into TSPs would be considered uninsured.)

Several factors led CBO and JCT to anticipate that most new enrollment in short-term plans will be in ISPs rather than TSPs. First, interviews with insurers and other stakeholders suggested that most people would prefer more comprehensive insurance coverage to TSPs, and many insurers indicated a preference for offering more substantial coverage. In addition, enrollment data for the nongroup market as a whole that predate 2014

(when many of the regulations governing nongroup insurance coverage took effect) suggest that the number of people who purchased coverage resembling ISPs was far greater than the number purchasing coverage that resembled TSPs.

New Short-Term Coverage Among Previously Uninsured People

CBO and JCT also expect a small number of currently uninsured people to purchase short-term plans. That group includes younger and healthier people who are not eligible for premium tax credits. They are likely to see short-term plans with premiums that are significantly lower than the lowest-cost option available through the fully regulated nongroup market. CBO and JCT estimate that roughly 600,000 people will gain insurance coverage by purchasing ISPs as a result of the short-term-plan rule. Only about 100,000 people will purchase TSPs and thus, in CBO and JCT's projections of health insurance coverage, will remain uninsured.

New Offers of Coverage by Employers

CBO and JCT expect that a small number of employers who otherwise would not have offered coverage will start offering AHP coverage to their employees. The agencies estimate that, on average, 400,000 people will have new AHP coverage who otherwise would be uninsured over the 2019–2028 period. (A smaller number who would have been insured in the nongroup market would be expected to receive an employment-based offer of AHP coverage.) Although most people will probably accept the newly offered employment-based coverage, CBO and JCT estimate that roughly 5 percent will decline (see the section on key technical inputs).

Eligibility for the premium tax credits for nongroup coverage purchased through the marketplaces is conditional on not having an affordable offer of insurance through an employer. As a result of those new affordable offers of AHP coverage (which would meet CBO's definition of insurance), CBO and JCT estimate that a very small number of people will receive but decline an affordable AHP offer, which will cause them to lose eligibility for the premium tax credits and to become uninsured.

What Are the Greatest Sources of Uncertainty in the Estimates?

CBO and JCT's estimates of the effects of the AHP and short-term-plan rules aim to represent the middle of an extremely broad range of possible outcomes. The projections are inherently uncertain in large part because of legal and administrative questions. There is considerable uncertainty regarding the Administration's implementation and enforcement of the new rules—for example, the AHP rule includes language suggesting that the Administration might preempt state laws that limit the new rule's effects. To the extent that the Administration challenges state laws, such actions might affect the availability of various types of insurance coverage. Furthermore, both rules are facing court challenges.[13]

Some questions about how insurers, states, employers, individuals, and other affected parties will respond to the new rules cannot be answered definitively. Considerable change has occurred in the nongroup and small-group markets in recent years; the market fluctuations caused by mergers and by the entry and exit of insurers, for

Table 2.

Estimated Average Annual Enrollment of People Who Are Projected to Change Their Insurance Coverage Because of the New Rules for AHPs and Short-Term Plans, 2019 to 2028

Millions of People

		Coverage Status With the New Rules		
Coverage Status	Without the New Rules	AHP	TSP	ISP
Uninsured	1.1	0.4	0.1	0.6
Insured in the Small-Group Market	3.1	3.1	*	*
Insured in the Nongroup Market	0.9	0.2	*	0.6
Total	**5.1**	**3.7**	**0.2**	**1.2**

Sources: Congressional Budget Office; staff of the Joint Committee on Taxation.

The estimated 5.1 million people whose coverage will be affected by the new rules represent less than 10 percent of people who otherwise would be uninsured or would be insured through the small-group or nongroup market.

TSPs do not cover high-cost, low-probability events and therefore do not meet CBO's definition of private health insurance. For more information, see Congressional Budget Office, *How CBO Defines and Estimates Health Insurance Coverage for People Under Age 65* (May 2018), www.cbo.gov/publication/53822.

AHP = association health plan, ISP = insured short-term plan, TSP = traditional short-term plan; * = between zero and 49,000 people.

13. See *New York v. Department of Labor*, No. 18-1747 (D.D.C. filed July 26, 2018); and *Association for Community Affiliated Plans v. Department of the Treasury*, No. 18-2133 (D.D.C. filed September 24, 2018)

Table 3.

Estimates of Annual Enrollment in AHPs and Short-Term Plans Resulting From the New Rules for AHPs and Short-Term Plans

Millions of Enrollees

Published Source	Year	Enrollment
AHPs		
Avalere Health, 2018	2022	2.4 to 4.3
CBO and JCT	**2022**	**4.6**
Short-Term Plans		
Rao, Nowak, and Eibner, 2018	Not specified	Negligible to 5[a]
Wakely Consulting Group, 2018	After 4 years	1.1 to 1.9[b]
Federal Register, 2018	2028	1.4
CBO and JCT	**2028**	**1.6**
Center for Health and Economy, 2018	2028	3.2
Blumberg, Buettgens, and Wang, 2018a, b	2019	4.3[a]

Sources: Congressional Budget Office; staff of the Joint Committee on Taxation.

AHP = association health plan.

a. Includes the effects of repealing the requirement for individuals to have insurance.

b. Includes only the number of people leaving the nongroup market.

example, make forecasting people's responses more tenuous than might be possible under more stable conditions.

Although CBO and JCT interviewed a wide range of stakeholders about how people might respond to the two rules, the new types of AHPs and short-term plans that insurers will actually offer—and the premiums that they charge—may differ considerably from those that CBO and JCT have modeled. Different plan offerings or pricing would affect enrollment in the new plans, the characteristics of the enrollees those plans attract, and the resulting effects on the fully regulated small-group and nongroup markets.

States also will react in ways that could affect the types of plans offered and their enrollments. Some states have taken regulatory actions to block the rules from taking effect. When the rule on short-term plans was first proposed, three states—Massachusetts, New Jersey, and New York—already had rules banning such short-term plans, and other states had policies that limited the initial or total contract duration of short-term plans. Between publication of the proposed and the final rules, more states acted to prohibit or limit the sale of short-term coverage. CBO and JCT's current estimates reflect state governments' policies in place as of September 2018 (see the section on key technical inputs).

At the time that CBO and JCT conducted the analysis, other states were considering actions that might strengthen the effect of the proposed rules. For example, New Hampshire was evaluating how to amend state law to better conform to federal law and to ease the burden on insurers and associations offering new AHPs. Because some states were considering legislation that would enhance the effects of the final rules and other states were considering legislation that would dampen such effects, for this analysis, CBO and JCT did not attempt to project state actions into the future.

Finally, states could create other mechanisms for people to purchase coverage that is exempt from the regulations on small-group and nongroup markets. Iowa, for example, has enacted legislation authorizing the sale of "health benefit plans" through its Farm Bureau. Because the state does not define those plans as insurance, they need not comply with the federal or state regulations for nongroup and small-group coverage. CBO and JCT expect that the availability of such state-specific products will reduce enrollment in AHPs and short-term plans but will nevertheless increase enrollment outside of the fully regulated markets.

How Do CBO and JCT's Estimates Compare With Other Analyses?

CBO and JCT's assessment of the effects of the rules concerning AHPs and short-term plans is in line with other published analyses, although comparing results is difficult because the policy scenarios evaluated are different. (Those sources are listed in this report's selected bibliography.)[14] In particular, CBO and JCT found only one study, Covered California (2018), that analyzed the effects of both rules jointly. As a further complication, several studies of the rule for short-term plans presented combined findings for the effects of that rule and for repealing the requirement for individuals to have insurance.

Table 3 and Table 4 compare CBO and JCT's estimates of the effects of the rules after full implementation with

14. For another analysis of the various estimates of short-term plans, see Pope (2018) in the selected bibliography.

the estimates of other organizations. CBO and JCT's estimates, shown in those tables, are larger than the enrollment numbers presented earlier in this report because those earlier numbers are 10-year averages, which encompass several years during which the effects of the rules will be phased in. CBO and JCT expect that the markets will respond to the rules over several years and that the effects of both rules will be fully evident by 2022.

CBO and JCT's estimates of enrollment in the new types of plans are similar to those of other organizations. For example, CBO and JCT estimate that, in 2022, roughly 4.6 million people will newly enroll in AHPs and that, in 2028, roughly 1.6 million people will newly enroll in short-term plans as the result of the rules (see Table 3). Although CBO and JCT's estimate of enrollment in AHPs in 2022 is slightly above the range of the other comparable estimate, the agencies' estimate of enrollment in short-term plans is within the broad range of estimates by other organizations.

The agencies' estimates of premium increases in the nongroup market also are similar to those of other organizations, which range up to 9 percent (see Table 4). As of December 2018, CBO and JCT had found no analyses of the effects of the rules on premiums in the fully regulated small-group market.

Table 4.

Estimates of Premium Increases in the Fully Regulated Nongroup Market Resulting From the New Rules for AHPs and Short-Term Plans

Percentage Increase

Published Source	Year	Premium Increase
AHPs and Short-Term Plans		
Covered California, 2018	2021	1.3 to 5.4
CBO and JCT	**2028[a]**	**3**
AHPs		
Corlette, Hammerquist, and Nakahata, 2018	Not specified	1.4 to 4.4
Avalere Health, 2018	2022	3.5
Short-Term Plans		
Rao, Nowak, and Eibner, 2018	Not specified	Negligible to 3.6[b]
Wakely Consulting Group, 2018	After 4 years	2.2 to 6.6
Federal Register, 2018	2028	5
Center for Health and Economy, 2018	2028	1 to 9

Sources: Congressional Budget Office; staff of the Joint Committee on Taxation.

AHP = association health plan

a CBO and JCT estimate that in 2021, premiums for nongroup coverage sold in the fully regulated markets would be 2 percent higher as a result of the two rules. However, the effects of both rules will not be fully evident until 2022.

b Includes the effects of repealing the requirement for individuals to have insurance.

What Key Technical Inputs Did CBO and JCT Use?

CBO and JCT developed several key technical inputs for the model that serves as this report's foundation. The agencies relied on research from various sources—listed in the selected bibliography—in developing and applying those inputs to estimate various populations' responses to new health insurance options (see Table 5).

Elasticities for Small Employers and for Individuals in the Nongroup Market

In economic research, price elasticity is a summary measure of the extent to which purchasing decisions are influenced by changes in price. CBO and JCT considered two inputs: purchase elasticity and cross-price elasticity.[15] Purchase elasticity measures changes in employers' and individuals' decisions to purchase coverage (either on behalf of employees or as individuals) in response to changes in premiums. Cross-price elasticity measures how readily people will switch between sources of insurance coverage in response to changes in premiums.

Research suggests that cross-price elasticities are much larger than purchase elasticities: That is, people respond to price changes by switching between plans more readily once they have decided that insurance coverage is something they want. (Although employers and individuals alike tend to view their current insurance as the default, the literature and interviews with insurers and stakeholders suggest that even with that tendency to renew coverage, cross-price elasticities are larger. This may be particularly true in the nongroup and small-group markets, which have been changing rapidly in recent years.)

15. In the economic literature, elasticities are often referred to as being on the extensive margin (whether to purchase or not) or the intensive margin (the amount to purchase). This report refers to the extensive margin as purchase elasticity.

Table 5.

CBO and JCT's Use of Technical Inputs to Estimate the Effects of the Rules on AHPs and Short-Term Plans

AHPs		Insured Short-Term Plans	
The number of people in uninsured families who work for small employers that do not offer any health insurance without the rule change	**8.9 million**[a]	The number of people with family marketplace coverage and income above 400 percent of the FPL without the rule change	**1.0 million**[a]
The percentage of small employers that do not offer any health insurance coverage and are potential purchasers of AHPs	× **60 percent**	The percentage of families with family marketplace coverage and income above 400 percent of the FPL who are potential purchasers	× **60 percent**
The average change in the small-employer premium	× **-30 percent**	The average change in the family premium	× **-55%**
The elasticity of small employers that do not currently offer coverage with respect to premiums	× **-0.38**	The elasticity of current nongroup market enrollees with respect to premiums	× **-1.18**
The share of people who accept their employer's offer of coverage	× **80 percent**	The share of people who live in states that allow ISPs under federal regulations	× **60 percent**
The projected number of people who are uninsured and gain family coverage through a small employer that begins to offer an AHP	**500,000**[a]	The projected number of people with income above 400 percent of the FPL who switch from family marketplace coverage to family ISPs	**200,000**[a]

Sources: Congressional Budget Office; staff of the Joint Committee on Taxation

AHP = association health plan, FPL = federal poverty level; ISP = insured short-term plan.

a. Rounded to the nearest hundred-thousand people.

For health insurance, elasticities are expressed as negative numbers because people are less inclined to purchase coverage when premiums rise.

In the models for AHPs and short-term plans, CBO and JCT used elasticities to anticipate people's choices about nongroup coverage and employers' choices for small-group coverage. The agencies estimated those elasticities through a review of the literature cited in the selected bibliography. In the small-group market, the elasticity for small employers that did not currently offer coverage is estimated at –0.38, and for small employers that did offer coverage, it is estimated at –0.76. In the nongroup market, CBO and JCT estimated, the purchase elasticity for coverage among people who are currently uninsured is –0.59, and the cross-price elasticity for people currently insured in the nongroup market is –1.18. (An elasticity of –0.59 implies that if premiums increase by 10 percent, the number of people with coverage will decrease by 5.9 percent.)

Take-Up Rates for People With Offers of Coverage From a Small Employer

After identifying small employers that would offer AHP coverage under the new rule, CBO and JCT examined take-up rates—the percentage of eligible people who actually enroll. For most populations, CBO and JCT used the take-up rates that they estimate as part of their health insurance projections. Those rates tend to be around 75 percent or 80 percent: That is, between 75 percent and 80 percent of the people who are offered coverage through a small employer accept that offer.

In some instances, CBO and JCT adjusted the rate to reflect certain populations' characteristics. A lower rate was used for people who, in the projections, would have an offer of employment-based insurance coverage in the absence of the two final rules but would choose not to take up that offer. A higher rate was used for people who expressed a strong preference for insurance (such as those who, in the absence of the new rules, would purchase nongroup coverage without a tax credit). Finally, CBO and JCT expect that most people who are projected to have insurance through a small employer would

retain that coverage, regardless of whether the employer switched to an AHP or continued to offer fully regulated coverage.

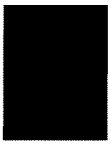
Effects of State Policies to Prevent Implementation of the Rules

AHPs and short-term plans are subject to federal and state regulation that in some cases could prevent the two new final rules from taking full effect. In their modeling, CBO and JCT reduced estimated enrollment in short-term plans by almost 40 percent to account for the possible mitigating effects of state laws, which can take a variety of forms but may include any of the following:

- Prohibitions on the sale of short-term plans;
- Requirements that short-term plans comply with guaranteed issue, community rating, and coverage of essential health benefits (regulations that govern the nongroup market); and
- Limiting enrollment in short-term plans to periods of as little as three or six months.

At the time that CBO and JCT conducted the analysis, the states of California, Hawaii, Illinois, Maryland, Massachusetts, New Jersey, New York, Oregon, Vermont, and Washington had laws in place that could be expected to nullify the effects of the new rule for short-term plans. Other states had laws that would reduce but not eliminate the effects, and none had enacted legislation that would augment the effects of the new rule. The selected bibliography lists the sources CBO and JCT consulted. The agencies will account for future changes to state laws during regular updates to their baseline projections of health insurance coverage.

CBO did not make a similar adjustment for the AHP rule because the extent to which states' policies will preclude the expansion of AHPs is not clear, nor is it clear whether the Administration will seek to preempt state laws that attempt to limit the possibility of expansion.



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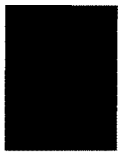


About This Document

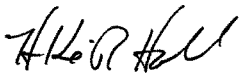
This document, which is part of the Congressional Budget Office's continuing effort to make its work transparent, explains how CBO and the staff of the Joint Committee on Taxation estimated the coverage changes associated with new rules that were aimed at increasing health insurance coverage either through association health plans or through short-term, limited-duration insurance. In keeping with CBO's mandate to provide objective, impartial analysis, the report makes no recommendations.

Alice Burns and Kevin McNellis wrote the report with contributions from Kate Fritzsche, Philippa Haven, and Keren Hendel and with guidance from Chad Chirico, Leo Lex, and Sarah Masi. Alissa Ardito, Elizabeth Bass, Susan Yeh Beyer, and Sebastien Gay commented, as did the staff of the Joint Committee on Taxation.

Comments also were provided by Katherine Baicker of the University of Chicago Harris School of Public Policy, Michael Cohen of the Wakely Consulting Group, Sabrina Corlette and Kevin Lucia of the Center on Health Insurance Reforms at the Georgetown University Health Policy Institute, and Preethi Rao of RAND Corporation. The assistance of external reviewers implies no responsibility for the final product, which rests solely with CBO.

Jeffrey Kling and Robert Sunshine reviewed the report, Kate Kelly edited it, Kim Kowalewski created the figure, and Casey Labrack prepared the report for publication. An electronic version is available on CBO's website (www.cbo.gov/publication/54915).

CBO seeks feedback to make its work as useful as possible. Please send comments to communications@cbo.gov.



Keith Hall
Director
January 2019

Chairman SCOTT. I did have a question on association plans, just to get some clarity in respect of the department's stance on association plans in light of the March 28 District Court decision in State of New York v. United States Department of Labor. Can you confirm for the committee that AHPs that were invalidated by the ruling are no longer able to enroll new customers?

Secretary ACOSTA. Mr. Chairman, AHPs that were invalidated by the ruling cannot enroll new customers. But to provide a complete answer, they have to continue servicing. And one of the questions is, can AHPs continue in effect. And the answer we are giving is, yes. We are not enforcing against those AHPs to the extent they service existing customers. If someone has a healthcare plan, they should continue to receive benefits under that plan.

Chairman SCOTT. Thank you. On the minimum wage, the White House economic advisor stated, and I quote, "My view is a federal minimum wage is a terrible idea, terrible, and will damage particularly small businesses." Is that the position of the Department of Labor?

Secretary ACOSTA. Mr. Chairman, about three-fifths of the States have passed a minimum wage that exceeds the Federal level. It is our view that a federal minimum wage would be those three-fifths of the States imposing a cost structure on the remaining two-fifths of States that have chosen not to increase the minimum wage above the Federal level.

The Washington Post, in fact the editorial board, had an editorial that said much the same thing, that they were concerned about the high-cost States imposing cost structures on the low-cost States.

Chairman SCOTT. The quote was that a federal minimum wage is a terrible idea. Is that the position of the Department of Labor?

Secretary ACOSTA. Mr. Chairman, we do not support a change in the federal minimum wage at this time.

Chairman SCOTT. You cited a Seattle study. Are you aware that the authors have backed off of their original conclusions?

Secretary ACOSTA. Yes. They ran a second study. And one of the interesting parts of that study is, I believe, if I recall correctly, that while workers in the mid-wage areas experienced an increase, at the lower wage scale, there was a decrease in jobs. So even, you know, so even where there is not a net change in jobs, there is an impact, particularly at the lower end of the wage scale.

Chairman SCOTT. But most studies have said that there is negligible if any impact on jobs.

Secretary ACOSTA. Mr. Chairman, I understand we can spend a lot of time on studies.

Chairman SCOTT. Let me ask, I have two other questions I am going to try to get in. The Office of Federal Contract Compliance Programs provides that those who contract with the Federal Government not only are prohibited from discriminating on employment but also have to have affirmative action plans. Can you explain how a faith-based contractor can affirmatively discriminate based on religion in hiring?

Secretary ACOSTA. Mr. Chairman, the executive order has an explicit exemption for religious organizations to allow them to exercise a religious preference in their hiring. That is part of the executive order itself.

Chairman SCOTT. And so if they have strong feelings that they are only going to hire people in an all-white church, essentially excluding African Americans, would that pass muster?

Secretary ACOSTA. Mr. Chairman, it would be fact based. But in your set of facts, when religion seems to be an excuse for another kind of discrimination as you just mentioned in your fact pattern, that would be looked at very, very closely. And most likely, the answer would be—most likely if not definitely, the answer would be no, that is not what is meant by religious exemption.

Chairman SCOTT. Finally, you had described earlier today, not in the committee, a program involving bonding for employees. Can you tell me how that is good for workers and/or business?

Secretary ACOSTA. Mr. Chairman, certainly. Individuals, so we are facing a shortage of—you know, we have talked about how businesses want to hire. And there are individuals that have criminal convictions and they are leaving prison. And the best—in our opinion, the best way to help them is by helping them find a job. The best way to help society and keep society safe is by helping individuals, you know, find a path to a job. Because if there is no job, then the probability of recidivism is much, much higher. And from an economic perspective, we are much better off with individuals working as opposed to individuals going to prison, where society is paying the cost of prison. And so for all those reasons, we want to encourage a broad-based reentry program that helps individuals leaving prison find jobs.

Something that we are doing with respect to that is a bonding program, where we are telling businesses, if you hire someone that has a criminal history that is reentering society, we will pay for a bond. And we will pay for a bond, I believe it is up to $25,000. At the end of the day, one of the great things—and, right now, it is a small program. But there are so few claims that it is not that expensive. Which, in fact, shows that these individuals are not as much of a danger as they are perceived.

And so through this bonding program, we hope to, in essence, correct the market by showing that they are not as much of a danger, as evidenced by the fact that we are willing at the Federal level to sponsor a bond for them.

Chairman SCOTT. And you mentioned a problem with security clearances. Can you help us figure out how to help those with criminal records get security clearances and whether it is legislative, administrative, and/or both, what we can do to facilitate that issue?

Secretary ACOSTA. The Federal Government should lead the effort, you know, for reentry. And I am happy to work with the committee.

Chairman SCOTT. Thank you. Does the Ranking Member have a closing statement?

Ms. FOXX. Yes, sir, I do. Thank you.

Mr. Secretary, at the beginning of this hearing, you observed there are clearly differences of opinion between the two sides here on the dais. Differences of opinion, however, do not equate to different sets of facts.

I have listened as the Democrats here today have twisted, stretched, distorted and mourned the facts that are so clearly in

favor of American workers. Mr. Secretary, some of us here have research backgrounds. We know how variables can shift one way or another and that can contribute to different outcomes. But the trends in favor of the American worker are simply indisputable. That is bad news for folks who clearly long for the day when working families are solely dependent on the Federal Government.

The way I see it, how you view the facts says a lot about where your priorities really are and who you are here to serve. Let's go through a few examples.

Since the beginning of 2017, the economy has created 5.1 million jobs with 3.2 million created since the Republican Tax Cuts and Jobs Act. If you want to see moms and dads with more job options and college graduates with a hope for an entry-level job that will keep them out of their parents' basement, that is a good thing. If you think Americans should spend the next 10, 20, 30 years working toward retirement in jobs they hate with no other options, I can see why you would be disappointed.

In 2018, average hourly earnings experienced the largest increase since 2009, with the strongest wage gains being experienced by the lowest decile of earners. I believe you spoke to that. If you want to see Americans rewarded by their employers for jobs well done, for their contributions to growing businesses, this is great news. If you want the government and the government alone to be able to claim credit for individual prosperity, this is not good news for you.

Unemployment is holding steady near historic lows. If you believe Americans living independently, providing for themselves and making ends meet is good, this news is outstanding. If you glean your self-worth as a Member of Congress by longer unemployment lines, I can see why this would be bad news for you.

Even as employment increased, workplace deaths, injuries, and illnesses fell in 2017. If you want Americans to go to work every day in safe and healthy workplaces, this is a positive development. If you would rather point to bad actors and tragic accidents as reasons for sweeping Federal legislation, I can see why these trends are disheartening.

Since DOL published the final rule expanding access to association health plans, more than 30 major organizations in 14 States have established or announced their intent to establish an AHP to offer their employees affordable, high-quality health coverage. If you want Americans to have more options, lower cost and better health coverage, this is great news. If your political future lives and dies on how fiercely you protect Obamacare, these facts are certainly not helpful.

And I need to point out again, Mr. Secretary, something that got lost several times today in the discussions. And that is that AHPs cannot violate the ERISA law. And therefore, things thrown out as facts today about what AHPs can do are simply not facts.

I would also like to point out that what is being called junk healthcare plans are merely short-term plans that were allowed up until the last days of the Obama Administration. And then a rule came out not allowing them. And, if you want to call them junk plans, then you are calling the 1.5 million Americans who have chosen to get them people who do not have very good judgment.

Since President Trump established the National Council for the American Worker, more than 200 companies, associations, and labor organizations have pledged to create 7,452,470 new work force development opportunities for Americans of all ages and backgrounds. If you value success for every American, from every neighborhood and every walk of life, you have a positive view of these facts. Again, if you want the government and the government alone to pick winners and losers, these are facts you will not like.

Last year, as you pointed out a few minutes ago, the Department's Wage and Hour Division recovered more than $304 million in back wages for more than 265,000 workers across the United States, more than any other year in the agency's history. Mr. Secretary, you and those around you are doing excellent work. More importantly, the American people are doing excellent work. We are here for them. I am confident you are here for them also.

I yield back.

Chairman SCOTT. Thank you. And I thank you for your comments.

And I just want to make a couple points for the record, one on apprenticeships. I wanted to clarify that during the hearing, we have heard about the expansion of apprenticeships to non-construction trades and professions and the industry-designated apprenticeships. Data from the Department of Labor's website lists manufacturing and healthcare in the top 10 industries for registered apprenticeships in Fiscal Year 2018 and that expansion of new registered apprenticeships is at a 10-year high. At a recent hearing, we heard from IT and insurance executives who are also successfully expanding registered apprenticeships across the country. So we do not necessarily need to go into lower-quality programs.

We also heard that the lowest decile was the area with the most improvement in wages. And, as the Secretary mentioned, most of the States have increased their minimum wage recently and that is a major factor in increasing the wage for the lowest decile.

In terms of association plans and the junk plans, the short-term plans, the problem that occurred was they went from 3-month plans, where they were really short term, kind of transitional plans, to up to 3 years. So that you could have a plan and keep it for 3 years, which really takes you out of the market. Those who joined those short-term plans with less protection, without the essential benefits, with underwriting so they can deny people with preexisting conditions, creates a pool of people who are younger and healthier. And, okay, they will pay less. But unfortunately, as I indicated in a document we are introducing for the record, if some pull out and pay less, simple arithmetic says other people will pay more. According to the CBO, that could be close to $1,000 more for a family policy.

So, Mr. Secretary, I want to thank you for being with us today. It has been a long day. You have been forthright with your answers and I certainly appreciate that. And we have a lot of work to do. I think there are a lot of issues where we are going to go forward together, particularly on the bonding and the security clearances, working to see if we can get together on the short-term Pell for jobs, and with a lot of other issues where we'll be going forward together. So thank you for being here.

Secretary ACOSTA. Thank you, Mr. Chairman.

Chairman SCOTT. And if there is no further business, the committee is now adjourned.

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

COMMITTEE ON EDUCATION
AND LABOR
U S HOUSE OF REPRESENTATIVES
2176 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6100

May 14, 2019

The Honorable Alexander Acosta
Secretary of Labor
U.S. Department of Labor
200 Constitution Avenue
Washington, D.C. 20210

Dear Secretary Acosta:

I would like to thank you for testifying at the May 1, 2019, Committee on Education and Labor hearing on "*Examining the Policies and Priorities of the U.S. Department of Labor.*"

Please find enclosed additional questions submitted by Committee members following the hearing. Please provide a written response no later Tuesday, May 28, 2019, for inclusion in the official hearing record. Your responses should be sent to Cathy Yu of the Committee staff. She can be contacted at the main number 202-225-3725 should you have any questions.

We appreciate your time and continued contribution to the work of the Committee.

Sincerely,

ROBERT C. "BOBBY" SCOTT
Chairman

Enclosure

Full Committee Hearing
"Examining the Policies and Priorities of the U.S. Department of Labor"
Wednesday, May 1, 2019
10:15 a.m.

Chairman Robert C. "Bobby" Scott (VA)

1. The FY20 budget anticipates that Office of Disability Employment Policy (ODEP) funding will be sufficient to maintain its 49 FTEs from FY 2019, but ODEP's budget authority drops from $38.2 M (FY19 enacted) to $27 M (FY20 request). Please state where the planned reductions will come from within ODEP, and the rationale for these requested reductions.

2. On August 31, 2018, President Trump signed an executive order (EO) regarding retirement.[1] Section 2(c) of the EO stated that, within one year of the date of the EO, the Secretary of Labor shall "complete a review of actions that could be taken through regulation or guidance, or both, to make retirement plan disclosures required under ERISA and the Internal Revenue Code of 1986 more understandable and useful for participants and beneficiaries."[2] The EO specified that this review shall "include an exploration of the potential for broader use of electronic delivery" of retirement plan disclosures. The EO stated that, if the Secretary of Labor determines action should be taken, the Secretary shall consider "proposing appropriate regulations or guidance."[3]

    a. Please provide a copy of the findings of this review. Please state if you determined action should be taken and if you are planning to propose regulations or guidance. If you are planning to propose regulations or guidance, please specify when (exact month) it will be completed and published. If you are planning to propose regulations or guidance, please commit to an open and transparent process that allows for public comment.
    b. If the review has not been completed, please provide a timeline for when it will be completed and commit to publicly sharing a copy of the findings.

3. It is federal OSHA's responsibility to monitor the 20 plus state plans to ensure that they are at least as effective as the federal program. Over the last ten years, there have been serious problems with the state plans in Nevada, Hawaii, South Carolina, Arizona, Alaska, Indiana, Illinois, Virgin Islands and most recently, Kentucky.

    a. Please explain why the Department sought to cut 14 positions from the regional office staff assigned to oversee the state plans in its budget proposal.

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[1] Executive Order No. 13847, 83 FR 45321 (2018)
[2] *Id.*
[3] *Id.*

4. The National Employment Law Project reported that the Department's own numbers show that while the raw number of OSHA inspections is slightly higher than 2016, OSHA's enforcement units, which are the more important numbers, have dropped precipitously since 2016.[4] Enforcement units weight inspections so that the more complex and time-consuming inspections receive more weight than faster, less complex inspections. Please describe what the Department is doing to ensure that OSHA conducts additional more-heavily weighted investigations than it is now.

5. You have stated that the Department plans to merge the Mine Safety enforcement budget activity with the Metal/Non-Metal budget activity and cross-train inspectors so that they can perform both types of enforcement. But the proposed budget does not request any increase in funding for inspector training. Please describe the Department's plans for conducting the additional training needed to ensure that inspectors are proficient in both sectors.

6. Please provide the evidence that was relied upon in issuing the Office of Federal Contract Compliance Programs (OFCCP) Directive 2018-01 to allow contractors to file rebuttals before a final Notice of Violation. Specifically, please provide the evidence that showed a need for this change in policy in order to bring about an improvement in the Department's ability to enforce the law when there is a violation and impose penalties to ensure that contractors are discouraged from such behavior in the future.

7. Last August, the Office of Federal Contract Compliance Programs (OFCCP) issued Directive 2018-03 that expands the right of federal contractors to justify employment-based discrimination based on their religious views.

    a. Please state how many complaints OFCCP received from religious organizations claiming they were prohibited from seeking government contracts based upon their religious beliefs in the last 2 years prior to issuing the directive.

    b. Please provide a detailed description of any other evidence that was relied upon to determine that there was a need for the OFCCP guidance.

    c. The OFCCP Director has stated in testimony before the Commission on Civil Rights that the Supreme Court cases relied upon in this directive, Hobby Lobby and Masterpiece Cake, were not about employment issues. He also said that religious exemptions would be granted when the law required it, and not granted when the law doesn't. He then stated he understands that the law is unclear. Given the lack of clarity in the law as well as conflicts between religious freedom and anti-discrimination laws, please provide a detailed description, including any supporting documents, of OFCCP's enforcement scheme for this directive. Please include any training materials for OFCCP staff on enforcement policies.

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[4] "Workplace Safety Enforcement Continues to Decline in Trump Administration," National Employment Law Project (March 2019), available at https://bit.ly/2CB5cET

8. OSHA currently has fewer inspectors than any time in its 49-year history, despite the fact that the number of workplaces and number of workers under OSHA jurisdiction has nearly doubled over that time. The AFL-CIO estimates that at this low level of staffing, each workplace within OSHA's jurisdiction would only get inspected once every 165 years. For just under a $100 million budget increase (or roughly 20 percent), OSHA could add enough inspectors to bring that number down to once every 100 years. Please state whether the Department would support such an increase so that every workplace under OSHA jurisdiction can be inspected at least once every century.

Rep. Susan A. Davis (CA)

1. You have confirmed for both Senate Appropriations Subcommittee on LHHS and the US House Appropriations LHHS Subcommittee that all apprenticeship funding from the FY2018 and FY2019 Omnibus could be used only for the establishment of Registered Apprenticeship programs. Can you confirm for the record today that there is not a single cent of the $160 million is being used being used to support Industry Recognized Apprenticeship Programs in any manner – inclusive of Advisory Groups that deal in any way with IRAPs, marketing materials that could support IRAPs or Registered Apprenticeships, or websites established to support any form of "apprenticeship"?
    a. If the Department is not using the $160 million for these purposes, how are they funding these activities?
2. In the July 2018 Training and Employment Notice regarding Industry Recognized Apprenticeships, the Department made clear that construction and military apprenticeship programs would be excluded from consideration for IRAPs, as there is already an "existing high concentration in these two areas." Can you confirm that these areas will be excluded from any proposed or final rules related to the National Apprenticeship Act?
3. We recently had a hearing on Registered Apprenticeships and had a witness from Apprenti, which is DOL's IT Sector Lead on expansion of Registered technology apprenticeships, and they're expanding Registered Apprenticeship IT programs across the United States. Yet at the hearing, you were insistent that a new apprenticeship track is needed for non-trade professions. However, the data from DOL's website that lists manufacturing and healthcare are in the top 10 industries for Registered Apprenticeships in fiscal year 2018, and that the expansion of new Registered Apprenticeship programs is at a 10-year high. Can you provide the Department's justification for lowering quality standards for a new alternative track of "apprenticeship" programs, given the data showing the success of the existing Registered Apprenticeship system?
4. Following up from Rep. Omar's questions during the May 1, 2019 hearing regarding the enforcement of labor provisions in the recently negotiated USMCA, please provide the Department's stance on Senator Brown's and Senator Wyden's proposed labor enforcement plan.
    a. Is this something the Department of Labor would be able to work with USTR on implementing?

b. What is your estimate of how much additional funding would be necessary to successfully implement this proposal, and conversations has your department already had with USTR on either this or other labor enforcement

Rep. Raúl M. Grijalva (AZ)

1. For more than 5 decades, the Department of Labor has required employers to offer and pay the local "prevailing wage" for workers in the H-2A agricultural guestworker program. However, prevailing wage surveys are increasingly not being done or published due to lack of sufficient funding from the Department to state agencies or simply because state agencies don't prioritize these surveys. Please provide a detailed description of the Department's efforts to ensure that the prevailing wage system under the H-2A program has updated and useful data to use, including wage surveys.
2. The anti-trafficking organization Polaris recently released a report[5] on human trafficking in temporary work visa programs. The visa category with the most reported trafficking cases (over 300) was the H-2A agricultural worker visa program. Please provide a detailed description of the steps DOL is taking to address these abuses and violations.

Rep. Gregorio Kilili Camacho Sablan (MP)

1. Secretary Acosta, regarding implementation of the Northern Mariana Islands U.S. Workforce Act, at the May 1 hearing we briefly discussed the Department's communication with the Office of the Governor about their June 3 deadline to submit the statutorily required plan for approval of the use of funds to educate and train U.S. workers. Can you provide specifics of the communications and the evaluation criteria that the U.S. Department of Labor will use to determine approval of that plan?
2. Under the Northern Mariana Islands U.S. Workforce Act, the Secretary of Homeland Security is required to develop a system for each employer of a foreign worker to report to you semiannually to provide evidence "to verify the continuing employment and payment of such worker under the terms and conditions set forth in the permit petition that the employer filed on behalf of such worker". Has the Department of Homeland Security established the system? If not, when will it be established? If it has, can you describe how it works?
3. Last year U.S. workers at the Saipan casino construction site lost their jobs to foreign workers with H-2B visas. In a response to Chairman Scott and me on this issue your department said that it "can – and does – enforce employer's non-displacement obligations". Yet, there were reports in my local media last year – and constituents individually reported to me – that IPI, a company that your Department approved for

[5] Polaris, Human Trafficking on Temporary Work Visas (June 2018), available at https://polarisproject.org/sites/default/files/Human%20Trafficking%20on%20Temporary%20Work%20Visas%20A%20Data%20Analysis%202015-2017.pdf

1,668 H-2B visas, was laying off U.S. workers in similar jobs. Is the U.S. Department of Labor investigating these layoffs? Are U.S. workers losing their jobs at the same time you are approving foreign workers for the same project?

4. The Occupational Safety and Health Administration (OSHA) has, unfortunately, been involved in several enforcement actions in Saipan in recent years. This has included a March 2017 fatality and numerous workplace injuries at the Saipan casino construction site and three July 2017 fatalities in a preventable confined space incident elsewhere on Saipan. These incidents are due, in part, due to a lack of understanding and compliance with U.S. labor laws by companies managed by foreign-owned entities using foreign labor. Now, the Marianas is embarking on a large-scale disaster reconstruction program raises additional worker safety concerns. There are presently no full-time OSHA personnel in the Marianas; the Marianas is serviced by the Honolulu office over 3,000 miles away. The Marianas needs full-time "boots on the ground" Compliance Safety and Health Officers to educate employers and workers and deter companies from committing violations. Only a physical OSHA presence in the Marianas, rather than the infrequent visits presently being made from elsewhere, can truly help keep these kinds of horrific incidents from recurring. Will you commit to deploying full-time OSHA Compliance Safety and Health Officers in the Marianas?

Rep. Suzanne Bonamici (OR)

1. The Senior Community Service Employment Program (SCSEP) successfully addresses the growing need for job training and workforce development for low-income Americans aged 55 and above who want to continue living independent and productive lives. SCSEP currently serves approximately 41,000 older workers across the country, helping individuals develop new skills while contributing to their communities by working in schools, senior centers, and other non-profit settings.

   With the existing challenges for older Americans to find work and a looming retirement security crisis because most older Americans do not have enough saved for retirement, why would the Administration propose to eliminate SCSEP?

2. The Affordable Care Act (ACA) requires that health plans provide contraceptive coverage. On November 15, 2018, the Administration issued two final rules that would allow nearly any employer or institution of higher education to claim a religious or moral objection to providing contraceptive coverage. Astoundingly, under this rule, women enrolled in plans sponsored by entities that object to birth control coverage would no longer be guaranteed that coverage through an accommodation, as was previously required.

What is the Department doing to track and ensure proper oversight of employers' use of religious and moral exemptions from the ACA's contraceptive coverage requirement, and to quantify how many employees and dependents have lost coverage as a result?

What is the Department doing to monitor and enforce employers' compliance with Section 2713 of the Public Health Service Act, including the requirement for employee health plans to cover contraceptive counseling, methods, and services?

How does the Department plan to guarantee that all the employees and their dependents whose employers deny them contraceptive coverage are provided with timely and no-cost coverage for the contraceptive methods of their choosing, as required under *Zubik v. Burwell*?

Because these new rules will reduce access to contraception, what is the Department doing to track and address any resulting increase in unintended pregnancies?

3. In 2014, Congress demonstrated broad bipartisan support for job training programs by passing the Workforce Innovation and Opportunity Act. I am deeply disappointed that the President's budget request for Fiscal Year 2020 cuts job training programs by 13 percent, including funding WIOA at $375 million below authorized levels. The budget also includes a 41 percent cut to Job Corps, a 16 percent cut to the Reentry Employment Opportunities Program, and the elimination of the Migrant and Seasonal Farmworkers Program, the Indian and Native American Programs, and the Workforce Data Quality Initiative. These programs help workers receive the support they need to access better paying jobs and help employers hire a workforce responsive to their needs.

   Do you agree that job training programs are important to help those who have been left behind and left out of the economic recovery and help more people access better paying jobs?

4. I am proud to represent the Tongue Point Job Corps Center is Astoria and Partners in Vocational Opportunity Training Center in Northwest Portland. At these centers, students earn credentials and practical skills like glazing, seamanship, and culinary arts. By making sure that students have a safe and welcoming living and learning environment, Job Corps Centers can help students who have faced challenges in the traditional education system and make sure that they thrive academically.

   I am extremely concerned that the President's budget request for Fiscal Year 2020 would make significant cuts to Job Corp and also proposes limiting enrollment to students aged 20 to 24. What steps will the Department take to support students ages 16 to 19 who are interested in Job Corps and will no longer be eligible under this proposed policy change,

especially at-risk students for whom Job Corps is the best option for getting skills to enter the workforce?

Rep. Alma S. Adams (NC)

1. Coal miners are now experiencing a growing epidemic of a severe form of Black Lung disease called Progressive Massive Fibrosis. Both the National Academies of Science Engineering, and Medicine and The National Institute for Occupational Safety and Health (NIOSH) issued reports that found silica to be highly relevant to the development of this disease.

    a. Please state the Department's position as to whether silica is a major contributor to the increase in Progressive Massive Fibrosis.

    b. Please describe what the Department is doing to protect miners by ensuring that mine operators monitor and control their miners' silica exposure.
    c. Please state whether the Department is considering a rule requiring mine operators to use currently available technology to do end-of-shift monitoring of miners' silica exposure. If so, please provide an estimated timeline of such a proposed rule.

2. In 2010, the Department of Labor launched a *Misclassification Initiative* to prevent, detect, and remedy employee misclassification through increased investigations and prosecutions.[6] There was no mention of this initiative in this Administration's 2018, 2019, or 2020 fiscal year budget documents, and it appears that most references to the *Misclassification Initiative* have been purged from the DOL website. Those references that remain are from actions that pre-date this Administration. Please state whether the Department is still involved in this initiative and if so, provide a detailed explanation of the status of this initiative.

3. In April, the Department issued a proposed interpretive rule that seeks to drastically narrow circumstances under which an employee can hold two or more employers accountable for violations of the Fair Labor Standards Act (FLSA). The proposal seeks to narrow liability to circumstances under which an employer actually exercises control

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[6] See Fiscal Year 2016 Department of Labor, Budget in Brief, at 24, available at http://www.dol.gov/dol/budget/2016/PDF/FY2016BIB.pdf; Fiscal Year 2015 Budget of the United States, Department of Labor, at 108, available at http://www.whitehouse.gov/sites/default/files/omb/budget/fy2015/assets/labor.pdf; Fiscal Year 2014 Budget of the United States, Department of Labor, at 126, available at http://www.whitehouse.gov/sites/default/files/omb/budget/fy2014/assets/budget.pdf; Fiscal Year 2013 Budget of the United States, Department of Labor, at 146, available at http://www.whitehouse.gov/sites/default/files/omb/budget/fy2013/assets/labor.pdf. $3.8 million was dedicated to the hiring of an additional 35 full-time investigators. See Fiscal Year 2015 Department of Labor, Budget in Brief, at 37, available at http://www.dol.gov/dol/budget/2015/PDF/FY2015BIB.pdf.

over working conditions. However, Congress's intent in passing the FLSA was a broad definition of employment to ensure that workers can hold employers accountable for wage and hour violations as long as the employee can establish economic dependence on an employer.

a. Please provide a detailed legal explanation, along with supporting documents and citations, of the Department's authority to issue an interpretive regulation that violates the broad standard for joint employment under the FLSA that Congress put in place.

b. Please also provide a detailed legal explanation, along with supporting documents and citations, of the Department's authority to issue an interpretative regulation that violates the standard for joint employment under the Migrant and Seasonal Agricultural Worker Protection Act of 1983.[7]

c. Please provide a detailed description of how this interpretative regulation will impact the Department's enforcement of joint employment liability cases.

Rep. Donald Norcross (NJ)

Secretary Acosta, in March of this year, USDOL sent a letter to states requesting they adopt effective strategies to prevent, detect, and recover Unemployment Insurance (UI) improper payments. While it is important for USDOL to address and work with states to strengthen their UI systems and implement tools to reduce improper payments, and comply with the Improper Payments Elimination and Recovery Act of 2010 (IPERA) - state UI trust funds are missing out on millions of dollars, primarily due to the misclassification of employees as independent contractors – resulting in less contributions being collected for states' UI trust funds.

We need USDOL to do more to find effective strategies to combat misclassification and help states collect UI taxes owed to them from employers who are misclassifying workers as independent contractors, or in some cases paying them in cash and off the books.

What is the USDOL doing to help states go after employers who are misclassifying workers?

Misclassification also deprives workers of a suite of rights guaranteed to employees but not independent contractors; including the right to earn overtime for working in excess of 40 hours per week; to receive workers compensation benefits if injured on the job; to receive unemployment benefits; to receive earned sick leave; to take job-protected family leave and receive family leave benefits; to receive health and safety protections, as well as protection under state and federal anti-discrimination laws; and to organize under the National Labor Relations

[7] According to the bill's legislative history, the bill's adoption of its broad definition of employment relationships "was deliberate and done with the clear intent of adopting the 'joint employer' doctrine as a central foundation of this new statute; it is the indivisible hinge between certain important duties imposed for the protection of migrant and seasonal workers and those liable for any breach of those duties." In fact, the Department's own regulation on the Migrant and Seasonal Agricultural Worker Protection Act of 1983 quotes this same language.

Act.

What is the USDOL doing to ensure that workers have adequate protections and access to the aforementioned benefits?


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DepSec Letter to SWDB Chairs_NJ - Si

Rep. Pramila Jayapal (WA)

1. During the hearing, you stated that the Small Business Regulatory Enforcement Fairness Act (SBREFA) panel on an OSHA rule on workplace violence was currently being put together. Please provide the detailed timeline for this SBREFA panel as promised during the hearing.

Rep. Josh Harder (CA)

1. Please provide my office with the following information regarding Job Corps students from my district (CA-10):

    a. How many students are currently enrolled in Job Corps?
    b. Over the past 10 years how many students have enrolled in Job Corps? Please provide a breakdown of the number of students per year.
    c. Over the past 10 years, at which Job Corps centers are/have these students enrolled?
    d. Over the past 10 years, which trades are/have these students studying/studied? Please provide the number of students per trade.

2. How many current Job Corps Centers are in rural communities? How many current Job Corps Centers are in urban areas? How many students from rural areas are served by Job Corps currently? How many in the last program year?

3. How many Job Corps Centers have been closed in the past 10 years? How many of the Job Corps Centers that have been closed were in rural communities? How many were in urban areas?

4. What contracts does Job Corps have that provide outreach and recruitment to eligible students in my district (CA-10)? Is there an outreach contract specifically for Northern California? Please provide details regarding to which entities the contracts have been awarded and how the outreach is conducted in my district (CA-10).

5. Please provide a list of the outreach programs for my district (CA-10) for FY 2019 and FY 2020. What has the Department done to ensure that students from rural communities are being served by Job Corps?

6. Please explain the Department's reasoning for why there are no Civilian Conservation Centers in California, despite having nearly 2 million acres burn last year alone, the highest of all 50 states.

7. Please provide my office with a copy of the interagency agreement between the Department of Labor and the Department of Agriculture, which establishes the Civilian Conservation Centers.

Rep. Lucy McBath (GA)

1. The *Newborns' and Mothers' Health Protection Act* provides protections for mothers and their newborn children in relation to the length of their hospital stays following childbirth. This care is vital to ensuring that both mother and baby access the care they need. The Department of Labor is responsible for ensuring that employer provided group health plans comply with this legal requirement. Secretary Acosta, could you provide an update on enforcement efforts in this area?

2. Secretary Acosta, I would also like to follow up on my questions to you during our hearing regarding the Department's enforcement of workplace protections for breastfeeding mothers under the Fair Labor Standards Act. As you know, the *Patient Protection and Affordable Care Act* amended the *Fair Labor Standards Act* to provide critical protections for breastfeeding mothers. Under this provision, employers can no longer prevent breastfeeding moms from taking breaks to pump or force them to pump breastmilk in the bathroom. Yet, a study conducted in 2016 showed that more than half of women are still denied private space, break time to pump, or both.[8]

    a. During the hearing, you committed to answering my question on the specific number of enforcement actions the Department has taken in the last year related to violations of breastfeeding protections under the Fair Labor Standards Act. How many such enforcement actions have been taken in the last year?

    b. You also stated during the hearing that the Department had recently taken an enforcement action in Phoenix, Arizona, and you said that you would be able to

[8] K. B. Kozhimannil, J. Jou, D. Gjerdingen, & P. McGovern, "Access to Workplace Accommodations to Support Breastfeeding after Passage of the Affordable Care Act," *Women's Health Issues,* (January-February 2016), https://www.whijournal.com/article/S1049-3867(15)00117-6/fulltext

provide us more details. Can you provide the name of the employer and the nature of the enforcement action and any resolution?

c. When an employer violates any of these provisions under the Fair Labor Standards Act, is it correct that federal law provides: (1) no authority for the Department to impose a civil monetary penalty on the employer and (2) no private right of action for an employee to recover damages against the employer (other than a retaliation claim)? What statutory authority, if any, exists for the Department to enforce this requirement, and what remedy, if any, exists for workers whose employers violate this requirement?

d. You stated that you would be interested in pursuing a compliance campaign to make employers aware of this requirement, given the research I cited showing that more than half of women were still denied private non-bathroom space to pump, break time to pump, or both, following the passage of the protections into law. What actions will you commit the Department to taking to pursue such a compliance campaign? What support would you need from Congress to implement such an effort?

e. You asked that I share the above-mentioned study. Here is the citation: K. B. Kozhimannil, J. Jou, D. Gjerdingen, & P. McGovern, "Access to Workplace Accommodations to Support Breastfeeding after Passage of the Affordable Care Act," *Women's Health Issues,* (January-February 2016), https://www.whijournal.com/article/S1049-3867(15)00117-6/fulltext.

Rep. Lauren Underwood (IL)

1. The most recent DOL survey on Family and Medical Leave Act (FMLA) use was released in 2012, and updated data in this area is needed. DOL has contracted with Abt Associates to conduct a "Wave 4" study on FMLA use, and the contract end date is August 2019. Please provide a detailed description about the status of the Wave 4 study, including a timeline of when the study will be completed.

Rep. Jahana Hayes (CT)

1. The President's Commission on Combatting Drug Addiction and the Opioid Crisis' Final Report recommended that Congress give DOL enhanced enforcement authority over the Mental Health Parity and Addiction Equity Act (MHPAEA) after you testified before the Commission. Specifically, the Commission recommended, "Because the Department of Labor (DOL) regulates health care coverage provided by many large employers, **the Commission recommends that Congress provide DOL increased authority to levy monetary penalties on insurers and funders, and permit DOL to launch investigations of health insurers independently for parity violations.**"

As the Commission's report noted, "while parity is a legal requirement, the existing means of monitoring and enforcing the parity act are insufficient. The sole means of enforcement under the parity act is equitable relief against the buyer of the insurance plan; and for the employer-based plans that are self-funding, DOL is presently permitted to enforce MHPAEA against only the employer, rather than the insurance company administering the benefits."

Would you support Congress providing DOL with this authority to levy monetary penalties on insurers and funders and launch investigations into health insurers for parity violations to ensure that all parties are held accountable for providing equitable coverage of mental health and substance use disorder treatment benefits consistent with MHPAEA?

2. I was shocked to see a call for an immediate closure of 25 Job Corps Centers operated by the US Department of Agriculture, with no explanation of a closure plan and no request for funding to support the wind down of operations. **Where exactly are each of these 25 USDA Job Corps Centers?**

3. If the President's Budget, including proposed cuts to Job Corps were to go into effect, **what would happen to the students who would be displaced from these closed centers? Does the Department of Labor have a plan for them?**

4. We've heard from operators and students around the country – including in Connecticut, that the program needs more help to rebuild crumbling infrastructure at Job Corps facilities. Your budget concurs with that concern, but then calls for a decrease in the budget for Operation and Maintenance of Facilities, and level funding from FY2019 for other construction related line items. **How do you explain this request for a decrease in funding?**

5. The FY 2020 Budget proposes several new legislative flexibilities that would enable the Department to more expediently close low-performing centers. **How do you define "low-performing center"? Beyond the 25 USDA centers, how many of these Job Corps centers are being targeted for closure?**

6. **Before launching additional Job Corps pilots, can you explain whether evaluations have actually been completed on the pilots that are already underway, and what lessons can be taken from these?**

Rep. Donna E. Shalala (FL)

1. Secretary Acosta – you are from South Florida, so you probably familiar with the climate crisis we are facing, but to reiterate: in our community, climate change and sea level rise is life-or-death.

Since 1950, the sea level in South Florida has risen 8 inches, and it is only speeding up. By 2030, the sea level in South Florida is projected to rise up to 12 inches, and by 2100, perhaps 80 inches.

The average temperature on the planet will rise by 5 to 9 degrees Fahrenheit by the end of the century. This will cause a sea level rise that will virtually submerge all of South Florida.

If we continue to do nothing on climate change, our community, as you and I know it, will disappear.

That is the physical impact. I want to discuss with you the impact on working families.

Several months ago, the Fourth National Climate Assessment, a federally-mandated climate change assessment, outlined the potential impacts of climate change across American society, including to jobs and the economy.[9]

The report says, "climate change is expected to cause growing losses to American infrastructure and property and impede the rate of economic growth over this century." The report notes that climate change also threatens "outdoor workers who are at additional risk for heat stress."

The report goes on to say that, "regional economies and industries that depend on natural resources and favorable climate conditions, such as agriculture, tourism, fisheries, are vulnerable to the growing impacts of climate change."

Do you believe in climate change?

2. In response to this report that was produced by our own government, though, President Trump said, "I don't believe it."

Do you agree that climate change will not be detrimental to U.S. jobs and the U.S. economy? What is the Department of Labor doing to prepare for climate change?

Rep. Ilhan Omar (MN)

1. Mr. Secretary, as you know, the Hatch Act prohibits federal officials from using government resources to engage in partisan political activity.

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[9] U.S. Global Change Research Program, *Fourth National Climate Assessment Volume II: Impacts, Risks, and Adaptation in the United States* (2018) (https://nca2018.globalchange.gov/).s

Your tweets praising President Trump and referring to the – quote – "@POTUS economy" have been flagged by Labor Department ethics officers. My understanding is that the Department's ethics officers asked the Office of Special Counsel for guidance on whether these tweets were permissible. Where does this Hatch Act issue stand?

Rep. Haley M. Stevens (MI)

Apprenticeships:

Your budget request the flexibility to raise from 20 percent to 40 percent the cap on local areas providing incumbent worker training. This helps employees acquire the skills to retain employment, *if* the increase in the percentage is used to support apprenticeship programs.

1. Can you confirm that this percentage increase request is only in reference to registered apprenticeships, as required by Section 3 of the Workforce Innovation and Opportunity Act?

Women's Bureau Funding:

The President issued a presidential proclamation on Women's History Month that touted the Administration's commitment to helping women thrive in the labor force.

1. Would you agree that the Women's Bureau plays an important role in this effort?

In the same month that President Trump proclaimed it to be Women's History Month, his 2020 budget proposed cutting the Women's Bureau by 74 percent – from $13.75 million in 2019 to $3.5 million in 2020.

2. Can you explain?

Rep. Susie Lee (NV)

1. The Department's Advisory Board on Toxic Substances and Worker Health is tasked with advising the Department on the quality, objectivity and consistency of the work of staff and consulting industrial hygienists and physicians of the Department with respect to their involvement in claims evaluation under the Energy Employees Occupational Illness Compensation Program Act. The Board has twice requested resources to examine a representative number of claims in order to conduct a systematic evaluation of the work of such industrial hygienists and physicians in order to provide the Secretary with sound advice. This approach parallels the work of the NIOSH Advisory Board on Radiation and Worker Health.

    a. How much will the Department provide to carry out this important work in FY 2019?

    b. When will the funding be released?

c. How much has the Department requested for FY 2020?

2. The Department's Advisory Board on Toxic Substances and Worker Health has made recommendations regarding exposure-disease presumptions that are based in medical science, are consistent with the Energy Employees Occupational Illness Compensation Act, and could improve the timeliness, fairness, and efficiency of the program. Which presumptions have been accepted, and which presumptions have been rejected and the reasoning for their rejection?

Rep. Joaquin Castro (TX)

1. The President has a litany of lawsuits and settlements against him, including a report from Washington Post on April 30th, *At Trump golf course, undocumented employees said they were sometimes told to work extra hours without pay,* which alleged that Donald Trump's golf course was working undocumented workers without overtime pay. The Washington Post's article included multiple violations of labor laws, including unpaid "side work," unpaid overtime, and averaging worked hours over multiple weeks. And former managers described in the article how supervisors pressured undocumented workers to work without pay in order to meet demands from Trump Tower in Manhattan. And this is not the first allegation of mistreatment by Trump Organization, as workers have come out from his private club and golf course at Bedminster, New Jersey, the Trump National Golf Club in Westchester, New York, and Trump's National Golf Club at Mar-a-Lago that are now being run by his children. **Please confirm if the Department of Labor is investigating or has investigated allegations of mistreatment and labor violations by the Trump Organization?**

2. It is the Department's duty to do what it can to assure workers that they should never be reluctant for any reason to file legitimate complaints against their employers. Yet, Department of Labor officials have noted an uptick in workers' reluctance to file complaints against employers or accept back wages collected by the Department on the worker's behalf. **What specifically is the Department of Labor doing to monitor and respond to this situation and reaffirm its commitment to protecting individuals' identity from employers during the course of labor investigations? What policies and protocols does the Department have in place to ensure that these violations are appropriately addressed and investigated?**

3. I would like to follow up on a letter that I sent along with Members from the Congressional Hispanic Caucus on October 2, 2013 to then Department of Labor Secretary Thomas E. Perez. I am submitting a copy of this letter for the record. In the letter we requested that information regarding the "Bracero Program" and any wages

made from the program be made public, but we never received a response. **I would like to again request that the Department of Labor respond to our letter and provide us with a copy of the necessary documentation to assist these braceros. Specifically, I ask that the names of the braceros and the amount of money withheld from their paychecks be made public.** This information would allow these former braceros and their families to claim the money that is owed and that was promised to them while helping meet the economic needs of our country. **Should the Department of Labor not have the relevant information pertained to braceros, I ask for your help in locating the appropriate department.**

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Rep. David P. Roe (TN)

1. We have heard a lot from my friends on the other side of the aisle about how association health plans (AHPs) aren't as good as individual or small group coverage and will cause the sicker, older people to stay in the exchanges driving up the premiums in those markets. If this is the case, then why do we allow labor unions to promote AHPs to their members instead of moving those folks onto the exchanges? If it is good enough for the teamsters, why can't it be good enough for a group of small business owners? Obamacare is already pricing people out of the exchanges, why wouldn't we want to allow for more available, affordable options for coverage?

2. What kind of quality or comprehensiveness of coverage has the Labor Department seen so far with AHPs? Are most of these AHPs meeting all of the essential health benefits?

3. Are you aware that the American Medical Association found that 73 percent of 380 city regions were dominated by 1-2 insurers? With AHPs, would small businesses have more or fewer options? What effect does competition have on the quality and affordability of this employer-sponsored benefit?

4. We have heard that association health plans, or AHPs, must comply with the HIPAA and ACA nondiscrimination rules, in addition to COBRA and all state laws. Can you expand on how these laws shape AHPs?

5. One of the key promises we've heard from previous administrations is that, "If you like your doctor, you can keep your doctor." Under the provider networks that AHPs are developing, are most providers enrolling into these private networks?

6. Last Congress, I introduced with 42 bipartisan cosponsors common sense legislation (H.R. 4610 the RETIRE Act) to switch the default for distribution of retirement plan disclosures from paper to electronic. Today, most retirement plan documents are sent in

paper despite the advances in technology that would allow for lower cost and more expedited delivery via electronic methods. E-delivery is more efficient, more effective, less costly and less wasteful. In August 2018, President Trump signed an executive order instructing the Department of Labor to investigate the "the potential for broader use of electronic delivery as a way to improve the effectiveness of disclosures and reduce their associated costs and burdens." When can we expect a proposal from the Department to implement this executive order?

Rep. Tim Walberg (MI)

1. Last August, President Trump issued an executive order on "Strengthening Retirement Security in America" that, among other things, directed the Labor Department to look at ways to streamline benefit plan notices and disclosures. What is your view regarding the benefits of electronic delivery for retirement savers and can you provide an update on the Department's progress on this initiative?

Rep. Francis Rooney (FL)

1. In an effort to shield union leaders from accountability, DOL under the Obama administration rescinded several important union reporting requirements. Under your leadership, the Department has indicated plans to promulgate rules pertaining to union trusts and intermediate bodies, but it has given no such indication it will re-impose rules pertaining to Form LM-2 and Form LM-30 that were in place prior to President Obama taking office, which were intended to expose conflicts of interest in union spending.

   I have introduced the *Union Transparency and Accountability Act* to codify the rules of T-1, LM-2, and the LM-30 that were put in place by the Bush administration

   This should be a major priority. Does the Department have any plans to reimpose the LM-2 and LM-30 requirements that were rescinded by the Obama administration?

2. Congress intended for the *Labor-Management Reporting and Disclosure Act* (LMRDA) to be applied broadly to combat union corruption. Unfortunately, the Obama administration rescinded several important union reporting requirements that would have provided valuable transparency for rank-and-file workers. One of those pertains to so-called "intermediate bodies," which are midlevel state or regional organizations in the union hierarchy made up of public employees. These intermediate bodies do not currently have to file financial disclosure reports under the LMRDA, but they are subordinate to larger unions that are covered by the LMRDA.

   Given the Trump administration's prioritization of transparency and that the "Labor Organization Annual Financial Reports: Coverage of Intermediate Bodies" proposed rule has been on the Spring 2017, Fall 2017, Spring 2018 ,and Fall 2018 Unified Agenda with the latest deadline of December 2018 for a notice of proposed rulemaking, what is the

current status of the rulemaking and the anticipated timing for the rule to be promulgated?

3. The *Labor-Management Reporting and Disclosure Act* (LMRDA) was passed in 1959 so that workers would have some oversight of the groups or individuals purporting to represent them in the workplace. It also allows workers to see how their dues money or other funds that might be provided to these groups or individuals is being spent. LMRDA established a very broad definition of what types of entities should be considered "labor organizations" subject to the law's jurisdiction.

   I introduced the *Accountability for Represented Workers Act* to stop organizations called "worker centers" from evading the scope of the law. Groups like the Restaurant Opportunities Center, the Coalition of Immokalee Workers, OUR Walmart, and others are clearly attempting to "deal with" employers on behalf of specific workers, yet they consider themselves outside the reach of the LMRDA and do not file any of the requisite disclosures by the statute. I wrote you on this issue in November 2018 asking the Office of Labor-Management Standards to properly enforce the law and classify these worker centers as labor organizations. What is DOL doing to ensure that worker centers are meeting their rightful obligations under the LMRDA?

4. The Obama administration's 2015 proposal to dramatically expand overtime eligibility caused many entities, particularly small businesses, to reexamine a long-standing exemption in current law—Retail or Service Establishment (RSE) exemption (29 USC § 207(i)).

   To qualify for this exemption, an employee must work at an establishment "recognized as retail…in the particular industry" and where at least 75 percent of annual sales are "not for resale." Further, the employee in question must be paid at least one-and-a-half times the applicable minimum wage and more than half of the employee's earnings must consist of commissions.

   A number of businesses were surprised to learn that they are blocked from even being measured against the exemption's criteria due to a DOL ruling dating to 1970 (29 CFR § 779.317), which has gone unchanged in the subsequent 49 years, which arbitrarily lists industries that are deemed to "lack a retail concept" and thus can't qualify for the RSE "under any circumstances." This is of particular concern to travel agencies in my state, with travel agents included on this regulatory "blacklist." Their concern is reinforced by the fact that in the only court case that directly address the propriety of including travel agents on this blacklist (*Reich v. Cruises Only, Inc.*, 1997), a federal court found in favor of the travel agency, determining that DOL's regulations "excluding a travel agency from those establishments possessing a retail concept appear to be arbitrary and without any rational basis" (1997 U.S. Dist. LEXIS 23727 (M.D. Fla.1997).

It's hard to disagree with the court's finding, as travel agencies are clearly "retail" and I believe they should have an opportunity to claim the RSE exemption **if** they qualify for it.

That's why I have introduced the *Travel Advisors Retail Fairness Act*. This bipartisan bill would simply strike travel agencies from this blacklist, allowing them to claim the exemption if they meet the appropriate statutory criteria. This is a matter of basic fairness—this legislation will treat travel agents like any other retail business. At the same time, it will help preserve 100,000 travel agency jobs by protecting agency owners against audits and lawsuits while giving them the flexibility to better serve their clients in the dynamic and hyper-competitive travel industry.

Will you commit to reexamining the propriety of including travel agencies and other industries included in 29 CFR § 779.317 and consider removing them and other appropriate industries from the list through the rulemaking process, guidance letters or other appropriate actions?

Rep. Russ Fulcher (ID)

1. I have heard examples from my home state of Idaho of companies who have spent multiple years going through the DOL-OFCCP auditing process, which includes hundreds of labor hours that in some cases last multiple years, thousands of electronic documents requested and submitted, and huge sums of attorney fees, in order to respond to a single OFCCP Section 503 focused review. In your written testimony, you refer to the FY 2020 OFCCP budget request for $103.6 million, which includes funding for IT Modernization efforts to enhance operational efficiencies.

    a. How will this large investment in IT Modernization maximize the efficiencies of the OFCCP review processes?

    b. What actions other than IT Modernization is OFCCP taking to maximize the efficacy of the Section 503 focus review, compliance check, and establishment review processes? Specifically, is OFCCP looking at reducing the time it takes to complete their reviews, and working to reduce the administrative costs to federal contractors?

    c. Has OFCCP published best practices or guidelines for federal contractors to reference while they are in the review process, and which clearly state what documents and materials will be reviewed subject to OFCCP audit?

    d. How does the OFCCP go about selecting companies that will be subject to a Section 503 focus review, compliance check, or establishment review? Is there a formula used to determine which federal contractors will be selected? If so, what is the formula? Is

the same formula used to determine a Section 503 focus review, compliance check, and establishment review?

ODEP BUDGET CUTS

The FY20 budget anticipates that Office of Disability Employment Policy (ODEP) funding will be sufficient to maintain its 49 FTEs from FY 2019, but ODEP's budget authority drops from $38.2 M (FY19 enacted) to $27 M (FY20 request).

Mr. Scott: Please state where the planned reductions will come from within ODEP, and the rationale for these requested reductions.

Mr. Acosta: The Office of Disability Employment Policy's (ODEP) activities in Fiscal Year 2020 will continue to focus on increasing the labor force participation rate of individuals with disabilities to help them to lead successful and self-sustaining lives. To accomplish this, ODEP will continue to partner with the Social Security Administration and the Department's Employment and Training Administration to launch early intervention pilots that help workers return to work after experiencing an injury or illness. These pilot grants aim to prevent needless unemployment and work disability. ODEP will also continue to help states adopt effective policies to help their people with disabilities find family-sustaining jobs and work to make apprenticeship programs more inclusive of workers with disabilities. In addition, the Department will maintain ODEP's investments in key technical assistance centers that help employers implement inclusive policies and successful workplace accommodations.

The Department would shift its focus from lower value activities to higher value ones, including phasing out grants to community colleges and technical assistance centers in youth transition and the public workforce system that have largely completed their work and conduct activities similar to those performed by other federal agencies. Lessons learned from those technical assistance centers have and will continue to be shared with state workforce agencies and other stakeholders. Importantly, ODEP will maintain its staff of 49 Full-Time Equivalents and use their national expertise to develop policy recommendations by working with other federal agencies, including those within the Department.

EXECUTIVE ORDER NO. 13847, 83 FR 45321 (2018)

On August 31, 2018, President Trump signed an executive order (EO) regarding retirement.[1] Section 2(c) of the EO stated that, within one year of the date of the EO, the Secretary of Labor shall "complete a review of actions that could be taken through regulation or guidance, or both, to make retirement plan disclosures required under ERISA and the Internal Revenue Code of 1986 more understandable and useful for participants and beneficiaries."[2] The EO specified that this review shall "include an exploration of the potential for broader use of electronic delivery" of retirement plan disclosures. The EO stated that, if the Secretary of Labor determines action should be taken, the Secretary shall consider "proposing appropriate regulations or guidance."[3]

Mr. Scott: Please provide a copy of the findings of this review. Please state if you determined action should be taken and if you are planning to propose regulations or guidance. If you are

[1] Executive Order No. 13847, 83 FR 45321 (2018)
[2] *Id.*
[3] *Id.*

planning to propose regulations or guidance, please specify when (exact month) it will be completed and published. If you are planning to propose regulations or guidance, please commit to an open and transparent process that allows for public comment.

Mr. Acosta: In response to the President's Executive Order, the Employee Benefits Security Administration (EBSA) added a regulatory project to the Spring 2019 Semiannual Regulatory Agenda, which was made available to the public on May 22, 2019, on www.reginfo.gov. EBSA is exploring ways to reduce the costs and burdens imposed on employers and other plan fiduciaries responsible for the production and distribution of retirement plan disclosures, as well as ways to make these disclosures more understandable and useful for participants and beneficiaries. As part of this project, EBSA is also considering revising its current electronic disclosure rules, with an eye towards broader use of electronic delivery. Any proposal the Department publishes will invite public comments from interested stakeholders, it will include a regulatory impact analysis of expected costs and benefits, and a copy of the proposal will be provided to the Committee.

Mr. Scott: If the review has not been completed, please provide a timeline for when it will be completed and commit to publicly sharing a copy of the findings.

Mr. Acosta: Please see the response to the previous question.

OSHA REGIONAL STAFF CUTS

It is federal OSHA's responsibility to monitor the 20 plus state plans to ensure that they are at least as effective as the federal program. Over the last ten years, there have been serious problems with the state plans in Nevada, Hawaii, South Carolina, Arizona, Alaska, Indiana, Illinois, Virgin Islands and most recently, Kentucky.

Mr. Scott: Please explain why the Department sought to cut 14 positions from the regional office staff assigned to oversee the state plans in its budget proposal.

Mr. Acosta: The Occupational Safety and Health Administration (OSHA) proposes to manage State Plan monitoring through its National Office. Seven State Plan Monitors would remain located in the field, but would report directly to the Directorate of Cooperative and State Programs, Office of State Programs. These seven monitors would cover approximately four State Plans each and would be responsible for day-to-day monitoring, including conducting quarterly meetings, processing the State Plan grant applications, handling Complaints About State Plan Administration, and serving as the main point of contact between State Plans and OSHA.

Centralizing State Plan monitoring would improve consistency by streamlining program oversight, add efficiencies in program management by reducing duplicative efforts, and provide cost savings.

WEIGHTED OSHA INVESTIGATIONS

The National Employment Law Project reported that the Department's own numbers show that while the raw number of OSHA inspections is slightly higher than 2016, OSHA's enforcement units, which are the more important numbers, have dropped precipitously since 2016.[4] With enforcement units, more complex and time-consuming inspections receive more weight than faster, less complex inspections.

Mr. Scott: Please describe what the Department is doing to ensure that OSHA conducts additional more-heavily weighted investigations than it is now.

Mr. Acosta: The Occupational Safety and Health Administration (OSHA) has met or exceeded its enforcement unit goal for the past three fiscal years.

The Occupational Safety and Health Administration (OSHA) is revising its enforcement weighting system. The updated system will include a greater emphasis on the impact of inspections, rather than the current system's emphasis on the resources expended in an inspection. With this revision, OSHA can emphasize inspections that are not resource intensive, but save more lives and reduce exposure to hazards. These inspections include those addressing fall and trenching hazards.

MINE SAFETY and ENFORCEMENT BUDGET ACTIVITY

Mr. Scott: You have stated that the Department plans to merge the Mine Safety enforcement budget activity with the Metal/Non-Metal budget activity and cross-train inspectors so that they can perform both types of enforcement. But the proposed budget does not request any increase in funding for inspector training. Please describe the Department's plans for conducting the additional training needed to ensure that inspectors are proficient in both sectors.

Mr. Acosta: The Mine Safety and Health Administration's (MSHA) "One MSHA" initiative began by creating the unified position of Administrator, Mine Safety & Health over all of Enforcement. MSHA then evaluated all mines for distance from MSHA offices, and identified 90 mines where it made sense to train a coal inspector to inspect a metal/nonmetal mine, or vice versa. The Mine Academy in Beckley, WV established and revised our curriculum, with input from the NCFLL. MSHA provided up to 56 hours of classroom training for those inspectors, plus up to 24 hours on-the-job training with a seasoned inspector or manager.

During the six months beginning last October, inspectors for those 90 mines spent 41 percent less time driving than previously. This saves taxpayer dollars on vehicles, fuel, food and lodging. But ultimately this is about more effectively achieving MSHA's core mission: instead of spending time driving in a car, our inspectors can spend more time on site interacting with miners and observing safety conditions.

[4] "Workplace Safety Enforcement Continues to Decline in Trump Administration," National Employment Law Project (March 2019), available at https://bit.ly/2CB5cET

Based on the success of phase one, starting July 1st MSHA will add 117 more mines. Understand that MSHA will retain specialists in their current roles to cover specific mining conditions, such as ventilation experts inspecting underground coal mines prone to hazardous conditions like combustible coal dust and methane inundation.

In keeping MSHA's promise to House and Senate Appropriations Committees, MSHA's Office of Accountability will audit crossover mine inspections to ensure that enforcement personnel adhered to MSHA's policies and procedures.

OFCCP DIRECTIVE 2018-01

Mr. Scott: Please provide the evidence that was relied upon in issuing the Office of Federal Contract Compliance Programs (OFCCP) Directive 2018-01 to allow contractors to file rebuttals before a final Notice of Violation. Specifically, please provide the evidence that showed a need for this change in policy in order to bring about an improvement in the Department's ability to enforce the law when there is a violation and impose penalties to ensure that contractors are discouraged from such behavior in the future.

Mr. Acosta: The Office of Federal Contract Compliance Programs (OFCCP) is committed to vigorous enforcement of the equal employment opportunity and non-discrimination provisions in Executive Order 11246, Section 503 of the Rehabilitation Act, and the Vietnam Era Veterans' Readjustment Assistance Act.

On February 27, 2018, OFCCP issued Directive 2018-01, "Use of Predetermination Notices (PDN)." A PDN is a letter that OFCCP uses to inform federal contractors and subcontractors of the agency's preliminary findings of employment discrimination. The use of PDNs encourages earlier communication with federal contractors and provides them an opportunity to respond to preliminary findings before OFCCP determines whether to issue a Notice of Violation, and to engage in earlier conciliation. In instances where the contractor provides a nondiscriminatory reason for the finding that OFCCP had not considered in its evaluation or the contractor had not previously provided, the agency can review the submission, decide whether additional inquiry related to the submission is necessary.

OFCCP has issued PDNs as a long-standing practice described in OFCCP's Federal Contract Compliance Manual, which is publically available. The practice, however, had not been mandatory and OFCCP regions were inconsistent in their use of the PDN. OFCCP's own administrative data also suggests that the use of PDNs correlate to lower aged case rates. OFCCP, therefore, issued the directive to ensure consistent use of PDNs across all of its regions and improve efficient decision-making.

OFCCP DIRECTIVE 2018-03

Last August, the Office of Federal Contract Compliance Programs (OFCCP) issued Directive 2018-03 that expands the right of federal contractors to justify employment- based discrimination based on their religious views.

Mr. Scott: Please state how many complaints OFCCP received from religious organizations claiming they were prohibited from seeking government contracts based upon their religious beliefs in the last 2 years prior to issuing the directive.

Mr. Acosta: The Office of Federal Contract Compliance Programs (OFCCP) ensures that employers with federal contracts and subcontracts take affirmative action and do not discriminate in their employment practices on the basis of race, color, sex, sexual orientation, gender identity, religion, national origin, disability, or status as a protected veteran. In addition, contractors and subcontractors are prohibited from discriminating against applicants or employees because they inquire about, discuss, or disclose their compensation or that of others, subject to certain limitations.

While OFCCP's authority originates with a federal contract or subcontract, the agency does not oversee the contract solicitation and award processes. This responsibility rests with contracting officers at each federal agency. Thus, OFCCP has not received any complaints from religious organizations seeking government contracts in the past two years, nor would OFCCP have the authority to take any action on those complaints.

Mr. Scott: Please provide a detailed description of any other evidence that was relied upon to determine that there was a need for the OFCCP guidance.

Mr. Acosta: OFCCP relied upon stakeholder input, recent case law, and statements of administration policy contained in Executive Orders 13798 and 13831 to determine that OFCCP needed to provide guidance in this area. In a stakeholder meeting with religious organizations, OFCCP was informed that these organizations are reluctant to participate as federal contractors because of uncertainty regarding the scope of the religious exemption contained in section 204(c) of Executive Order 11246 and codified in OFCCP's regulations.

OFCCP's Guidelines on Discrimination Because of Religion or National Origin, found at 41 CFR part 60-50, were originally written in 1978 (43 FR 49265). The guidelines were revised in 2014, when sexual orientation and gender identity were added as protected bases under Executive Order 11246 (79 FR 72995). The guidelines state that they do not supersede or otherwise limit the exemption, but the interaction between the guidelines and the exemption was not clear to stakeholders.

For example, OFCCP's response to a frequently asked question (FAQ) on the religious exemption interpreted the exemption more narrowly than is indicated by recent U.S. Supreme Court cases. As a result, the guidance was needed to align OFCCP's interpretation with current case law and Executive Orders 13798 and 13831.[5]

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[5] *Masterpiece Cakeshop, Ltd v. Colo. Civil Rights Comm'n*, 138 S. Ct. 1719, 1731 (2018) (government violates the Free Exercise clause when its decisions are based on hostility to religion or a religious viewpoint); *Trinity Lutheran Church of Columbia, Inc v Comer*, 137 S. Ct. 2012, 2022 (2017) (government violates the Free Exercise clause when it conditions a generally available public benefit on an entity's giving up its religious character, unless that condition withstands the strictest scrutiny); *Burwell v Hobby Lobby Stores, Inc* , 134 S. Ct. 2751, 2775 (2014) (the Religious Freedom Restoration Act applies to federal regulation of the activities of for-profit closely held corporations); Executive Order 13831, 83 FR 20715 (May 8, 2018); Executive Order 13798, 82 FR 21675 (May 9, 2017).

Mr. Scott: Given the lack of clarity in the law as well as conflicts between religious freedom and anti-discrimination laws, please provide a detailed description, including any supporting documents, of OFCCP's enforcement scheme for this directive. Please include any training materials for OFCCP staff on enforcement policies.

Mr. Acosta: OFCCP published Directive 2018-03 on August 10, 2018. Staff are required to read and become familiar with all agency directives. Additionally, OFCCP published FAQs that specifically address religious employers and the religious exemption. For ease of use, the FAQs are located on one webpage and clearly labeled.[6] OFCCP's enforcement of these requirements is included in the Federal Contract Compliance Manual at Chapter 2, Section 2G for supply and service contractors and at Chapter 3, Section 3M for construction contractors.[7]

OFCCP's proposed rule, which will further clarify the scope and application of the religious exemption (RIN 1250-AA09) is expected to be published as an NPRM in Summer 2019.

INCREASE IN OSHA INSPECTORS

OSHA currently has fewer inspectors than any time in its 49-year history, despite the fact that the number of workplaces and number of workers under OSHA jurisdiction has nearly doubled over that time. The AFL-CIO estimates that at this low level of staffing, each workplace within OSHA's jurisdiction would only get inspected once every 165 years. For just under a $100 million budget increase (or roughly 20 percent), OSHA could add enough inspectors to bring that number down to once every 100 years.

Mr. Scott: Please state whether the Department would support such an increase so that every workplace under OSHA jurisdiction can be inspected at least once every century.

Mr. Acosta: The Occupational Safety and Health Administration (OSHA) has taken several steps to increase its Federal Enforcement staffing levels. Beginning in 2017, the agency received approval to fill all funded Compliance Safety and Health Officers (CSHO) positions. All vacancies are being recruited for, and OSHA is in the process of on-boarding the inspectors. The agency begins the recruitment process as soon as a vacancy occurs, or an upcoming retirement is announced. OSHA advertises and recruits individuals to fill all current vacancies, and the new inspectors then begin the on-boarding process. The recruitment and on-boarding process can take from three to six months, which includes the time necessary for advertisement, application, screening and interviews, and completing the required clearance of applicants under consideration, such as security and CSHO physicals. OSHA has also begun recruiting for a larger number of positions than available vacancies to ensure there is a continuous pool of CSHO applicants for selection when future vacancies occur.

[6] The Religious Employers and Religious Exemption FAQs are available on OFCCP's website at https://www.dol.gov/ofccp/regs/compliance/faqs/ReligiousEmployersExemption.htm
[7] The Federal Contractor Compliance Manual is available on OFCCP's website at https://www.dol.gov/ofccp/regs/compliance/fccm/FCCM_FINAL_508c.pdf

On May 8, 2019, the House Appropriations Committee reported a bill that includes an increase of $37,383,000 for the Occupational Safety and Health Administration's (OSHA) Federal Enforcement activity. If enacted at this level, the increase would provide additional compliance safety and health officer resources for OSHA to expand its enforcement presence and reach additional workplaces.

USE OF APPRENTICESHIP FUNDING

You have confirmed for both Senate Appropriations Subcommittee on LHHS and the US House Appropriations LHHS Subcommittee that all apprenticeship funding from the FY2018 and FY2019 Omnibus could be used only for the establishment of Registered Apprenticeship programs.

Ms. Davis: Can you confirm for the record today that there is not a single cent of the $160 million is being used being used to support Industry Recognized Apprenticeship Programs in any manner – inclusive of Advisory Groups that deal in any way with IRAPs, marketing materials that could support IRAPs or Registered Apprenticeships, or websites established to support any form of "apprenticeship"?

Mr. Acosta: No registered apprenticeship funds have been provided to business or industry to set up IRAPs. Contracts funded from the Department's apprenticeship appropriation are intended to develop and expand registered apprenticeship programs. In using these funds, industry recognized apprenticeship programs, pre-apprenticeship programs, and other apprenticeship models, may incidentally or indirectly benefit from an expenditure to expand opportunities for registered apprenticeship programs. Indeed, identifying and encouraging non-registered apprenticeship programs to consider registration should benefit registered apprenticeship programs.

Ms. Davis: If the Department is not using the $160 million for these purposes, how are they funding these activities?

Mr. Acosta: Please see the response to the prior question.

CONSTRUCTION AND MILITARY APPRENTICESHIP PROGRAMS

In the July 2018 Training and Employment Notice regarding Industry Recognized Apprenticeships, the Department made clear that construction and military apprenticeship programs would be excluded from consideration for IRAPs, as there is already an "existing high concentration in these two areas."

Ms. Davis: Can you confirm that these areas will be excluded from any proposed or final rules related to the National Apprenticeship Act?

Mr. Acosta: On June 25, 2019, the Federal Register published a Notice of Proposed Rulemaking (NPRM) entitled, "Apprenticeship Programs, Labor Standards for Registration, Amendment of Regulations." The NPRM seeks comment regarding industries where apprenticeships are already effective and substantially widespread. For more information, please

see Section 29.31, "Scope and Deconfliction between Apprenticeship Programs under Subpart A and Subpart B" available at: https://www.federalregister.gov/documents/2019/06/25/2019-13076/apprenticeship-programs-labor-standards-for-registration-amendment-of-regulations.

EXPANSION OF REGISTERED TECHNOLOGY APPRENTICESHIPS

We recently had a hearing on Registered Apprenticeships and had a witness from Apprenti, which is DOL's IT Sector Lead on expansion of Registered technology apprenticeships, and they're expanding Registered Apprenticeship IT programs across the United States. Yet at the hearing, you were insistent that a new apprenticeship track is needed for non-trade professions. However, the data from DOL's website that lists manufacturing and healthcare are in the top 10 industries for Registered Apprenticeships in fiscal year 2018, and that the expansion of new Registered Apprenticeship programs is at a 10-year high.

Ms. Davis: Can you provide the Department's justification for lowering quality standards for a new alternative track of "apprenticeship" programs, given the data showing the success of the existing Registered Apprenticeship system?

Mr. Acosta: Industry recognized apprenticeship programs (IRAPs) are high-quality apprenticeship programs with the following hallmarks of quality: paid work; work-based learning; mentorship; education and instruction; obtaining industry-recognized credentials; safety and supervision; and adherence to equal employment opportunity obligations.

Under the proposed rule, entities such as trade, industry, and employer groups or associations, educational institutions, state and local government entities, non-profit organizations, unions, or a consortium or partnership of these entities could become a Standards Recognition Entity (SRE) that sets standards for training, structure, and curricula for in relevant industries or occupational areas. The SREs would be recognized through the Department of Labor to ensure that its requirements are met, resulting in only high-quality IRAPs. For more specific requirements, please see the NPRM at §§29.21 - 29.23.

This is a similar relationship to the one that exists between the Department of Education and higher education accrediting bodies. The Department would ensure that SREs have the capacity and quality-assurance processes and procedures needed to ensure strong oversight of IRAPs.

As this is an open rulemaking, if you have any additional questions or items for consideration, the Department encourages you to submit these as comments in the rulemaking record so that they may be addressed in any final rule.

ILAB ENFORCEMENT

Following up from Rep. Omar's questions during the May 1, 2019 hearing regarding the enforcement of labor provisions in the recently negotiated USMCA, please provide the Department's stance on Senator Brown's and Senator Wyden's proposed labor enforcement plan.

Ms. Davis: Is this something the Department of Labor would be able to work with USTR on implementing?

Mr. Acosta: The U.S. Trade Representative (USTR) is the lead agency for negotiating the USMCA and other trade agreements. It is working closely with the Department and Congress on a package of U.S. government actions to address concerns about Mexico's enforcement of the labor provisions of the USMCA. The Administration is confident that the agreed-upon package will contain a variety of approaches to strengthen Mexico's enforcement of its labor laws and to monitor the compliance of Mexico's USMCA labor commitments. The Department will play a key role in these efforts.

Ms. Davis: What is your estimate of how much additional funding would be necessary to successfully implement this proposal, and what conversations has your department already had with USTR on either this or other labor enforcement?

Mr. Acosta: The USMCA enforcement package is being conducted by the USTR. The Department and the USTR have had preliminary discussions about what efforts could support enforcement of Mexico's USMCA labor commitments. However, there have not been specific conversations with the USTR about funding Senators Wyden and Brown's proposal.

HUMAN TRAFFICKING OF H-2A GUESTWORKERS

The anti-trafficking organization Polaris recently released a report[8] on human trafficking in temporary work visa programs. The visa category with the most reported trafficking cases (over 300) was the H-2A agricultural worker visa program.

Mr. Grijalva: Please provide a detailed description of the steps DOL is taking to address these abuses and violations.

Mr. Acosta: Bad actors that fraudulently exploit non-immigrant visa programs not only hurt working Americans and American job creators, but also harm guest workers by, among other things, failing to provide the required living accommodations and standard of pay. At times, these abuses are severe and endanger the lives of guest workers. Because the potential for such abuses and violations are not limited to the H-2A visa program, on June 6, 2017, the Department announced a policy to vigorously enforce all laws governing the administration and enforcement of non-immigrant visa programs within its jurisdiction, including by:

- Directing the Department's Wage and Hour Division (WHD) to use all its tools in conducting civil investigations to enforce labor protections provided by the visa programs.
- Directing the Department's Employment and Training Administration (ETA) to develop proposed changes to the Labor Condition Application, and for WHD to review its investigatory forms, to better identify systematic violations and potential fraud, and provide greater transparency for agency personnel, U.S. workers and the general public.

[8] Polaris, Human Trafficking on Temporary Work Visas (June 2018), available at https://polarisproject.org/sites/default/files/Human%20Trafficking%20on%20Temporary%20Work%20Visas%20A%20Data%20Analysis%202015-2017.pdf

- Directing WHD, ETA, and the Office of the Solicitor (SOL) to coordinate the administration and enforcement activities of the visa programs and make referrals of criminal fraud to the Office of the Inspector General.

Since this announcement, a working group comprised of senior leadership from OIG, ETA, WHD, and SOL have implemented protocols that supervise this effort and coordinate enforcement to avoid duplication of efforts and maximize the efficiency of the Department's activities regarding the visa programs.

These sustained efforts have led to significant results. In a notable example, a WHD investigation found 69 Mexican guest workers living in a life-threatening housing encampment. Workers were housed in converted school buses, truck trailers, and a shed that were grossly overcrowded, unsanitary, and inadequately ventilated, even as daytime temperatures exceeded 100 degrees. In the Department's subsequent case against the grower and its recruiting agents, an Arizona federal court entered judgments, after the Department obtained its first ever injunction in the H-2A program, to redress these violations.

The Department will also continue to work with the Departments of Justice, Homeland Security, and State to further detect and investigate visa program fraud and abuse.

PREVAILING WAGE FOR H-2A GUESTWORKERS

For more than 5 decades, the Department of Labor has required employers to offer and pay the local "prevailing wage" for workers in the H-2A agricultural guestworker program. However, prevailing wage surveys are increasingly not being done or published due to lack of sufficient funding from the Department to state agencies or simply because state agencies don't prioritize these surveys.

Mr. Grijalva: Please provide a detailed description of the Department's efforts to ensure that the prevailing wage system under the H-2A program has updated and useful data to use, including wage surveys.

Mr. Acosta: Under the Department's regulations at 20 CFR 655.120, an employer participating in the program is required to offer and pay at least the highest of several wages, namely: the Adverse Effect Wage Rate (AEWR), the prevailing hourly wage or piece rate, the agreed upon collective bargaining wage, or the Federal or State minimum wage, except where a special procedure is approved for an occupation or specific class of agricultural employment. The AEWR adopts the results of the Farm Labor Survey performed by the U.S. Department of Agriculture semi-annually and is in place to protect U.S. workers from suffering adverse effects due to the employment of temporary foreign workers in agricultural work. The H-2A prevailing wage is the wage established pursuant to a prevailing wage survey conducted by the State Workforce Agency (SWA) under the Department's regulations at 20 CFR part 653.

Annual funding for SWA grants has consistently been $14.282 million for all states since FY 2014. The Department also issued $1.4 million in supplemental state grants in FY 2017 due to increasing state workloads. In accordance with the Training Employment and Guidance Letter

the Department issues annually, states cannot spend more than 20% of the Office of Foreign Labor Certification (OFLC) grant funds conducting prevailing wage and prevailing practice surveys. OFLC does not offer other monetary support beyond grant funding. However, states can use other Wagner-Peyser funds (e.g. Employer Service grants and Workforce Information Grants) to conduct prevailing wage surveys.

To the extent practicable, the SWAs have prioritized their limited resources on performing H-2A program functions, including housing inspections and placing job orders to recruit U.S. workers, in addition to conducting wage surveys in the major crops or other agricultural activities/commodities where seasonal H-2A workers are regularly employed and which rely on voluntary responses by employers.

NORTHERN MARIANA ISLANDS U.S. WORKFORCE ACT

Secretary Acosta, regarding implementation of the Northern Mariana Islands U.S. Workforce Act, at the May 1 hearing we briefly discussed the Department's communication with the Office of the Governor about their June 3 deadline to submit the statutorily required plan for approval of the use of funds to educate and train U.S. workers.

Mr. Kilili Camacho Sablan: Can you provide specifics of the communications and the evaluation criteria that the U.S. Department of Labor will use to determine approval of that plan?

Mr. Acosta: The Department's Employment and Training Administration is in receipt of the Commonwealth Worker Fund Annual Plan, dated June 1, 2019, submitted for review. In accordance with the Northern Mariana Islands U.S. Workforce Act of 2018, a determination of the plan will be issued within 120 days of receipt.

REPORTING SYSTEM UNDER THE NORTHERN MARIANA ISLANDS U.S. WORKFORCE ACT

Under the Northern Mariana Islands U.S. Workforce Act, the Secretary of Homeland Security is required to develop a system for each employer of a foreign worker to report to you semiannually to provide evidence "to verify the continuing employment and payment of such worker under the terms and conditions set forth in the permit petition that the employer filed on behalf of such worker".

Mr. Kilili Camacho Sablan: Has the Department of Homeland Security established the system? If not, when will it be established? If it has, can you describe how it works?

Mr. Acosta: The Northern Mariana Islands U.S. Workforce Act of 2018 (P. L. 115-218) requires the Department of Homeland Security (DHS) to establish, administer, and enforce a system for allocating and determining terms and conditions of permits to be issued to prospective employers for each nonimmigrant worker who would not otherwise be eligible for admission under the Immigration and Nationality Act. DHS is the federal agency responsible for this system, and the Department of Labor is unable to speak to its status.

WORKERS DISPLACED BY THE H-2B VISA PROGRAM

Last year U.S. workers at the Saipan casino construction site lost their jobs to foreign workers with H-2B visas. In a response to Chairman Scott and me on this issue your department said that it "can – and does – enforce employer's non-displacement obligations". Yet, there were reports in my local media last year – and constituents individually reported to me – that IPI, a company that your Department approved for 1,668 H-2B visas, was laying off U.S. workers in similar jobs.

Mr. Kilili Camacho Sablan: Is the U.S. Department of Labor investigating these layoffs?

Mr. Acosta: The H-2B regulations contain provisions to ensure that the employment of H-2B workers will not adversely affect the job opportunities of U.S. workers. The Department of Labor (Department) has the authority to enforce the regulatory provisions that protect U.S. workers, including employers' non-displacement obligations. The prohibition of recent or future layoffs of similarly-employed U.S. workers requires that the employer requesting the H-2B worker attest that is has not laid off and will not lay off any similarly-employed U.S. worker.

The Department is aware of allegations of U.S. worker displacement related to the Saipan casino construction and continues to assess this matter.

WHD continues to have a very active presence in the CNMI. For example:

- In March 2019, WHD announced it settled with four China-based construction contractors to pay $13,972,425 for minimum wage and overtime violations under the Fair Labor Standards Act. The four construction contractors building the Saipan Casino and Hotel were MCC International Saipan Ltd. Co., Beilida New Materials System Engineering Co. Ltd., Gold Mantis Construction Decoration, and Sino Great Wall International Engineering Co. LLC. WHD is still in the process of paying the back wages to the more than 2,400 workers.
- To further strengthen our relationship with the CNMI's local Department of Labor, WHD recently renewed a Memorandum of Understanding with them.

Mr. Kilili Camacho Sablan: Are U.S. workers losing their jobs at the same time you are approving foreign workers for the same project?

Mr. Acosta: Consistent with the Immigration and Nationality Act's emphasis on the protection of U.S. workers, the Department enforces and ensures that employers have not and will not lay off any similarly-employed U.S. workers in the occupation that is the subject of temporary labor certification. This prohibition begins 120 days before the date the H-2B worker is needed by the employer, and runs until the worker is scheduled to leave. More generally, as part of any H-2B investigation, the Department's Wage and Hour Division (WHD) reviews whether the H-2B certified employer displaced their U.S. workers in favor of H-2B workers. For example, H-2B employers must also contact former U.S. workers and offer them employment in the jobs for which they seek H-2B temporary labor certifications.

The Department is tasked with protecting American workers by determining whether a qualified U.S. worker is available to perform the temporary services or labor for which an employer desires to hire foreign workers and whether a foreign worker's employment will adversely affect the wages or working conditions of similarly employed U.S. workers. In order to obtain an H-2B temporary labor certification from the Department, an employer must also conduct the recruitment activities required by the H-2B regulations in order to determine whether qualified U.S. workers are available to perform the job. The Department issued 10 H-2B certifications to IPI for 1,644 worker positions in Fiscal Year (FY) 2018. In FY 2019, as of May 31, 2019, approximately 11 H-2B certifications for 2,647 worker positions were issued for IPI.

OSHA PERSONNEL IN THE NORTHERN MARIANA ISLANDS

The Occupational Safety and Health Administration (OSHA) has, unfortunately, been involved in several enforcement actions in Saipan in recent years. This has included a March 2017 fatality and numerous workplace injuries at the Saipan casino construction site and three July 2017 fatalities in a preventable confined space incident elsewhere on Saipan. These incidents are due, in part, due to a lack of understanding and compliance with U.S. labor laws by companies managed by foreign-owned entities using foreign labor. Now, the Marianas is embarking on a large-scale disaster reconstruction program raises additional worker safety concerns. There are presently no full-time OSHA personnel in the Marianas; the Marianas is serviced by the Honolulu office over 3,000 miles away. The Marianas needs full-time "boots on the ground" Compliance Safety and Health Officers to educate employers and workers and deter companies from committing violations. Only a physical OSHA presence in the Marianas, rather than the infrequent visits presently being made from elsewhere, can truly help keep these kinds of horrific incidents from recurring.

Mr. Kilili Camacho Sablan: Will you commit to deploying full-time OSHA Compliance Safety and Health Officers in the Marianas?

Mr. Acosta: The Occupational Safety and Health Administration (OSHA) is committed to providing workplace safety and health protection in the Mariana Islands. OSHA has twelve compliance safety and health officers (CSHOs) and four supervisory CSHOs to cover the territory. OSHA also has the capacity to deploy additional resources, should the need arise, to respond to incidents and provide outreach and assistance in the Mariana Islands.

CSEOA ELIMINATION

The Senior Community Service Employment Program (SCSEP) successfully addresses the growing need for job training and workforce development for low-income Americans aged 55 and above who want to continue living independent and productive lives. SCSEP currently serves approximately 41,000 older workers across the country, helping individuals develop new skills while contributing to their communities by working in schools, senior centers, and other non-profit settings.

Ms. Bonamici: With the existing challenges for older Americans to find work and a looming retirement security crisis because most older Americans do not have enough saved for retirement, why would the Administration propose to eliminate SCSEP?

Mr. Acosta: Workforce Innovation and Opportunity Act (WIOA) programs, including the WIOA formula-funded Adult and Dislocated worker programs, address the needs of older workers. Older workers, like all workers, will be better served by streamlined, effective workforce development programs and by programs that are controlled at the state and local level based on each state's specific needs.

While the program provides some income support to about 60,000 individuals each year, it fails to meet its other major statutory goals of fostering economic self-sufficiency and moving low-income seniors into unsubsidized employment. SCSEP has a goal of transitioning half of participants into unsubsidized employment within the first quarter after exiting the program, but has struggled to achieve even this modest goal, doing so in only one of the most recent seven program years.[9]

Further, the Inspector General recently found that the program's largest grantee intentionally misused more than $4 million of program funds on items such as personal travel, Netflix subscriptions, and nearly $800,000 in expenses for the former Board of Directors' Chairman and other former senior executives.[10]

ACA HEALTH PLAN REQUIREMENTS

The Affordable Care Act (ACA) requires that health plans provide contraceptive coverage. On November 15, 2018, the Administration issued two final rules that would allow nearly any employer or institution of higher education to claim a religious or moral objection to providing contraceptive coverage. Astoundingly, under this rule, women enrolled in plans sponsored by entities that object to birth control coverage would no longer be guaranteed that coverage through an accommodation, as was previously required.

Ms. Bonamici: What is the Department doing to track and ensure proper oversight of employers' use of religious and moral exemptions from the ACA's contraceptive coverage requirement, and to quantify how many employees and dependents have lost coverage as a result?

Mr. Acosta: The Patient Protection and Affordable Care Act (PPACA) generally requires coverage of certain preventive services, including, with respect to women, preventive care and screenings provided for in comprehensive guidelines issued by the Department of Health and Human Services' (HHS) Health Resources and Services Administration (HRSA). PPACA granted HRSA the authority to develop comprehensive guidelines for preventive care and screenings for women, as well as discretion to exempt certain religious employers from the guidelines where contraceptive services are concerned. In 2011, HRSA adopted guidelines requiring coverage for all FDA-approved contraceptives and sterilization for women with reproductive capacity. At that time, health plans sponsored by houses of worship were exempted from compliance with the mandate to cover contraceptive services. A number of lawsuits were filed by employers that did not qualify for the exemption for houses of worship and with

[9] http://www.doleta.gov/Seniors/html_docs/GranteePerf.cfm
[10] https://www.oig.dol.gov/public/reports/oa/2018/26-18-002-03-360.pdf

sincerely-held religious and moral objections to providing coverage for contraception. Between 2011 and 2017, a series of guidance and regulatory amendments were issued to address religious accommodations. On October 6, 2017, HRSA revised its recommendations with respect to contraception to provide an expanded exemption for entities that object to providing coverage for all or a subset of contraceptive items and services based on sincerely held religious beliefs or moral convictions. Pursuant to the discretion afforded HRSA under PPACAHHS, jointly with the Departments of the Treasury and Labor (collectively, the Departments), published the two interim final rules, followed by final rules, providing an exemption for employers with religious and moral objections to contraception coverage.

On January 13, 2019, the United States District Court for the Northern District of California issued an order staying the final rules from going into effect in the plaintiff states while the lawsuit proceeds. On January 14, 2019, the United States District Court for the Eastern District of Pennsylvania issued a nationwide preliminary injunction, preventing the rules from taking effect. On July 12, 2019, the U.S. Court of Appeals for the Third Circuit affirmed the district court's order enjoining the final rules nationwide.

On June 5, 2019, the United States District Court for the Northern District of Texas held that the contraceptive mandate violated the Religious Freedom Restoration Act (RFRA) when applied to certain religious objectors. This holding is separate and apart from the injunctions preventing the 2018 final rules from taking effect. The court certified two classes of religious objectors: current or future employers with sincerely-held religious objections to the accommodation process; and current or future individuals with sincerely-held religious objections to the contraceptive mandate who would be willing to buy health insurance that excludes contraceptive coverage. The court concluded that the mandate violated RFRA for both classes. It therefore issued an injunction against the Government prohibiting it from enforcing the mandate against members of either class.

Ms. Bonamici: What is the Department doing to monitor and enforce employers' compliance with Section 2713 of the Public Health Service Act, including the requirement for employee health plans to cover contraceptive counseling, methods, and services?

Mr. Acosta: The Department has primary enforcement jurisdiction over employment-based, private-sector health plans. These plans can be self-insured, fully-insured, or a combination of both. HHS has primary enforcement authority over non-Federal governmental plans. States are the primary enforcers over issuers, although HHS can act as a fallback enforcer if a state fails to substantially enforce the federal standards.

The Department's Employee Benefits Security Administration (EBSA) conducts investigations of health plans to enforce the requirements of part 7 of the Employee Retirement Income Security Act (ERISA), including the preventive service requirements of section 2713 of the Public Health Service Act (which are incorporated into ERISA section 715). When EBSA identifies violations in a group health plan, the Department asks the plan to make necessary changes to any noncompliant plan provision and to re-adjudicate any improperly denied benefit claims. If the plan fails to make those necessary changes, the Department will take all necessary and appropriate steps to compel the plan to comply.

In light of the injunctions and ongoing litigation regarding the final rules, the Departments are working with the Department of Justice and our Solicitor's Office to reach a conclusion on what steps the Departments may take.

Ms. Bonamici: How does the Department plan to guarantee that all the employees and their dependents whose employers deny them contraceptive coverage are provided with timely and no-cost coverage for the contraceptive methods of their choosing, as required under *Zubik v.Burwell*?

Mr. Acosta: Although the Supreme Court did not resolve the Religious Freedom Restoration Act claims presented in Zubik on their merits, it instructed the Departments to consider alternative accommodations for the objecting plaintiffs, after the Government suggested that such alternatives might be possible. In response to the Supreme Court's order, the Departments issued a request for information seeking public comment to determine whether further modifications to the accommodation could resolve the litigation challenges asserted by various organizations while providing a coverage mechanism for their employees. The agencies received more than 54,000 comments.

Subsequent to this request for information, and consistent with the President's Executive Order Promoting Free Speech and Religious Liberty, the Departments promulgated rulemaking that expanded the scope of the exemption for entities that object to providing coverage for all or a subset of contraceptive items and services based on sincerely held religious beliefs or moral convictions and made the accommodation process voluntary for those entities. Because the final rules that made the mandatory accommodation process voluntary are enjoined, in the Department's view, a plan with a religious objection must either self-certify its objection to its health insurance issuer (to the extent it has an insured plan) or third party administrator (to the extent it has a self-insured plan) using the EBSA Form 700 provided by the Department; or self-certify its objection. In the event that an objecting entity notifies the Departments of their objection, the Departments will notify the TPA or issuer to facilitate the provision of contraception to plan participants as part of the mandatory accommodation process.

Ms. Bonamici: Because these new rules will reduce access to contraception, what is the Department doing to track and address any resulting increase in unintended pregnancies?

Mr. Acosta: The interim final rules and final rules are currently enjoined. The Departments of HHS, Treasury, Labor and the Department of Justice have interpreted the courts' rulings to mean that the Departments are to continue with our same approach prior to issuance of those regulations.

BUDGET CUTS TO JOB TRAINING PROGRAMS

In 2014, Congress demonstrated broad bipartisan support for job training programs by passing the Workforce Innovation and Opportunity Act. I am deeply disappointed that the President's budget request for Fiscal Year 2020 cuts job training programs by 13 percent, including funding WIOA at $375 million below authorized levels. The budget also includes a 41 percent cut to Job Corps, a 16 percent cut to the Reentry Employment Opportunities Program, and the elimination of the Migrant and Seasonal Farmworkers Program, the Indian and Native American Programs,

and the Workforce Data Quality Initiative. These programs help workers receive the support they need to access better paying jobs and help employers hire a workforce responsive to their needs.

Ms. Bonamici: Do you agree that job training programs are important to help those who have been left behind and left out of the economic recovery and help more people access better paying jobs?

Mr. Acosta: The FY 2020 Budget proposes to fund the WIOA formula programs at the same level as Congress appropriated in FY 2019. The Department is committed to investing in programs that work for our job seekers and businesses, including some of those authorized by the Workforce Innovation and Opportunity Act (WIOA). The FY 2020 Budget prioritizes evidence-based strategies, such as apprenticeship, which improve employment outcomes and economic output, and proposes eliminating programs that are ineffective, unproven, or duplicative.

JOB CORPS ENROLLMENT LIMITATIONS

I am proud to represent the Tongue Point Job Corps Center is Astoria and Partners in Vocational Opportunity Training Center in Northwest Portland. At these centers, students earn credentials and practical skills like glazing, seamanship, and culinary arts. By making sure that students have a safe and welcoming living and learning environment, Job Corps Centers can help students who have faced challenges in the traditional education system and make sure that they thrive academically.

I am extremely concerned that the President's budget request for Fiscal Year 2020 would make significant cuts to Job Corp and also proposes limiting enrollment to students aged 20 to 24.

Ms. Bonamici: What steps will the Department take to support students ages 16 to 19 who are interested in Job Corps and will no longer be eligible under this proposed policy change, especially at-risk students for whom Job Corps is the best option for getting skills to enter the workforce?

Mr. Acosta: The PY 2020 Budget indicates that Job Corps will focus on older youth for whom the program is more effective. However, Job Corps will continue to serve the full range of eligible youth ages 16 to 24.

The Department of Labor is committed to helping young individuals from disadvantaged backgrounds receive high-quality vocational and academic instruction opportunities. The Department has concerns about the program, irrespective of the funding level, and is proceeding based on those concerns with reforms to the program that we believe will improve outcomes for youth and make the program more effective and efficient. For example, the Department is using its pilot project authority, working with governors who are interested to establish pilot projects throughout the United States. As our demonstration projects mature, we will assess them to determine whether they offer more effective models for serving at-risk youth as compared to the Department's traditional Job Corps program model. The Department will also determine whether these alternate approaches are more cost effective than the traditional program model. The

Department will consider scaling efficiencies identified by demonstration projects in order to improve the delivery of Job Corps services.

Overall, the Department is conducting a programmatic assessment of performance center by center, surveying physical facilities, assessing programmatic sustainability, and considering the workforce development needs in each state and area served by a Job Corps center. Using this deliberate approach, the Department will determine how to allocate the program's Fiscal Year (FY) 2020 resources, including whether to close some centers. It is the Department's expectation that through concentration of Job Corps activities in a more limited set of higher performing centers, we will provide Job Corps participants with higher quality services that lead to better outcomes. The Department always prioritizes the needs of current Job Corps participants when deactivating or consolidating a center, allowing them to complete their Job Corps training either at their current center or at a higher performing center. Further, the Department will maintain as many student slots as possible by increasing Job Corps capacity at remaining centers. This approach maximizes the impact of Job Corps' appropriation, allowing us to continue to serve at risk youth from all fifty states and territories without compromising program effectiveness.

PROGRESSIVE MASSIVE FIBROSIS

Ms. Adams: Coal miners are now experiencing a growing epidemic of a severe form of Black Lung disease called Progressive Massive Fibrosis. Both the National Academies of Science Engineering, and Medicine and The National Institute for Occupational Safety and Health (NIOSH) issued reports that found silica to be highly relevant to the development of this disease. Please state the Department's position as to whether silica is a major contributor to the increase in Progressive Massive Fibrosis.

Mr. Acosta: The Mine Safety and Health Administration (MSHA) is aware of recent National Institute for Occupational Safety and Health (NIOSH) research documenting large clusters of miners in Kentucky and Virginia with Progressive Massive Fibrosis (PMF), the most severe form of black lung disease. The factor or combination of factors that led to this increase in cases of PMF and whether there are more cases in neighboring coal mining regions is still unknown. Lung diseases, like PMF, have a significant latency period between exposure and disease. The health effects from exposure to respirable coal mine dust may not be realized for a decade or more until the disease becomes clinically apparent.

In the 2014 Respirable Coal Mine Dust Rule, MSHA committed to a retrospective study of the rule beginning February 1, 2017, and last year issued a request for information seeking comments on how best to structure that study. Due to the 10- to 15-year latency between exposure and disease, a medically valid study cannot be completed for a decade or more, but MSHA anticipates the study will confirm that dramatic improvements in sampling and compliance translate into reduced Black Lung incidences going forward. In the meantime, MSHA is currently considering appropriate next steps to address miners' exposures to quartz. In the Spring Unified Agenda, we announced a request for information to identify ways to protect miners from exposure to quartz, including an examination of an appropriately reduced permissible exposure limit, and potential protective technologies.

Ms. Adams: Please describe what the Department is doing to protect miners by ensuring that mine operators monitor and control their miners' silica exposure.

Mr. Acosta: MSHA continues to aggressively sample the mine environment and enforce existing standards to ensure that operators have effective controls in place that continuously protect miners' health from exposure to respirable dust and silica—or quartz. MSHA is encouraged by mine operators' compliance with the Dust Rule, and control of coal miners' exposure to quartz. Since August 2016, for example, MSHA samples indicate average quartz exposure of about 25 percent of the limit. Whereas more than 16 percent of MSHA's samples exceeded the quartz standard in 2008, by 2018 only 1.2 percent of samples exceeded the standard – the lowest rate since MSHA began keeping records.

When respirable dust samples exceed the quartz standard, MSHA leadership reviews each exceedance with senior staff. Field staff issue citations where appropriate and requires corrective actions (such as revising ventilation and dust control plans and improving engineering controls). Enforcement staff follows up to ensure that the mine applies needed controls to avoid future exceedances.

Ms. Adams: Please state whether the Department is considering a rule requiring mine operators to use currently available technology to do end-of-shift monitoring of miners' silica exposure. If so, please provide an estimated timeline of such a proposed rule.

Mr. Acosta: NIOSH has stated that the Rapid Quartz Monitor (previously known as the end-of-shift monitoring device) was never meant to be used by operators as a compliance tool, but rather as an engineering tool. MSHA agrees that the results of the Rapid Quartz Monitor for compliance would be difficult or impossible to verify. Therefore, MSHA encourages mine operators to use the device to monitor their miners' exposure to quartz, and it is not considering a rule that requires mine operators to use the monitoring technology for compliance. However, MSHA is committed to collaborating with NIOSH to fully explore any potential the device may have toward compliance.

MISCLASSIFICATION INITIATIVE

In 2010, the Department of Labor launched a *Misclassification Initiative* to prevent, detect, and remedy employee misclassification through increased investigations and prosecutions.[11] There was no mention of this initiative in this Administration's 2018, 2019, or 2020 fiscal year

[11] See Fiscal Year 2016 Department of Labor, Budget in Brief, at 24, available at http://www.dol.gov/dol/budget/2016/PDF/FY2016BIB.pdf; Fiscal Year 2015 Budget of the United States, Department of Labor, at 108, available at http://www.whitehouse.gov/sites/default/files/omb/budget/fy2015/assets/labor.pdf; Fiscal Year 2014 Budget of the United States, Department of Labor, at 126, available at http://www.whitehouse.gov/sites/default/files/omb/budget/fy2014/assets/budget.pdf; Fiscal Year 2013 Budget of the United States, Department of Labor, at 146, available at http://www.whitehouse.gov/sites/default/files/omb/budget/fy2013/assets/labor.pdf.
$3.8 million was dedicated to the hiring of an additional 35 full-time investigators. See Fiscal Year 2015 Department of Labor, Budget in Brief, at 37, available at http://www.dol.gov/dol/budget/2015/PDF/FY2015BIB.pdf.

budget documents, and it appears that most references to the *Misclassification Initiative* have been purged from the DOL website. Those references that remain are from actions that pre-date this Administration.

Ms. Adams: Please state whether the Department is still involved in this initiative and if so, provide a detailed explanation of the status of this initiative.

Mr. Acosta: Misclassified employees often are denied access to critical benefits and protections they are entitled to by law, such as the minimum wage, overtime compensation, family and medical leave, unemployment insurance, and safe workplaces. Employee misclassification generates substantial losses to the federal government and state governments in the form of lower tax revenues, as well as to state unemployment insurance and workers' compensation funds. The U.S. Department of Labor's (the Department) Wage and Hour Division (WHD) continues to concentrate its enforcement efforts in high-violation, low-wage industries where these practices, and other violations of Wage and Hour statutes, are prevalent.

WHD rigorously enforces the law as evidenced by the record breaking $304 million in back wages owed to workers recovered last year. WHD focuses on enforcing **all** violations of the Fair Labor Standards Act, not just violations that occur when an employer misclassifies an employee as an independent contractor. WHD continues to build and maintain strong relationships with state and federal agencies to foster communication and better serve our nation's workers and businesses. WHD has Memoranda of Understanding (MOUs) with nearly every state across the country concerning the various laws that WHD enforces, including MOUs that address misclassification. These partnerships provide for data sharing, referrals, coordinated enforcement, joint outreach, and compliance assistance. They maximize WHD's impact and the corresponding benefits for workers and businesses. The Department's intention is to renew all such partnerships and seek new ones with states that are interested in entering into cooperative agreements. All such agreements are and will be posted on the WHD website.

JOINT EMPLOYER STANDARD

In April, the Department issued a proposed interpretive rule that seeks to drastically narrow circumstances under which an employee can hold two or more employers accountable for violations of the Fair Labor Standards Act (FLSA). The proposal seeks to narrow liability to circumstances under which an employer actually exercises control over working conditions. However, Congress's intent in passing the FLSA was a broad definition of employment to ensure that workers can hold employers accountable for wage and hour violations as long as the employee can establish economic dependence on an employer.

Ms. Adams: Please provide a detailed legal explanation, along with supporting documents and citations, of the Department's authority to issue an interpretive regulation that violates the broad standard for joint employment under the FLSA that Congress put in place.

Mr. Acosta: The Department's Notice of Proposed Rulemaking (NPRM) on FLSA joint employer status sets out a detailed legal explanation, with citations to supporting authorities, for the Department's proposed standard on this issue. The NPRM explains that there are three relevant statutory provisions: FLSA sections 3(d), 3(e) (1), and 3(g). The NPRM proposes to

adopt a standard on joint employer status that—supported by Supreme Court and federal circuit precedent—interprets sections 3(e)(1) and 3(g) as determining whether a worker is an employee of an employer, and section 3(d) alone as determining whether additional persons are joint employers of that employee. Consistent with this statutory interpretation and supported by judicial precedent, the NPRM proposes a number of regulatory changes, including the addition of a clear, four-factor balancing test favored by multiple circuits to determine joint employer status in one of the two FLSA joint employer scenarios.

Ms. Adams: Please also provide a detailed legal explanation, along with supporting documents and citations, of the Department's authority to issue an interpretative regulation that violates the standard for joint employment under the Migrant and Seasonal Agricultural Worker Protection Act of 1983.[12]

Mr. Acosta: The Department is not proposing any changes to its regulations explaining the standard for joint employer status under the Migrant and Seasonal Agricultural Worker Protection Act of 1983 (MSPA). MSPA is a different statute with different statutory provisions. Accordingly, any future change that the Department proposes to its MSPA regulations must be consistent with MSPA—taking into account any differences between MSPA and other statutes, such as the FLSA.

Ms. Adams: Please provide a detailed description of how this interpretative regulation will impact the Department's enforcement of joint employment liability cases.

Mr. Acosta: The Department's NPRM on FLSA joint employer status offers a detailed description of its proposed interpretation of the standard for FLSA joint employer status, and this interpretation, if adopted, will guide its enforcement. If the NPRM is adopted as a Final Rule, the Department will determine joint employer status on a case-by-case basis—weighing the factors in the proposed regulatory text, and not considering the factors expressly excluded by the proposed regulatory text, as it considers the totality of the circumstances in each case. If adopted, the Department's proposed guidance will continue to apply a dynamic and fact-sensitive interpretation of joint employer status under the FLSA to joint employer scenarios.

EMPLOYEE MISCLASSIFICATION

Secretary Acosta, in March of this year, USDOL sent a letter to states requesting they adopt effective strategies to prevent, detect, and recover Unemployment Insurance (UI) improper payments. While it is important for USDOL to address and work with states to strengthen their UI systems and implement tools to reduce improper payments, and comply with the Improper Payments Elimination and Recovery Act of 2010 (IPERA) - state UI trust funds are missing out on millions of dollars, primarily due to the misclassification of employees as independent contractors – resulting in less contributions being collected for states' UI trust funds.

[12] According to the bill's legislative history, the bill's adoption of its broad definition of employment relationships "was deliberate and done with the clear intent of adopting the 'joint employer' doctrine as a central foundation of this new statute; it is the indivisible hinge between certain important duties imposed for the protection of migrant and seasonal workers and those liable for any breach of those duties." In fact, the Department's own regulation on the Migrant and Seasonal Agricultural Worker Protection Act of 1983 quotes this same language.

We need USDOL to do more to find effective strategies to combat misclassification and help states collect UI taxes owed to them from employers who are misclassifying workers as independent contractors, or in some cases paying them in cash and off the books.

Mr. Norcross: What is the USDOL doing to help states go after employers who are misclassifying workers?

Mr. Acosta: The proper classification of workers is important to the Department. Under the Fair Labor Standards Act (FLSA), whether a worker is an employee or an independent contractor determines whether the worker is entitled to the FLSA's minimum wage and overtime pay protections. Proper classification of workers is also a critical component of the Unemployment Insurance (UI) program impacting both eligibility for benefits and employer tax liability.

The Department's Wage and Hour Division (WHD) focuses on proper classification of workers under the FLSA. The Department recognizes there are many workers who intentionally choose to work as independent contractors. Misclassified employees, however, often are denied access to critical benefits and protections they are entitled to by law, such as the minimum wage, overtime compensation, family and medical leave, unemployment insurance, and safe workplaces. Employee misclassification generates substantial losses to the federal government and state governments in the form of lower tax revenues, as well as to state unemployment insurance and workers' compensation funds. WHD continues to concentrate its enforcement efforts in high-violation, low-wage industries where these practices, and other violations of Wage and Hour statutes, are prevalent. WHD also makes compliance assistance to employers a priority, including those with questions regarding the status of their workers under the FLSA. The Department believes that employers can succeed, and ultimately create more jobs, when they understand how to operate in compliance with the law.

WHD builds and maintains strong relationships with state and federal agencies to foster communication and better serve our nation's workers and businesses. WHD has Memoranda of Understanding (MOUs) with states across the country concerning the various laws that WHD enforces, including MOUs that address misclassification. These partnerships provide for data sharing, referrals, coordinated enforcement, joint outreach, and compliance assistance. They maximize WHD's impact and the corresponding benefits for businesses and workers. We note that state UI agencies are also parties to these MOUs in many states.

The UI program is a federal/state partnership with states administering their UI programs in accordance with their own state laws and the Department's Employment and Training Administration (ETA) providing oversight to ensure conformity and compliance with Federal laws. State UI laws vary in the types of tests they use to determine proper worker classification. ETA promotes proper classification of workers by states using a variety of strategies, recognizing that each state needs to develop its own strategies based on its laws and resources. As part of its oversight of states' UI tax operations, states are held accountable for addressing worker misclassification through the Effective Audit Measure, which provides information on the percent of employers audited; the percent of change in total wages from audits; the percent of total wages audited; and the average number of misclassified employees detected per audit.

State UI tax agencies are required to audit approximately one percent of contributory employers annually. In calendar year 2018, state UI tax agencies performed 87,847 compliance audits. These audits resulted in the reclassification of 411,643 previously misclassified workers, the identification of $5.6 billion in unreported wages, and the assessment of $85.2 million in UI contributions/taxes.

ETA also promotes states' participation in MOUs with the U.S. Department of Treasury's Questionable Employer Tax Practices (QETP) Program and the Treasury Offset Program (TOP). The QETP Program allows state UI agencies to receive 1099 data from the Internal Revenue Service (IRS) to assist states in identifying potential tax avoidance bad actors and assist in collecting delinquent contributions. A longstanding QETP workgroup also provides a forum for the IRS and state UI tax agencies to share best practices regarding addressing worker misclassification issues. Currently, 38 states have entered into QETP MOUs with the IRS.

Mr. Norcross: What is the USDOL doing to ensure that workers have adequate protections and access to the aforementioned benefits?

Mr. Acosta: An important role of the Department is to ensure that employers who want to do the right thing have clear compliance guidance from the Department. Employers who deliberately misclassify employees as independent contractors undercut law-abiding employers who are making contributions to these systems and paying their workers correctly.

WHD continues to provide guidance around this issue. As an example, a recently published opinion letter addressed whether a service provider for a virtual marketplace company is an employee of the company under the FLSA or is an independent contractor.

In addition to the strategies discussed above to ensure workers are correctly classified for purposes of receiving UI benefits, ETA reviews all draft legislation introduced in state legislatures that affect the federal-state UI program to ensure that any proposed revision to state UI law conforms to the requirements outlined in the Federal Unemployment Tax Act (FUTA). Further, ETA's National and Regional office staff work with state UI partners to ensure quality in state UI tax operations by providing customized technical assistance as needed, conducting in-person and remote training sessions on UI tax issues, and performing monitoring reviews of state UI tax operations.

OSHA WORKPLACE VIOLENCE RULE

During the hearing, you stated that the Small Business Regulatory Enforcement Fairness Act (SBREFA) panel on an OSHA rule on workplace violence was currently being put together.

Ms. Jayapal: Please provide the detailed timeline for this SBREFA panel as promised during the hearing.

Mr. Acosta: The Occupational Safety and Health Administration (OSHA) is in the process of analyzing the information it has gathered from petitioners for a standard, participants of the stakeholder meeting, comments received in response to the Request for Information, and experts. OSHA will use this information to develop regulatory alternatives and cost and benefit analyses

required to initiate the small business review set forth by the Small Business Regulatory Enforcement Fairness Act (SBREFA). OSHA anticipates initiating the SBREFA process in Fall 2019.

CALIFORNIA JOB CORPS CENTERS

Please provide my office with the following information regarding Job Corps students from my district (CA-10):

Mr. Harder: How many students are currently enrolled in Job Corps?

Mr. Acosta: As of May 31, 2019, there are 47 students from CA-10 enrolled in Job Corps centers located in California, Kentucky, and Utah.

California	Inland Empire, San Bernardino, CA	1
	Los Angeles, Los Angeles, CA	1
	Sacramento, Sacramento, CA	9
	San Jose, San Jose, CA	17
	Treasure Island, San Francisco, CA	16
Kentucky	Earle C. Clements, Morganfield, KY	1
	Carl D. Perkins, Prestonsburg, KY	1
Utah	Clearfield, Clearfield, UT	1

Mr. Harder: Over the past 10 years how many students have enrolled in Job Corps? Please provide a breakdown of the number of students per year.

Mr. Acosta: Between July 1, 2009, and May 31, 2019, approximately 856 students from CA-10 have enrolled in Job Corps. A breakdown of the center and number of students per year is in the chart below.

State	Center Name	PY2009 July 1, 2009 – June 30, 2010	PY2010 July 1, 2010 – June 30, 2011	PY2011 July 1, 2011 – June 30, 2012	PY2012 July 1, 2012 – June 30, 2013	PY2013 July 1, 2013 – June 30, 2014	PY2014 July 1, 2014 - June 30, 2015	PY2015 July 1, 2014 – June 30, 2015	PY2016 July 1, 2015 – June 30, 2016	PY2017 July 1, 2016 – June 30, 2017	PY2018 July 1, 2017 – June 30, 2018
AZ	Fred G Acosta								1		
AR	Ouachita					1					
CA	Inland Empire	1			1		1	1			1
CA	Long Beach						1	1	1	3	
CA	Los Angeles	2		1							2
CA	Sacramento	26	17	36	20	37	42	14	15	9	11
CA	San Diego	1	1	1	1					1	
CA	San Jose	26	24	25	20	26	23	29	33	28	36
CA	Treasure Island	12	11	9	7	12	27	27	20	11	26
ID	Centennial	1	1					1			
IA	Ottumwa						1		1		
KY	Clements										1
MO	Mingo									1	
MT	Anaconda			1		1					
MT	Kicking Horse	1					1				
NV	Sierra Nevada	1	1	3	1	1		1	1	3	
NM	Roswell								1		
ND	Burdick							1			
OK	Treasure Lake		1								
OR	Angell								1		
OR	Timber Lake	1				1					
OR	Tongue Point				1		1	3			
TX	Gary			1							
UT	Clearfield	23	30	21	9		18	18	5	4	2
WA	Columbia Basin	2	1					1	1		
WA	Curlew				1		1				
WV	Harpers Ferry			1							
WI	Blackwell		1								
Total		97	88	99	61	79	116	97	80	60	79

Mr. Harder: Over the past 10 years, at which Job Corps centers are/have these students enrolled?

Mr. Acosta: The list of the centers at which these 856 Job Corps students enrolled between July 1, 2009, and May 31, 2019, is included in the chart above.

Mr. Harder: Over the past 10 years, which trades are/have these students studying/studied? Please provide the number of students per trade.

Mr. Acosta: Below is a list of trades of these 856 students:

Trades																
Accounting			2													
ACT			17					1					4			
Adv Transportation			13													
Advanced Auto Diesel													8			
Automobile Tech			2								1		11			
Bricklaying														1		
Carpentry			17								1		5			
Cement Masonry			19													
Certified Nurse Asst			33			1		2		1			25	1		
Clinical Med Assistant	1		60													
Collision Repair			3													
Computer Network														2		
Computer Tech			5	1									7			
Corrections Officer												1				
Culinary Arts			56				3	2			1		20			
Dental Assistant			2								1					
Diesel Mechanic			3													
Electrical			13	1									5			
Facilities Maintenance			49					2	1				6			
Glazing			1													
Heavy Equip Mechanic			7													
Heavy Equip Ops			14													
Hotel & Lodging			8					2								
HVAC			15													
Landscaping			9													
Licensed Prac/Voc Nurse			1													
Machining			2										5			
Manufacturing Tech													2			
Material & Dist Ops			58										4			
Medical Admin Assistant			59					2								
Network Cable Install													2			
Office Admin			85				1	2			1		13	1		1
OTP Adv Manufacturing			6		1								2			
OTP Auto & Machine Repair			15													
OTP Construction			16		1											
OTP Finance & Bus			2													
OTP Health Care			27										7			
OTP Info Technology			9													
Painting			6	1			1							1		
Pharmacy Tech			7										3	3		
Plastering			11													
Plumbing								1					1			
Retail Sales			45													
Seamanship											8					
Security			72					2								
Tile Setting			2										1			
Urban Forestry		1														
Welding			4										12	2	1	

Mr. Harder: How many current Job Corps Centers are in rural communities? How many current Job Corps Centers are in urban areas? How many students from rural areas are served by Job Corps currently? How many in the last program year?

Mr. Acosta: Job Corps does not collect data based on any rural or urban classifications; however, approximately 70% of the current student population arrived from a home city size with a population of greater than 50,000.

JOB CORPS CENTER CLOSURES IN CALIFORNIA

Mr. Harder: How many Job Corps Centers have been closed in the past 10 years? How many of the Job Corps Centers that have been closed were in rural communities? How many were in urban areas?

Mr. Acosta: In the past ten years, Department of Labor opened Job Corps centers in Milwaukee, Wisconsin (2010) (pop 594,833); Ottumwa, Iowa (2011) (pop 25,023); Manchester, New Hampshire (pop 109,565) (2015); and Riverton, Wyoming (2015) (pop 10,616). Also in the past 10 years, Treasure Lake (OK), Homestead (FL), Ouachita (AR), and Golconda (IL) were deactivated. All of these Job Corps centers except Homestead were located in a rural area.

JOB CORPS OUTREACH AND RECRUITMENT IN CALIFORNIA

Mr. Harder: What contracts does Job Corps have that provide outreach and recruitment to eligible students in my district (CA-10)?

Mr. Acosta: Career Systems Development Corporation (CSDC) is the contractor that provides outreach and recruitment services for eligible applicants in district CA-10.

Mr. Harder: Is there an outreach contract specifically for Northern California? Please provide details regarding to which entities the contracts have been awarded and how the outreach is conducted in my district (CA-10).

Mr. Acosta: CSDC is responsible for conducting Job Corps outreach and recruitment in Northern California, including district CA-10. As required, CSDC developed an Outreach and Public Education Plan that outlines various activities to attract eligible youth, which includes conducting presentations in the local community, at various educational institutions and other community-based organizational events.

Mr. Harder: Please provide a list of the outreach programs for my district (CA-10) for FY 2019 and FY 2020. What has the Department done to ensure that students from rural communities are being served by Job Corps?

Mr. Acosta: Annually, outreach and admissions contractors are required to develop an Outreach and Public Education Plan. Such plan is submitted to the Job Corps Regional Office of Job Corps for review. In CSDC's Outreach and Public Education Plan, outreach activities included presentations and career fairs at over 40 entities, including schools, community-based organizations, and libraries in CA-10. Some of the activities were conducted in communities in

CA-10 that may be considered rural given the local population. For the upcoming contract year, there are a number of presentations planned in CA-10 at various high schools, clubs, libraries, and a number of other venues that attract Job Corps eligible youth.

Job Corps recently increased its oversight and accountability of the implementation and adequacy of required Outreach and Public Education Plans created by outreach and admissions providers. These plans include, among other elements, outreach strategies to achieve and maintain center capacity; plans to ensure coordination of efforts between contractors and centers; and a description of the public education and outreach methods that the contractor will develop. Through this increased accountability, the Job Corps program has increased overall enrollment during the past year. Job Corps continues to monitor follow-up activities associated with potential applicants expressing interest in the program by conducting weekly teleconferences with outreach and admissions providers to review potential applicant and new applicant information in detail.

Currently, Job Corps is using a digital media campaign to increase Job Corps' On-Board-Strength (OBS) at many of its largest centers. This campaign includes using a digital outreach strategy for each of the targeted centers and requires frequent coordination among regional Job Corps staff, a media consultant, outreach and admissions providers, and center operators. Regular meetings are used to review and analyze OBS-related data, identify and resolve barriers to increasing student enrollment and retention, and provide feedback on center-specific media outreach.

Job Corps is transitioning stand-alone outreach and admissions activities into center operations contracts. By consolidating these activities into the center operations contract, Job Corps center operators assume a more direct responsibility for ensuring that their centers are operating at full capacity.

Before the end of the year, Job Corps will finalize its new methodology for creating the Geographic Assignment Plan (GAP). This new plan, referred to as the National Enrollee Assignment Plan (NEAP), will apply a standard formula to all Job Corps centers to determine the number of new students each center must enroll to maintain full capacity. Historically, Job Corps used a fixed national average of students it anticipated would leave the program each year to help calculate the arrival goals for each admissions provider. The new NEAP approach utilizes center-specific separation rates to set contract arrival goals. Centers with higher separation rates will have higher arrival goals in order to align with actual recruitment needs. These revised goals will be included in each admissions provider's contract to ensure that Job Corps centers achieve and maintain full capacity.

As part of its new NEAP strategy, Job Corps is reestablishing its defined recruitment areas so that they align with each state's Local Workforce Development Areas (LWDA). As a result of aligning recruitment efforts with LWDAs, there will be an increased opportunity to work in collaboration with partners in the workforce system, including receiving and providing referrals for individuals who express interest in the Job Corps program or are in need of other workforce development assistance.

Finally, in 2019, Job Corps plans to launch a new student enrollment services system to identify and minimize delays and bottlenecks in the enrollment and center assignment processes. The new system will also improve the quality of career counseling provided, resulting in better matching of enrollee interests and/or aptitudes with a skills instruction program. The net results should be improved enrollments, student arrivals, and retention.

Each month, approximately 18,000 youth express some interest in Job Corps' education and skills instruction program. This interest is primarily expressed through Job Corps' website. Prospective applicant information is provided directly to outreach and admissions contractors for follow-up. To capitalize on this interest and increase enrollment in the program, Job Corps is currently developing a new student enrollment services system, which will include a new information technology (IT) platform.

The IT upgrades in the new enrollment services system will be designed to ensure that the eligible at-risk youth in the enrollment pipeline are promptly processed and enrolled. The new enrollment services system will seek to leverage technology to improve efficiencies in the system by monitoring the processing of applicants, and quickly resolving delays and bottlenecks, which will reduce application processing times. Job Corps' expanded use of technology will also create greater transparency by making application and enrollment data available in real time to those involved in the outreach, admissions, and center assignment processes. These changes will also provide tech-savvy youth easy access to Job Corps' application and a better user experience during the enrollment process. Finally, the new enrollment services system will provide meaningful career counseling during the admissions process. This will allow Job Corps to better manage enrollee expectations and better match enrollee interests and aptitudes with a skills instruction program. All of these efforts will support student recruitment and retention, as well as result in full utilization of Job Corps centers.

CIVILIAN CONSERVATION CENTERS

Mr. Harder: Please explain the Department's reasoning for why there are no Civilian Conservation Centers in California, despite having nearly 2 million acres burn last year alone, the highest of all 50 states.

Mr. Acosta: The Job Corps program, including the Job Corps Civilian Conservation Centers (JCCCCs), was established to help America's economically disadvantaged youth overcome the many barriers to successful careers. Even though the United States Forest Service does not operate a Job Corps Civilian Conservation Center in California, there are seven operational Job Corps centers in California available to serve the state's at-risk youth. It is important to note that Job Corps Civilian Conservation Centers play a supportive, not primary, role in firefighting activities. Of the 24 Forest Service operated Job Corps centers, only six have firefighting training programs. In Program Year 2017, more than 3,200 Job Corps students contributed to 357,000 hours of support on wildfires. Such amounts to less than one percent of the estimated 55 million Forest Service hours spent on fire suppression.

Mr. Harder: Please provide my office with a copy of the interagency agreement between the Department of Labor and the Department of Agriculture, which establishes the Civilian Conservation Centers.

Mr. Acosta: Attached is a copy of the Interagency Agreement between the Department and USDA.

NEWBORNS' AND MOTHERS' HEALTH PROTECTION ACT

The *Newborns' and Mothers' Health Protection Act* provides protections for mothers and their newborn children in relation to the length of their hospital stays following childbirth. This care is vital to ensuring that both mother and baby access the care they need. The Department of Labor is responsible for ensuring that employer provided group health plans comply with this legal requirement.

Ms. McBath: Secretary Acosta, could you provide an update on enforcement efforts in this area?

Mr. Acosta: The Departments of Labor (DOL), Health and Human Services (HHS), and Treasury share jurisdiction over the Newborns' and Mothers' Health Protection Act (Newborn's Act). DOL has primary enforcement jurisdiction over employment-based, private-sector health plans, and refers violations to Treasury's Internal Revenue Service for consideration of an excise tax in certain circumstances. HHS has primary enforcement authority over non-Federal governmental plans. States are the primary enforcers over health insurance issuers, although HHS can act as a fallback enforcer if a State fails to substantially enforce the federal standards.

DOL's Employee Benefits Security Administration (EBSA) conducts investigations of group health plans and service providers to determine compliance with the Employee Retirement Income Security Act, including the Newborns' Act provisions. EBSA closed 3,286 health investigations between fiscal years 2011 and 2017, which involved a review of compliance with the Newborns' Act. Of those investigations, violations of the Newborns' Act were cited in 43 cases. When EBSA identifies violations in a group health plan, the Department asks the plan to make necessary changes to any noncompliant plan provision and to re-adjudicate any improperly denied benefit claims. If the plan fails to make those necessary changes, the Department will take all necessary and appropriate steps to compel the plan to comply. EBSA also coordinates with HHS and the States to address any violations in health insurance policies that could have spillover to other coverage.

AFFORDABLE CARE ACT AMENDMENTS TO THE FAIR LABOR STANDARDS ACT

Secretary Acosta, I would also like to follow up on my questions to you during our hearing regarding the Department's enforcement of workplace protections for breastfeeding mothers under the Fair Labor Standards Act. As you know, the *Patient Protection and Affordable Care Act* amended the *Fair Labor Standards Act* to provide critical protections for breastfeeding mothers. Under this provision, employers can no longer prevent breastfeeding moms from taking breaks to pump or force them to pump breastmilk in the bathroom. Yet, a study conducted in

2016 showed that more than half of women are still denied private space, break time to pump, or both.[13]

During the hearing, you committed to answering my question on the specific number of enforcement actions the Department has taken in the last year related to violations of breastfeeding protections under the Fair Labor Standards Act.

Ms. McBath: How many such enforcement actions have been taken in the last year?
Mr. Acosta: In Fiscal Year 2018 and the first two quarters of Fiscal Year 2019, the U.S. Department of Labor (the Department) Wage and Hour Division (WHD) concluded 88 investigations under Section 207(r) of the Fair Labor Standards Act (FLSA), involving break time for nursing mothers.

You also stated during the hearing that the Department had recently taken an enforcement action in Phoenix, Arizona, and you said that you would be able to provide us more details.

Ms. McBath: Can you provide the name of the employer and the nature of the enforcement action and any resolution?

Mr. Acosta: A WHD investigation found that Yuma Regional Medical Center—based in Yuma, Arizona—failed to provide adequate breaks and accommodations for nursing mothers while on the job, violating the Break Time for Nursing Mothers provisions of the FLSA.

Specifically, WHD investigators determined that the employer denied nursing mother workers breaks to express milk and failed to shield from public view the break room it provided to nursing mothers. Under the FLSA, nursing mothers must be given breaks to express milk and an appropriate location in which to do so privately.

The medical center agreed to provide training to all their supervisors at all locations and to provide all employees returning from maternity leave with information on their rights to express milk in the workplace.

Ms. McBath: When an employer violates any of these provisions under the Fair Labor Standards Act, is it correct that federal law provides: (1) no authority for the Department to impose a civil monetary penalty on the employer and (2) no private right of action for an employee to recover damages against the employer (other than a retaliation claim)? What statutory authority, if any, exists for the Department to enforce this requirement, and what remedy, if any, exists for workers whose employers violate this requirement?

Mr. Acosta: As an initial matter, only employees who are not exempt from section 7—which includes the FLSA's overtime pay requirements—are entitled to breaks and a place to express

[13] K. B. Kozhimannil, J. Jou, D. Gjerdingen, & P. McGovern, "Access to Workplace Accommodations to Support Breastfeeding after Passage of the Affordable Care Act," Women's Health Issues, (January-February 2016), https://www.whijournal.com/article/S1049- 3867(15)00117-6/fulltext

milk.[14] Section 15(a) (2) of the FLSA prohibits employers from violating any provision in section 7, including the nursing-mothers requirements at 7(r). However, section 7(r) of the FLSA does not specify any penalties if an employer is found to have violated the nursing-mothers requirements. The monetary remedies available for section 7 violations under the FLSA are limited to unpaid minimum wages or unpaid overtime compensation and an additional amount in liquidated damages.[15] Because employers are not required to compensate employees for break time to express milk, in most circumstances there will not be any unpaid minimum wage or overtime compensation associated with the failure to provide breaks. Nonetheless, if the violation gives rise to a claim of unpaid wages (for instance, if an employee is not completely relieved of duties during unpaid breaks to express breast milk), an employee may pursue a private cause of action or may file a complaint with the Department. Similarly, section 15(a) (3) prohibits retaliation against an employees. Pursuant to section 16(b) of the FLSA a broader array of remedies, including reinstatement, is available in cases of retaliation. The Department has authority under section 16(c) and 15(a) (3) to enforce these requirements. Additionally, the Department has authority under section 17 to bring an injunction proceeding to restrain violations of the FLSA, including violations of section 7(r).

WHD works to resolve complaints under section 7(r) administratively by educating the employer about the law's requirements and, based upon the facts of the particular case, by helping the employer and complainant to identify solutions that meet the statutory requirements. If an employer refuses to comply with the requirements of section 7(r), the Department could seek injunctive relief in federal district court and obtain reinstatement and lost wages for the employee pursuant to section 17 of the FLSA.

You stated that you would be interested in pursuing a compliance campaign to make employers aware of this requirement, given the research I cited showing that more than half of women were still denied private non-bathroom space to pump, break time to pump, or both, following the passage of the protections into law.

Ms. McBath: What actions will you commit the Department to taking to pursue such a compliance campaign? What support would you need from Congress to implement such an effort?

Mr. Acosta: Enforcement of this law positively impacts the workplace for current and future nursing mothers by removing barriers that make it difficult for them to balance providing nutrition to their children and their workplace duties. WHD provides a variety of tools to ensure that employers understand their legal responsibilities, including a recently updated workplace poster.

In addition, the Department looks for opportunities to promote and explain the law, such as a recent social media campaign around Mother's Day, available at https://twitter.com/USDOL/status/1127551529974681600.

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[14] While employers are not required under the FLSA to provide breaks to nursing mothers who are exempt from the requirements of Section 7, they may be obligated to provide such breaks under State laws.
[15] 29 U.S.C. 216(b)

WHD also provides the tools for employees to file complaints, and emphasizes that complaints are confidential. In extensive outreach to employee organizations, we make clear that WHD welcomes complaints, and provides all of the information that workers need to file. We also enforce the anti-retaliation provisions of the FLSA, further protecting employees and providing a safe pathway for them to step forward when they feel their rights have been denied. WHD offers a well-publicized toll free number that employees can use to speak directly and confidentially with a trained wage and hour professional – 866-4US-WAGE.

Ms. McBath: You asked that I share the above-mentioned study. Here is the citation: K. B. Kozhimannil, J. Jou, D. Gjerdingen, & P. McGovern, "Access to Workplace Accommodations to Support Breastfeeding after Passage of the Affordable Care Act," Women's Health Issues, (January-February 2016), https://www.whijournal.com/article/S1049-3867(15)00117-6/fulltext.

FAMILY MEDICAL LEAVE ACT

The most recent DOL survey on Family and Medical Leave Act (FMLA) use was released in 2012, and updated data in this area is needed. DOL has contracted with Abt Associates to conduct a "Wave 4" study on FMLA use, and the contract end date is August 2019.

Ms. Underwood: Please provide a detailed description about the status of the Wave 4 study, including a timeline of when the study will be completed.

Mr. Acosta: The Department has administered four waves of Family and Medical Leave Act (FMLA) surveys—each wave fielding a survey to employees and a survey to employers. The most recent iteration of the FMLA surveys, overseen by the DOL's Chief Evaluation Office, concluded all survey fielding in February and May 2019, for the employer and employee surveys, respectively. Target numbers have been reached for both surveys (4,000 employees and 2,000 employers), ensuring subnational level analysis for the first time. However, in order to reach the target numbers, both surveys required substantial extensions in the fielding timeline, with cascading effects on the contract end date. The contract will end in Spring 2020, at which time all findings will be publicly released, including a public use data set.

DOL ENFORCEMENT AUTHORITY OVER MENTAL HEALTH PARITY AND ADDICTION EQUITY ACT

The President's Commission on Combatting Drug Addiction and the Opioid Crisis' Final Report recommended that Congress give DOL enhanced enforcement authority over the Mental Health Parity and Addiction Equity Act (MHPAEA) after you testified before the Commission. Specifically, the Commission recommended, "Because the Department of Labor (DOL) regulates health care coverage provided by many large employers, **the Commission recommends that Congress provide DOL increased authority to levy monetary penalties on insurers and funders, and permit DOL to launch investigations of health insurers independently for parity violations.**"

As the Commission's report noted, "while parity is a legal requirement, the existing means of monitoring and enforcing the parity act are insufficient. The sole means of enforcement under the parity act is equitable relief against the buyer of the insurance plan; and for the employer-based plans that are self-funding, DOL is presently permitted to enforce MHPAEA against only the employer, rather than the insurance company administering the benefits."

Ms. Hayes: Would you support Congress providing DOL with this authority to levy monetary penalties on insurers and funders and launch investigations into health insurers for parity violations to ensure that all parties are held accountable for providing equitable coverage of mental health and substance use disorder treatment benefits consistent with MHPAEA?

Mr. Acosta: Since the enactment of the Mental Health Parity and Addiction Equity Act (MHPAEA)—as described in the U.S. Department of Labor's (Department) Report to Congress in 2018—the Department has been committed to enforcing the law, promoting compliance, assisting consumers, and conducting investigations. The President's Commission on Combatting Drug Addiction and the Opioid (Commission) highlighted the importance of robust and systematic enforcement of parity by State and Federal agencies responsible for implementing the law. The Department is committed to leveraging all available resources, and collaborating with Federal and State partners, to increase access to meaningful coverage for mental health and substance use disorders.

As part of the Department's efforts to enforce MHPAEA and promote compliance, the Department has taken important steps to foster coordination between State and Federal agencies. For example, the Department engages regularly with Department of Health and Human Services (HHS) and State regulators by participating in standing meetings with the National Association of Insurance Commissioners, as well as providing ongoing technical assistance and training to individual States on a regular basis. As required by the Cures Act, the Department worked in collaboration with HHS and the Treasury to issue a MHPAEA compliance tool that a number of States now rely on in their enforcement of MHPAEA. The Department also coordinates directly with individual states to enforce mental health parity by executing written agreements to undertake joint MHPAEA investigations.

In addition to highlighting the importance of robust and systematic enforcement of parity by State and Federal agencies, the Commission recommended that Congress make legislative changes to provide the Department with new authority to enhance its enforcement efforts. Consistent with this recommendation, the Department will work with Congress to provide technical assistance and to implement any legislative changes Congress deems appropriate to ensure that individuals receive the full parity protections under the law.

JOB CORPS CENTER CLOSURES

I was shocked to see a call for an immediate closure of 25 Job Corps Centers operated by the US Department of Agriculture, with no explanation of a closure plan and no request for funding to support the wind down of operations.

Ms. Hayes: Where exactly are each of these 25 USDA Job Corps Centers?

Mr. Acosta: The United States Department Agriculture (USDA), Forest Service, operates the Angell CCC in Yachats, Oregon; Boxelder CCC in Nemo, South Dakota; Centennial CCC in Nampa, Idaho; Collbran CCC in Collbran, Colorado; Columbia Basin CCC in Moses Lake, Washington; Curlew CCC in Curlew, Washington; Great Onyx CCC in Mammoth Cave, Kentucky; Harpers Ferry CCC in Harpers Ferry, West Virginia; Lyndon Johnson CCC in Franklin, North Carolina; Jacobs Creek CCC in Bristol, Tennessee; Mingo CCC in Puxico, Missouri; Pine Ridge CCC in Chadron, Nebraska; Schenck CCC in Pisgah Forest, North Carolina; Trapper Creek CCC in Darby, Montana; Weber Basin CCC in Ogden, Utah; and Wolf Creek CCC in Glide, Oregon; Anaconda CCC in Anaconda, Montana; Blackwell CCC in Laona, Wisconsin; Cass CCC in Ozark, Arkansas; Flatwoods CCC in Coeburn, Virginia; Fort Simcoe CCC in White Swan, Washington; Frenchburg CCC in Frenchburg, Kentucky; Oconaluftee CCC in Cherokee, North Carolina; Pine Knot CCC in Pine Knot, Kentucky; and Timber Lake CCC in Estacada, Oregon. Effective July 1, 2019, the State of Idaho will assume operation and management control of the Centennial CCC in Nampa, Idaho.

As to the Job Corps Civilian Conservation Centers operated by the Forest Service, the United States Department of Agriculture no longer intends to transfer these centers to DOL. As a result, given their continued involvement in the Job Corps program, DOL looks forward to working with USDA to improve center performance and better serve students.

Ms. Hayes: If the President's Budget, including proposed cuts to Job Corps were to go into effect, what would happen to the students who would be displaced from these closed centers? Does the Department of Labor have a plan for them?

Mr. Acosta: The Department would prioritize the needs of current students when closing a center. Students will be allowed to complete their Job Corps training either at their current center or transfer to a Job Corps center that offers their trade. Once a final decision is made relating to funds available for Job Corps operations, a plan would be developed and implemented.

The Department of Labor is committed to helping young individuals from disadvantaged backgrounds receive high-quality vocational and academic instruction opportunities. The Department has concerns about the program, irrespective of the funding level, and are proceeding based on those concerns with reforms to the program that we believe will improve outcomes for youth and make the program more effective and efficient. For example, the Department is using its pilot project authority, working with governors who are interested to establish pilot projects throughout the United States. As our demonstration projects mature, we will assess them to determine whether they offer more effective models for serving at-risk youth as compared to the Department's traditional Job Corps program model. The Department will also determine whether these alternate approaches are more cost effective than the traditional program model. The Department will consider scaling efficiencies identified by demonstration projects in order to improve the delivery of Job Corps services.

Overall, the Department is conducting a programmatic assessment of performance center by center, surveying physical facilities, assessing programmatic sustainability, and considering the workforce development needs in each state and area served by a Job Corps center. Using this

deliberate approach, the Department will determine how to allocate the program's Fiscal Year (FY) 2020 resources, including whether to close some centers. It is the Department's expectation that through concentration of Job Corps activities in a more limited set of higher performing centers, we will provide Job Corps participants with higher quality services that lead to better outcomes. The Department always prioritizes the needs of current Job Corps participants when deactivating or consolidating a center, allowing them to complete their Job Corps training either at their current center or at a higher performing center. Further, the Department will maintain as many student slots as possible by increasing Job Corps capacity at remaining centers. This approach maximizes the impact of Job Corps' appropriation, allowing us to continue to serve at risk youth from all fifty states and territories without compromising program effectiveness.

ADDRESSING JOB CORPS INFRASTRUCTURE ISSUES

We've heard from operators and students around the country – including in Connecticut, that the program needs more help to rebuild crumbling infrastructure at Job Corps facilities. Your budget concurs with that concern, but then calls for a decrease in the budget for Operation and Maintenance of Facilities, and level funding from FY2019 for other construction related line items.

Ms. Hayes: How do you explain this request for a decrease in funding?

Mr. Acosta: The FY 2020 Budget takes important steps toward improving Job Corps for the youth it serves by improving center safety; empowering new, more effective entities to operate centers; focusing the program on the older youth for whom the program is more effective; and closing centers that inadequately prepare students for jobs. The Department recognizes the uneven performance of Job Corps centers and is committed to funding only high performing centers that justify the high cost of (residential model) operations.

Making upgrades to the safety and security of Job Corps students and staff continues to be a priority. Approximately 85 percent of Job Corps students live at a Job Corps center and rely on Job Corps to provide a safe residential and learning environment 24 hours a day. In addition to the challenge of maintaining a safe environment for residential students, the presence of nonresidential students brings with it the challenge of controlling the environment with students leaving and entering the campus on a continual basis.

In FY 2020, Job Corps will continue implementation of the safety and security related operational recommendations made by the Department's Office of the Inspector General and the U.S. Government Accountability Office and continue to improve the safety and security of students and staff at Job Corps centers. A focus on mental health services at Job Corps centers is a priority. Job Corps accepts students with barriers to employment, including those that have histories of substance abuse, contact with the criminal justice system, learning disabilities, mental health issues, and/or behavioral issues. In PY 2017, 30 percent of Job Corps students who separated from Job Corps disclosed they had a disability, which is consistent with the same period in PY 2016.

The FY 2020 Budget proposes several new legislative flexibilities that would enable the Department to more expediently close low-performing centers and prioritize enrollment for students ages 20 to 24, as evidence shows Job Corps to be more effective for this age group. The Department will pilot new models and programming at underperforming centers to identify, test, and evaluate evidence-based skills instruction models that lead to family-sustaining jobs. The Department will also refocus the advanced skilled instruction programs to provide more hands-on, work-based learning experiences to deliver better connections to growing and in-demand employment opportunities.

The Department also proposes new transfer authority language, which would permit the Department to transfer up to one percent from the Operations budget activity to the Construction budget activity, subject to Congressional notification. The transferred resources would enable the Department to make the necessary capital investments to ensure successful pilot projects. The Department is currently pursuing other reforms to the program, including using demonstration authority to implement pilot projects with non-profits, state governments and other entities that have expertise in serving youth to operate centers and implementing reforms to the contracting process to support performance improvement and the more efficient use of federal resources. These reforms will save money by finding better ways to educate youth.

LOW-PERFORMING JOB CORPS CENTERS

The FY 2020 Budget proposes several new legislative flexibilities that would enable the Department to more expediently close low-performing centers.

Ms. Hayes: How do you define "low-performing center"? Beyond the 25 USDA centers, how many of these Job Corps centers are being targeted for closure?

Mr. Acosta: In accordance with Section 159(c) of the Workforce Innovation and Opportunity Act (WIOA), the Department of Labor (DOL) annually establishes expected levels of performance for each Job Corps center relating to each of the primary indicators of performance for eligible youth. In Program Year 2018, Job Corps undertook a major reform initiative of its performance management system, known as the Outcome Measurement System (OMS), by placing greater emphasis on post-center outcomes rather than on-center outputs. Each month, the Office of Job Corps publishes information relating to center performance on individual measures and ranks each Job Corps center from highest to lowest in terms of meeting program expectations. As a result, we are able to provide constant feedback and promote continuous improvement in areas identified as program priorities.

In accordance with Section 159(f) of the WIOA, if a Job Corps center fails to meet performance expectations, a Performance Improvement Plan (PIP) is developed and implemented. The Office of Job Corps has identified two criteria for a center's entry into the PIP system: the Job Corps center is ranked in the bottom 10 percent of all performers, and its average performance is 88 percent or below the national average for all performers for that Program Year. For Program Year 2018, three Job Corps centers were operating on a PIP. Under a PIP, there are multiple options available to improve performance. None of the three Job Corps operating on a PIP have been identified for closure.

As to the Job Corps Civilian Conservation Centers operated by the Forest Service, the United States Department of Agriculture no longer intends to transfer these centers to DOL. As a result, given their continued involvement in the Job Corps program, DOL looks forward to working with USDA to improve center performance and better serve students.

JOB CORPS PILOT PROGRAMS

Ms. Hayes: Before launching additional Job Corps pilots, can you explain whether evaluations have actually been completed on the pilots that are already underway, and what lessons can be taken from these?

Mr. Acosta: The Department is using its pilot project authority to explore alternative methods of serving Job Corps eligible youth. As our demonstration/pilot projects mature, we will assess them to determine whether they offer more effective models for serving at-risk youth as compared to the Department's traditional Job Corps program model. The Department will also determine whether these alternate approaches are more cost effective than the traditional program model.

During this administration, the Department has developed several types of Job Corps demonstration/pilot projects. The Job Corps demonstration projects are as follows:

National Guard Job Corps ChalleNGe Demonstration Projects

Job Corps Job ChalleNGe Demonstration Projects will serve Job Corps eligible youth through a skills instruction program which is modeled on and builds off of the National Guard's evidence-based Youth ChalleNGe program, which has been shown to increase participants' long-term employment and educational outcomes. The Department engaged the Department of Defense, National Guard Bureau, and state officials about collaborating to serve at-risk youth through the National Guard in the various states interested in participating in such a Job ChalleNGe demonstration project. Currently, the Florida National Guard is working to stand up a Job ChalleNGe program at Camp Blanding, replacing the Gainesville Job Corps Center which has been proposed for deactivation. In addition, the Louisiana National Guard is working to implement a Job ChalleNGe program through a repurposed Carville Job Corps Center.

State-Operated Job Corps Demonstration Project

A State-operated Job Corps program involves engagement of state officials who have expressed interest in alternative approaches to serving Job Corps eligible youth in their state. These demonstration projects will explore whether providing flexibility to states to develop and implement customized, state-based, approaches to serving Job Corps eligible students is an effective model. Currently, the state of Idaho is working to implement what is known as the Idaho JOBCorps at the Centennial Job Corps Center.

Job Corps Scholars Program

The Job Corps Scholars Program is designed to serve Job Corps eligible youth through extensive counseling and employment related services at existing higher education institutions rather than a traditional Job Corps center. Job Corps engaged the Department of Education and sought public input and suggestions about this pilot project through a Notice of Intent. After comments are received and reviewed, DOL will make any necessary revisions, publish the funding opportunity announcement and begin accepting grant applications.

As these pilots are still in the beginning stages, no outcome data have yet been obtained.

IMPACT OF CLIMATE CHANGE ON WORKING FAMILIES

Secretary Acosta – you are from South Florida, so you probably familiar with the climate crisis we are facing, but to reiterate: in our community, climate change and sea level rise is life-or-death.

Since 1950, the sea level in South Florida has risen 8 inches, and it is only speeding up. By 2030, the sea level in South Florida is projected to rise up to 12 inches, and by 2100, perhaps 80 inches.

The average temperature on the planet will rise by 5 to 9 degrees Fahrenheit by the end of the century. This will cause a sea level rise that will virtually submerge all of South Florida.

If we continue to do nothing on climate change, our community, as you and I know it, will disappear.

That is the physical impact. I want to discuss with you the impact on working families.

Several months ago, the Fourth National Climate Assessment, a federally-mandated climate change assessment, outlined the potential impacts of climate change across American society, including to jobs and the economy.[16]

The report says, "climate change is expected to cause growing losses to American infrastructure and property and impede the rate of economic growth over this century." The report notes that climate change also threatens "outdoor workers who are at additional risk for heat stress."

The report goes on to say that, "regional economies and industries that depend on natural resources and favorable climate conditions, such as agriculture, tourism, fisheries, are vulnerable to the growing impacts of climate change."

Ms. Shalala: Do you believe in climate change?

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[16] U.S. Global Change Research Program, *Fourth National Climate Assessment Volume II: Impacts, Risks, and Adaptation in the United States* (2018) (https://nca2018.globalchange.gov/).

Mr. Acosta: The Department of Labor is committed to carrying out the administration's pro-growth, pro-worker agenda. In the past, American workers and their families have been put on the line for other countries' pollution and contributions to climate change, while foreign nations and companies were allowed to carry on business as usual. American workers should not be asked to sacrifice their livelihoods to fight climate change while countries like China, India, and Brazil continue to increase their emissions.

The Department is aligned with President Trump's prioritization of American workers first. We will continue to advance such policies in the interest of the American economy and workers.

Ms. Shalala: In response to this report that was produced by our own government, though, President Trump said, "I don't believe it."

Ms. Shalala: Do you agree that climate change will not be detrimental to U.S. jobs and the U.S. economy? What is the Department of Labor doing to prepare for climate change?

Mr. Acosta: Please see the answer to previous question.

HATCH ACT VIOLATIONS

Mr. Secretary, as you know, the Hatch Act prohibits federal officials from using government resources to engage in partisan political activity. Your tweets praising President Trump and referring to the – quote – "@POTUS economy"[17] have been flagged by Labor Department ethics officers. My understanding is that the Department's ethics officers asked the Office of Special Counsel for guidance on whether these tweets were permissible.

Ms. Omar: Where does this Hatch Act issue stand?

Mr. Acosta: The Department's career ethics staff routinely review proposed social media posts to ensure they comply with applicable ethics rules including the Hatch Act. Earlier this year, the staff reviewed potential tweets that referenced @POTUS. By way of background, @POTUS is the official Twitter account of the President and was introduced by President Obama. Out of an abundance of caution, the staff contacted the U.S. Office of Special Counsel's (OSC) Hatch Act Division regarding whether use of "@POTUS" in an agency tweet would run afoul of the Hatch Act. They were advised by OSC that use of @POTUS did not violate the Hatch Act. The ethics staff concluded that the tweets did not violate the Hatch Act. The staff has provided Hatch Act training and guidance to career and non-career staff over the past year.

WIOA FUNDING FOR APPRENTICESHIP PROGRAMS

Your budget request the flexibility to raise from 20 percent to 40 percent the cap on local areas providing incumbent worker training. This helps employees acquire the skills to retain employment, if the increase in the percentage is used to support apprenticeship programs.

[17] https://news.bloomberglaw.com/daily-labor-report/labor-secretarys-potus-tweets-raise-ethics-fears-in-department

Ms. Stevens: Can you confirm that this percentage increase request is only in reference to registered apprenticeships, as required by Section 3 of the Workforce Innovation and Opportunity Act?

Mr. Acosta: The President's proposed Fiscal Year 2020 Budget seeks to allow local areas to use up to 40 percent of funds allotted to the local area for incumbent worker training programs, if the increase in the percentage of funds used is for the purpose of supporting apprenticeship programs. This proposed increase could only be spent on registered apprenticeship programs, in alignment with the requirements identified in the Workforce Innovation and Opportunity Act.

WOMEN'S BUREAU FUNDING

The President issued a presidential proclamation on Women's History Month that touted the Administration's commitment to helping women thrive in the labor force.

Ms. Stevens: Would you agree that the Women's Bureau plays an important role in this effort?

Mr. Acosta: Women are nearly fifty percent of the workforce and the President's FY 2020 budget and previous budget requests reflect the importance of women in the workforce.

The Women's Bureau serves an important role at the Department of Labor, promoting and advancing the interests of working women by convening stakeholders, advising on policy change, and starting conversations around topics that are critical to women, their families, and our nation's prosperity. Success for the Women's Bureau is achieved when the issues it champions move beyond the Bureau, because that means the problems and opportunities identified through its work are being addressed.

Next year, the Women's Bureau will celebrate its Centennial year, which provides an opportunity to reflect on how far women have come over the past 100 years. Over the past century, the Women's Bureau has successfully advocated for workplace safety standards, family leave benefits, and pay equality protections.

The Women's Bureau has recently taken a number of actions to advance women's workplace policies and influence the current state of women in the workforce. Since the beginning of 2017, the Women's Bureau has:

- Partnered with the Department of Health and Human Services to help increase working families' access to affordable, quality child care;
- Worked with the Small Business Administration (SBA) and the Treasury Department to grow opportunities for women in entrepreneurship;
- Coordinated with the Employment and Training Administration (ETA) to increase opportunities for women to access and thrive in apprenticeship programs;
- Joined the Veterans' Employment and Training Service (VETS), the Department of Defense, and others to address employment opportunities and reducing occupational licensing barriers for military spouses, 92 percent of whom are women; and

- Supported the Trump Administration's commitment to address the opioid crisis with a focus on helping women who have been impacted by the opioid crisis.

None of these efforts will be negatively affected by the FY 2020 budget. Instead, the Department will more effectively support and advance the mission of the Women's Bureau by focusing the Bureau's resources on conducting research and collaborating with agencies and departments across the government. In the coming year, the Women's Bureau will collaborate with ETA and VETS to support grant work on state licensing and promoting employment for military spouses; with the White House to identify innovative solutions to childcare; and with SBA to expand opportunities for women to thrive in entrepreneurship.

As mentioned previously, the Women's Bureau provides research and analysis on the issues of interest to working women. Following a request by members of the Senate, the Women's Bureau commissioned a study, which is still in the early stages of analysis, to produce an independent, more precise and current estimate of the gender wage gap. The commissioned work will update a study on the gender wage gap issued by the Department in 2009. The 2009 study, which was funded by the Department and produced by the CONSAD Research Corporation, systematically reviewed then-available research on gender differentials in earnings and used data from the Current Population Survey to identify factors (including education, occupation, industry, work experience, and career interruptions) that contributed to the gender wage gap.

In addition to the CONSAD update research study, the Women's Bureau is partnering with the Census Bureau to link administrative and survey data to produce a more precise and current estimate of the gender wage gap. The study will include an in-depth examination of variables such as industry, occupation, education and work experience that contribute to the gender wage gap. Findings from both projects are expected by the end of the 2019 calendar year.

While recognizing that many factors go into determining wages, data-driven information concerning the wage gap provides a baseline for women planning careers to learn about prospective occupations, and as a comparison point for women already in the labor force to evaluate their wages. The Women's Bureau has an interactive visualization tool available on the Women's Bureau website, which shows average wages for women and men in more than 300 occupations.

ETA also supports programs to provide workforce development services for female workers. For example, the Women's Bureau is collaborating with the Office of Apprenticeship (OA) to recruit and retain women in pre-apprenticeship and apprenticeship programs as potential pathways for women to non-traditional occupations that may have higher average salaries. Through WIOA, ETA supports programs that provide workforce development services for individuals with barriers to employment, including over two million women workers in Program Year 2017. In addition, WIOA emphasizes providing services and placing women in non-traditional occupations, such as apprenticeships, that may have higher average salaries.

In the same month that President Trump proclaimed it to be Women's History Month, his 2020 budget proposed cutting the Women's Bureau by 74 percent – from $13.75 million in 2019 to $3.5 million in 2020.

Ms. Stevens: Can you explain?

Mr. Acosta: Please see the response above.

ADVISORY BOARD ON TOXIC SUBSTANCES AND WORKER HEALTH FUNDING

The Department's Advisory Board on Toxic Substances and Worker Health is tasked with advising the Department on the quality, objectivity and consistency of the work of staff and consulting industrial hygienists and physicians of the Department with respect to their involvement in claims evaluation under the Energy Employees Occupational Illness Compensation Program Act. The Board has twice requested resources to examine a representative number of claims in order to conduct a systematic evaluation of the work of such industrial hygienists and physicians in order to provide the Secretary with sound advice. This approach parallels the work of the NIOSH Advisory Board on Radiation and Worker Health.

Ms. Lee: How much will the Department provide to carry out this important work in FY 2019?

Mr. Acosta: The Advisory Board on Toxic Substances and Worker Health (Advisory Board) first requested additional resources on May 19, 2017, in order to conduct a quality assessment of 50 contract medical consultant (CMC) evaluations, and suggested that contracted services of worker-centered occupational physicians not associated with the current CMC contract may be necessary. Following this request, the Office of Workers' Compensation Programs (OWCP) staff met with members of the Advisory Board to explain the internal quarterly audit process of CMC's that the Program already conducted, and provided a link to those reports. The Program also instituted a 10 percent supervisory review of all recommended and final decisions based on a GAO recommendation; continued to conduct annual quality accountability reviews of a sample of staff work nationwide; and continued to have federal industrial hygienists review 100 percent of the reports of the contract industrial hygienists. The Advisory Board did not then request any additional resources until April 26, 2019, at which time it requested "additional resources (such as an external contractor to provide personnel, IT support, and additional resources as required) to conduct a systematic evaluation of claims to assess and to ensure the objectivity, quality and consistency of the industrial hygiene and medical evaluations that are part of the claims process."

While the Advisory Board has requested resources in the form of a contract, it has not yet provided any specifics that allow the Program to project the cost of the contract or estimate an amount to include in a budget request. OWCP will work with the Advisory Board to determine the scope of the contract and next steps.

Ms. Lee: When will the funding be released?

Mr. Acosta: OWCP is working with the Advisory Board to identify the scope of the contract and then develop requirements for a full procurement. At this point in the process, the timetable for releasing funding is undetermined.

Ms. Lee: How much has the Department requested for FY 2020?

Mr. Acosta: The Department requested $512,000 for the Advisory Board for Fiscal Year 2020. This includes travel and administrative expenses for the Advisory Board and one Full-Time Equivalent.

ADVISORY BOARD EXPOSURE-DISEASE PRESUMPTION RECOMMENDATIONS

The Department's Advisory Board on Toxic Substances and Worker Health has made recommendations regarding exposure-disease presumptions that are based in medical science, are consistent with the Energy Employees Occupational Illness Compensation Act, and could improve the timeliness, fairness, and efficiency of the program.

Ms. Lee: Which presumptions have been accepted, and which presumptions have been rejected and the reasoning for their rejection?

Mr. Acosta: Since its establishment in 2015, the Advisory Board on Toxic Substances and Worker Health (Advisory Board), it has made recommendations regarding exposure-disease presumptions for several conditions that can be caused by asbestos exposure: asbestosis; lung cancer; mesothelioma; asbestos-related pleural disease; ovarian cancer; and laryngeal cancer. The Department of Labor (Department) has accepted the Advisory Board's recommended presumptions for all of these diseases as they relate to the aggregate workdays of exposure and latency periods. For these same diseases, some of the Department's existing presumptions require that in order for the presumption to apply, a worker must have worked in particular labor categories. The Advisory Board initially recommended that the Department expand the list of particular labor categories to include the overly broad category of "maintenance and construction workers," because this term is commonly used in occupational medicine studies. In response, the Department stated it had been able to break down this vague category into multiple specific labor categories with better defined job duties (which provides the necessary context for individual industrial hygiene reviews), and requested that the Advisory Board provide more specificity in its recommendation to add labor categories to this existing presumption. In its March 14, 2019, recommendations, the Advisory Board provided more specific information and the Department is currently researching these new recommendations.

The Advisory Board also recommended modifications to the presumptive standards for evaluating claims involving chronic obstructive pulmonary disease (COPD). In particular, the Advisory Board recommended the Department add exposure to "vapors, gases, dust, and fumes" as having a health effect to the development of COPD. The Department contends that using the phrase "vapors, gases, dust, and fumes" is overly broad and not legally permissible, given the other statutory requirements of Energy Employees Occupational Illness Compensation Act. The Department maintains a database, the Site Exposure Matrices (SEM), which is a relational database that provides information on toxic substances that may have been present at Department of Energy covered facilities, and certain health effects of these substances. There is a current list of toxic substances in SEM that already represents a set of named toxic substances or work processes known to have a COPD health effect, many of which are already part of the broad categories of vapors, gases, dusts, or fumes, while still offering the Department the specificity needed for case adjudication. The Department is open to additional input from the Advisory

Board on more specific toxic substances encompassing vapors, gases, dusts, and fumes that could be added to the COPD health effect listed in SEM.

For the complete set of Advisory Board recommendations and the Department's responses, please go to this link:
https://www.dol.gov/owcp/energy/regs/compliance/advboard/advboard_recommendations.htm

LABOR VIOLATION INVESTIGATIONS

The President has a litany of lawsuits and settlements against him, including a report from Washington Post on April 30th, *At Trump golf course, undocumented employees said they were sometimes told to work extra hours without pay*, which alleged that Donald Trump's golf course was working undocumented workers without overtime pay. The Washington Post's article included multiple violations of labor laws, including unpaid "side work," unpaid overtime, and averaging worked hours over multiple weeks. And former managers described in the article how supervisors pressured undocumented workers to work without pay in order to meet demands from Trump Tower in Manhattan. And this is not the first allegation of mistreatment by Trump Organization, as workers have come out from his private club and golf course at Bedminster, New Jersey, the Trump National Golf Club in Westchester, New York, and Trump's National Golf Club at Mar-a-Lago that are now being run by his children.

Mr. Castro: Please confirm if the Department of Labor is investigating or has investigated allegations of mistreatment and labor violations by the Trump Organization?

Mr. Acosta: The U.S. Department of Labor's Wage and Hour Division (WHD) uses an evidence-based approach to ensure that it prioritizes providing compliance assistance and using enforcement resources in areas where the agency is most likely to uncover violations in high violation industries. This process, informed by data, research and evaluation, allows the agency to make the most of its limited resources.

A search of that database from June 1, 2014 through June 1, 2019 for investigations of any Trump-branded establishments shows one investigation of the Trump International Beach Resort in Miami, FL. That investigation, which began March 30, 2018 and concluded June 21, 2018, disclosed no violations.

Should there be a suspected WHD violation, workers and their advocates are encouraged to file a complaint with WHD by calling our toll-free number at 1-866-4US-WAGE or by visiting our website at www.dol.gov/whd/howtofileacomplaint.htm.

WAGE THEFT INVESTIGATIONS

It is the Department's duty to do what it can to assure workers that they should never be reluctant for any reason to file legitimate complaints against their employers. Yet, Department of Labor officials have noted an uptick in workers' reluctance to file complaints against employers or accept back wages collected by the Department on the worker's behalf.

Mr. Castro: What specifically is the Department of Labor doing to monitor and respond to this situation and reaffirm its commitment to protecting individuals' identity from employers during the course of labor investigations?

Mr. Acosta: The Wage and Hour Division (WHD) has seen no evidence of any widespread pattern of workers refusing to accept back wages that have been collected on their behalf. WHD stands ready to assist any individuals who may have concerns about receiving back wages for hours they have worked. WHD continues to monitor data related to the volume of incoming complaints. Moreover, WHD's longstanding practice has been to protect complainants by ensuring that all complaints are confidential—the name of the worker and the nature of the complaint are not disclosable, and whether a complaint exists may not be disclosed. To operate otherwise would result in a chilling effect that could discourage workers from stepping forward, and would run contrary to WHD's mission.

Mr. Castro: What policies and protocols does the Department have in place to ensure that these violations are appropriately addressed and investigated?

Mr. Acosta: WHD fully and fairly enforces the law. The agency balances strong enforcement of the law while also making compliance assistance a priority. WHD recovered more than $304 million for more than 265,000 workers in FY 2018, more back wages than in any other year in the agency's history.

WHD conducts investigations for a number of reasons, all having to do with enforcement of the laws and assuring an employer's compliance. WHD does not typically disclose the reason for an investigation. Many are initiated by complaints. In addition to complaints, WHD selects certain types of businesses or industries for investigation. WHD targets low-wage industries, for example, because of high rates of violations or egregious violations, the employment of vulnerable workers, or rapid changes in an industry such as growth or decline. Occasionally, a number of businesses in a specific geographic area will be examined. The objective of targeted investigations is to improve compliance with the law in those businesses, industries, or localities. Regardless of the particular reason that prompts an investigation, all investigations are conducted in accordance with established WHD policies and procedures.

WHD continues to accept and investigate complaints from a variety of sources – including from workers, competitors, and third parties. The identity of complainants is kept confidential so that workers may feel comfortable stepping forward. Additionally, WHD enforces anti-retaliation provisions under the Fair Labor Standards Act (FLSA) to counter any efforts by employers to take adverse actions against employees who cooperate with our investigations.

In addition, WHD conducted a record breaking 3,600 outreach events and presentations in FY 2018, providing critical information and compliance assistance to thousands of employers, employees, and industry associations. This represents a new record for the number of events conducted in a single year, reflecting the agency's commitment to providing employers the information and the tools they need to comply with the law. Additionally, our website provides clear instructions on how to file a confidential complaint, and we offer direct, confidential

telephone conversations with trained Wage and Hour professionals, in a wide variety of languages, nationwide at our well-publicized toll-free number, 866-4US-WAGE.

WHD continues to focus on modernizing its compliance assistance materials to help educate the public. Recent examples include the publication of animated, plain-language compliance tutorial videos, a digital version of the Handy Reference Guide to the Fair Labor Standards Act, and electronic compliance assistance toolkits specific to various program areas and/or industries. This balanced approach also allows the agency to focus enforcement resources on egregious violators.

BRACERO PROGRAM

I would like to follow up on a letter that I sent along with Members from the Congressional Hispanic Caucus on October 2, 2013 to then Department of Labor Secretary Thomas E. Perez. I am submitting a copy of this letter for the record. In the letter we requested that information regarding the "Bracero Program" and any wages made from the program be made public, but we never received a response.

Mr. Castro: I would like to again request that the Department of Labor respond to our letter and provide us with a copy of the necessary documentation to assist these braceros. Specifically, I ask that the names of the braceros and the amount of money withheld from their paychecks be made public. This information would allow these former braceros and their families to claim the money that is owed and that was promised to them while helping meet the economic needs of our country. Should the Department of Labor not have the relevant information pertained to braceros, I ask for your help in locating the appropriate department.

Mr. Acosta: The program concluded in 1964, and the office administering the program closed in 1972. In 1973, the program records were approved for disposal per record management requirements at the time and are no longer available.

Attachments:


congress ltr to labor dept final.pdf


congress ltr to labor dept final.pdf


congress ltr to labor dept final.pdf

ASSOCIATION HEALTH PLANS FOR SMALL BUSINESS OWNERS

We have heard a lot from my friends on the other side of the aisle about how association health plans (AHPs) aren't as good as individual or small group coverage and will cause the sicker, older people to stay in the exchanges driving up the premiums in those markets.

Mr. Roe: If this is the case, then why do we allow labor unions to promote AHPs to their members instead of moving those folks onto the exchanges? If it is good enough for the teamsters, why can't it be good enough for a group of small business owners? Obamacare is

already pricing people out of the exchanges, why wouldn't we want to allow for more available, affordable options for coverage?

Mr. Acosta: The U.S. Department of Labor is helping working Americans gain access to quality, affordable health insurance for themselves and their families. Many small businesses and their employees have struggled with government restrictions that limit access to quality, affordable health coverage. This Association Health Plan (AHP) final rule addresses many of the inequities between small and large businesses in access to that coverage.

Many small business owners cannot afford to offer health insurance to their employees. The percentage of small businesses offering healthcare coverage has been dropping substantially. For the self-employed, the individual market exchanges do not offer affordable coverage either; premiums more than doubled between 2013 and 2017 with deductibles increasing even more. This rule allows small employers – many of whom are facing much higher premiums and fewer coverage options as a result of Obamacare – a greater ability to join together and gain many of the regulatory advantages enjoyed by large employers.

Under the Department's final rule, AHPs can serve employers in a city, county, state, or a multi-state metropolitan area, or a particular industry nationwide. Sole proprietors as well as their families are permitted to join such plans. In addition to providing more choice, the final rule makes insurance more affordable for small businesses. Just like plans for large employers, these plans will be customizable to tailor benefit design to small businesses' needs. With increased administrative efficiencies and enhanced bargaining power with insurers and medical providers, AHPs are offering generous benefits and premiums lower than those that can be found in the exchanges.

The final rule includes several safeguards. Consumer protections and healthcare anti-discrimination protections that apply to large businesses will also apply to AHPs organized under this rule. As it has for large company plans since 1974, the Department's Employee Benefits Security Administration will monitor these new plans to ensure compliance with the law and protect consumers. Additionally, States will continue to share enforcement authority with the Federal Government.

The Congressional Budget Office (CBO) estimates that millions of people will switch their coverage to more affordable and more flexible AHP plans and save thousands of dollars in premiums. CBO also estimates that 400,000 previously uninsured people will gain coverage under AHPs.

Unfortunately, on March 28, 2019, in *State of New York v. United States Department of Labor*, the United States District Court for the District of Columbia vacated most of the Department's AHP final rule. The Department disagrees with the district court's ruling, on April 26, 2019, filed a notice of appeal, and on May 31, 2019, filed its opening brief.

AHPs have positive effects on small businesses offering their employees quality, affordable health coverage. In an amicus brief supporting the Department's position, the Chamber of Commerce argues that the projection of 400,000 previously uninsured people gaining coverage is

too low.[18] More than 21,000 individuals have already enrolled in AHPs provided by State and Local Chambers and other associations. This number is expected to rise to over 300,000 within the next year if the rule is reinstated.

As compiled by the Chamber, there are numerous examples of established AHPs that have seen impressive results.[19] For example, the Clark County Health Plan Association in Southern Nevada covers more than 10,000 people. Starting in September 2018, it has offered a range of health plans for working owners and small businesses, with annual premium savings of up to 30% and no rate increases until summer or fall of 2020. In Texas, the San Antonio Chamber of Commerce established an AHP that allowed its members to save 21% compared to their original premium rates.

Additionally, businesses on the VACE AHP in Vermont include a restaurant with six covered employees that moved from a high-deductible exchange plan and reduced their individual employee's deductibles by $3,650 each, a non-profit animal shelter that dropped group-sponsored coverage in 2014 but decided to offer insurance again and contribute 100% of the single premium towards a VACE AHP, and a pediatric office that is saving over $4,000 in annual premium expenses for its five covered employees by offering a similar plan as before that provides prescription coverage with a small copay instead of the previous $2,850 deductible.

The Department is committed to taking all appropriate action within its authority to ensure those who gained coverage can keep their coverage through the end of the plan year or contract term. Through the remainder of the applicable plan year or contract term that was in force at the time of the district court's decision, the Department will not take action against existing AHPs for continuing to provide benefits to members who enrolled in good faith reliance on the AHP rule's validity before the district court's order, as long as parties meet their responsibilities to association members and their participants and beneficiaries to pay health benefit claims as promised.

Mr. Roe: What kind of quality or comprehensiveness of coverage has the Labor Department seen so far with AHPs? Are most of these AHPs meeting all of the essential health benefits?

Mr. Acosta: The Department's final Association Health Plan (AHP) rule opened healthcare options for dozens of associations representing many small businesses and sole proprietors and provided them with access to the same type of affordable healthcare options offered by large employers. With increased administrative efficiencies and enhanced bargaining power with insurers and medical providers, AHPs are offering generous benefits and premiums lower than those that can be found in the exchanges.

All of the consumer protections and healthcare anti-discrimination protections in the Employee Retirement Income Security Act (ERISA)—including those added by the Health Insurance Portability and Accountability Act (HIPAA)—the Genetic Information

[18] http://d31hzlhk6di2h5.cloudfront.net/20190607/89/2a/49/3f/742130632b887f0bb29f76ea/_ECF_1791767__AHP_Amicus_Brief.pdf

[19] Chamber of Commerce of the United States of America, "Successful Association Health Plans," available at: https://www.uschamber.com/successful-association-health-plans

Nondiscrimination Act (GINA), and the Patient Protection and Affordable Care Act (PPACA) — apply to AHPs, like any other group health plan. For example:

- AHPs cannot impose a preexisting condition exclusion.
- AHPs cannot discriminate in eligibility, benefits, or premiums against individuals based on a health factor, including pregnancy or genetic information.
- AHPs cannot cancel or rescind coverage because an employee becomes pregnant or ill.
- Individuals have special enrollment rights upon life events such as marriage, birth of a child, adoption, or placement for adoption.
- Dependent children can stay on the coverage until age 26.
- Individuals have the right to choose a primary care provider, a pediatrician, or an OB/GYN without prior authorization or referral.
- If an AHP provides mental health or substance use services, then the coverage must be comparable to that provided for medical/surgical services.
- AHPs, like other large group health plans, are prohibited from imposing annual or lifetime dollar limits on any essential health benefits covered.
- If an AHP covers a benefit that would be considered an EHB, the AHP must count an individual's out-of-pocket spending as required by the provisions regarding maximum yearly out-of-pocket costs.
- AHPs remain subject to Federal and State laws other than EHB requirements that require the provision of certain benefits. For example:
    - AHPs that provide coverage for hospital stays in connection with childbirth cannot restrict a hospital stay to less than 48 hours (or 96 hours following a caesarian section).
    - AHPs are required to cover recommended preventive services without cost sharing, including contraceptive coverage, well-woman exams and screenings, well-baby visits, and other pediatric services.
    - AHPs covering treatment for breast cancer surgery must also cover post-surgery benefits, including reconstructive surgery.

Mr. Roe: Are you aware that the American Medical Association found that 73 percent of 380 city regions were dominated by 1-2 insurers? With AHPs, would small businesses have more or fewer options? What effect does competition have on the quality and affordability of this employer-sponsored benefit?

Mr. Acosta: The Congressional Budget Office (CBO) noted that the coverage offered through AHPs is similar to comprehensive employer-based coverage, that expanded AHPs will lead to lower premiums across the entire small group market because of greater competition, and that many employers will offer coverage for the first time as a result, thus reducing the number of people uninsured. CBO estimated that AHPs will result in premium savings.[20]

[20] U.S. Congressional Budget Office, "Federal Subsidies for Health Insurance Coverage for People Under Age 65: 2018 to 2028," available at: https://www.cbo.gov/publication/53826.

Mr. Roe: We have heard that association health plans, or AHPs, must comply with the HIPAA and ACA nondiscrimination rules, in addition to COBRA and all state laws. Can you expand on how these laws shape AHPs?

Mr. Acosta: AHPs are ERISA-covered group health plans and, therefore, ERISA's consumer protections apply to AHPs. These protections include the HIPAA and ACA nondiscrimination provisions, the COBRA continuation health coverage provisions, and many other consumer protections (as discussed earlier). The Department's final rule also includes additional nondiscrimination safeguards for individuals enrolled in AHPs. For example, AHPs cannot make eligibility decisions, or charge participating employers different rates, based on the aggregate health status of their employees.

Other federal employment laws also provide protections for women, including pregnant women. Title VII of the Civil Rights Act of 1964 (administered by the Equal Employment Opportunity Commission), which applies to employers with 15 or more employees, prohibits discrimination based on gender. The Pregnancy Discrimination Act amended Title VII of the Civil Rights Act and provides that pregnancy-related expenses for employees and their spouses must be reimbursed in the same manner as those incurred for other medical conditions. Lastly, the Age Discrimination in Employment Act applies to employers with 20 or more employees and prohibits discrimination in the workplace based on age.

Furthermore, the final rule does not diminish state oversight. ERISA expressly provides both the Department and State insurance regulators joint authority over AHPs. In addition, States can regulate health insurance issuers and the health insurance policies sold to AHPs.

Mr. Roe: One of the key promises we've heard from previous administrations is that, "If you like your doctor, you can keep your doctor." Under the provider networks that AHPs are developing, are most providers enrolling into these private networks?

Mr. Acosta: Group health plans, including AHPs, are not required to report information regarding provider network size to the Department. However, recent articles in the Washington Post indicate that AHPs are generally providing high-quality, comprehensive coverage. These articles stated that AHPs are not skinny plans and offer benefits comparable to most workplace plans, including primary care, emergency room care, and mental health coverage. By contrast, other articles report that exchange plan networks are narrow.[21]

RETIRE ACT

Last Congress, I introduced with 42 bipartisan cosponsors common sense legislation (H.R. 4610 the RETIRE Act) to switch the default for distribution of retirement plan disclosures from paper to electronic. Today, most retirement plan documents are sent in paper despite the advances in technology that would allow for lower cost and more expedited delivery via

[21] See https://avalere.com/press-releases/plans-with-more-restrictive-networks-comprise-73-of-exchange-market, https://www.modernhealthcare.com/article/20181204/NEWS/181209976/most-aca-exchange-plans-feature-a-narrow-network, https://healthpayerintelligence.com/news/narrow-network-health-plans-continue-to-dominate-aca-exchanges, and https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2016.1669.

electronic methods. E-delivery is more efficient, more effective, less costly and less wasteful. In August 2018, President Trump signed an executive order instructing the Department of Labor to investigate the "the potential for broader use of electronic delivery as a way to improve the effectiveness of disclosures and reduce their associated costs and burdens."

Mr. Roe: When can we expect a proposal from the Department to implement this executive order?

Mr. Acosta: In response to the President's Executive Order, the Employee Benefits Security Administration (EBSA) added a regulatory project to the Spring 2019 Semiannual Regulatory Agenda, which was made available to the public on May 22, 2019, on www.reginfo.gov. EBSA is exploring ways to reduce the costs and burdens imposed on employers and other plan fiduciaries responsible for the production and distribution of retirement plan disclosures, as well as ways to make these disclosures more understandable and useful for participants and beneficiaries. As part of this project, EBSA is also considering revising its current electronic disclosure rules, with an eye towards broader use of electronic delivery.

EXECUTIVE ORDER ON STRENGTHENING RETIREMENT SECURITY IN AMERICA

Last August, President Trump issued an executive order on "Strengthening Retirement Security in America" that, among other things, directed the Labor Department to look at ways to streamline benefit plan notices and disclosures.

Mr. Walberg: What is your view regarding the benefits of electronic delivery for retirement savers and can you provide an update on the Department's progress on this initiative?

Mr. Acosta: Since the enactment of the Employee Retirement Income Security Act in 1974, technological innovations have improved the ability to aggregate, disseminate, and communicate information in the workplace and at home; however, many of the rules governing benefit disclosure requirements have not kept pace with changing technology. The U.S. Department of Labor has an obligation to protect the rights of participants and beneficiaries of employee benefit plans and regulatory changes in this area must ensure these participants have access to timely and effective disclosure information regarding their employee benefit plans.

In response to the President's Executive Order, the Employee Benefits Security Administration (EBSA) added a regulatory project to the Spring 2019 Semiannual Regulatory Agenda, which was made available to the public on May 22, 2019, on www.reginfo.gov. EBSA is exploring ways to reduce the costs and burdens imposed on employers and other plan fiduciaries responsible for the production and distribution of retirement plan disclosures, as well as ways to make these disclosures more understandable and useful for participants and beneficiaries. As part of this project, EBSA is also considering revising its current electronic disclosure rules, with an eye towards broader use of electronic delivery. Any proposal the Department publishes will invite public comments from interested stakeholders, it will include a regulatory impact analysis of expected costs and benefits, and a copy of the proposal will be provided to the Committee.

UNION TRANSPARENCY AND ACCOUNTABILITY ACT

In an effort to shield union leaders from accountability, DOL under the Obama administration rescinded several important union reporting requirements. Under your leadership, the Department has indicated plans to promulgate rules pertaining to union trusts and intermediate bodies, but it has given no such indication it will re-impose rules pertaining to Form LM-2 and Form LM-30 that were in place prior to President Obama taking office, which were intended to expose conflicts of interest in union spending.

I have introduced the *Union Transparency and Accountability Act* to codify the rules of T-1, LM-2, and the LM-30 that were put in place by the Bush administration. This should be a major priority.

Mr. Rooney: Does the Department have any plans to reimpose the LM-2 and LM-30 requirements that were rescinded by the Obama administration?

Mr. Acosta: As part of the Department's ongoing efforts to ensure financial integrity and transparency in our nation's labor organizations, the Office of Labor-Management Standards routinely reviews the reporting requirements under the Labor-Management Reporting and Disclosure Act (LMRDA), and it will continue to do so. In particular, as stated in the Spring 2019 Update of the Unified Agenda of Federal Regulatory and Deregulatory Actions, the Department will review modernization of the annual financial reports filed by labor organizations.

LABOR ORGANIZATION ANNUAL FINANCIAL REPORTS

Congress intended for the *Labor-Management Reporting and Disclosure Act* (LMRDA) to be applied broadly to combat union corruption. Unfortunately, the Obama administration rescinded several important union reporting requirements that would have provided valuable transparency for rank-and-file workers. One of those pertains to so- called "intermediate bodies," which are midlevel state or regional organizations in the union hierarchy made up of public employees. These intermediate bodies do not currently have to file financial disclosure reports under the LMRDA, but they are subordinate to larger unions that are covered by the LMRDA.

Mr. Rooney: Given the Trump administration's prioritization of transparency and that the "Labor Organization Annual Financial Reports: Coverage of Intermediate Bodies" proposed rule has been on the Spring 2017, Fall 2017, Spring 2018, and Fall 2018 Unified Agenda with the latest deadline of December 2018 for a notice of proposed rulemaking, what is the current status of the rulemaking and the anticipated timing for the rule to be promulgated?

Mr. Acosta: As stated in the Spring 2019 Update of the Unified Agenda of Federal Regulatory and Deregulatory Actions, the Department intends to publish a notice of proposed rulemaking in Summer 2019. In 1959, when the Labor-Management Reporting and Disclosure Act (LMRDA) was enacted, states seldom permitted collective bargaining by government employees. Time and practices have changed—increasingly, public sector unions use substantial monies derived from private sector unions. Section 208 of the LMRDA provides the Secretary with the authority to issue rules and regulations to ensure financial transparency. The proposal

would make certain intermediate bodies — those subordinate to an LMRDA-covered national or international labor organization — are subject to LMRDA reporting and disclosure provisions.

ACCOUNTABILITY FOR REPRESENTED WORKERS ACT

The *Labor-Management Reporting and Disclosure Act* (LMRDA) was passed in 1959 so that workers would have some oversight of the groups or individuals purporting to represent them in the workplace. It also allows workers to see how their dues money or other funds that might be provided to these groups or individuals is being spent. LMRDA established a very broad definition of what types of entities should be considered "labor organizations" subject to the law's jurisdiction.

I introduced the *Accountability for Represented Workers Act* to stop organizations called "worker centers" from evading the scope of the law. Groups like the Restaurant Opportunities Center, the Coalition of Immokalee Workers, OUR Walmart, and others are clearly attempting to "deal with" employers on behalf of specific workers, yet they consider themselves outside the reach of the LMRDA and do not file any of the requisite disclosures by the statute. I wrote you on this issue in November 2018 asking the Office of Labor-Management Standards to properly enforce the law and classify these worker centers as labor organizations.

Mr. Rooney: What is DOL doing to ensure that worker centers are meeting their rightful obligations under the LMRDA?

Mr. Acosta: OLMS is committed to upholding and enforcing the Labor-Management Reporting and Disclosure Act (LMRDA) fully and fairly. OLMS takes its obligation to investigate allegations and enforce the LMRDA on labor organizations seriously. When OLMS receives a complaint or some other credible indication that an organization is acting as a labor organization but has failed to adhere to the reporting requirements and other provisions of the LMRDA, OLMS will open an investigation or an inquiry into the matter. OLMS handles allegations about worker centers as LMRDA-covered labor organizations on a case-by-case basis. The Department takes seriously the statutory requirement that all organizations acting as labor organizations comply with the law and continues to monitor situations where this compliance is called into question.

TRAVEL ADVISORS RETAIL FAIRNESS ACT

The Obama administration's 2015 proposal to dramatically expand overtime eligibility caused many entities, particularly small businesses, to reexamine a long-standing exemption in current law—Retail or Service Establishment (RSE) exemption (29 USC § 207(i)).

To qualify for this exemption, an employee must work at an establishment "recognized as retail…in the particular industry" and where at least 75 percent of annual sales are "not for resale." Further, the employee in question must be paid at least one-and-a-half times the applicable minimum wage and more than half of the employee's earnings must consist of commissions.

A number of businesses were surprised to learn that they are blocked from even being measured against the exemption's criteria due to a DOL ruling dating to 1970 (29 CFR § 779.317), which has gone unchanged in the subsequent 49 years, which arbitrarily lists industries that are deemed to "lack a retail concept" and thus can't qualify for the RSE "under any circumstances." This is of particular concern to travel agencies in my state, with travel agents included on this regulatory "blacklist." Their concern is reinforced by the fact that in the only court case that directly address the propriety of including travel agents on this blacklist (Reich v. Cruises Only, Inc., 1997), a federal court found in favor of the travel agency, determining that DOL's regulations "excluding a travel agency from those establishments possessing a retail concept appear to be arbitrary and without any rational basis" (1997 U.S. Dist. LEXIS 23727 (M.D. Fla.1997).

It's hard to disagree with the court's finding, as travel agencies are clearly "retail" and I believe they should have an opportunity to claim the RSE exemption if they qualify for it.

That's why I have introduced the *Travel Advisors Retail Fairness Act*. This bipartisan bill would simply strike travel agencies from this blacklist, allowing them to claim the exemption if they meet the appropriate statutory criteria. This is a matter of basic fairness—this legislation will treat travel agents like any other retail business. At the same time, it will help preserve 100,000 travel agency jobs by protecting agency owners against audits and lawsuits while giving them the flexibility to better serve their clients in the dynamic and hyper-competitive travel industry.

Mr. Rooney: Will you commit to reexamining the propriety of including travel agencies and other industries included in 29 CFR § 779.317 and consider removing them and other appropriate industries from the list through the rulemaking process, guidance letters or other appropriate actions?

Mr. Acosta: Section 7(i) of the Fair Labor Standard Act (FLSA) exempts certain commissioned employees at retail or service establishments from overtime requirements under the FLSA. Part 779 of title 29 Code of Federal Regulations contains the Department's official interpretations of the statutory requirements for satisfying this exemption. The Department has not meaningfully updated these interpretations for many years. On May 22, 2019, the Department published its Spring 2019 Unified Agenda of Federal Regulatory and Deregulatory Actions. Upon publication of a Notice of Proposed Rulemaking, the public will have the opportunity to submit comments. As part of this agenda, the Department stated its intention to propose revisions to these regulations.

OFCCP IT MODERNIZATION

I have heard examples from my home state of Idaho of companies who have spent multiple years going through the DOL-OFCCP auditing process, which includes hundreds of labor hours that in some cases last multiple years, thousands of electronic documents requested and submitted, and huge sums of attorney fees, in order to respond to a single OFCCP Section 503 focused review. In your written testimony, you refer to the FY 2020 OFCCP budget request for

$103.6 million, which includes funding for IT Modernization efforts to enhance operational efficiencies.

Mr. Fulcher: How will this large investment in IT Modernization maximize the efficiencies of the OFCCP review processes?

Mr. Acosta: Section 503 focused reviews are a new initiative OFCCP announced in a public facing directive (DIR 2018-04) in August of 2018. OFCCP implemented this directive by including Section 503 focused reviews, for the first time, on its neutral scheduling evaluation list that OFCCP deployed in early May. OFCCP is allowing contractors to prepare further for the new Section 503 focused reviews by deferring any related onsite visits until FY 2020.

OFCCP also has and continues to invest in critical IT modernization. With the prevalence of telework, the increase of cross-office and cross-regional collaboration, and federal electronic records management requirements, OFCCP recognized the critical need for IT modernization of its legacy case management system to effectively carry out its compliance evaluation activities with a dispersed and mobile workforce. The new system addresses the current challenges of case uniformity, security of sensitive information, version control, inter-regional collaboration, and efficiency of the agency's quality assurance activities.

Mr. Fulcher: What actions other than IT Modernization is OFCCP taking to maximize the efficacy of the Section 503 focus review, compliance check, and establishment review processes? Specifically, is OFCCP looking at reducing the time it takes to complete their reviews, and working to reduce the administrative costs to federal contractors?

Mr. Acosta: OFCCP has implemented an aged case initiative to reduce the time it takes to complete compliance evaluations and reduce the administrative costs to contractors and to the agency. OFCCP defines a case as aged when it remains open for more than two years. Many of the initiative's components stem from OFCCP's Transparency in OFCCP Compliance Activities directive (DIR 2018-08), issued in September 2018. Consistent with Directive 2018-08, the agency is working to close reviews quickly where there are no indicators of discrimination or evidence of other violations. Ideally, and in the majority of cases, OFCCP would complete a typical desk audit within 45 days of receiving complete and acceptable Affirmative Action Program (AAPs) and supporting data. Since OFCCP issued DIR 2018-08, the agency has reduced desk audit processing times from more than 120 days to less than 40 days on average. OFCCP also has reduced its aged case rate from 30 percent of open cases to 20 percent during the last year and is working to reduce it even further. Also consistent with DIR 2018-08, OFCCP now publishes the scheduling list for supply and service compliance evaluations, type of reviews, and methodology it uses to select contractors for an evaluation, and it requires that OFCCP staff provide the basis for supplemental information requests. These are all procedural changes that have already begun to improve case processing times.

OFCCP's Early Resolution Procedures (ERP), detailed in DIR 2019-02, is also designed to reduce the time it takes to process cases with violations by allowing OFCCP and the contractor to resolve problem areas before OFCCP issues a Pre-Determination Notice or Notice of Violation. The ERP program also incorporates resolution of simultaneously open evaluations of

establishments of the same contractor in order for OFCCP to resolve them efficiently together in one conciliation agreement. OFCCP anticipates that the ERP program will have significant positive impacts on more expedient case processing in the coming months and years as the program matures.

Finally, OFCCP's expanded compliance assistance materials, including technical assistance guides, fact sheets, frequently asked questions (FAQs), and a new Section 503 Focused Review landing page promote more efficient evaluations by providing better contractor education and technical assistance.

Mr. Fulcher: Has OFCCP published best practices or guidelines for federal contractors to reference while they are in the review process, and which clearly state what documents and materials will be reviewed subject to OFCCP audit?

Mr. Acosta: Consistent with Directive 2018-08, Transparency in OFCCP Compliance Activities, OFCCP is committed to being transparent and collaborative in educating contractors about how to comply with their requirements. Further, OFCCP is committed to conducting high quality, consistent, and efficient compliance evaluations, ensuring there is open communication, cooperation, and intent to minimize unnecessary burden, making considerable efforts to resolve violations through conciliation, and standing ready to pursue litigation vigorously when necessary. Since issuing DIR 2018-08, OFCCP has posted a wealth of information on its website, including guidance, best practices, FAQs, and other information to assist federal contractors with understanding the review process, including the documents and materials that will be reviewed during an audit. In addition, OFCCP offers compliance assistance to federal contractors who may have questions during the review process.

Mr. Fulcher: How does the OFCCP go about selecting companies that will be subject to a Section 503 focus review, compliance check, or establishment review? Is there a formula used to determine which federal contractors will be selected? If so, what is the formula? Is the same formula used to determine a Section 503 focus review, compliance check, and establishment review?

Mr. Acosta: OFCCP's most recent scheduling list is comprised of 3,500 establishments, including 500 Section 503 Focused Reviews, 500 Compliance Checks, and 2,500 establishment compliance reviews. Consistent with the Transparency Directive (DIR 2018-08), OFCCP publishes its scheduling methodology on its website, providing detailed information to contractors and the public about how OFCCP selects establishments for supply and service compliance evaluations, including Section 503 focused reviews and compliance checks. The published methodology on the website explains how OFCCP selected contractor establishments for each type of review.

INTERAGENCY AGREEMENT

BETWEEN

THE UNITED STATES DEPARTMENT OF LABOR AND THE UNITED STATES DEPARTMENT OF AGRICULTURE

GOVERNING THE FUNDING, ESTABLISHMENT, AND OPERATION OF JOB CORPS CIVILIAN CONSERVATION CENTERS

SECTION I. PARTIES TO AGREEMENT

U.S. Department of Labor	Hereinafter Referred to as "DOL"
U.S. Department of Agriculture	Hereinafter Referred to as "USDA"

SECTION II. BACKGROUND, AUTHORITIES AND PURPOSE

A. Job Corps was established to help America's economically disadvantaged youth overcome the many barriers to successful careers. First authorized by the Economic Opportunity Act of 1964, it is currently authorized by Title I of the Workforce Investment Act (WIA) of 1998, as amended. The Secretary of Labor's authority to establish and fund Civilian Conservation Centers (CCCs), as Job Corps operators, is authorized by WIA at section 147 (c), 29 U.S.C. § 2887(c), and further defined by WIA regulations at 20 CFR § 670.120, and at 20 CFR § 670.310(e) which states:

> *"The Secretary [of Labor] enters into interagency agreements with Federal agencies for the funding, establishment, and operation of CCCs which include provisions to ensure that the Federal agencies comply with the regulations under this part."*

B. This Agreement is the overarching document for cooperative efforts of all personnel working towards the accomplishment of the mission as set forth in the authorizing legislation. It applies to all Job Corps CCCs funded by DOL and operated by USDA on federal or a combination of federal, state, or private property controlled by USDA. This Agreement outlines the joint and separate roles, authorities, and responsibilities of DOL and USDA and for the management of Job Corps CCCs. This Agreement is an internal Government agreement and is not intended to confer any right upon any private person or third party and does not preclude DOL from acting in a manner it deems advisable to carry out the Job Corps program, nor does it limit USDA in carrying out any activities not pertaining to its Job Corps CCCs.

C. This Agreement pertains to Job Corps Civilian Conservation Centers (Job Corps CCCs) and is entered into pursuant to 29 U.S.C. § 2887(c) and other authorities available to the Parties, and is an Operating Plan for the Job Corps CCCs under 29 U.S.C. § 2891. The Parties shall carry out

their obligations under this Agreement consistent with applicable law, and pursuant to their respective legal authorities such as those for managing the areas where these Job Corps CCCs are located and governing the operations of their respective agencies. Moreover, in performing these activities, the Parties may utilize other laws, regulations, policies and guidance, including those authorizing collaboration amongst Federal agencies such as the *Economy Act,31* U.S.C. § 1535 and those which authorize the use of private contractors.

SECTION III. ROLES AND RESPONSIBILITIES

The parties agree to the following division of responsibilities:

A. General

(1) DOL: DOL has the primary responsibility within the Executive Branch for administering and managing the Job Corps program. DOL allocates resources and works with USDA on the guiding policies, standards and procedures for operation of Job Corps CCCs and in program planning and delivery of services to Job Corps centers operated by USDA. DOL will coordinate proposed changes to national policy and guidelines affecting CCCs with USDA. DOL Regional Offices have responsibility to ensure that the Job Corps CCCs in their regions comply with Job Corps national policies, rules and regulations, to include the Job Corps Policy and Requirements Handbook (PRH). USDA agrees to operate Job Corps CCCs in accordance with such Department of Labor guidance.

(2) USDA: USDA is responsible for the operational management of Job Corps' CCCs funded by DOL in accordance with 20 CFR § 670.220(b). This responsibility covers the provision of materials, services, personnel, and the administration of contracts that are needed to operate these centers in a manner that, at a minimum, meets the administrative and programmatic requirements and goals established by DOL, and as agreed to with USDA.

B. Program Design

(1) The Job Corps program is defined in the authorizing legislation Workforce Investment Act (WIA) of 1998, as amended, and the implementing regulations of the DOL.

(2) When determining career technical training offerings or the configuration of enrollment slots at USDA centers, USDA's conservation mission shall be taken into account. DOL will collaborate with USDA regarding the reduction or reconfiguration of enrollment slots before any final decisions are made by DOL, to allow USDA to make programmatic adjustments.

(3) DOL will invite USDA to provide one representative each to be a member of DOL-established Job Corps inter-agency task forces, committees, workgroups, etc. which are established to seek improvements in various aspects of the programs and Job Corps CCCs operated by USDA.

(4) USDA may test and develop innovative approaches for teaching academic and career technical training skills to students, and imparting career success standards, including independent living skills and the implementation of Job Corps' standards-based training program/curriculum. USDA Job Corps CCCs will apprise DOL of any successful techniques developed or discovered in order to provide DOL the opportunity to consider testing on a wider scale.

C. Operations

(1) DOL, as the program administrator, is responsible for providing all available funding to USDA to carry out the agreed to center operating requirements in the annual operating plan. Guidance for operations is set forth in the Policy and Requirements Handbook (PRH) published by DOL. From each year's appropriation, DOL may reserve contingency funds to cover facility-related emergencies. USDA may request needed funds from this reserve by notifying the appropriate DOL Job Corps Regional Office. Such emergencies do not include bringing a facility into compliance with Federal architectural accessibility requirements.

(2) Personnel

(a) DOL will provide funding to cover the cost of Federal Employees' Compensation Act (FECA) covered claims for Job Corps CCC students and federal staff.

(b) DOL will be responsible and accountable for recruiting, admitting, and assigning students to centers, as well as job development, career transition, and support services to separated students. USDA agrees to cooperate and assist in these important tasks to the extent that resources permit.

(c) USDA will make every effort to place graduates in jobs in the federal programs they administer, and report their progress annually to both the appropriate DOL Job Corps Regional Office and the National Office.

(d) DOL will furnish the funding for students' pay, allowances, clothing, and official travel; however, the effective and efficient delivery of these services to such students will be the responsibility of the management of the USDA Job Corps CCCs. In addition, USDA will conduct a reconciliation of student payroll and transportation accounts and submit it to the appropriate DOL Job Corps Regional Office each month.

(e) USDA bears chief responsibility for providing the necessary training for the staff of the Job Corps CCCs they manage. Periodically, DOL will conduct or arrange training for center operators and staff to introduce new program policies, requirements, curricula, or procedures, providing advance notice to the USDA National Offices. USDA is responsible for ensuring that appropriate staff attends these sessions, to the extent adequate resources are available.

(f) National Training Contractor (NTC) instructors working at USDA-managed

Job Corps CCCs shall be permitted to attend annual training conferences sponsored and funded by their NTC parent organization.

(g) USDA agrees to staff Job Corps CCCs in accordance with the staffing plans and center budgets approved and funded by DOL. If no suitable candidate is found within 90 days of a vacancy occurring, the DOL Job Corps Regional Director will be notified.

(3) Real Property

(a) DOL is responsible for the custody and control of all Job Corps CCCs, existing and future buildings, structures, and associated physical plant and the upward reporting of said properties, with the exception of staff housing located on certain Job Corps CCC sites.

(b) DOL will maintain all facilities data on Job Corps CCCs (other than the staff housing referred to in subparagraph (a)) as required by the Federal Real Property Council to ensure that all the necessary inventory and cost data are reported to the Federal Real Property Profile-Internet Application (FRPP IA) operated by the General Services Administration. USDA will report all cost data through the DOL Financial Management System (FMS), ensuring accurate reporting of operating costs in a timely manner.

(c) DOL will provide architectural and engineering (A&E) support to all Job Corps CCCs to include:

(1) carrying out center facility surveys every three years
(2) identifying safety and health, construction, rehabilitation and acquisition projects (CRA) to include all A&E support and construction administration
(3) maintaining an on-line Inventory of Needs (ION) listing of all projects for Job Corps CCCs, and providing access to this inventory to USDA program staff
(4) working with USDA to select their prioritized projects from the ION annually, prior to the formulation of the program year budget
(5) providing to USDA the results of each facility survey at each of the Job Corps CCCs, the DOL Asset Management Plan and Three-Year Implementation Plan for real property

(d) DOL and USDA agree to review all design construction documents for major student vocational skills training projects. This review will include ensuring that such projects comply with applicable Federal architectural accessibility requirements.

(e) USDA will report to DOL on the progress of projects in a timely manner, including the expenditure of funds by project, using DOL's online Funded Not Corrected (FNC) system.

(4) Personal Property

(a) DOL will hold title/ownership of, and is ultimately responsible for custody and control of all personal property purchased with Job Corps funds. USDA will, however, be responsible for the accounting and control of the personal property at all USDA Job Corps CCCs. USDA will transfer items only in accordance with the provisions of the Job Corps Property Management Handbook. USDA and DOL will agree on necessary resources to complete personal property tracking, accounting and control.

(b) USDA will track and report all required personal property data, in accordance with the Job Corps Property Management Handbook, for all personal property purchased with Job Corps funds. Reporting will be accomplished using the DOL Electronic Property Management System (EPMS) or a system allowing the transfer of data to the EPMS. DOL will be responsible for any upward reporting requirements.

(c) USDA will provide fleet vehicles and transportation as needed utilizing its Working Capital Fund operation and DOL will fund the appropriate use rates and fixed ownership rates as established by USDA and agreed upon by DOL. USDA will provide fleet vehicles using GSA vehicle leases. DOL will fund allowable charges for damages to vehicles upon USDA request and submission of all supporting documentation.

(5) All Federal directives and guidelines pertaining to the conservation of energy resources at Federal establishments shall be observed/applied by USDA at all Job Corps CCCs, as funded by DOL. All Job Corps CCCs will utilize the Energy Watchdog program, such program to be provided by DOL, to identify potential energy savings, and DOL will report energy usage to DOE. DOL and USDA will work together to achieve the goals of Federal directives and guidelines pertaining to the conservation of energy resources and environmental stewardship at all Job Corps CCCs.

D. Information Technology (IT)

DOL assumes all financial and operational responsibility for the purchase, installation, management, maintenance and upgrade of information technology equipment and technical infrastructure, including software, needed to operate a Job Corps center on a Civilian Conservation Center site. The controlling authority for the policies, procedures, and appropriate use of these assets shall be the Department of Labor Manual Series – 9 (DLMS-9) on IT.

DOL and USDA will develop policies and systems to provide staff with access to USDA applications (i.e., Time & Attendance, Travel, Agency E-mail, Aglearn).

E. Financial Management

(1) In accordance with 20 CFR § 670.950, USDA National Office(s) will perform financial oversight and management of Job Corps CCCs consistent with DOL's established policy and procedures. Initial budget requests for center operations, and all requests for transfers of authorized balances, require the approval of USDA National Office(s) prior to the submission of such reports to the DOL Job Corps National/Regional Offices for approval.

(2) In accordance with 20 CFR § 670.320(b), DOL will transfer Job Corps funds to USDA to cover the costs of Job Corps CCC operations, in accordance with annual operating budgets that have been approved by DOL. As a general rule, funds covering ongoing operating costs and program direction costs will be transferred in quarterly installments, while funds for construction and capital items will be transferred in lump sum. USDA shall account for all funds in accordance with financial accounting and auditing standards applicable to such funds, and to applicable reporting requirements pertaining to such funds as may be established and promulgated by DOL's Chief Financial Officer (CFO), pursuant to all applicable authorities.

(3) USDA shall ensure that Job Corps funds are properly controlled and accounted for, and used prudently, in accordance with the principles of government accounting and OMB-approved policies and processes. The allowable use of such funds will be determined in accordance with FAR Part 31 and OMB Circular A-87 (Costs Principles for State, Local and Indian Tribal Governments), except to the extent that this would contravene any law or regulation. Final decisions on the appropriate use of funds will be reserved to DOL. DOL reserves the right to recover funds used to pay any expenditure that is disallowed.

(4) Funds for Program Direction, calculated as a percentage (currently 6%) of the annual budget of the Job Corps CCC, will be provided by DOL to USDA for the administrative and overhead costs associated with the Job Corps program. If USDA determines that actual indirect costs for any program year are less than the amount funded, then USDA shall submit a request to the National Office of Job Corps, through the appropriate DOL Regional Office, for approval to transfer these excess funds to a direct operations category or to return such funds to DOL. No program direction funds may be used for Construction, Rehabilitation and Acquisition (CRA) projects. Program Direction dollars are not subject to the On-Board Strength (OBS) take-back dollars.

(5) For transfers of Center Operations funds (hereafter referred to as movement of funds) between line items in the budget of a single center, or between centers, the following procedures apply:

(a) Funds from personnel line items may only be moved to other personnel line items.

(b) Funds from non-personnel line items may only be moved to other non-personnel line items.

(c) Movement of funds totaling less than 3% of the affected line items at each center (in a single instance of a center-to-center movement) requires no concurrence from the Department of Labor. However, each instance must be recorded as a

variance statement in the quarterly financial reports for the quarter in which the movement occurred. For center to center movements, both centers must record the adjustment.

(d) Movement of funds totaling 3% or greater of the affected line items at either center (in a single instance of a center-to-center movement)must be communicated to the Budget Officer in the National Office of Job Corps for approval prior to the move. The Budget Officer agrees to respond within 14 calendar days. Upon concurrence, the movement must be recorded as a variance statement in the quarterly financial statement for the quarter in which the movement occurred. Both centers must record the adjustment.

(e) When a center's total initial operating budget has been adjusted by 10% or greater as a result of the cumulative movement of funds in a program year, such adjustments will be considered permanent for the purpose of the next Program Year's budget. (For this purpose, an adjustment will only be counted once, in absolute dollars.)

(6) USDA may: (1) utilize any excess funding in the construction/rehabilitation category to supplement higher than anticipated costs for prioritized construction and or rehabilitation projects that are in the approved budget, or (2) undertake additional unbudgeted renovations listed in the facility survey as having been pre-approved by the DOL Job Corps National Office.

(7) USDA Job Corps CCCs shall complete the Construction/Rehabilitation Funding Status Report and maintain the Web-based log of the completion of funded deficiencies.

(8) USDA may transfer up to $500 in capital equipment funds between Job Corps CCCs, with reports of those transfers sent to the DOL National Job Corps Office. Amounts greater than $500.00 will be subject to coordination and approval by the DOL Regional Job Corps Office prior to a DOL National Office transfer.

(9) If average OBS at any Job Corps CCC falls below 98%, DOL and USDA will discuss the reallocation or recapture of excess funds.

(10) USDA will use the DOL Web-based Job Corps Financial Management System to report the accrual of costs allocated to each Job Corps CCC, in accordance with the instructions provided by DOL.

(11) Funding reconciliations in the form of the 2110 F Report, including the treatment of unexpended balances, will be performed by the USDA National Offices and provided to the DOL Job Corps National Office at the end of each program year.

(12) Funding for vehicles will be provided on a basis consistent with the formula used for contractor operated centers. Information regarding each center's fleet (e.g. number, type and size of vehicles) will be shared with the applicable Job Corps Regional Office upon request. If USDA determines that additional vehicle amortization funds are needed based on agreed-to operating requirements (see Section III-C(4)(c)), a request shall be made to

the appropriate Job Corps Regional Office.

(13) Annual Career Technical Skills Training (CTST) budgets are allocated to USDA based on the number of career technical training slots, times an amount agreed upon by DOL and USDA. If USDA determines the need for additional CTST funds, then it may transmit such a request to the Job Corps Regional Office through USDA National Office for consideration.

(14) USDA will not be assessed liquidated damages in connection with the violation of DOL performance data integrity issues (i.e. reporting fraudulent academic or career technical achievements, reporting false student accountability, etc.). USDA shall take appropriate disciplinary or contractual action in accordance with its personnel policies, contract provisions, and/or any other Agency/Department rules and procedures that are applicable in disciplining responsible employees or contractors for such violations. In addition, credits found to be invalid will be removed, potentially changing the values of performance measurements. For each investigation, a report will be provided to DOL outlining the steps taken to remedy the situation and the preventative measures enacted to prevent repeat occurrences.

F. Assessments and Evaluations

(1) The focus of the assessments by DOL and USDA is on the effectiveness of center operations and compliance with Job Corps' governing statute, (WIA), regulations, policy, and requirements, as well as determining adherence to the center operating plans, performance measures, and approved annual budgets. The assessments will examine each center's internal administrative procedures, to the extent that they are associated with operations/administration compliance. In addition, the DOL Civil Rights Center (CRC) may conduct compliance reviews to determine the extent of a center's compliance with the PRH policies, standards, and other requirements that are related to nondiscrimination and equal opportunity for Job Corps students.

(2) The Job Corps Regional Offices will notify the USDA National Offices when scheduling assessments of the Job Corps CCCs. All parties will concurrently furnish copies of their assessment schedule prior to the start of each program year. USDA shall conduct comprehensive assessments of each Job Corps CCC it manages at a minimum every two years, or more frequently where needed, and/or in line with DOL frequency by center. DOL reserves the right to conduct unannounced visits in coordination with USDA National Offices. Reports of each monitoring visit will be shared with USDA officials and the Job Corps CCC center director within 45 calendar days of the visit. Additionally, all involved parties will respond to reports within 45 days of receipt. DOL and USDA will strive to conduct joint assessments.

(3) DOL's Office of the Inspector General will have lead responsibility for conducting comprehensive program and financial audits of USDA Job Corps activities. After completion of each audit, the report will be shared with appropriate USDA officials. In the event USDA conducts an Inspector General or other enforcement agency investigation, the report will be shared with DOL officials unless confidentiality is necessary to protect the integrity of law enforcement or employee relations

investigations.

(4) In accordance with WIA Section 147 (c) (2), and in the event a Job Corps CCC managed by the USDA fails to meet expected levels of performance, corrective measures will be developed by USDA and the Job Corps Regional Office. If corrective action measures are not implemented, or if implemented, do not result in adequate performance over a reasonable period of time, the Secretary of Labor, in accordance with WIA Section 159 (f) (2), shall develop and implement a performance improvement plan.

G. Reporting

(1) Job Corps centers managed by USDA are required to use Job Corps standard information systems for data collection and reporting. USDA agrees to provide oversight to ensure data integrity, timeliness and reporting accuracy.

(2) USDA agree to provide accurate and timely notification to the Job Corps Regional and National Offices of any significant incidents that occur at and around the Job Corps CCCs it manages. These incidents shall be reported within required timeframes utilizing the Job Corps Web-based, Significant Incident Reporting System (SIRS).

(3) USDA agree to provide accurate and timely notification to DOL's Civil Rights Center (CRC) when any administrative enforcement actions or lawsuits are filed against a Job Corps CCC alleging discrimination against Job Corps students on any ground that is prohibited in the Job Corps program. This notification will comply with the provisions contained in the Policy and Requirements Handbook.

(4) USDA agrees to immediately inform the appropriate DOL Job Corps Regional Office whenever there is a permanent or temporary change of center directors, or a USDA agency representative responsible for oversight of a Job Corps CCC.

H. Special Provisions

(1) USDA is responsible for managing any emergency or crisis situation that arises at the Job Corps CCCs it manages, especially situations that present an immediate danger to the health or safety of students, staff, or members of the general community. The appropriate DOL Job Corps Regional Office will be notified as soon as possible when such situations arise.

(2) DOL routinely publishes notices and other directives, including system-security directives, that are program-wide in scope and that are issued directly to Job Corps centers, center operators and other parties as appropriate. DOL notices and other directives will be coordinated and implemented promptly by Job Corps CCCs managed by USDA.

(3) It is understood that Job Corps CCC Federal employees are covered by OPM regulations and union agreements. As such, USDA shall negotiate with DOL any changes impacting Federal employees.

(4) DOL shall recognize USDA as an executive agency within the Federal Government having established rules and regulations. These rules and regulations will be used in conjunction with the DOL established rules and regulations to guide USDA actions as they pertain to matters of personnel, budget and finance, property, use of information technology, acquisition of goods and services, safety, law enforcement, and labor/management relations, and as such, establish guidelines under which the Job Corps CCCs operate. DOL agrees to take into consideration and coordinate these regulations (to avoid promulgating conflicting guidance) when establishing policies, providing budget guidance (to include staffing), or directing any activity that will require Job Corps CCCs to take action under their departmental procedures.

(5) In cases where possible criminal activity has occurred at a Job Corps CCC, DOL fully acknowledges the primacy of USDA's law enforcement personnel and procedures in the conduct of a subsequent investigation. Pursuant to that acknowledgment, DOL retains the need to have such incidents properly reported through established channels and in accordance with Job Corps' published policies governing such occurrences on Job Corps centers.

In cases where possible criminal activity has occurred through the use or misuse of Job Corps equipment, DOL retains all rights to its equipment or devices after appropriate investigations by USDA's law enforcement personnel are concluded. In the case of administrative or disciplinary proceedings stemming from misuse of its equipment, USDA's law enforcement personnel will take possession of the equipment to secure material evidence and to ensure that other Job Corps students are shielded from possible harm through inadvertent access. Once final actions have been taken relative to the proceedings, the equipment will be returned to the Job Corps and a determination made as to whether the equipment shall be put back in service.

(6) Activities carried out under this Agreement are subject to, among other things, the Job Corps Policy and Requirements Handbook (PRH). This describes the joint and separate roles, authorities, and responsibilities of DOL and USDA management of Job Corps CCCs. The PRH contains the procedures and processes that all parties shall use for communication with each other about Job Corps matters, and procedures for handling routine or cyclical administrative tasks; such as planning, budgeting, financial management and accountability, work project development, as well as performance planning, center management, and, where necessary, improvement.

(7) If the Secretary of Labor or her/his designee, determines that the health, safety, or well-being of students are in immediate jeopardy, the Secretary, or her/his designee, will initiate discussions with USDA leading to more significant action. DOL and USDA will jointly develop an action plan to address the incident and/or resolve the underlying concerns. This shall not preclude DOL or USDA from taking immediate action to protect the health and safety of the Job Corps CCC students and staff.

I. Closing USDA CCCs

(1) The Secretary of Labor, after consultation with the Secretary of Agriculture, may temporarily close a Job Corps CCC managed by USDA, based upon a concern for the health, safety and well being of students, staff, and/or nearby community(ies). Every effort will be made by the involved agencies to correct such concerns prior to closing the site. The Secretary of Labor, or her/his designee, will notify appropriate USDA officials prior to announcing and temporarily closing a Job Corps CCC.

(2) In the event it becomes necessary pursuant to 29 U.S.C. 2899(g) to permanently close a Job Corps CCC managed by USDA, USDA will prepare and submit a cost proposal to DOL within 30 days of closure and the parties will agree upon mutually acceptable terms. The following general principles apply:

(a) DOL shall cover the costs of maintaining a small cadre of staff following center deactivation, to provide for the orderly retirement of records, disposition of personal property, and other administrative tasks resulting from the deactivation. It is anticipated that a cadre of three to five staff working for up to three to six months will be adequate following deactivation.

(b) DOL shall cover the cost of utilities at the Job Corps center for a maximum of 6 months following deactivation, as well as the one-time cost(s) of winterizing or mothballing the facilities.

(c) DOL shall not cover the costs of any renovations or improvements to the facility after notification to USDA that the facility is to be deactivated. The only exception to this principle will be renovations that are needed to ensure the personal health or safety of students or staff while they continue to reside or work at the center.

(d) With regard to Federal staff that are separated from the Federal government as a direct result of a center closing, the DOL will cover the following costs, as applicable and as specified by law: lump-sum leave settlement: unemployment insurance benefits, and severance pay.

(e) DOL will cover the pre-approved relocation costs of any Federal staff member employed at a closing center who is reassigned to either another Job Corps CCC operated by the USDA or an administrative (program direction) position within USDA that is devoted 100% to the Job Corps program. DOL will not cover relocation costs for any other types of reassignments or transfers.

(f) DOL will cover reasonable costs that result from early termination or partial termination of contracts.

(g) The facilities may not be assigned or reassigned or used for any other purpose without the approval of USDA once the decision to close a center has been made.

(h) USDA and DOL will work together to establish a plan that restores the closed center's footprint to a level consistent with future land management plans.

SECTION IV. ANNUAL PLANNING AND BUDGETING

A. General operational planning and budgeting will be conducted on an annual cycle. DOL will initiate each year's planning process by furnishing USDA with instructions and with sufficient time to implement contracts and begin each program year.

B. The amount provided for USDA Program Direction costs in each year's budget currently is a minimum of 6%. The Program Direction budget proposed by USDA must be accompanied by reasonable supporting documentation.

C. The identification of specific CTST work projects will be accomplished through a special planning process in which USDA proposes specific projects and submits them as a package to the USDA National Office for approval prior to submitting to the appropriate DOL Job Corps Regional Office. Where National Training Contractors (NTC) programs are operating at USDA-managed Job Corps CCC, the CTST planning requirements in the NTC Memorandum of Understanding shall be followed.

D. Fund allocations for managing the real and personal property portfolio at Job Corps CCCs will be determined by the DOL National Office of Job Corps, working with the USDA National Office. DOL will schedule the allocation process so that it leads to the formulation of the annual budget before the beginning of the budget year and allows for the transfer of funds to USDA at the start of the budget year.

(1) The following areas will be agreed upon by DOL and USDA for each Job Corps CCC:

(a) The number of enrollment slots to be maintained, including breakouts for male/female and residential/nonresidential.

(b) The career technical training offerings to be available.

(c) Staffing levels and staffing patterns.

(d) Number of Career Technical Skills Training (CTST) slots.

(e) Budgetary guidance relative to allowable inflationary adjustments on operational expenses, vehicle and equipment costs, and USDA program direction costs.

(2) A budget request will be required for each Job Corps CCC, using standard Job Corps budget line items.

(3)The time established by DOL for USDA submittal of its proposed budget, and any subsequent budget changes, will allow opportunity for bilateral discussions and negotiations. As much as possible, DOL will approve USDA's budget for the coming year at least one month prior to the start of the budget year. DOL will notify USDA if for any reason this deadline will not be met.

SECTION V. DELEGATIONS OF AUTHORITY AND LINES OF COMMUNICATION

A. The DOL Job Corps National Director and the USDA National Directors are authorized to exercise all authorities and functions discussed in this Agreement, including the functions of the respective Secretaries of each agency. The National Directors are further authorized to enter into supplemental operating instructions with each other which serve to clarify, refine, or expand upon the provisions of this Agreement as long as they do not conflict with the Interagency Agreement.

B. The Job Corps USDA National Offices are located in Lakewood, CO. The DOL National Office will use the USDA National Offices as its point of contact with regard to any nonstandard center-related issues, both operational and administrative along with policy, budget, and guidance for all matters concerning Job Corps CCCs operated by USDA.

C. USDA National Offices have Assistant Directors/Youth Program Officers responsible to work with the respective DOL Regional Offices for the oversight of their Job Corps CCCs. In carrying out oversight responsibilities, Assistant Directors of USDA will work with DOL Regional Officials to provide direction to Job Corps CCC Center Directors. USDA agrees that center directors and their staffs will work together with DOL Job Corps Regional Directors and their staff to comply with DOL operational policies.

SECTION VI. ADMINISTRATION OF AGREEMENT

A. Order of Precedence

(1) In the event that specific provisions of this Agreement conflict with Federal law or regulation, the requirements of the law or the regulation shall prevail. As soon as such conflicts become known, DOL and USDA will work jointly to arrive at a mutually agreeable resolution.

B. Disputes

(1) In the event that disputes arise between DOL and USDA concerning the applicability or interpretation of provisions of this Agreement, resolution shall first be sought through discussions between the DOL National Director of Job Corps and the USDA National Director. If settlement cannot be reached at that level, then the matter will be referred to individuals designated by the signatories to this Agreement, or their successors, with authority to develop and approve a mutually satisfactory resolution. If agreement cannot be reached through these means, then the ruling of the Secretary of Labor shall prevail.

C. Revisions to this Agreement

(1) Revisions to this Agreement must be approved in writing by both parties.

SECTION VII. PERIOD OF AGREEMENT

A. This Agreement becomes effective when signed by all the authorized officials stipulated under Section X, herein, and will remain in effect until superseded or terminated in writing by

mutual agreement of the parties to this Agreement, or unilaterally terminated by any signatory Department after a minimum of 120 days formal notice. Supersession of this Agreement must be approved in writing by the parties to this Agreement, or their successors.

SECTION VIII. SUPERSESSION OF PREVIOUS AGREEMENTS

A. This Interagency Agreement terminates and supersedes the 1974 Agreement, as amended, between and among DOL and USDA, pertaining to Job Corps CCCs operated by USDA. Upon the effective date of this Agreement, as stipulated under Section VII, the Agreement of 1974, and any other such Agreements, shall no longer apply to USDA or DOL.

SECTION IX. AMENDMENT OF THIS AGREEMENT

A. All parties to this Agreement understand that it is subject to review and possible amendment under the following circumstances:

(1) At least every 4 years

(2) Upon revision of the enabling Job Corps program legislation.

(3) At the request of any party, based on changes significantly impacting the Agreement.

SECTION X. SIGNATURES OF AUTHORIZED OFFICIALS

Executed on Behalf of the Department of Labor

Assistant Secretary for Administration and Management — Date 3/6/08

National Director, Office of Job Corps — Date 3-5-08

Executed on Behalf of the Department of Agriculture

Assistant Secretary for Administration — Date 3/10/08 MAR 10 2008

Under Secretary for Natural Resources and Environment — Date 3/5/08

[Whereupon, at 3:07 p.m., the Committee was adjourned.]

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