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BUILDING THE LADDER OF OPPORTUNITY: WHAT'S WORKING TO MAKE THE AMERICAN DREAM A REALITY FOR MIDDLE-CLASS FAMILIES

HEARING

OF THE

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

ON

EXAMINING BUILDING A LADDER OF OPPORTUNITY, FOCUSING ON WHAT'S WORKING TO MAKE THE AMERICAN DREAM A REALITY FOR MIDDLE-CLASS FAMILIES

JULY 26, 2011

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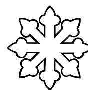

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BUILDING THE LADDER OF OPPORTUNITY: WHAT'S WORKING TO MAKE THE AMERICAN DREAM A REALITY FOR MIDDLE-CLASS FAMILIES

TUESDAY, JULY 26, 2011

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

The committee met, pursuant to notice, at 10:03 a.m., in room SD–430, Dirksen Senate Office Building, Hon. Tom Harkin, chairman of the committee, presiding.

Present: Senators Harkin, Murray, Casey, Hagan, Merkley, Franken, Bennet, Whitehouse, Blumenthal, Enzi, Alexander, and Isakson.

OPENING STATEMENT OF SENATOR HARKIN

The CHAIRMAN. The Committee on Health, Education, Labor, and Pensions will please come to order.

I would like to welcome everyone to the third in a series of hearings to explore the state of the American middle class. In our previous hearings, the committee has heard testimony from a number of noted economists and thinkers, including former Labor Secretary Reich and Vice President Biden's former economic policy adviser Jared Bernstein.

In addition, we have heard testimony from everyday Americans like Amanda Greubel of DeWitt, IA, who have explained to the committee what it is like to sit around the kitchen table every night and worry about how to pay off debts, put a child through college, and have enough money left to not only put a good meal on the table, but to save for retirement and maybe even take a vacation once in a while.

These hearings have made one thing very clear. Our once great middle class has been under siege for decades. In fact, for the last three decades, American workers have failed to share in our overall economic growth.

The chart shows the percent of total employer expenses that they have spent on compensation for their workers, and it has steadily declined ever since the post-World War II era. At that time, about 66 percent of employer spending was spent on compensation, and that includes benefits. And that is now down to about 58 percent. So it has been declining.

In addition, according to a recent study published by J.P. Morgan that looked at the time period between the 2001 recession and the

current downturn, this decline in wages and benefits over this period was responsible for about 75 percent of the increase in major corporations' profit margins. Worker compensation is at a 50-year low relative to both company sales and U.S. GDP.

These two facts paint a very troubling picture about what has happened in our economy in recent decades. Hard-working families have seen their incomes stagnate, while the gains have gone to the very wealthy, corporate CEOs, and shareholders. As middle-class families know all too well, our economy simply can't function like this much longer.

Our hearing today will help orient us in a different direction by focusing on programs, companies, and policies that have taken a different approach and are actually working to rebuild the middle class. For this reason, I am pleased that we are joined today by Labor Secretary Hilda Solis. The department is doing excellent work to help America out-innovate, out-educate, and out-compete in this global economy, and I am looking forward to hearing more about the work the department is doing and your experiences as you have traveled the country talking with middle-class families and businesses.

As Senator Enzi mentioned at our previous hearing, it is also important to consider the views of the private sector actors and business owners. One of these individuals, Tom Prinske, has joined us from Chicago to talk about a topic close to my heart. Today marks the 21st anniversary of the enactment of the Americans with Disabilities Act.

In the 21 years since this landmark act was signed into law, much progress has been made to make our country more accessible for people with disabilities. But sadly, too frequently, people with disabilities have yet to make it into the middle class.

According to the Bureau of Labor Statistics, less than a third, less than a third of working-age people with disabilities are participating in the labor force. Only about 4 million to 5 million out of 15.3 million Americans with disabilities. Put it another way, two out of every three adult Americans with a disability is not working.

And in the recent downturn, the people with disabilities left the labor force at a rate six times greater than those without disabilities. We need to do better, and I am pleased to be working with employers to help grow the size of the disability labor force to six million by 2015.

Mr. Prinske's story is a reminder that we need to do more to help make the American middle class accessible for all Americans, no matter their race, gender, ethnicity, sexual orientation, or disability status. His story gives me hope that we can meet this challenge head on and help people with disabilities move into and beyond the middle class.

I am convinced that we can do things the right way going forward and rebuild our middle class. We are not broke. I keep hearing people say we are broke, we are poor. Well, America still remains the richest Nation in the history of the world. We have the highest per capita income of any major Nation.

If we can build on the lessons that I hope we will learn in this and other hearings and make better policy choices, we can continue

to lead the world in the 21st century with a strong middle class and a strong economy.

I know Senator Enzi was tied up and couldn't be here right away. And so, I would recognize Senator Isakson.

STATEMENT OF SENATOR ISAKSON

Senator ISAKSON. Thank you very much, Chairman Harkin.

And welcome, Secretary Solis. We are delighted to have you today.

This is the third hearing we have had on the middle class and the struggle they are going through. Unfortunately, since we have begun, unemployment has gone up almost 1 percentage point or 0.1 of a percentage point per month in the last 3 months.

Since our first hearing early May, the unemployment rate has increased again and again. While the Administration may be downplaying this figure, this is just more bad news for nearly 14 million Americans.

Not only has the unemployment rate increased, but so has the underemployment rate increased—those working part time who would like to work full time, those who have left the labor force entirely because they simply have given up searching. The extended unemployment benefits that have drained the State trust funds are beginning to run out, and we must face the shocking statistic that over 50 percent of those exhausting their benefits are unemployed.

Over these 3 months, there are 50,000 Americans who used up all regular unemployment benefits and extended benefits and still have no job. Clearly, the actions taken by the Administration and this Congress have not created the jobs middle-class families desperately need.

Over $1 trillion was added to the deficit for stimulus spending, but too much of it is gone, poorly directed or wasted. President Obama has even joked about the stimulus funds going to projects that really were not shovel ready. Job creating employers of all sizes have been directly harmed by the policies of the Administration.

I learned a long time ago from my father that you should be judged by your actions and not your words. Under this Administration, employers are being punished for creating new jobs in the right-to-work States of our country.

One notable incident is what has happened in the Boeing Aircraft Corporation in South Carolina, where they created 1,000 jobs, but an attorney for the National Labor Relations Board decided to challenge that and issued a complaint claiming Boeing should have used unionized workers in Washington State rather than nonunion workers in South Carolina.

Other actions by the Administration are just as disturbing. I am very involved with Delta Airlines, which is in my own State. They are a National Mediation Board regulated transportation entity. They have had union elections 9, 10, 11, and 12 times in which the company rejected unionization in terms of their flight attendants. After the last vote, the National Mediation Board decided to ask for a judicial review of Delta's management's involvement in those votes, again forcing Delta to over and over again call votes that are unnecessary.

And then there is the new proposal on quickie elections, which reduces the time in which an election can be posed. And even worse and most troubling for me, as one who worked in retail for a while, are micro unions—to approve many unions within a particular institution.

Take a retailer, for example, that has 12, 15, 20, or even 50 different departments in a huge store. This would allow each department to form a micro union. So you would have 50 different entities competing for the wage rates under the same roof. That is just not functional for a company to operate under, and it certainly is a job killer, not a job creator.

The first witness we called in the first middle-class hearing was Secretary Robert Reich, who, in the answer to questions, told us the following. That he favors repealing the right-to-work option in current law in 22 States in America, including the State of Georgia and the State of Iowa. That is just not right.

The irony of this singular focus on increasing unionization rates is that unions fare pretty well under the current system of secret ballot elections and free and informed choice. Certification elections are held at a median of 38 days from the filing of the petition to unionize. Over 95 percent of elections are conducted within 56 days. Unions win 64 percent of those elections.

The assault on employers also includes the tremendous surge in regulatory burden, including the healthcare law and numerous EPA regulations. Combining these figures with legitimate concerns of our national debt and efforts to hike taxes, it is not surprising that employers are uncertain of their ability to maintain profitable businesses and wary of making new hires.

Senior officials in the White House have expressed frustration with the regulatory burden coming out of agencies. I hope that frustration turns into action before it is too late.

It is important to have this hearing today because we know the stimulus that we had before didn't work, or where it did work, it cost us more than it should have for a job. The Administration's own report estimates that each job added or saved cost $185,000 to $275,000 per job. That is entirely too expensive and inappropriate.

I appreciate, Mr. Chairman, you holding the hearing today. I am grateful that Secretary Solis has come to be with us. And I look forward to the question and answer session to follow.

The CHAIRMAN. Thank you very much, Senator Isakson.

We have two panels. Our first panel will be our Secretary of Labor, Secretary Hilda Solis. Prior to her tenure at the department, Secretary Solis represented the 32d congressional district in California from 2001 to 2009. She served in the California State Assembly from 1992 to 1994, and 1994 was the first Latina elected to this California State Senate. In 2000, she became the first woman to receive the John F. Kennedy Profile in Courage Award for her pioneering work on environmental justice issues.

Secretary Solis, welcome back to the committee again. You have quite a lengthy statement, which I read last night. It is very good. It is very interesting.

It will be made a part of the record in its entirety. If you might just sum up for us in 7, 8 minutes, we would sure appreciate it, and then we can have a discussion.

Secretary SOLIS. Great.

The CHAIRMAN. Welcome back.

STATEMENT OF THE HON. HILDA L. SOLIS, SECRETARY, U.S. DEPARTMENT OF LABOR, WASHINGTON, DC

Secretary SOLIS. Thank you so much, Mr. Chairman, Chairman Harkin, and also Senator Isakson and all your colleagues that are here today.

It is a real pleasure to be here with you again before this committee, and I thank you for inviting me here to testify on what I think is one of the most important topics for our discussion.

There is nothing more important that is facing our country today than shoring up the embattled middle class. And as you said, Senator Harkin, in the first hearing in your series, you said we can't have a strong economy without a strong middle class. And I totally agree with that.

This month's jobs numbers show that we have yet to see the kind of economic recovery that the middle class really needs. But the challenges of the middle class did not come just with the great recession. The precarious situation of the middle class has been developing for a long time, and I am committed to using the tools at my disposal at the Department of Labor to address both the long-standing challenges facing the middle class and those related to the recent economic downturn.

In looking forward to how we should rebuild the security and stability of the middle class, we first have to talk about sustaining the middle class at the most basic level. And what I mean by that is that in an economic downturn, our unemployment insurance system becomes even more crucial. And that is a part of the middle-class safety net.

We know that once workers fall out of the middle class, there is an enormous barrier to their re-entering into it. And this is why, at the very least, we need to preserve the middle class by continuing extended unemployment benefits.

No worker, as you know, prefers to receive UI benefits. They would rather have a job, quite frankly. And that is what I hear around the country. That is why my goal, as Secretary of Labor, is to help foster an economy in which good jobs are available for everyone, and American workers are prepared with the necessary skills to be productive in these jobs not only for the time being, but for a lifetime.

And I would like to share with you some principles that I see as essential in preserving and expanding the middle class and what our role is at the Department of Labor. And briefly, those principles are rebuilding the manufacturing sector; designing our training programs to make them more available in lifelong learning that occurs and that skill levels are enhanced; focusing on training programs with high-growth industries for the future, ensuring that all workers, including veterans, disabled workers, have access to training; and using worker protection agencies to provide stability and security for middle-class workers.

This is why the committee work that you all have been doing to help reauthorize the Workforce Investment Act is so critical. And I appreciate, Mr. Chairman, you and Senator Isakson and Senator Enzi and all of you, and Senator Murray, for working so tirelessly on this issue. I hope that we can get something done in terms of reauthorizing the WIA program.

First, let me address why rebuilding our manufacturing sector is so critical to rebuilding the middle class. The manufacturing sector has shown enormous resiliency and strength in our economic recovery so far. In fact, 250,000 jobs were added since the beginning of 2010.

I saw an example currently, the rebirth of what is possible in the manufacturing sector earlier this month when I visited Flint, MI. There, I toured Diplomat Specialty Pharmacy, which is manufacturing medicine in the same building that once housed General Motors auto plants.

For the manufacturing sector and the rest of our economy to thrive, we have to ensure that workers have access to skills that will support a lifetime of middle-class jobs. It won't be enough for a worker to master a particular set of skills at the outset of his or her career. Instead, workers will have to be more flexible and adaptable to keep pace with more fluid and dynamic economic challenges that they will see.

To enable workers to adapt to this shift in the 21st century, we will have to change how we think about education and job training overall. No longer will most Americans participate in the world of education and work to be strictly sequential, first going to school and then going to work. Instead, we will have to maintain flexibility, lifelong learning tools. And moreover, the skills that they acquire will have to be portable, and they will have to be able to be adaptable to new and emerging industries.

Let me share another example with you of a worker who is living this principle right now. A worker from Colorado lost his job in a traditional construction industry and as a result of the downsizing in the housing area.

He attended one of our training programs funded by the Recovery Act. The program trained him in energy efficiency, weatherization, and energy auditing. Now he has a job as a program director for a nonprofit organization which provides weatherization and retrofitting to low-income housing.

The Department of Labor is focusing in our training programs to help prepare workers in other high-skill and high-growth industries as well. We are paying particular attention to the green economy and advanced manufacturing and healthcare sectors.

And just recently, in my travel last week, I happened to be in California, and I saw our investment in action when I visited the Santa Clara Valley Transportation Authority. The authority has developed a fleet of 90 hybrid buses that were built in one of the few manufacturing American-only facilities in Hayward, CA. Quite an amazing sight to see.

The department has partially funded a partnership between that authority and the Amalgamated Transit Union to train authority workers. I met there Mr. Peter Reyes, who was laid off from his

job in the banking industry and is now working as a hybrid bus driver.

"Without a doubt," in his statement to me, he said, "I would much rather wear a jacket and a shirt instead of having to wear a tie." And he was asked that by one of his fellow colleagues who used to work with him in the banking industry. He says, "Now I have the relief and ability to provide for my last child, to be able to send that child to college. So I am happy that I have this job and that I got retooled, and I am in an industry that is providing services that are much-needed and also reducing energy consumption."

I was very moved by that story by Mr. Reyes, and there were many stories like that that I heard as I was on the ground in San Jose.

We have another example of the focus here that we are highlighting. One of them happens to be here in the audience. She is a recipient of one of our programs from Maryland. Her name is Telmy Alfaro.

Telmy, can you please stand and be recognized? Thank you for coming here today.

She is here because she has also gone through experiences in our program. She has gained the skills and experience she needed to get a job at Prince George's County Hospital Center. Telmy got her training start there at the local One-Stop center, and now she is studying to become a registered nurse.

And many of you here in the room know how invaluable that is, just to be able to provide that opportunity for someone to get into that profession, which is so hard to get into.

The department has collaborated with also many community colleges, which is an important factor in our success for moving toward the future into better jobs. We have partnered with the business community and several community colleges.

I happen to know something about that as a former trustee at Rio Hondo Community College, the importance of making sure that community colleges are engaging firsthand with industry and manufacturers in their local areas to see that curriculum fits, fits the type of employees that are needed by different industries. And I know that in the past few years, perhaps that was a focus that wasn't prioritized, but now at the Department of Labor, we are making a part of our excellence.

I also want to mention another individual who went through our program. Her name is Elizabeth Strader. She was bussing tables at a casino in Connecticut, and she wanted a better future, too.

Through a job training grant that she participated in in a local workforce investment board, she focused on STEM careers and a partnership between WIB and the General Dynamics Electric Boat company. Elizabeth was able to take classes in technical drafting, math at her local community colleges. And as a result, she has now been hired by Electric Boat, doing computer design on naval vessels and continuing to work toward her associate degree in nuclear technology.

Credentials, as you know, are a very important aspect of improving the skills and adaptability of all of our workers, and I can tell you that we are, in fact, focusing in on how we can better provide

for our programs to emphasize credentialing. And I know that if an individual has a credential, their placement rate in terms of getting a job is much higher than those that only have a GED.

So we know these programs do work. And I am extremely proud of the department in also helping our Nation's veterans gain and retain their rightful place in the middle class. Our VETS program is helping to return service members and their families to take advantage of the best civilian opportunities available.

And having a job is essential to being a part of the middle class, but for people with disabilities—Senator Harkin, as you well know, on this date, we celebrate the 21st anniversary of the Americans with Disabilities Act. DOL's Office of Disability Employment Policy, known as ODEP, is promoting universal strategies, good business practices for hiring people with disabilities. The work will help to bring about access for these individuals to the middle class.

Senator Harkin, we owe you a debt of gratitude for being a pioneer on this issue, and I salute you for your work.

Job training also is a big piece of the department's contribution to supporting the middle class, and that isn't the whole story. We are also implementing major portions of the healthcare reform and access to affordable healthcare coverage so that all individuals will be able to be covered and that no one will fear that one injury or illness will keep them from receiving the assistance they need and keeping them out of financial ruin and poverty.

The department's worker protection programs also play a key role in providing security and stability to workers who need to sustain their place in the middle class. Without rigorous enforcement of our wage and hour laws, occupational safety protections will run the risk of a race to the bottom in terms of pay and safety. Jobs at the bottom of that race are not going to be middle-class jobs, as we well know.

We are also very concerned about middle-class workers who put their time in and expect to live out their retirement with dignity and respect. The department's Employee Benefit Security Administration, known as EBSA, works to protect the security of retirement and employee benefits for America's workers, retirees, and their families to support them with the remainder of their lifetime.

And finally, I think any discussion about finding solutions to the challenges facing the middle class would be deficient if we did not include a discussion about the importance of collective bargaining rights. The health of the labor movement is central to the health of the middle class in this country, and I have lived that very close connection personally.

And that is why this Administration feels strongly and supports the right of workers to collectively bargain when they choose to. We, at the Department of Labor, come to work every day to do our best to create economic opportunities for all American workers.

I look forward to working with all of you to ensure that good jobs for American workers are assured. And I am happy to answer any questions.

Thank you, Senator.

[The prepared statement of Secretary Solis follows:]

PREPARED STATEMENT OF SECRETARY HILDA L. SOLIS

Chairman Harkin, Ranking Member Enzi, and members of the committee, thank you for the invitation to testify today and for holding this series of hearings on the state of the American worker. There is no more important issue facing our country today than shoring up the embattled middle class. Senator Harkin, I absolutely agree with what you said in the first hearing in this series—we can't have a strong economy without a strong middle class, and we won't have a sustainable economic recovery without the recovery of our middle class.

This month's jobs numbers show that we have yet to see the kind of economic recovery that the middle class needs to get on firm ground. The payroll employment numbers reported for May and June by the Bureau of Labor Statistics showed a slowing economic recovery—job growth of 25,000 and 18,000 in each of the 2 months respectively—this growth is nowhere near enough to keep up with regular population growth in the labor force, let alone bring our unemployment rate down to prerecession levels.

No one can deny that now is a difficult time for the American worker. We have all been focused on the terrible recession that began in 2007. This recession, the deepest since the Great Depression, destroyed almost 9 million jobs. But the precarious situation of the middle class has been developing for a long time. When the 2001 recession began in March 2001, 64.3 percent of Americans age 16 and over were working. Millions of Americans lost their jobs and the rate fell to 62 percent by September 2003. But more disturbingly, it hadn't recovered very much by the time the current recession started. In December 2007, only 62.7 percent of the working age population was employed. That means we were still short nearly 4 million jobs at the start of the 2007 recession. Throughout the entire Bush administration, total job growth averaged just 11,000 jobs per month, meaning that we lost jobs from a per capita perspective for 8 years.

The weak labor market has been particularly tough on young workers. The 17.3 percent unemployment rate for 16- to 24-year-old workers in June 2011 is nearly 6 percentage points higher than at the start of the recession in December 2007. While the unemployment rate has declined by nearly 1 percent in the last year, the rate is still unacceptably high. Although young workers with a bachelor's degree have more labor market opportunities, they too face an extremely difficult job market and now confront substantial hurdles into the middle class. For example, the unemployment rate for young college graduates was 12.1 percent in June 2011, far worse than the 4.4 percent unemployment rate of older college-educated workers.

With jobs disappearing, it's not surprising that we've also seen household income plummet. Real median household income fell by over 4 percent during the recession to its lowest level in more than a decade.

Looking ahead to how we rebuild the security and stability of the middle class, we first have to talk about sustaining the middle class at the most basic level. During this Great Recession, the very survival of the middle class was at risk. For millions of workers, their grasp on their position in the middle class for the first time in their lives became tenuous. As millions of pink slips went out, millions of workers who had never had to worry before about where the next paycheck was coming from faced their worst fears.

In an economic downturn, our unemployment insurance (UI) system is the most crucial part of the middle-class safety net. This kind of backstop is critical. We know that once workers fall out of the middle class, there are enormous barriers for them to re-enter it.

The Department of Labor helped 23 million unemployed workers receive $150 billion in unemployment insurance benefits in 2010. That's 23 million people who had a shot at paying their rent, putting food on their tables, and providing the necessities of life for their families—that is, carrying out the basic economic activities of a middle-class life—while looking for work. That is 23 million consumers keeping demand up for grocery stores and gas stations; keeping local small businesses afloat.

In the hearing that this committee held last month, you heard from Amanda Greubel, a social worker from Iowa. She so eloquently described the cruelty of this Great Recession for so many middle-class workers. There are millions of middle-class workers who, like Amanda, have played by the rules for their entire working lives. They scrimped and saved to get a good education, got good jobs and saved a little money when possible for a rainy day. No one can blame them, however, for failing to anticipate just how hard and long the rain would fall during this recession.

Through no fault of their own, millions of unemployed workers just cannot find new jobs. There are still about 14 million unemployed Americans—6.3 million of whom have been looking for work for over 6 months—and just 3 million job open-

ings nationwide. In other words, there are almost five job seekers for every open job. Our recovery has resulted in a net increase of 2.2 million private sector jobs since February 2010, after a recession that saw us lose 8.8 million paying positions. Simply put, there are still over 6 million fewer paying positions open for a population that is larger than in 2007. Not all workers who held jobs in 2007 could get hired, and not all new workers who entered the labor force after 2007 can get hired.

That's why if we want at the very least to preserve the existing middle class, we have to continue to extend unemployment benefits. According to the Census Bureau, UI benefits kept 3.3 million Americans—including 1 million children—from falling below the poverty line in 2009. UI benefits get spent right back into the economy and help local businesses: Every dollar spent on UI benefits adds $2 to GDP. As you know, we fought a tough battle at the end of the last Congress to get unemployment benefits extended. Those extended benefits will expire again at the end of the year. We must renew those extensions when the time comes.

As important as providing a safety net for unemployed middle-class workers is, it is clearly not enough. No middle-class worker wants to be unemployed—no matter how long we extend the benefits. Senator Harkin, as you reminded us when you began this series of hearings, "Americans don't expect to be rich or privileged, but they do expect to be treated fairly and they deserve to have the opportunity to build a better life for their children." The middle class can build a better life for their children only on the foundation of good, safe jobs.

My goal as Secretary of Labor has been and will continue to be to help foster an economy in which good jobs are available for everyone and American workers are prepared with the skills necessary to be productive in these jobs throughout their lifetime. This means jobs that can support a family. Jobs that are sustainable. Jobs that are safe and secure. In short, my highest priority is to get Americans back to work as part of a stable, secure middle class. We must make these investments while also making difficult choices that will put our Nation on a sustainable fiscal path.

As I described earlier, we are making progress. We have stabilized the economy, prevented a financial meltdown, started the economy growing again, and created more than 2.2 million private sector jobs in the past 16 months. As the President said in his State of the Union address, however, if we are going to win the future and rebuild the middle class, we are going to have to out-educate, out-innovate, and out-build our global competitors. The whole Administration is committed to this vision and we are all doing our part.

I would like to share with you the principles that I see as essential to preserving and expanding the middle class in the 21st century American economy and the role that the Department of Labor can play in supporting that mission.

First, I agree wholeheartedly with President Obama that rebuilding our manufacturing sector is critical to rebuilding the middle class. The manufacturing sector has shown enormous resiliency and strength in our economic recovery so far, with over 250,000 jobs added since the beginning of 2010. Manufacturing jobs are the kinds of jobs that pay well and can serve as an anchor in communities across the country. After more than a decade of losing manufacturing jobs, it is a thrill for me to be part of the policies that are helping to rebuild our manufacturing base.

I saw an example of the rebirth that is possible in the manufacturing sector earlier this month when I visited Flint, MI. There, I toured the Diplomat Specialty Pharmacy, which is manufacturing medicine in the same building that once housed a General Motors auto plant. I was there with Jay Williams, the Mayor of Youngstown, OH, who in a few days will be taking over our Office of Recovery for Auto Communities and Workers. I know that Mayor Williams will effectively lead the Department's efforts to help transform the manufacturing sector.

In June, the President announced the Advanced Manufacturing Partnership, an effort that brings industry, universities, and the Federal Government together to invest in emerging technologies that will create high quality manufacturing jobs and enhance our global competitiveness. This Administration initiative will leverage existing programs and proposals and invest more than $500 million to build domestic manufacturing capabilities in critical industries. Supporting the development of new technologies can be particularly valuable in an economy that is just beginning to come out of recession and in which millions of jobs need to be added to return to full employment. Moreover, by helping to train workers for these positions we can help speed up a process in which many U.S. workers will need to acquire new skills before they can succeed in these industries. Just as U.S. investment in science and new technologies for NASA stimulated economic growth during the 1960s, I believe that the President's vision of economic growth due to our investments in technologically advanced, green industry can stimulate economic growth today.

To take advantage of the jobs created as a result of the Advanced Manufacturing Partnership and the other promising industries of the 21st century economy, we are going to have to ensure that workers have access to skills that will support a lifetime career path of productive middle-class jobs. To maintain a secure spot in the middle class, it will not be enough for a worker to master a particular set of skills at the outset of his or her career. Instead, workers will have to be more flexible and adaptable to keep pace with a more fluid and dynamic economy than that of the past.

As technology continues to rapidly change and advance, the economy will continue to shift. Workers will have to have the skills to accommodate those shifts in technology and changes in the workforce overall. For example, the President has called for 80 percent of America's electricity to come from clean sources by 2035, including wind, solar, nuclear, clean coal, and natural gas. He has also put forward measures to ensure that the United States is the first country to put 1 million advanced technology vehicles on our roads. These commitments, coupled with private sector investments, will expand our clean energy economy, producing new green jobs in new green industries. Employers will need skilled workers to fill these jobs. The skills that workers will need are different than those they needed in the pre-recession economy and are likely to change again as these new industries continue to mature and expand.

To enable workers to adapt to these shifts in the skill sets that employers require, we will have to change how we think about education and job training. No longer will most Americans' participation in the world of education and work be strictly sequential—first going to school and then going to work. Instead, to maintain a good middle-class job, workers will need life-long learning. Moreover, the skills they acquire will have to be portable to support moves within and between emerging industries.

This is why this committee's work to reauthorize the Workforce Investment Act (WIA) is so important. I appreciate all your hard work, Mr. Chairman, as well as the work of Senators Enzi, Murray and Isakson to make WIA reauthorization a priority and to work together on this bipartisan initiative to modernize our job training system to meet the needs of employers and workers.

Let me share with you a couple of examples of workers who are living these principles, adapting and reinventing themselves as the economy shifts. A worker from Colorado lost his job in the traditional construction industry as a result of the recession. He attended a training program funded by the Recovery Act. The program trained him in energy efficiency, weatherization and energy auditing. Now he has a job as a program director for a local nonprofit that provides weatherization and retrofitting of low-income housing. One woman, from Herrin, IL, was a hard worker at a washing machine assembly plant. She and a thousand of her colleagues lost their jobs when they were laid off from the plant. She took advantage of dislocated worker funding and training assistance available through the Workforce Investment Act and Trade Adjustment Assistance programs and made a big change in her career plans. She went back to school to get a degree in applied sciences and a certificate in nursing. She now works for a doctor and is realizing her dream of working in the medical profession.

These stories point to another principle of preparing workers for a place in the middle class in the future. The world is more science and technology oriented than it has ever been before. Computational literacy is more important than ever. Workers will need higher skills training to maintain good-paying middle-class jobs. I do not mean to say that every worker will need a 4-year college degree for a middle-class life, but they will need more than a high school degree. The Bureau of Labor Statistics (BLS) projects that two-thirds of the occupations that will grow the fastest between 2008 and 2018 will require postsecondary education.

In my travels throughout the country as Secretary of Labor, I have met workers of all ages who are accepting the challenge posed by the new higher skills future. When I was back home in California, I visited the American River College, where I met Rhonda Gage, a 54-year-old medical assistant. Although it had been a long time since Rhonda had been in a classroom, with the help of WIA and Recovery Act funding, Rhonda went back to school to update her skills. Her enhanced skills led to a new job with a healthcare firm, making three times what she previously earned. Rhonda now has a more secure future and place in the middle class as a result of her enhanced skills.

The Department of Labor has an important role to play in preparing workers for the middle-class jobs of the 21st century. First, we are focusing our training programs to prepare workers for the high growth industries, with particular attention to jobs in the green energy, advanced manufacturing, and healthcare sectors. As all of you probably know, I am a big believer in the promise of these sectors. I am

proud of the investment that the Department has made in training workers across the country to take advantage of current and future opportunities.

The Department's investments in the clean energy economy have focused on three goals:

1. Enabling States to develop needed partnerships and plans to better align their workforce and State energy policies leading to employment;
2. Building the capacity of established job training providers to train workers for clean energy jobs; and
3. Directly supporting education and training services for a diverse community of American workers either seeking entry into or retraining for new and emerging jobs in the clean energy economy.

To advance these goals, we just announced $38 million in Green Jobs Innovation Fund grants to serve workers in 19 States and the District of Columbia. These grants will equip workers with the necessary knowledge, skills and abilities to succeed in green energy industry jobs. They are smart investments in the green energy jobs of today and the green energy economy of the future. The funds will help organizations with existing career training programs leverage Registered Apprenticeships, pre-apprenticeship programs and community-based partnerships to build sustainable green career pathways.

For example, we recently awarded a Green Jobs Innovation Fund grant to the Finishing Trades Institute of the Mid-Atlantic Region, a non-profit organization located in Philadelphia, to further Registered Apprenticeship opportunities. The Institute will use the grant to create a partnership between employers, organized labor, and the public and private workforce development sectors to create training opportunities for incumbent workers, dislocated workers and unemployed people in the construction and building trades. The almost 2,000 participants in the program will be working towards green-related associate's degrees and Green Advantage credentials.

We also are working with the Department of Commerce and the Small Business Administration (SBA) to accept applications for $33 million in grants available under our Jobs and Innovation Accelerator Challenge. This program is administered in partnership with Commerce and the SBA, and focuses on supporting what are called "industry clusters." Many of these clusters are designed to encourage investment in the high growth industries of the future, like the technology cluster in the Silicon Valley or the energy cluster in Houston. I recently traveled to Silicon Valley in April and met with business leaders to learn more about what they need to continue growing and innovating and creating jobs in the United States. We are looking for innovation and collaboration to infuse these types of communities through our grants and, as a result, to create and retain higher-wage and sustainable jobs.

The Administration's Better Building Initiative is another innovative program working to bring green energy jobs to middle-class workers. This initiative will lead to more energy efficient buildings across the Nation, while at the same time boosting manufacturing of energy-efficient products and putting contractors and construction workers back to work.

We are having similar success in shifting our focus to training for the health care industry. As you may know, BLS projects that health care workers will experience the largest job growth of any industry over the next decade. Under the Recovery Act, we awarded 55 Health Care and Other High Growth Emerging Industries grants.

The Recovery Act also provided funding for other health care training programs, including a program in Maryland that helped Telmy Alfaro gain the skills and experience she needed to get a job at the Prince George's County Hospital Center. She participated in a program called the Knowledge Equals Youth Success at her local One-Stop Career Center. Telmy is now studying to become a registered nurse—a job that should provide a good middle-class career for her.

In addition to identifying the industries that will provide the middle-class jobs of the future, the Department is also identifying the types of training that workers will need in those industries and across the economy to succeed. We are focusing on a career pathways approach to ensuring that workers have the best chance to compete for good jobs. The term "career pathways" refers to a clear sequence of education and training that is aligned with the skill needs of employers, utilizes curriculum and instructional strategies, leads to the attainment of industry-recognized degree or credentials, and includes supportive services such as childcare and transportation services, and job placement services.

The Department's collaboration with the Nation's community colleges is an important part of our efforts to ensure that workers have the advanced skills they need to obtain middle-class jobs. We're bringing together the business community and

community colleges to help provide the relevant training that industries are looking for, and will surely need more of, as we pave the way to recovery. DOL's support of community colleges is increasingly important during a time when State and local governments, as well as employers, continue to trim their budgets and cut spending. As a former trustee on a community college board, I know first hand the transformative power these institutions can have in the careers and lives of young and older students.

Many of the Department's largest job training grants, such as Community-Based Job Training Grants, Recovery Act green jobs training grants, and Health Care Sector and Other High Growth Emerging Industries job training grants, have invested hundreds of millions of dollars in community colleges and related organizations over the past few years. These grants have provided training to hundreds of thousands of individuals, many of whom are earning degrees or certificates through their training.[1] And it is just as critical that employers who understand the needs and the skills desired in their specific industries work directly with community college faculty to develop relevant curricula and coursework that prepare workers to succeed in good, safe jobs.

On January 20th, we announced the availability of $500 million for the Trade Adjustment Assistance (TAA) Community College and Career Training Grants. These competitive grants will provide community colleges and other eligible institutions of higher education with funds to expand and improve education and career training programs suitable for workers who have lost their jobs or are threatened with job loss because of trade with other countries. These training programs must be completed in 2 years or less. The overarching goals of these grants are to increase attainment of degrees, certificates, and other industry-recognized credentials and better prepare beneficiaries for high-wage, high-skill middle-class employment. The program will also encourage community colleges to develop innovative methods, use data, and replicate evidence-based practices to improve student outcomes and efficiency. For example, grants will support the delivery of online education that can allow students balancing the competing demands of work and family to acquire new skills at a time, place and pace that are convenient for them. We are working with our colleagues at the Department of Education as we prepare to award and administer these grants.

Last month, the President announced another important initiative to expand the opportunities for workers to enhance their skills at community colleges in order to compete for advanced manufacturing jobs. As part of the Skills for America's Future initiative, the President launched new commitments from businesses and universities to make it possible for 500,000 community college students to earn industry-accepted credentials for manufacturing jobs that companies across the country are looking to fill. This program will make it easier for workers to get retrained and move up into better, more secure middle-class jobs.

I have a great example of how these collaborations between the Department of Labor, community colleges, and companies can work. Elizabeth Strader was busing tables at a casino in Connecticut, but she wanted a better future. Through a job training grant awarded to the Eastern Connecticut Workforce Investment Board (WIB) that focused on science, technology, engineering and math (STEM) careers and a partnership between the WIB and the General Dynamics Electric Boat company, Elizabeth was able to participate in training that included technical drafting and math at her local community college. That investment by the Department, Elizabeth, and Electric Boat paid off. Elizabeth is now working for Electric Boat doing computer design on naval vessels and continuing to work towards her Associates degree in nuclear technology.

In Georgia, a worker was looking to upgrade her skills after she lost her job as a quality assurance technician at a Georgia bakery. But she took this challenge as an educational opportunity to re-invent herself thanks to the Workforce Investment Act Adult Program. With help from the Atlanta Regional Commission, a DOL funding recipient, she enrolled in a 2-year technical college to study bioscience. When she earns her degree, she said her current contract job as a lab technician with an international food producer will become a full-time employee position. She admitted

[1] Since 2005, the Department has invested over $485 million in over 250 community colleges and related organizations through the Community-Based Job Training Grants. By the end of fiscal year 2010, these grants provided training to over 171,000 individuals, of whom over 72,000 earned a degree or certificate. The green jobs training grants and Health Care Sector and Other High Growth Emerging Industries job training grants are still ongoing. $750 million was invested through these ARRA grants and final numbers of people who have been trained through these ARRA grants will be available when the funding ends in 2013.

she was "shocked and blindsided" when she first lost her job but looked at it as "an opportunity to go back to school."

Credentials are a key component of improving the skills and adaptability of workers who want to compete for middle-class jobs in the 21st century. Credentials serve as documentation that workers have attained the specific skills they need to perform a job. The Department has an important role to play in encouraging a more focused effort on credentialing. Ensuring that workers attain the credentials needed for jobs in the new and growing sectors of the economy will help workers break into those good-paying fields and move between jobs as necessary.

The value of credentials to employers and workers cannot be overstated. For employers, credentials provide assurance of a potential employee's skills, giving them the security they need to take a leap of faith and hire a new worker. For workers, credentials improve their likelihood of landing a good middle-class job and represent a portable manifestation of the skills they have attained. According to one recent study, workers with an associate's degree earned, on average, 33 percent more than workers with only a high school diploma or General Education Development credential.

Rubin Castneda from Juneau, AK is a good example of the wage advantage that credentials can provide. He was a 20-year-old single parent, who had dropped out of high school to work with his parents, immigrants from Mexico. His jobs never provided the kind of salary he needed to take care of his son. With help from the Workforce Investment Act Youth Program, Rubin got his GED and acquired the credentials he needed to get a better job, including a Commercial Drivers License and Basic Welding. He is driving a big rig in Juneau, making a good living and taking care of his son.

In December 2010, I announced, as part of the Department's 2011 Strategic Plan, a high priority performance goal to increase credential attainment by 10 percent among customers of the public workforce system by June 2012. To achieve this goal, we are working to refer more WIA and TAA participants into programs that result in credentials. We are also focusing on providing participants with resources to help them complete training. Finally, we are assisting our workforce agencies to ensure that the credentials that workers are pursuing are the ones that will lead to secure middle-class jobs by encouraging them to assess the needs in their local labor markets and educate employers about the value and validity of credentials.

I have a great success story from Maryland. Lisa McDowell, a Baltimore resident, lacked the skills and confidence to get the good-paying job she desired. According to Lisa, the last time she had worked in an office, people used switchboards. To get her skills and confidence upgraded, she sought help from Baltimore Works at her local One Stop Career Center. There, she earned certifications in several areas of computer skills, including Computing Core Certification—a global, validated, standards-based training for basic computer hardware, software, and networks. Her success at her One Stop training courses has led to a $45,000 a year job with the Maryland Board of Public Works. She is thrilled with the doors that have opened to her and that the computer training she received can take her, in her own words, "anywhere and everywhere."

A very special kind of credential comes with completion of a Registered Apprenticeship program. Last month, I celebrated 100 years of Registered Apprenticeships legislation in a great event on the National Mall. We had labor and industry leaders with us to recognize the contribution of Registered Apprenticeships to supporting entry into the middle class. Registered Apprenticeships continue to provide first-rate training and a path to good jobs with good pay and solid footing in the middle class. Last year, more than 100,000 workers entered into a Registered Apprenticeship program, over 400,000 active apprentices continued to earn and learn in over 20,000 apprenticeship programs nationwide, and more than 50,000 program participants completed their apprenticeships and received a nationally recognized, portable credential. I am especially proud of the fact that the Employment and Training Administration's Office of Apprenticeship recently recognized Wind Turbine Technician as the first new green occupation to be added to the official list of apprenticeship occupations—another example of how we are working across the Department to prepare workers for the middle-class jobs of the 21st century.

The training needs of incumbent workers are another important piece of the skills challenge facing middle-class workers that the Department is addressing. In times of high unemployment and tight budgets, however, we struggle to find resources to address this need. If we want to ensure that workers have a long-term and not just short-term place in the middle class, it is critical to devote at least some resources to training incumbent workers. Without this training, workers are at risk of having their jobs leave them behind. Changing technology does not only bring out new industries, but it changes the way existing industries do their work. Without opportu-

nities for life-long learning, workers have a hard time keeping up with those changes.

For example, a construction worker in Florida, previously at the top of his profession, found himself unqualified for his job when solar panel installation and renewable energy skills became a requirement. He participated in a DOL-funded program and now has an industry recognized Solar Photovoltaic (PV) degree and a firmer hold on a good-paying job. DOL also helped fund training for Marat Olfir. He is a residential building superintendent in New York. He took courses provided by the 32BJ Thomas Shortman Training Fund, a joint labor-management partnership. He earned the fund's Green Diploma after taking courses in green building maintenance and management. He feels he is now better prepared for the future of building maintenance and has advanced his career.

The role of the Department in supporting incumbent worker training is critical. Some employers may be disinclined to provide this kind of portable skills upgrade for fear that their workers will take those skills to another employer, possibly a competitor. Some workers don't have the resources they need to invest in their own training. That leaves a gap that is best filled by publicly supported training and public-private partnerships.

I am also extremely proud of the work the Department is doing to help our Nation's veterans gain and retain their rightful place in the middle class. Our veterans' employment and training programs are part of a larger effort to provide a smooth transition process for veterans, transitioning Service Members, and their spouses as they seek to identify and secure productive middle-class civilian opportunities. By promoting priority of service for veterans in the One-Stop Career Center system, we ensure that over 1.8 million veterans a year receive the training and employment assistance they need to obtain good jobs.

Our work with homeless veterans is especially important. Clearly, being homeless is a serious obstacle to moving into the middle class. Our homeless programs help nearly 20,000 veterans a year in their efforts to reintegrate into the workforce. I am proud to share with you, Senator Harkin, a success story from Iowa. A Goodwill Industries of Central Iowa caseworker, Jan Broers, learned of a homeless Army veteran in her community who was battling substance abuse. With help from a grant to the program from the Department's Homeless Veterans Reintegration Program, she was able to get the veteran a place to live, medical attention and training. Eventually, she was able to find a job for the veteran at a convenience store. The veteran has since been promoted to a management position. Ms. Broers has seen more than 100 homeless veterans get help as a result of the Department's $200,000 grant to the program. That's 100 Iowa veterans who have served their country and deserve our support, who now have a better chance at a middle-class life.

Having a job is essential to being a part of the middle class, but many people with disabilities are not a part of the U.S. labor force. The most recent BLS report issued in June 2011 shows that only 32.8 percent of working age people (16–64) with disabilities are actually in the American workforce, while the participation rate for people without disabilities is 77.2 percent. On this date, which happens to be the 21st anniversary of the Americans with Disabilities Act, DOL's Office of Disability Employment Policy (ODEP) is working hard to reduce this disparity. We believe that by making the Federal Government a model employer of persons with disabilities, promoting integrated employment of people with significant disabilities through customized employment and Employment First strategies, capitalizing on workforce flexibility strategies to retain aging workers and assist workers in returning to work, and ensuring that youth with disabilities have the skills they need for today's workplace, we can bring the middle class within reach of many people with disabilities. Because ODEP's policy work focuses primarily on universal strategies and good business practices, it also holds great potential to help millions of other workers with complex needs to find good jobs in the private sector. We owe so much to you Senator Harkin for your leadership in both shepherding passage of the ADA and in continuing to be a champion for the employment of people with disabilities.

Job training is a big piece of the Department's contribution to supporting the middle class, but it is not the whole story. I believe that one of the most important contributions that the Administration and the Department have made to the future security of the middle class is the implementation of health care reform. The Affordable Care Act and the implementation of regulations to make it a reality are making a huge difference in the lives of Americans across the country.

Access to affordable health care coverage means that middle-class workers are no longer one injury or illness away from financial ruin and descent into poverty. Without the Affordable Care Act, middle-class families were facing multiple health-care related challenges, including an increasing percentage of their income spent on out-of-pocket health care costs and increasing difficulty in obtaining health care cov-

erage. With the Affordable Care Act, middle-class families can look forward to lower costs and better coverage. In fact, a recent report by the Department of Health and Human Services predicts that middle-class families purchasing private insurance in the new State-based health insurance exchanges could save as much as $2,300 per year in 2014. And independent research on Medicaid released just this month by the National Bureau of Economic Research showed that those with access to health insurance through Medicaid reported they were in significantly better health and were more financially stable as a result of the insurance coverage.

The Department's worker protection programs also play a key role in providing the security and stability that workers need to sustain their place in the middle class. Without rigorous enforcement of our wage and hour laws and occupational safety protections, we run the risk of a race to the bottom in terms of pay and safety practices. It is simply unfair and bad policy to require good employers to compete against employers who are willing to flout the law, cut corners on safety, and pay workers less than they are owed.

Over 4,000 workers are killed in workplace accidents on the job in this country each year, and thousands of others continue to die from occupational disease. These tragic numbers are well-known. Less well known is the fact that every year well over 3 million workers are seriously injured on the job. With so many family budgets already pushed to the breaking point and so many families with little or no savings, living paycheck-to-paycheck, a workplace fatality or even a serious injury may be the blow that keeps a struggling family from entering the middle class or knocks a family out of the middle class. We know how to prevent these tragedies and our worker enforcement agencies are crucial to ensuring that American workplaces are safe workplaces.

The Department's effort to combat misclassification of employees is an excellent example of how our worker protection programs are central to sustaining the middle class. We know that the vast majority of employers play by the rules. Unfortunately, these high road employers are forced to compete with employers who misclassify their employees as something other than employees, such as independent contractors, in order to avoid minimum wage and overtime obligations, paying workers compensation premiums and payroll taxes, and investing in required safety practices. Work as a misclassified independent contractor is less likely to support a middle-class lifestyle than work as an employee, which comes with all the protections that Congress intended employees to have. Enforcing the laws that Congress has passed ensures that firms can count on a level playing field and don't lose profits and opportunities to firms that cheat. And workers can focus on doing their jobs, knowing that they can count on the protections that Congress intended them to have.

Our concern for the middle class extends not only to those actively in the workforce, but also to those who have put their time in and expect to live out their retirement in dignity and security. The Department's Employee Benefits Security Administration (EBSA) works to protect the security of retirement and other employee benefits for America's workers, retirees, and their families and to support the growth of our private benefits system. In fulfilling that role, EBSA oversees approximately 718,000 private sector retirement plans, approximately 2.6 million health plans and similar number of other welfare benefits plans covering approximately 150 million Americans. These plans hold over $6 trillion in assets. Most middle-class workers and retirees cannot afford to lose retirement savings to mismanagement or theft.

I also believe that the issues facing defined benefit plans are central to the conversation about the security of middle-class retirees. I intend to continue to look at proposals to help these plans keep their commitments to workers and retirees. Defined benefits plans play a critical role in the retirement security of millions of Americans. The President's budget proposes to strengthen the defined benefit system by shoring up the solvency of the Federal agency that acts as a backstop to protect pension payments for workers whose companies have failed. Moreover, the trends that I described earlier in my testimony about the increasing fluidity in workers' careers clearly have significant implications for planning for a secure retirement. I commend the committee for holding a recent hearing on these issues and I look forward to working with you on innovative solutions.

Finally, I think any discussion about finding solutions to the challenges facing the middle class would be deficient if it did not include a discussion of the importance of collective bargaining rights. I know that the recent actions of the National Labor Relations Board (NLRB) have been discussed in earlier hearings in this series. I do not mean to take our conversation in that direction. As you know, the NLRB is an independent agency and I cannot comment on either the Boeing complaint or the recently proposed union election rules.

I can comment, however, on the centrality of the relationship between the health of the labor movement and the health of the middle class in our Nation. I have lived that connection. My father was a Teamsters shop steward in a battery recycling plant. When I was a child, I would sit at our kitchen table and help translate the workers' grievances from Spanish to English. They wanted safer working conditions and livable wages and benefits. The union helped them get what they earned and deserved—a shot at a middle-class life for themselves and their families.

The statistics bear this out. From the 1940s to the 1960s, when union density was at its height, the middle class in our country thrived. Wages and productivity rose together during that time and we experienced robust growth throughout the economy. Union members with good, secure jobs could afford to buy good American products so American companies could succeed. That's why this Administration supports the right of workers to collectively bargain if they so choose.

We at the Department of Labor come to work every day to do our best to create economic opportunities for the American people. Last month's jobs report just underscores that more work needs to be done to stimulate new employment opportunities in the private sector and to support workers striving to achieve the skills needed in the new economy. Again, I appreciate your invitation to be a part of this incredibly important examination of how we can come up with the best solutions for the security of the middle class. I look forward to working with all of you to ensure good jobs for American workers. I am happy to answer your questions.

The CHAIRMAN. Well, Secretary Solis, thank you very much for a very eloquent statement and a summation of a very nice statement that you had prepared.

We will begin 5-minute rounds. As I shared with you, before we came out here, some disturbing news in the paper this morning. The Pew Foundation study examined the impact of the recent recession on wealth disparities. They looked at Census Bureau data.

They found that the median wealth of Hispanic households fell by 66 percent from 2005 to 2009. African-Americans saw their wealth drop by 53 percent. Asians also saw a big decline, with household wealth dropping 54 percent. By contrast, the median wealth of white Americans fell by just 16 percent.

As a result, a wealth gap between white America and minorities is now the widest it has been in 25 years since the census started collecting the data, with white households having 20 times the net worth of Hispanic and black households. By way of comparison, in 1995, the wealth ratio was 7-to-1 whites to minority. This is very disturbing.

I saw a recent interview with Bill Moyers, and he was asked what his biggest concern was. And he said his biggest concern was that in the future, that we were going to—as Americans, we were going to accept a wider and wider disparity of income, of inequality, a wider disparity of inequality as the norm, that he was afraid that we would accept that as the norm.

Now, Secretary Solis, as you have traveled around the country—and I congratulate you for doing that. You have really been out and around listening to people. Do you get a sense that people are—do you get a feeling—when you are talking to average Americans out there, working Americans, do they get a sense that somehow things aren't quite right, that there is this disparity going on? Do they feel that?

Secretary SOLIS. Senator, I know this is a hard question because there are, unfortunately, groups that suffer more severe impact in terms of poverty when we are going through a recession. And it is true that Latinos and African-Americans and others that are low-skilled are the ones that have had to carry the burden through this

recession, and even before then. I have said that time and time again.

I think the reality is, that we can't forego our commitment to education. And the statistics still continue to bear out, those individuals with higher earnings have higher degrees or credentials.

So my statement to you is that we have to continue providing job opportunities through these programs that can not so much, I would say, positively guarantee a job right away, because people have to go through a transition. We are talking about a massive number of people who have lost jobs, who have been out of work for more than 6 months and are somewhat disillusioned but need to be integrated into our systems, our One-Stop centers.

And that is an appropriate place for this to be, so that individuals can get an assessment, know what skill sets they have, where they can ramp up, and then given options and opportunities as to where to go.

So education, certificates are important. I hear from businesses all the time telling me that it isn't so much that they need the higher end, the bachelor of science or Ph.D. engineer. What they need is a good technician who has adaptable skills and is flexible and is ready to take on the responsibility of adapting to a whole new environment.

I would say there are different factors going on. But, yes, the disparity amongst these groups is alarming, and that is why the Department of Labor has emphasized in grant programs known as Pathways Out of Poverty, $150 million went to communities across this country with levels of 50 percent or higher unemployment.

Now, surely, that wasn't enough. But we know that it was a start in the right direction, and I can tell you that different collaborative opportunities have made themselves available with business, community colleges, and even faith-based and other organizations.

The CHAIRMAN. Madam Secretary, I appreciate that. I also wanted to ask about youth unemployment.

I have seen figures recently also that show that more and more young people, first of all, aren't even entering the workforce. And if they are, there are very low-skilled jobs they are in, and then they fall back out of the workforce.

It seems that we have a real problem with youth unemployment. What can we do about that?

Secretary SOLIS. Senator, unfortunately, what is happening is we have older workers who are staying in longer. We have older workers who are not retiring, as usually would take place. But because of this recession, they are staying in longer because they have to out of necessity.

That isn't opening up more jobs for those at the lower end and the entry level. Unfortunately, for young people, my preference is that we give them mentorships, internships, that we give them at least that work-based experience. It is so essential for them.

I can recall when I was an intern how important it was, even if I wasn't paid, but to have that experience and to have that noted on my resumé, how that created an opportunity to open up another full-time job.

But what is happening here for young people also is that some of the areas that perhaps they are getting degrees in may not be

the ones that are opening—that are offering jobs right now. So we are asking students, young people to also take a look at adapting their skill sets and taking, perhaps, another credential or maybe another type of degree in another area that might be of help while this transition occurs, while we begin to expand.

That is why I think looking at opportunities in the green industry, renewable energy, and looking at how we can transition individuals from some of the harder manufacturing and, say, construction fields is so essential to move people up so we can open up opportunities for them. For young people, it is very hard. And for minorities, young people, it is three times harder.

I think one of the things I would like to make clear is, though, under the Recovery Act, we did have moneys for summer youth employment. That money has gone away. I have created my own initiative and asked corporations around this country if they would unselfishly open up some slots for summer jobs. Our goal was to help provide at least 100,000 jobs. We are up to about 80,000.

Recently, I visited Jamba Juice in San Jose. They committed 2,500 jobs initially. When I went to visit them this last week, they had 2,700 jobs that they provided. And they are willing now to work with us even to open up slots, internships for some of our Job Corps students.

And so, I think, once we begin a discussion with businesses about what we are faced with, I think people will give it some thought and open up those opportunities.

The CHAIRMAN. Thank you very much, Madam Secretary.

Senator Isakson.

Senator ISAKSON. Thank you, Mr. Chairman.

Madam Secretary, are you familiar with OSHA's rule known as RIR, or reportable incident rate rule?

Secretary SOLIS. Yes.

Senator ISAKSON. OK, well, I was not familiar with it until yesterday, when a dear friend of mine, who is an Hispanic woman—naturalized U.S. citizen, been recognized by the Department of Labor in past years as one of the leading minority enterprises in the country—came to my office because of the difficulties with regulations being applied in a very difficult economic time.

And it is important for us to understand that because we are an equal opportunity country, all of our rules and regulations apply to everybody, regardless of ethnicity or anything else. The RIR rule is the reportable incident rate rule that limits a worker, a company from getting involved in a government contract if they have a reportable incident rate higher than 3.

Now I don't want to be technical, but this is important for everybody to understand. The reportable incident rate rule says the following. A company must take its last 12 months and take how many reportable incidents to OSHA it had. A reportable incident is an injury that goes beyond first aid, OK?

They multiply those incidents times 200,000. Two hundred thousand is the number of hours a company employing 100 people would consume in a year if each worker worked 40 hours a week for 50 weeks. And then you divide that by the number of workable hours your particular company had in the preceding year to come up with a product.

This is the exact case in terms of this company. They had three reportable incidents in the last 12 months. If you multiply that times 200,000 hours, which is 100 people working full time in a company, that equals 600,000. If you then divide that by the number of hours your company did—and she had 48 employees, not 100—multiply 48 times 2,000, you get 96,000 hours.

When you divide the smaller denominator of 96,000 into the larger number accomplished by 100 workers at 200,000, the reportable incident rate for her company with three incidents is 6.2. So the rule negatively impacts small business, rewards the more employees you have in a larger business.

We have Plant Vogtle being built in Georgia right now, which is a major nuclear plant, a green jobs plant, I might add. She cannot bid on that contract because the RIR rule applies a strict across-the-board three factor with no accommodation for a business employing less than 100. Most small business employs less than 100.

None of us want people being injured. But my point is, it is very important that we make sure these rules apply to small businesses in an equitable fashion so they can get jobs and employ workers. And I would be happy for your comments.

Secretary SOLIS. Certainly, Senator Isakson. This is the first time I am hearing about this particular incident, and I will take it back to our Assistant Secretary in OSHA.

But I do want to make clear that OSHA does work very closely with small businesses when there are issues that do come up. So I would work with you or your office on this particular case, but would say to you that one of our emphasis out front is that we have to work with small businesses, and we know that we have to provide free consultation to them.

In many ways, we can prevent some of these types of incidents if we are working with people on the ground and understand that we are making ourselves available. We are trying to be more transparent and more available than we have in the past, and I, for one, know how important it is.

In fact, recently, our office actually was working on another regulation, a noise hazard, an MSD column initiative, where we had gotten a lot of concerns from businesses. So we have managed to go back and work with the Small Business Authority so that we could take into consideration all these comments where we do find that there are regulations that may have, say, an overly burdened disposition for some of these businesses.

I am open to working with you, and we know that the small business intent is to minimize penalties to small businesses. So I also am surprised to hear about this case, but we will guarantee that we will get back to you and work with you on that.

Senator ISAKSON. Please understand, I am not begging attention to an individual case, which is specifically why I did not mention either the company or the individual. But to point out, when you take an arbitrary rule and apply it, you can sometimes have the unintended consequence of costing jobs and hurting minority employers equally to what any other non-minority employer might have been hurt.

One other point, and I am going to run out of my time, but just one other rule and compliance issue that is causing terrible con-

sternation. And you have gotten a letter from me. This is the fiduciary rule under ERISA.

And the department, as I understand it, stated it was unable to estimate the number of service providers affected or the cost on small business when it wrote the rule. But the unintended consequence—I hope it is the unintended consequence—of the fiduciary rule is going to cost small business a tremendous amount of money and lose a lot of people in financial advice business and consulting business to small businesses. It is going to put them out of business.

So that is just two examples of rules that are hurting small businesses, raising compliance costs, and eliminating opportunity.

Thank you, ma'am.

Secretary SOLIS. Well, Senator Isakson, I would just say that, that current rule that you point out is very important because it would help to identify who is giving advice. And in many cases, in the previous rule, many of those decisions have had adverse effect on small businesses as well as individuals because they were given erroneous or wrong advice, and we find that there have been conflicts of interest.

And so, what we are doing with this current rule is trying to close that loophole so that the burden does lie on the individual that is giving that advice. If there is a conflict there, and there shouldn't be, quite frankly, but if there is, then this rule would apply.

I think that what we are trying to do is not be a burden on small business at all, but to have transparency where we know it will make a difference, especially in these hard times, economic times, when people are making major investments of their pension plans and given wrong information and end up losing later on because they were misled, say, half of their savings. And there are several cases that I could go through and talk to you about.

But these stories we have read about, we have heard about them, and all we are trying to do here is trying to level the playing field so that consumers and individuals that make these decisions understand that they are getting the best advice and that there isn't a conflict of interest.

Senator ISAKSON. My time is up, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Isakson.

And in order of appearance, we have now Senator Blumenthal, Senator Alexander, Senator Hagan, Senator Bennet, Senator Murray, Senator Casey, Senator Franken, Senator Whitehouse.

Senator Blumenthal.

STATEMENT OF SENATOR BLUMENTHAL

Senator BLUMENTHAL. Thank you, Mr. Chairman.

And once again, thank you for holding this hearing on a vitally and profoundly important topic.

Thank you, Madam Secretary, for the great work that you are doing on issues like skill training, particularly using community colleges, where both the Chairman and I have expressed an interest, and on misclassification of workers, which degrades the value of jobs. And the Chairman and I, along with Senator Brown, have

introduced legislation, the Payroll Fraud Prevention Act, that would help address a number of these concerns.

If I can't get to all of my questions, I will submit some in writing to you. But I would like to focus just at the beginning on an issue that has been a concern in my State, concerning the redefinition of "fiduciary" under Federal law.

I know you have been working hard on it, very difficult and complex set of issues surrounding this task. And there have been concerns expressed that the new rule might have the consequence, perhaps unintended consequence, of limiting the choice of providers or restricting investment, education, and guidance. And I wonder if you could talk a little bit about what you are doing to avoid those consequences?

Secretary SOLIS. Thank you, Senator Blumenthal, and it is good to see you.

Senator BLUMENTHAL. Thank you.

Secretary SOLIS. And I do want to say that, one of the things that we have attempted to do—and Assistant Secretary Borzi of EBSA will also be happy to meet with you after if there are further questions.

But in this particular regulation, what we are trying to do is, as I said earlier, minimize the kind of information that could be misleading and could lead to a potential loss of individuals' savings and their retirement. And we have seen that happen time and time again.

So we are saying here in this regulation that we want to make clear that the individual that is giving this advice be held accountable because under the current rules, they are not. So what we are asking for is that this be an item that we can move through.

We have worked with all the agencies, including Treasury and all those other agencies that are involved here, and there does not seem to be any conflict with respect to how this rule is being interpreted. The White House has been very much involved in this. We all have been hearing from many of our friends, and I think a lot of it has to do with just misinterpretation of what fiduciary is.

But I think——

Senator BLUMENTHAL. So you will be coordinating as well with the Securities and Exchange Commission and other agencies that have that.

Secretary SOLIS. Absolutely. And we have.

We have had several meetings with them and have purposely held more hearings so that we could have more comment made available to us.

Senator BLUMENTHAL. And perhaps also, I know that some concerns have been raised by folks in the industry about information that might be made available to them before finalization of the rule, such as relating to the prohibited transaction exemptions, and perhaps either now or in a subsequent discussion, we might have a conversation about how the Department of Labor will proceed in dealing with those revisions to the prohibited transaction exemptions?

Secretary SOLIS. Be happy to do that.

Senator, you also mentioned TAA—well, TAA community college program funding that is going to actually be issued in September,

$500 million of the first $2 billion that will be made available for community colleges to help them ramp up so that we can provide better training. It is not for, how could I say, access to a community college. It is to expand current programs that may be impacted.

So one that I know is very dear to many people in the room happens to deal with nursing. We hear these programs have been impacted. Places like that in institutions where you can acquire equipment, bring on staff to change curriculum, and work very closely with employers. That is the requirement for that particular grant. We are really excited about that.

And then the last one, misclassification, thank you for your work on that. What we are trying to get at here is that those businesses and employers that misuse the system are actually hurting our economy because they don't pay into the workers' comp system. They don't pay into disability insurance. They rob the employee, but they also hurt other legitimate businesses.

That is why we have decided to work collectively in our department with different divisions to put more strength and enforcement in this particular area, to really hold clear what the intent of that legislation is about.

Senator BLUMENTHAL. Well, I really commend you. I know a lot of the members of the committee join me in welcoming and commending that work. And particularly on the community colleges, I know the Chairman and Senator Hagan, I believe in a prior hearing, and I have remarked on the enormous potential for providing skills.

What I hear in Connecticut—and I know you have visited Connecticut, and thank you for doing so—is that a lot of the employers have openings, but they can't find the workers for the skills. And actually, we have community colleges that have established relationships with those employers to meet those demands.

And so I would be very, very eager to follow up with you on that issue.

Secretary SOLIS. Thank you. Thank you so much.

Senator BLUMENTHAL. Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Blumenthal.

Senator Alexander.

STATEMENT OF SENATOR ALEXANDER

Senator ALEXANDER. Madam Secretary, thank you for coming.

You mentioned Flint, MI, and the example there, and it reminded me of the auto industry. This is a discussion about middle-income families, and the auto industry in my State, Tennessee, has been a story of raising family incomes, of creating more middle-income families.

It also reminds me of a book that the late David Halberstam wrote in the late 1980s, where he described the American automobile industry centered in the Midwest as noncompetitive, with high costs, high labor prices, sort of an oligopoly, as he described it, unable to compete with Japanese and German car manufacturers.

What happened was that when President Carter said that the Governors in the 1980s go to Japan and persuade them to make

in the United States what they sold in the United States, they came for the first time to Tennessee. And one of the reasons was the central location of the State in the marketplace, but an equally important reason was the right-to-work law, which created a different environment for labor relations than was found in the Midwest.

Do you agree that States should have the right to enact right-to-work laws?

Secretary SOLIS. Senator Alexander, I recall the first time that I came before this committee, you asked me a similar question. I believe my response was that States ought to be able to do what they find in their best interests. And given the situation, there are many States that are right-to-work States, and there are many that are not.

And as I said earlier, my role is to help people right now find jobs and good jobs. In fact, I had the pleasure of going down to Tennessee and visit the Sharp Industries there, where they were assembling photovoltaic panels, solar panels.

The individual there, I believe, was from Japan, said that he was ready to ramp up and do more, but wanted to make sure that there was also support from the local government as well as the surrounding areas that would help support that build-out. And I told him I was very encouraged by what he was doing, and I was very happy to see the diversified staff that he had on the ground.

Senator ALEXANDER. Yes, Sharp is one of those Japanese companies that is located in Tennessee because of the right-to-work law.

Secretary SOLIS. They also, Senator, had a full force of African-American workers, male and female, who happened to be represented by union.

Senator ALEXANDER. But that doesn't have anything to do with the right-to-work law. I mean—

Secretary SOLIS. I just want to say that that was my observation there.

Senator ALEXANDER. Yes, well, that is a good—they also make solar panels. So my point is that I am deeply concerned by the Administration's seeming undermining of the right-to-work law in a number of ways, and I am reassured by your comment that you think States ought to continue to have, under Section 14(b) of the Taft-Hartley Act, the right to choose to enact a right-to-work law or not to, as 22 States do.

Do you believe that it is appropriate for a company to decide to locate in a State based upon the cost of labor and upon the relative number of strikes in that State? Do believe that using those as considerations for locating a plant is a violation of Federal labor laws?

Secretary SOLIS. Senator, I believe you are referring to the Boeing issue. And I would just clarify that that current dispute is being handled by another independent agency, and I don't have any impact with respect to that particular agency.

But I do, again, want to reiterate that, as I said in my statement, I am supportive of those individuals that would choose to be associated with a union, if they choose to. It is entirely up to——

Senator ALEXANDER. If they choose to. But you are all part of the same Administration, and the same President that appointed you

appointed members of the National Labor Relations Board and the acting general counsel who brought a case.

Do think it was a wise idea for counsel to wait until our largest manufacturer, Boeing, who sells airplanes all around the world, built—chose to begin the first new large airplane manufacturing plant in 40 years in South Carolina, wait until that manufacturer had spent $1 billion, hired 1,000-plus people, and then say you can't build the plant there or you can't open the plant there unless you build X number of planes in Washington State and X number of planes in South Carolina?

Is that the kind of policy that will create an environment in the United States where we can create the largest number of good new jobs for middle-income families?

Secretary SOLIS. Senator, I am very supportive of creating good jobs, particular middle-class jobs. I think that is what the thrust of this hearing is about. And as I said earlier, you are talking about a case that is not under my current jurisdiction. It is with the NLRB, and I can't comment on what—their current cases being undertaken at this time.

Senator ALEXANDER. Thank you, Mr. Chairman. My time is expired.

The CHAIRMAN. Thank you.

And now Senator Hagan. OK, Senator Bennet and Senator Murray.

STATEMENT OF SENATOR MURRAY

Senator MURRAY. Well, thank you very much, Mr. Chairman.

And Secretary Solis, thank you so much for testifying today on this really important topic. You talked about it in your opening remarks that since the late 1970s, income inequality in the United States has increased dramatically and, at the same time, the once-robust middle class has severely deteriorated.

Instead of focusing on the causes today, which certainly are important, I want to focus on what we can do to help hard-working families climb back up that ladder. And I am particularly interested, as you have talked a lot about this morning, in making sure that low-skilled individuals have access to education and to training, and that education and training leads those skills and credentials that have value in the labor market, that empower them to manage their own careers and enable them to earn family-sustaining wages.

You talked about reauthorizing the Workforce Investment Act, and how critical it is to meeting that goal. And I want to read to the committee a quote from a group of GAO researchers. And they said,

> "Reauthorizing WIA has never been more urgent than it is today. Workforce trends in the economic downturn have placed greater demands on the workforce investment system than ever before. At present, this system is stretched thin.
>
> "If we, as a Nation, are to maintain our competitiveness for the higher skilled jobs, we must place more emphasis on training workers to keep their skills current before they are threatened with layoffs. We must develop better linkages with edu-

> cation and employment. Increasing labor force participation will require improving basic skills levels and greater involvement of employers and unions in designing education and training opportunities."

I think it is really clear, as you have stated, that higher skills are correlated with higher wages and good jobs. So I want to ask you while you are here today what else the Federal Government should be doing to support skills development for our workers and the employers who need those highly skilled laborers and what new ideas we should be looking at as we look to reauthorize the WIA bill.

Secretary SOLIS. Well, Senator, I want to commend you and the Chairman and also Senator Isakson and Enzi for all of your work on this issue of WIA reauthorization. It is one that I continually hear around the country from our workforce investment boards, but particularly from businesses that have participated in the past and want to see a change and encouraging us to move forward with reauthorizing the legislation to allow for different sectors in the business community to also be able to draw down and utilize some of the funds that are made available.

What I want to present to you is that—and this isn't something new. You are aware of this. The whole issue of looking at sectors and regionalization of what is happening around the country, and trying to garnish that and allow for more flexibility so that the WIA boards and the Workforce Act can really engage and provide support for these industries that we know are really going to be the future of a particular area.

We see it in clusters right now. Silicon Valley—I think in other parts of the country we see pharmaceutical companies that take hold in a corridor, say, in North Carolina, or what have you. These are areas where we are hearing people say we want to see more support for these kinds of efforts.

We have worked with, partnered with the Department of Commerce to create a program that we are calling Accelerator Program, to look at how we can give funding up to $240 million to particular sets of individuals that are looking at sectors and accelerating the growth in industries, so the 21st century types of jobs, whether it be IT, broadband, healthcare, and, in particular, renewable energy. Those are sectors that we are looking at right now, and these grants are going to be made available.

And it is something that I believe the WIA reauthorization should encompass, but also to provide for a variety of other players or stakeholders to also be a part and represented in the WIA programs. We are not doing enough to also allow for, say, community-based organizations and faith-based groups to also be partnering with us.

In many cases, they provide essential services for the dislocated workers that haven't been to school in 25 years, lost their job. There is no return of that job. They need to have the assistance that is provided, guidance, and the intensive support case management that is required.

Unfortunately, our programs, as is, don't allow for that, enough flexibility. So I know those discussions are ongoing about who can be partners, and I think it is essential to have businesses. But

there are many businesses that just sit on the board in some cases, but haven't done anything to help provide assistance to innovate and to look at reforming themselves or reinventing themselves.

So there also has to be a greater monitoring of what these boards actually do and more accountability.

Senator MURRAY. Well, thank you for that comment, and I am extremely concerned about this. I think we are working very hard to get a good, solid bill out to address that.

We do have a skills gap. Senator Blumenthal talked about 3 million jobs available today, but we don't have the skilled workforce. This has to be part of our economic recovery, and certainly it is important for the middle class. So thank you for your words on that this morning.

Thank you, Mr. Chairman.

Secretary SOLIS. Thank you, Senator.

The CHAIRMAN. Thank you, Senator Murray.

Senator Franken.

STATEMENT OF SENATOR FRANKEN

Senator FRANKEN. Thank you, Mr. Chairman.

I would like to associate myself with what Senator Murray just spoke about. And I have recently cosponsored Senator Sherrod Brown's SECTORS Act.

I visited manufacturing shops and tech colleges all across Minnesota, and I have heard repeatedly from industry groups like the Minnesota Precision Manufacturing Association and companies like the Top Tool Company in Blaine that we have a skilled worker shortage in advanced manufacturing. And there are jobs actually going unfilled in a time we have so many Minnesotans out of work.

And some manufacturers in Minnesota have been collaborating with community and technical colleges to develop training programs to prepare people for jobs, and I just want to reiterate what she said, reemphasize what she said and you said in response. And I liked what I heard.

Secretary Solis, in the next panel, Dr. Kenneth Green of the American Enterprise Institute will be testifying. And in his written comments, he says, "When it comes to American job creation, it is unlikely that the Recovery Act has significant positive impact."

Yet, I heard from economists, like Blinder and his cohort, Mark Zandi, who had been McCain's adviser in 2008, that, in fact, the Recovery Act created or saved anywhere from 2 million to 4 million jobs at a time when States were disinvesting. And that these jobs and the stimulus—and I saw it all around my State—helped create or helped prevent us going into a depression. What is your response to that?

Secretary SOLIS. Senator, I was very pleased to visit your State back in April, and I actually visited Viking Drill and Tool. I don't know if you are aware of the group, but they were recipients of one of our grants in a partnership with the BlueGreen Alliance.

And in part, this particular manufacturer was around for over 50, 60 years, I believe, creating drill bits and had come in contact with our partners on the ground and decided that they wanted to learn how to retool, make themselves more competitive. Otherwise, they would have to close down.

What they ended up doing was actually bringing in individuals to help increase the skill level of current technicians they had on the ground there to be able to make that, I guess, step up so that they could produce a better product, using more computerization, what they call CAD/CAM robotics and things of that nature.

They were able to utilize our assistance to help provide the skill training, the education that was needed, but they were also able to help the company save about $100,000 in energy costs and consumption and using new methods for conservation.

So our partnership assisted this facility from actually having to lay off more people. They are now adding more people there, and they are providing a product that is being manufactured here in our country that is sent throughout the world.

I was quite amazed to see the diversity of the workforce because not everyone was highly skilled, but individuals had an opportunity then to move up. So that allowed for individuals that were looking for jobs to also be able to come in and be a part of this effort.

It was also a partnership, labor-management. So you had unions, the steelworkers that were represented in that partnership. And that is probably one of the best examples that I could give you that we would like to see more of in terms of looking at legislation like WIA reauthorization that would allow for these kinds of partnerships to be explicitly supported in this kind of legislation.

Senator FRANKEN. When the President took office, how many new jobs were being created each month—in other words, what was the net, plus or minus, new jobs in the United States per month?

Secretary SOLIS. Well, what I would say to you, Senator, is that, when I took office, we were hemorrhaging about 700,000 or more jobs for the first part of this Administration. Since the time that the Recovery Act was instituted, we have seen numbers changing dramatically.

And I would say in the last 16 months, 2.2 million private sector jobs, many of which came out of the manufacturing area, have been created. And I would say to you, one of the sectors that has been more resilient has been in the healthcare arena. That has continued to go up.

So I can see where, with the help of the Recovery Act, we have added jobs. When you look back at the previous administration, in each month of the previous administration, they added about 11,000 jobs per month. And this President has exceeded that.

Senator FRANKEN. Thank you very much, Mr. Chairman.

The CHAIRMAN. Senator Whitehouse.

STATEMENT OF SENATOR WHITEHOUSE

Senator WHITEHOUSE. Thank you.

Welcome, Madam Secretary.

Today's *Wall Street Journal* says that the median net worth of white households is 20 times greater than that of minority households, 20 times greater than that of black households and 18 times greater than that of Hispanic households. The disparity, the *Wall Street Journal* says, is the greatest since the Government began tracking such data a quarter century ago.

We just had last week a study correlating the corporate profits that are being reported across the corporate sector and buoying the

stock market with low wages, that there is a direct correlation between the profits that the corporations are declaring and their refusal to raise wages for their workers at a time when American workers are actually getting more and more productive.

And third, we see wealth disparity with the wealthiest Americans with a larger and larger share of the Nation's wealth really unprecedented since the robber baron era of many, many years ago. What is your reaction to those sorts of disparities emerging in our economy?

Setting aside the relative injustice between the winners and the losers in an economy like that, overall, does an economy succeed with that kind of disparity in it, or is it a stronger engine for growth if the wealth is more broadly shared with the middle class?

Secretary SOLIS. Well, obviously, I believe with the latter. If the distribution of wealth is made available to everyone, obviously, as they say, every boat is lifted. And I am very concerned because I think it is very unacceptable the high rates of unemployment among the different ethnic groups, and in particular, as I said earlier, amongst our youth.

It sends a very negative message in particular to young people, who are looking, and who will be our future workforce. And therefore, I believe that we can't afford to continue to cut back on services for the most vulnerable populations, who happen to be these particular groups.

It takes longer to get dislocated workers back into the workforce, but chances are, when they are in our programs, they have a higher rate of placement in a job if they go through our workforce training programs. And I am happy to say, with our workforce investment funds and the Recovery Act in particular, we were able to expand some of the curriculum so that people, young people in areas, for example, that are experiencing high numbers—high levels of unemployment with the African-American community and Latino community, we concentrated efforts in the Job Corps program.

We have a couple of students here in the back who are visiting from the DC Potomac program, and I am sure they will tell you their individual stories, how these job training programs made the difference for them. Or perhaps they fell out of high school. Maybe no one in their household is working. This is giving them an opportunity to gain a credential, but also to be placed in a worksite and then eventually hired up by, say, a local employer.

Those are the kinds of programs that we can't afford to cut right now, and I think that we also have to move forward on extending the TAA, the Trade Adjustment Assistance program, because there are too many people who have lost their jobs and are in need of this particular assistance.

We know it works. We know that these individuals lost their jobs, in many cases, through no fault of their own, but decisions that were made in another place. And yet, they are suffering. So we need to extend TAA, as well as provide incentives for middle-class individuals to get some of those tax breaks, in particular payroll tax.

Those kinds of things are very important, and also investing in infrastructure, transportation, high-speed rail, and other systems where we could put people in the construction industry back to

work, where high numbers of African-American and Latino workers were displaced in this recession.

Senator WHITEHOUSE. Well, let me thank you for your focus on jobs. A very small group of very hard-core extremists is holding the debt ceiling hostage to an agenda to attack Medicare, things that the American people don't want that you could never get done through a vote, but by taking the economy hostage, they are trying to do that right now. And it has fixated the public and the press on this debt ceiling crisis.

It is a manufactured crisis, but it is a real crisis. But it is really important for families who are out there trying to find a job and get back into the workplace and try to get this economy rolling and fairer that the Administration focus on jobs and not allow itself to be distracted by the real debt limit problem from the other very real problem for families in States like mine that have very high unemployment.

So thank you for keeping that focus.

Secretary SOLIS. Thank you, Senator.

The CHAIRMAN. Madam Secretary, thank you very much.

Senator Merkley.

STATEMENT OF SENATOR MERKLEY

Senator MERKLEY. Thank you very much, Mr. Chair.

And thank you, Madam Secretary.

When we were immersed in the conversations about the stimulus 2 years ago, there was a conversation about renewable energy and whether we could require the wind turbines to be built in America. And we were told, no, due to trade agreements, we couldn't.

Meanwhile, it is my understanding that China had insisted that the turbines that they purchased be made in China, that they provided enormous subsidies for companies to come there. And while they were pursuing an industrial policy, which discriminated in many ways against American companies, we were giving them free reign to our economy. And in fact, many of the turbines were made overseas that were purchased during that effort.

If China is pursuing an industrial policy that protects their domestic industries and we are not, and we lose jobs and they gain jobs, why is that a sustainable policy for the United States?

Secretary SOLIS. My response would be that I know that during the Recovery Act, there were many projects that were funded, and in the course of that, obviously, there were some beneficiaries of that. And unfortunately, some of those programs were not funded through the Department of Labor.

My funding goes through to job training, and I am very proud of what we have been able to do with respect to creating sustainable green jobs. And I am very excited about the fact that recently there was a report that came out from Brookings Institute that actually outlines the creation and number of jobs that have been made available here in the United States.

In fact, I think 10 days ago they just released a report that I am sure this committee will have access to. If not, I would be happy to share the information that we have. But around the country, you can see where there are jobs. In fact, the clean economy, according to this study that was put out by Brookings, says that there are

some now—employed 2.7 million workers in the clean green economy, and much of it has been happening in big metropolitan areas.

In fact, in States like Toledo, OH; Charlotte, NC; Cleveland, OH; San Jose, Sunnyvale, Santa Clara; Knoxville, TN; Albany, NY; and Troy. I am happy that this information is finally coming about, but I know we need to have policies where we encourage more investment here, that we support American-made products.

Senator MERKLEY. Thank you.

I am a big advocate of green jobs, but I think the heart of the issue I was raising is not one you address, which is China has an industrial policy that discriminates. We provide an open country.

Let me try a different angle on it, which is that China also pegs its currency, which acts as a *de facto tariff*, on imported goods to China. That means it affects the goods that we manufacture, while making their goods cheaper to us. Ours is more expensive to them and theirs is cheaper to us.

This sort of *de facto* tariff is extremely disadvantageous for creating jobs in America, and isn't this part of the picture?

Secretary SOLIS. I don't disagree with you. I think there are many issues that we have to look at, and many of which are not under my purview. But I agree with you that we need to have better trade agreements that are fair, and I look forward to encouraging the manufacturing base here to grow and be robust.

That has been what my discussion, I think, today has been about, trying to make sure that we can keep these competitive jobs and bring some of those back here to pay good wages and to make that investment and to close those tax loopholes and not allow for that to continue in the pattern that has actually driven down our salaries and created the disparities that exist amongst our different racial and ethnic groups, and particularly amongst young people.

Senator MERKLEY. Well, I appreciate that a great deal because I think it has been very hard for us to hold a national conversation over how, I think, we all believe that trade is advantageous in the context of countries being able to specialize and, thereby, produce things at lower costs. And trading back and forth on an equal basis enhances jobs and standard of living in both countries.

But I think we really have to wrestle with this issue of disparity in trading when there is an industrial policy on one side and not on the other. There are some very interesting studies of historical relationships, where one side has had industrial policy, the other hasn't. And almost always the side with the industrial policy, as you might expect, comes out ahead in that relationship.

In our recent bipartisan trip to China, every American company, every single one we talked to, had stories about their products being discriminated against, about the form of the financial agreement under which they could enter the market being stipulated, about that type of relationship, that economic structure being used to strip technology, steal technology, if you will.

These are very serious things for our success as a manufacturing Nation. And I realize it may not be under your direct purview, but in this conversation about jobs, I think we have to wrestle with some things that, as a Nation, we have found difficult to address.

Secretary SOLIS. I think, Senator, if I might, one of the recent activities that has occurred was with respect to tires, the sale of tires

to China, as you know. And had it not been for some of the folks in the steel industry, our friends, we probably wouldn't have moved and really seen the imbalance there.

And as a result, we now brought those jobs, those jobs came back, so to speak, and we are now having more assembly production of these tires that we knew were being—we were being disadvantaged because we were being flooded by exports from China.

So there are some good rays of hope. And I certainly want to work to continue with members on this committee to see that we provide opportunities for goods that are made and can be produced here and sent abroad. I think that is what many of us would like to envision.

Senator MERKLEY. Thank you so much.

Secretary SOLIS. Thank you. Thank you, Senator.

The CHAIRMAN. Thank you, Senator Merkley.

Secretary Solis, thank you very much for the generosity of your time, for coming up here and responding to our questions. We may have further questions in written form that we will submit. But again, I just thank you for your attention to this plight of the middle class.

We are going to continue to have these hearings. I don't feel there is any—I really don't believe there is any debate or discussion about the fact that the middle class has lost ground in the last 20, 30 years. There may be a debate and discussion about what has caused it, what may be some of the answers to it, and what we can do. But that is OK. Healthy discussion and debate can lead to progress, not necessarily stalemate.

But I do believe that this is something that all of us are going to have to pay attention to, and we are going to have to have this as a major debate and discussion in our country, what is happening to the middle class and what can we do—if we believe that a solid middle class is beneficial to our society, what can we do to regenerate it and to replenish that middle class?

So I thank you very much for your involvement in this and for your advice and suggestions today. Thank you, Madam Secretary.

And we will now go to the next panel.

[Pause.]

Our second panel, we welcome Deborah King, who has served as the executive director of the 1199 SEIU Training and Employment Fund since 1995. Also project director of the Health Careers Advancement Program, a national project to develop career ladders for healthcare workers. Ms. King has served as an adjunct professor at Cornell University in labor-management relations for 10 years. She also serves on the New York City Workforce Investment Board.

Sarah Corey is the director of public relations for IceStone, LLC, a small manufacturing company in New York City that produces durable surfaces made from 100 percent recycled glass and concrete. Ms. Corey has a degree in sustainable development, economics, and policy from the University of Vermont.

Kenneth Green is a resident scholar and the interim director of the American Enterprise Institute's Center for Regulatory Studies. He is an environmental scientist by training and has worked for more than 16 years at public policy research institutions across

America. He has twice served as an expert reviewer for the United Nation's Intergovernmental Panel on Climate Change.

Tom Prinske is an owner of T. Castro Produce in Chicago, IL, a small produce distributor with 15 employees. He has a progressive facial disability that began when he was a teenager, also serves as a member of the Illinois Workforce Investment Board.

We welcome you all here to this hearing. As you may have heard from our first witness, Secretary Solis, that we have been having a series of hearings basically on the middle class, what is happening to the middle class and any suggestions on how we can stop this erosion of the middle class in our society.

So we welcome you and your input into this hearing.

We will start with Ms. King then to Ms. Corey to Mr. Green to Mr. Prinske, Your statements will all be made a part of the record in their entirety, and I would ask if you could sum up in 5 minutes or so.

Ms. King, welcome. And please proceed.

STATEMENT OF DEBORAH KING, EXECUTIVE DIRECTOR, 1199 SEIU TRAINING AND EMPLOYMENT FUNDS, NEW YORK, NY

Ms. KING. Thank you. Thank you, Chairman Harkin, Ranking Member Enzi, and other Senators, for the opportunity to testify today.

I am Deborah King, executive director of the 1199 SEIU Training and Employment Fund. We are the largest labor-management workforce organization in America, covering over 250,000 healthcare workers and 600 hospital, nursing home, and homecare employers in New York, New Jersey, Massachusetts, Maryland, and DC.

The oldest part of the organization is the Training and Upgrading Fund, or TUF. Since 1969, TUF has supported over 100,000 workers to upgrade from service and clerical jobs to nursing and other technical and professional healthcare careers. These upgrades have enabled them to move from low-income jobs to good middle-class jobs, often increasing their salaries by 50 to 100 percent from before the training.

Additionally, achieving a college degree has brought workers long-term job security and has increased the chance that their children will also become college graduates.

TUF is a Taft-Hartley fund, administered by both labor—in this case, 1199 SEIU United Healthcare Workers East—and healthcare employers. It is financed through employer contributions and Federal, State, and private grants. Because TUF has input from employers about industry needs and SEIU about worker needs, it has been very successful in increasing the mobility of healthcare workers, promoting retention, and addressing industry needs.

TUF programs provide a full range of benefits, including counseling, preparatory classes, and tutoring, to support workers, many of whom have been out of school for years or dropped out of school because of economic or life hardships. TUF has established innovative worker-friendly programs, such as partnerships with colleges to create part-time, evening, and flexible programs.

This allows workers to move up the education and career ladder and out of entry-level jobs, creating yet another hiring opportunity.

As people move up, it is an opportunity for unemployed workers to move in.

TUF benefits, provided at no cost to workers, include English as a second language, GED, and college preparation. TUF offers up to 24 credits per year in tuition benefits and a range of technical and professional programs.

Pell grants, which provide most students with additional support, allow TUF to support many more workers each year. Without Pell grants and TUF, most of these workers would never afford to attend college. And I think we know that college is essential for many jobs that are available today.

In 2010, almost 20,000 workers participated in one of the fund's programs. Around 5,000 were supported through tuition vouchers and assistance to study for technical jobs, such as respiratory therapy, radiology tech, or for social work and counseling.

In the last 3 years, the fund has produced over 1,500 RN graduates. The vast majority of these workers were certified nursing aides, allowing them to nearly double their previous average salary of $35,000. They went to $65,000 a year to start. Last year, the fund also graduated over 500 licensed practical nurses, who went from salaries in the low $30s to earning in the high $40s.

Another success of our programs is the high levels of retention and completion rates in college. The Health Care College Core Curriculum is a college program where participants attend prerequisite courses as a cohort and are provided additional tutoring, counseling, and interventions to ensure success. It has a 90 percent retention rate in college, compared to national average of 30 to 50 percent for adults returning to school.

On June 16, we had a graduation ceremony, and when I think of our successful outcomes, I think of one of the speakers who spoke there, Christine Porter. Born on a dairy farm in upstate New York, Christine left home and school at 16 and had her first child at 18. Several years later, her life was in turmoil as the result of a terrible divorce that left her and three young children seeking refuge in a domestic violence shelter.

Moving her family to Queens, NY, Christine worked three jobs, 7 days a week to keep food on the table. After getting a job as a medical assistant and becoming an 1199 SEIU member at Long Island Jewish Medical Center, Christine learned about training fund benefits.

Christine found the transition to college to be much smoother, thanks to taking classes in the Healthcare College Core Curriculum and getting additional supports. While still working full time, Christine graduated with honors, earning her nursing degree at Queensborough Community College.

Christine now works for her same employer, but now as a neonatal intensive care registered nurse. She is currently pursuing a bachelor of science degree in nursing and will graduate next year. Her dream of having a decent life for herself and her children is now a reality.

Because of her perseverance—and I want to say none of this happens without workers really working hard, but it wouldn't happen just by that. It happens also with the support from our program.

TUF's track record of success has encouraged employers around the country to join the existing fund or create similar model organizations. In the past 10 years, the fund has grown by 50,000 workers, while similar funds in California, Pennsylvania, Connecticut, Washington State, Oregon, and Nevada cover an additional 100,000 workers. So this is an idea that works, and it is an idea that is catching on with other employers around the country.

Today, attaining middle-class status does not necessarily mean, unfortunately, that you will maintain it. Another project under the fund's umbrella is the Job Security Fund, started in 1992 and also funded by collective bargaining contributions.

Over 300 employers in the acute care and long-term care industries currently participate in the Job Security Fund, which covers over 125,000 employees. Laid-off workers receive supplemental unemployment benefits, continued health coverage, and retraining, as well as priority placement rights in participating institutions.

This safety net is a clear example of a benefit that prevents people from falling into poverty when faced with job loss. The Job Security Fund enables workers to get support and assistance they need to quickly re-enter the workforce.

And I want to say that over 90 percent of the workers that we have serviced since 1994 have been able to be placed back into employment, 11,000 out of 12,000 workers we have serviced. And it also supplies participating employers with well-trained, experienced staff.

Thank you again for the opportunity to testify. I urge the committee to look for ways to encourage initiatives like these through the Department of Health and Human Services, Labor, Education, and other agencies. We must not give up on the hope that today's workers and future generations will be able to live the American dream.

Thank you.

[The prepared statement of Ms. King follows:]

PREPARED STATEMENT OF DEBORAH KING

Thank you Chairman Harkin, Ranking Member Enzi, and all Senators on the Health, Education, Labor, and Pensions Committee for the opportunity to testify today at your hearing on "Building the Ladder of Opportunity: What's Working to Make the American Dream a Reality for the Middle Class." I am Deborah King, executive director of the 1199SEIU Training and Employment Funds. 1199SEIU is part of the 2.1 million member Service Employees International Union. 1199SEIU represents more than 300,000 members and retirees in New York, New Jersey, Maryland, the District of Columbia, Florida and Massachusetts. The 1199SEIU Training and Employment Funds is the largest labor-management workforce organization in the United States, covering over 250,000 healthcare workers and 600 hospital, nursing home and homecare employers in New York, New Jersey, Massachusetts, Maryland and Washington, DC.

The oldest part of the organization is the 1199SEIU League Training & Upgrading Fund (TUF). Since it's founding in 1969, TUF has supported over 100,000 workers to upgrade from service and clerical jobs to nursing and other technical and professional healthcare careers. These upgrades have enabled workers to move from low-income jobs to good middle-class jobs, frequently increasing their salaries by 50 to 100 percent when they move into their new classification. In addition, achieving a college degree has brought workers enhanced long-term job security and has increased the likelihood that their children will also become college graduates.

TUF is a Taft-Hartley Fund administered by both labor (1199SEIU United Healthcare Workers East) and management (healthcare employers) and is financed through employer contributions. In accordance with collective bargaining agreements, employers contribute a percentage of gross payroll to TUF. As a 501c (3)

non-profit organization, the Fund is also supported by Federal, State and private grants. Because TUF has input from employers about industry needs, and SEIU about worker needs, it has been an extremely successful partnership in increasing mobility of healthcare workers, promoting retention and addressing industry shortages.

Although the TUF in New York City started in 1969, its track record has incented employers in other geographic areas to join the existing Fund or to create new organizations modeled on TUF. In the last 10 years, the Fund has grown by almost 50,000 workers and similar funds programs by other locals in California, Pennsylvania, Connecticut, Washington, Oregon, and Nevada cover an additional 100,000 workers. This program works and it is growing throughout the country.

TUF programs have been successful because they provide a full range of benefits including counseling, preparatory classes and tutoring to support workers, many of whom have been out of school for years or who dropped out of high school or college because of economic hardships or other life circumstances, to succeed. Without this encouragement and support, many would remain in entry level jobs and not fulfill their human and economic potential.

TUF benefits, provided at no cost to workers, include English as a Second Language, GED and college preparation. In 2010 in New York City alone, thousands of workers participated in these programs. Over one-third of those who attended college preparatory programs moved on to college.

In addition, TUF offers up to 24 credits per year in tuition benefits and a range of programs for technical and professional workers. This includes reimbursement as well as tuition vouchers. TUF has negotiated these pre-paid agreements with State and city University colleges, which enable people to attend public colleges with little to no out-of-pocket cost. Most of the TUF's workers receive additional support through Federal Pell grants, which make it possible for the TUF to support so many people each year. Without the support of these Pell grants and TUF's tuition assistance, most of these workers would not be able to afford to attend college. I urge you to continue to support full funding of the Pell program, which is so essential to enable low-income people to obtain the credentials necessary to secure a decent job.

In 2010, almost 20,000 workers participated in one of the Fund's many programs.

Approximately 5,000 workers were supported through tuition vouchers and tuition assistance to attend college. Many people study for technical jobs such as Respiratory Tech, Radiology Tech, Pharmacy Tech, Surgical Tech, for Social Work and counseling and hundreds of our members upgrade to these positions each year. Over 60 percent of SEIU members choose nursing as a career. In the last 3 years, the Fund has produced over 1,500 nursing graduates. The vast majority of these workers were Certified Nursing Aides (CNAs) prior to graduating from nursing school. Upon upgrading, these workers almost double their salaries. For example, the average salary of a CNA in New York City is $35,000; Registered Nurses typically start at around $65,000. In that same time period, the Fund proudly graduated over 500 Licensed Practical Nurses (LPN), who went from earning salaries in the low $30s to the high $40s.

In addition to the salary increases, these workers secured more satisfying jobs with more responsibilities and increased recognition and respect. This is what the American Dream is about and we are making it happen.

Another success of TUF is the high levels of retention and completion rates. One specific example is the Health Care Career Core Curriculum program (HC–4), a supported college entry program. In this program, Fund participants attend prerequisite college courses as a cohort, with additional tutoring, counseling and interventions to ensure success. HC–4 retention rates are over 90 percent, as compared with national success rates of 30 to 50 percent for adults returning to school. TUF is now expanding this model to other geographic regions.

Another positive outcome has been TUF's track record in establishing innovative worker friendly programs. Through labor and management working together, TUF has been able to partner with colleges to create part-time, evening, and flexible programs. These programs have allowed healthcare workers to move up the education and career ladder. This is an example of how labor and management speaking with one voice can make systemic change which benefits everyone.

When I think of our successful outcomes, I cannot help but think about some of TUF's participants who have shared their stories at our annual graduate recognition ceremonies.

When Christine Porter spoke at our ceremony just a few weeks ago, the entire audience was in tears. Born on a dairy farm in Upstate New York, Christine left home at 16 and had her first child at 18 years old. Several years later, her life was in turmoil as a result of a terrible divorce that left her and her three young children seeking refuge in a domestic violence shelter. Moving her family to Queens, NY,

Christine worked three jobs, 7 days a week, to keep food on the table. After acquiring a job as a Medical Assistant and becoming an 1199SEIU member at Long Island Jewish Medical Center, Christine learned about Training Fund benefits.

Like the thousands of Health Careers Core Curriculum (HC–4) graduates who came before her, Christine found the transition to college to be much smoother while taking classes with other 1199 members and having access to additional types of support. While working full-time, Christine completed the program and moved on to receive tuition vouchers for her nursing degree at Queensborough Community College. She graduated this year with honors and served as the President of the Student Nurses Association. Christine is now working for her same employer as a Neonatal Intensive Care Registered Nurse. She is currently pursuing a Bachelor's of Science in Nursing and plans on graduating in 2012. Her dream of having a decent life for her and her children, which began in that shelter, is now a reality because of her perseverance and support from our program.

Another speaker who comes to mind is Dr. Michelle Joyce. Michelle worked at Jordan Hospital in Plymouth, MA for nearly 10 years after obtaining her masters in physical therapy. Many healthcare professions are increasingly requiring higher credentials. The Training Fund was negotiated into her Union contract for the first time in 2007, and Michelle saw her door to higher education and increased job security open.

Michelle pursued her Doctorate in Physical Therapy at Boston University, something that was too costly to consider before the Training Fund was established. She continued to work, be a wife and mother to two small children and obtain her PhD! She credits both the Union and Jordan Hospital's administrators for their insight and timely trust to partner together to bring the Fund to Massachusetts.

Some of our graduates had a longer road to travel to reach their goals. Some did not have a high school diploma or were working in a very low paid, entry level job. One such graduate, who I now see every day, is Denise Cherenfant.

Denise began her journey as a home health aide and then became a Certified Nurse Aide and 1199 member at Daughters of Jacob Nursing Home in the Bronx, NY. Denise was a single mother at the time and determined to increase her standard of living so that she could offer her son a better future. She tried to pass college entrance exams on her own several times but was unsuccessful. When she learned about the Training and Upgrading Fund, Denise enrolled in free college preparation courses which gave her the ability to pass the college entrance exam and succeed in college level work. Denise received her Associate's degree as a Physical Therapy Assistant from New York University, a very demanding program.

A few years later, Denise decided to return to school to become a Bachelor's-prepared Registered Nurse. Through support from the Fund, she attended Lehman College, with no out-of-pocket cost and also received a stipend so that she could take time off to attend classes and study. Without this financial support, Denise could not have reached her career goal—she became the first member of her family to graduate college and earned her Bachelor's of Science in Nursing in 2009. After working as a Registered Nurse at her former employer, Denise is now working at the Training Fund and is planning to pursue a Masters Degree in Nursing Education.

At the beginning of her journey, Denise earned minimum wage, with no benefits. She now earns a middle-class salary with excellent health, pension and other benefits and she is able to pay for her son's college tuition. He just started this fall.

Unfortunately, in our country today, attaining middle-class status does not necessarily mean that you will maintain it. A particularly scary time is when an employer moves out of the area or closes. Another project under the Training and Employment Funds umbrella is the 1199SEIU League Job Security Fund (JSF), which was established in 1992 and is also funded by collective bargaining contributions. Over 300 employers in the long-term and acute care industry currently participate in the JSF. Together, labor and management accept joint responsibility for the employment security of over 125,000 employees. Since 1993, there have been more than 12,000 lay-offs from 214 institutions in New York. The Fund provides a safety net and re-employment for laid-off workers within the healthcare industry. Over 11,000 of those laid-off have accessed JSF services, 8,000 of whom have been re-employed in the industry. Others have chosen to retire, relocate, change industry, and so on.

Laid off workers receive supplemental unemployment benefits, continued health coverage and re-training benefits as well as priority placement rights in other participating institutions. This safety net is a clear example of a benefit that prevents people from falling into poverty when faced with job loss. The intervention of the JSF enables Fund participants to get the support and assistance they need to quickly re-enter the workforce. It also helps to supply participating employers with well-

trained, experienced workers. It is clearly a program that can work where there is a network of employers jointly committed to the workforce in their industry.

One person who benefited from both TUF and JSF is Jorge Negron, a 2008 graduate. Growing up in "El Barrio" in East Harlem, NY, Jorge dropped out of school, became a father at 19 and went to work as a housekeeper at Mount Sinai Hospital. Years later, after obtaining his GED, Jorge was promoted to a job in Materials Management in an operating room. He would spend his lunch hours observing procedures and talking to nurses about their work.

Jorge learned about the Fund's HC–4 program from one of these nurses. With Fund counseling and tutoring services, and the support of his fellow union members in class, Jorge completed the HC–4 program and continued his pre-requisite classes at New York City College of Technology. He was able to become an Anesthesia tech and Operating Room Aide at St. Vincent's Midtown Hospital while still pursuing his RN degree. Sadly, St. Vincent's closed down and Jorge lost his job while in his last semester of school.

Being an 1199 member, Jorge was able to access the services of the Job Security Fund. This allowed him to continue his education, with full tuition being paid, and preserved his medical benefits. Today, Jorge works as a Registered Nurse at Mt. Sinai, where he once swept the floors. He earns nearly double what he was making prior to being laid off. Jorge still lives in "El Barrio" and because of his knowledge of his community and Spanish fluency, is making a great contribution to both the quality of care at the hospital and to the health of his community.

We are encouraged that even in these difficult economic times, programs like TUF and JSF are continuing to grow and make a difference—demonstrating the value-added of the labor movement, joint labor management partnerships, and that it is still possible to implement initiatives which provide pathways to the middle class.

In addition to the established funds, in States like Minnesota, Illinois and Michigan, healthcare employers and SEIU are collaborating on fledgling training initiatives. These projects are giving workers access to education opportunities they never had. They also are giving employers the chance to create local career pathways and site-based projects that engage incumbent workers and improve the quality of care that is delivered. I predict that these pilot initiatives, in these States and elsewhere, will result in the creation of new Taft-Hartley funds in the next several years.

I would like to thank the Health, Education, Labor, and Pensions Committee for this opportunity to testify and to share our programs with you. I urge the committee to look for ways to encourage these initiatives through support from the Departments of Health and Human Services, Labor, Education and other Federal agencies. We must not give up the hope that our children will have a secure and fulfilling future. Thank you.

The CHAIRMAN. Ms. King, thank you very much.

And now we will turn to Ms. Corey. Ms. Corey, welcome.

And again, your statement will be made part of the record. Please proceed.

STATEMENT OF SARAH COREY, PUBLIC RELATIONS DIRECTOR, ICESTONE, NEW YORK, NY

Ms. COREY. Good morning, and thank you, Mr. Chairman, Ranking Member Enzi, and members of the committee. It is an honor to be here today.

My name is Sarah Corey, and I am the director of public relations for a company called IceStone. I am here to share with you IceStone's unique story and illustrate how our company is part of an American manufacturing renaissance, creating safe, good jobs that pay a living wage.

Eight years ago, Peter Strugatz and Miranda Magagnini cofounded IceStone in Brooklyn, NY. Both Brooklyn natives, Peter and Miranda envisioned a company that would invigorate the local economy and challenge the notion that America's industrial age had passed. They believed that a manufacturing renaissance could be possible through the creation of green collar jobs.

Like so many American entrepreneurs, they embarked on a journey to create a better future for their children, and they found

their inspiration in America's landfills. Since 2003, IceStone has diverted 10 million pounds of glass from the waste stream through the production of its eponymous durable surfaces.

I brought a sample with me today. IceStone has three core ingredients—100 percent recycled glass, cement, and pigment. There are no carcinogenic resins or toxic chemicals in IceStone. So our products are safe for the employees who make the material and for the families who prepare their meals on IceStone countertops.

We procure 100 percent of the cement and 100 percent of our glass from American suppliers. Every slab is cast in Brooklyn. Our day-lit 19th century Navy Yard factory is both a reminder of our industrial heritage and proof that innovation often requires reflecting on the past. We are proof that America can regain a competitive advantage in the global economy by creating green products and paying wages that support families.

Today, IceStone employs 45 full-time men and women, six of whom were hired in 2011, and we are each dedicated to the same ethos that inspired our co-founders. A successful business places equal value on social responsibility, environmental stewardship, and fiscal profitability. We call this the "triple bottom line."

For the purposes of today's hearing, I will focus on IceStone's social bottom line, which has three key attributes—job training, a living wage, and employee health and safety.

Job training is an essential component of the IceStone employee experience, and we heard earlier from Secretary Solis just how important it is. Each IceStone employee creates a professional development plan every year. More than any other tool, the development plan empowers us to take a proactive role in the direction and evolution of our work. It captures our goals and details the resources needed to achieve them, inspires pride in our work, and has served as a roadmap for entry-level and executive-level employees alike.

In 2010, our lead technician, Jose Gomez, completed a 5-day workshop in total productive maintenance. By participating in the workshop, Jose expanded his arsenal of skills required for his job, which enabled him to identify and prevent potential equipment issues throughout the factory. This led to increased efficiency, and in turn, Jose received an increase in wages.

Other employees have used their professional development plans to explore skills unrelated to their day-to-day work. This summer, for example, Luke Keller from the operations team left the factory floor a few hours each week to work with the marketing team and hone his video production skills.

The capacity building that Jose and Luke have found at IceStone should be accessible for every working American and is a critical part of strengthening America's middle class.

The second key attribute of our social bottom line is the living wage. The minimum wage in the State of New York is $7.25. And any of you who are familiar with the monthly cost of riding New York's subway can attest to the inadequacy of this wage.

At IceStone, we believe that all employees have a right to a wage that will provide shelter, food, and other basic necessities for their families. We also believe that a living wage includes benefits, and currently, all IceStone employees have access to health and dental care.

Providing such benefits, coupled with a safe work environment, is the third pillar of IceStone's social bottom line. Our company has a low employee turnover rate, a high number of employee referrals, and promotes a culture of inclusion and service. But it doesn't end there.

IceStone strives to make positive social, environmental, and economic impacts beyond the gates of the Navy Yard. We are a founding member of B Corporation, a network of 427 companies that prove businesses have the power to solve social and environmental issues. To date, five States have signed legislation that recognizes B Corporations and holds the leaders of such companies accountable for the material impact their businesses have on society, stakeholders, and the environment.

IceStone has worked to build a network of like-minded businesses to bolster local economies, and we have partnered with an elementary school in Brooklyn, where employees collaborated with fifth grade teachers to create a curriculum on sustainable careers and recycling. We also partner with organizations like AHRC, which provides work and services for individuals with developmental disabilities.

The question posed by the committee today is, "What is working to make the American dream a reality for middle-class families?" Innovative businesses like IceStone and hundreds of thousands within the American Sustainable Business Council are effectively bridging the gap between reality and the dream.

There is still much work to be done, and IceStone's growth would not be possible without State and Federal capital. Legislation similar to Senator Gillibrand's Made in America block grant program and guaranteed loans are needed to support the new wave of manufacturing in our country.

However, above all else, America's workers need and deserve triple bottom line careers that improve the quality of life for their families, their local communities, and the planet.

Thank you.

[The prepared statement of Ms. Corey follows:]

PREPARED STATEMENT OF SARAH COREY

Good morning, and thank you Mr. Chairman, Ranking Member Enzi, and members of the committee; it is a privilege to be here today.

My name is Sarah Corey and I am the director of Public Relations for a company called IceStone. I'm here to share with you IceStone's unique story, and illustrate how our company is part of an American manufacturing renaissance, creating safe, good jobs that pay a living wage.

Eight years ago, Peter Strugatz and Miranda Magagnini co-founded IceStone, LLC in Brooklyn, NY. Both Brooklyn natives, Peter and Miranda envisioned a company that would invigorate the local economy and challenge the notion that America's industrial age had passed. They believed that a manufacturing renaissance could be possible through the creation of green collar jobs. Like so many American entrepreneurs, they embarked on a journey to create a better future for their children. They found their inspiration in America's landfills.

Since 2003, IceStone has diverted 10 million pounds of glass from the waste stream through the production of its eponymous durable surfaces. IceStone durable surfaces contain three core ingredients: 100 percent recycled glass, cement, and pigment. There are no carcinogenic resins or toxic chemicals in IceStone, so our products are safe, for the employees who make the material, and for the families who prepare their meals on IceStone countertops. We procure 100 percent of the cement of our surfaces and 100 percent of our glass from American suppliers. Every slab is cast in Brooklyn; our day-lit 19th century Navy Yard factory is both a reminder

of our industrial heritage and proof that innovation often requires reflecting on the past. We are proof that America can regain a competitive advantage in the global economy by creating green products and paying wages that support families. Today, IceStone employs 45 full-time men and women, each dedicated to the same ethos that inspired our co-founders; a successful business places equal value on social responsibility, environmental stewardship, and fiscal profitability. We call this the "triple bottom line."

(*A green collar job is one that pays a living wage, and directly improves environmental (and therefore societal) quality*).

For the purposes of today's hearing, I will focus on IceStone's social bottom line, which has three key attributes: job training, a living wage, and employee health and safety.

Job training is an essential component of the IceStone employee experience. Each employee creates a professional development plan every year. More than any other tool, the development plan empowers us to take a proactive role in the direction and evolution of our work. It captures our goals and details the resources needed to achieve them, inspires pride in our work, and has served as a road map for entry- and executive-level employees alike. In 2010, our lead technician, Jose Gomez, completed a 5-day workshop in Total Productive Maintenance. By participating in the workshop, Jose expanded his arsenal of skills required for his job, which enabled him to identify and prevent potential equipment issues throughout the factory. This led to increased efficiency and in turn, Jose received an increase in wages. Other employees have used their professional development plans to explore skills unrelated to their day-to-day work. This summer, for example, a member of our Operations Team named Luke Keller left the factory floor a few hours each week to work with the Marketing team and hone his video production skills. The capacity building that Jose and Luke have found at IceStone should be accessible for every working American, and is a critical part of strengthening America's middle class.

The second key attribute of our social bottom line is the living wage. The minimum wage in the State of New York is $7.25. Any of you who are familiar with the monthly cost of riding New York's subway can attest to the inadequacy of this wage. At IceStone, we believe that all employees have a right to a wage that will provide shelter, food, and other basic necessities for their families. We also believe that a living wage includes benefits, and currently, all IceStone employees have access to health and dental care.

(*Living wage rates factor the cost of living in a particular area, and the size of a family.*)

Providing such benefits, coupled with a safe work environment is the third pillar of IceStone's social bottom line. Our company has a low employee turn over rate, a high number of employee referrals, and promotes a culture of inclusion and service. It doesn't end there. IceStone strives to make positive social, environmental, and economic impacts beyond the gates of the Navy Yard. To that end, we've co-founded B Corporation, a network of 427 companies that prove businesses have the power to solve social and environmental issues. To date, five States have signed legislation that recognizes B Corporations and holds the leaders of such companies accountable for the material impact their businesses have on society, stakeholders and the environment. IceStone is part of the Business Alliance for Local Living Economies, and has partnered with an elementary school in Brooklyn where employees collaborated with 5th grade teachers to create a curriculum on sustainable careers and recycling. We also partner with organizations like AHRC, which provides work and services for individuals with developmental disabilities.

The question posed by the committee today is, "what's working to make the American dream a reality for middle-class families?" I believe that sustainable, innovative businesses like IceStone are effectively bridging the gap between reality and the Dream. There is still much work to be done, and IceStone's growth would not be possible without State and Federal capital. Legislation similar to Senator Gilibrand's Made in America block grant program is needed to support the new wave of manufacturing in our country. However, above all else, America's workers need and deserve triple bottom line careers that improve the quality of life for their families, their local communities, and the planet.

(*The five States that have passed B Corp legislation are: Hawaii, Maryland, New Jersey, Vermont, and Virginia. Pending legislation: California, Colorado, Michigan, New York, North Carolina, Pennsylvania)*

The CHAIRMAN. Ms. Corey, thank you very, very much.

And now we go to Kenneth Green. Again, your statement will be made a part of the record. Please proceed.

STATEMENT OF KENNETH P. GREEN, RESIDENT SCHOLAR, AMERICAN ENTERPRISE INSTITUTE, WASHINGTON, DC

Mr. GREEN. Thank you, Chairman Harkin, Ranking Member Enzi, members of the committee, for having me here today.

Along with my remarks, I have submitted a pertinent study I authored recently, called "The Myth of Green Energy Jobs: The European Experience," through the American Enterprise Institute. Much of my testimony today will be excerpted from that study, and I should observe that my testimony represents my views only. AEI does not take official positions. The views of the scholars are their own views.

I have been asked to discuss the question of today's hearing in the context of green jobs, and I will forego the green job jokes, although I have many of them, as you will no doubt imagine. I have been writing about for a few years now. First, a few words about my background.

As Senator Harkin mentioned, I am a biologist and environmental policy analyst by training, and I have applied that training to public policy analysis since 1994, when I received my doctoral degree from UCLA. While I do not hold a specific degree in economics—this came up in at another hearing—economic analysis is a fundamental component of policy analysis and, of course, is studied formally, both in the process of learning about policy analysis and applying it.

So, to the question of green jobs. As it turns out, we are only beginning to get a definition of what a green job is. As Secretary Solis mentioned, the Brookings Institution recently took a shot at defining what they are calling "clean" jobs. In fact, we are really not working on defining green jobs. Now we are looking actually at clean jobs.

They tried to do a good job of it. I give them full credit for doing their best to really define what they were talking about and measure it accurately. Very important effort.

But even their analysis raises more questions than answers. So, for instance, Brookings does not count the people who work inside companies today on environmental compliance issues or environmental impact reduction. Those people in the EHS, the environmental health and safety industry, aren't counted by Brookings as having a clean job.

And I worked with those people, and I am sure they are motivated by that desire to improve the environment. And yet, mass transit workers are virtually all thrown in, as are waste management workers. And so, there is a conflation of managing sludge, or are you driving a bus?

Whether or not a job is green or clean depends really on a number of things. With regard to transit, it is ridership levels, the power source of the transit, the age of the vehicles, and so on. It is hard to see how an inefficient 20-year-old Metro car, for instance, powered by coal and based on electricity, running half empty, is cleaner than newer, much cleaner automobiles carrying the same number of people over the same distance.

With that caveat, I will move into a quick discussion of the general theory of job creation, then a quick review of some real-world experience with Government stimulation of green energy jobs,

which are somewhat better defined, green energy being a subset of the entire green job arena or field.

First, what is the source of jobs? Do jobs emerge from the interaction of entrepreneurs and consumers, which, to admit my bias, is where I believe they come from, or do governments create them? That question has been debated since at least the 1850s, when Frederic Bastiat, a French journalist and politician, wrote "What is Seen, and What is Not Seen," an essay that should be mandatory reading for anyone who wants to study public policy.

Bastiat explained—and I am going to paraphrase this to break up the usual discussion of broken windows and children throwing bricks. Bastiat explained that since the Government doesn't have capital of its own, it can only create a job with money it takes from someone else who is already using it. So if Uncle Sam wants Taxpayer Tom to hire someone, they must give him money they have taken from Taxpayer Paula, who is already using it to create jobs, either directly or indirectly, even if it is sitting in a bank or even under her mattress.

But several dynamics make that effort a losing proposition on net. First, because Government administration costs money, some of the money taken from Paula doesn't all get to Tom. Some goes to pay Bureaucrat Bob.

Second, Government planners tend to create jobs that are less economically efficient than the private sector. After all, if the wind power job that Uncle Sam wants Tom to produce was more profitable than the job Paula was already producing, she would cash out of what she was doing and throw in with Taxpayer Tom for her own benefit, no Government intervention and no mandate required.

The same is true when Government tells a manufacturer what product they can't sell, while telling someone else what product they are allowed to sell. Just as with jobs, when Government regulations favor product A over product B, what is seen are the new jobs making product A. What is not seen are the killed jobs that were making product B.

So let us look at the application of green jobs as it has played out in three European countries. There are more examples in the study I mentioned when I began my testimonies. Let us start with Spain.

In March 2009, researchers at the Universidad Rey Juan Carlos studied the economic and employment impacts of Spain's push into green energy job creation. Their study calculates that since the year 2000, Spain spent about $815,000 to create each green energy job. When it was a wind job, it was particularly expensive, at $1.5 million per job created.

The study calculates that the money used to create those jobs would have produced 110,500 jobs elsewhere in the economy. Or in other words, for every green job created, over two jobs were destroyed or foregone in the general economy.

In Italy, a study performed by the Bruno Leoni Institute found similar problems, if not worse. In Italy, they found for every job created, a green job created with government stimulus funds, five to seven jobs were either destroyed or foregone in the general economy.

Finally, to the United Kingdom. A recent report by consultancy Verso Economics found the situation similar there. For every job created by the government in renewables, renewable energy, 3.7 jobs were destroyed or foregone in the general economy.

That report, by the way, is interesting because it uses the government of Scotland's own accounting mechanisms for determining job creation based on tax rates. And so, this is how the government calculates jobs created and destroyed, which makes it somewhat different than the previous studies I discussed, and we can go into the detailed methodology, if you wish, during the question period.

Before I conclude, I was asked to comment about the stimulus of 2009 and its effectiveness in creating green jobs. A report in September 2010 pointed out that only $20 billion of the $92 billion allocated for renewable energy projects had even been spent. According to the Department of Energy, much of that was spent abroad, creating green jobs in China, Spain, and South Korea.

For example, a report by American University found 11 U.S. wind farms used their stimulus grants to buy wind turbines made abroad. Seventy percent of those wind turbines purchased with stimulus grants were made elsewhere. It could have been worse. The Department of Energy reports that for some green stimulus projects, 80 percent of the spending was spent abroad.

The EPA recently admitted that it can't say whether or not stimulus money it used created jobs. They can tell you what they spent and who they gave it to, but they acknowledge they can't tell you what effect it had in terms of creating jobs.

So given that most of the green stimulus is unspent, and much of what has been spent has been spent elsewhere, and I am referring to the green stimulus, that being money targeted for green jobs, not all stimulus spending. And some of the projects funded have either moved to China or gone bankrupt.

When it comes to American job creation, it is unlikely that the act had a significant positive impact, at least in the domain of green jobs, green energy jobs.

In conclusion, the idea that Government can create jobs in the economy is a myth. Painting the myth green doesn't make it any less of a myth.

The experience of Europe, which has preceded us in the quest for a new green economy, is both negative and unsustainable, with subsidies being cut back and feed-in tariffs being reduced, even as we speak. And what little we know of our own efforts are similarly proving to be poorly thought out.

I thank you for the opportunity to testify, and I look forward to your questions.

[The prepared statement of Mr. Green follows:]

PREPARED STATEMENT OF KENNETH P. GREEN

Chairman Harkin, Ranking Member Enzi, members of the committee, thank you for inviting me to testify today. Along with my remarks, I have submitted a pertinent study that I authored, titled "The Myth of Green Energy Jobs: The European Experience." [1]

Much of my testimony is excerpted from this study. I should observe that my testimony represents my views only.

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[1] The study submitted by Kenneth P. Green may be found at *www.aei.org/article/energy-and-the-environment/the-myth-of-green-energy-jobs-the-european-experience/*.

I have been asked to discuss the question of today's hearing in the context of green jobs, which I have been writing about for a few years now.

But first, a few words about my background.

I am a biologist and environmental policy analyst by training, and I have applied that training to public policy analysis since 1994. While I do not hold a specific degree in economics, economic analysis is a fundamental component of policy analysis, and I have studied it both academically and professionally since 1990.

So, to the question of green jobs.

As it turns out, we are only beginning to get a definition of what a green job is.

The Brookings Institution recently took a shot at defining what they're calling "clean" jobs, and they tried to do a good job of it, but even their analysis raises more questions than answers.

For example, Brookings doesn't count people who work inside companies in environmental compliance or environmental impact reduction, but they throw in a very large number of mass transit workers.

Yet whether or not mass transit is green depends on ridership levels, the power source, the age of the vehicles, which emissions you're focused on and so on.

For example, it would be hard to see how an inefficient 20-year-old metro car powered by coal-generated electricity, running half empty is "cleaner" than the newer, much cleaner automobiles carrying people over the same distance.

With that caveat, I'll move into a quick discussion of the general theory of job creation, then move to a review of real-world experience with government stimulation of green-energy jobs, which are somewhat better defined.

First, what is the source of jobs? Do jobs emerge from the interaction of entrepreneurs and consumers, or do governments create them?

That question has been debated since at least the 1850s, when Frédéric Bastiat, a French journalist and politician wrote *What is Seen, and What is Not Seen*, an essay that should be mandatory reading for anyone interested in public policy.

Bastiat explained that since the government doesn't have capital of its own, it can only "create" a job with money it takes from someone who is already using it.

So, if Uncle Sam wants Taxpayer Tom to hire someone, they must give him money they've taken from Taxpayer Paula, who was already using it to create jobs directly or indirectly.

But several dynamics make that effort a losing proposition. First, because government administration costs money, what they take from Paula doesn't all get to Tom. Some goes to pay bureaucrat Bob.

Second, government planners tend to create jobs that are less economically efficient.

After all, if the wind-power job that Uncle Sam wants Tom to produce was more profitable than the job Paula was already producing, she would cash out of what she's doing and throw in with Taxpayer Tom for her own benefit. No mandates required.

The same is true when government tells a manufacturer what product they can't sell, while telling someone else what product they can sell.

Just as with jobs, when government regulation favors product A over product B, what is seen is the new sales of product A, and the jobs associated with such sales. What is not seen is the lost sales of product B, and the lost jobs that go with it.

Now, let's look at the application of green-energy job stimulation as it played out in three European countries. There are more examples in the study I referenced when I began.

I'll start with Spain.

In March 2009, researchers at the Universidad Rey Juan Carlos released a study examining the economic and employment impacts of Spain's push into green energy job creation.

The study calculates that since 2000 Spain spent about $815,000 dollars to create each green energy job. Wind industry jobs were particularly pricy, at $1.5 million per job created.

The study calculates that the money used to create those jobs would have produced 110,500 jobs elsewhere in the economy. In other words, for every green job created, 2.2 jobs were destroyed or foregone in the general economy.

Now to Italy, where a study performed by the Bruno Leoni Institute, found similar problems.

The Bruno Leoni study found that for every job created in the green sector, 5 to 7 jobs would likely have been created in the general economy.

Finally, to the United Kingdom.

A recent report by consultancy Verso Economics found that for every job created in the UK in renewable energy, 3.7 jobs were foregone in the general economy.

This report uses the government's own macroeconomic model for Scotland, and calculates that promoting renewable energy in the UK has an opportunity cost of 10,000 direct jobs in 2009/10 and 1,200 jobs in Scotland.

Before I conclude, I was asked to comment about the "stimulus" of 2009, and its effectiveness in creating green jobs.

A report September 2010 pointed out that only $20 billion of the $92 billion allocated for renewable energy projects had been spent. And, according to the Department of Energy, much of that was spent abroad, creating green jobs in China, Spain, and South Korea.

For example, a report by American University found that 11 U.S. wind farms used their stimulus grants to buy wind turbines made abroad: 70 percent of those wind turbines purchased with stimulus grants were made elsewhere.

It could have been worse: the Department of energy reports that for some green stimulus projects, 80 percent of the spending was abroad.

The EPA itself recently admitted that it can't say whether or not stimulus money created jobs: they can tell you what they spent, but not what effect it had.

So given that most of the green stimulus is unspent, and much of what has been spent has been spent elsewhere, and some of the projects that were funded have already gone belly up, when it comes to American job creation, it's unlikely that the Act had a significant positive impact.

In conclusion, the idea that government can create jobs in the economy is a myth, and painting the myth green makes it no less of a myth.

The experience of Europe, which has preceded us in the quest for a new green economy, is both negative, and unsustainable, with subsidies being cut back, and feed-in tariffs reduced.

What little we know of our own efforts are, similarly, proving to be poorly thought-out.

I thank you again for this opportunity to testify, and look forward to your questions.

ATTACHMENT—PREPARED STATEMENT OF THE AMERICAN ENTERPRISE INSTITUTE FOR PUBLIC POLICY RESEARCH (AEI)

THE MYTH OF GREEN ENERGY JOBS: THE EUROPEAN EXPERIENCE

(By Kenneth P. Green)*

With $2.3 billion in Recovery Act tax credits allocated for green manufacturers, President Barack Obama and other Democratic politicians have high hopes for green technology. But their expectations clash with both economic theory and practical experience in Europe. Green programs in Spain destroyed 2.2 jobs for every green job created, while the capital needed for one green job in Italy could create almost five jobs in the general economy. Wind and solar power have raised household energy prices by 7.5 percent in Germany, and Denmark has the highest electricity prices in the European Union. Central planners in the United States trying to promote green industry will fare no better at creating jobs or stimulating the economy.

Key points in this Outlook:

- The Obama administration, its allies in Congress, and the environmental community champion the benefits of green technology and the creation of green jobs to alleviate unemployment.
- Green jobs merely replace jobs in other sectors and actually contribute less to economic growth.
- Experiments with renewable energy in Europe have led to job loss, higher energy prices, and corruption.

Green is the new black, in both the United States and Europe. Virtually everyone on the left has thrown on the green pants, green shirts, and green cloak of what we are assured is the future of life on earth as we know it.

President Obama regularly references the green economy in his speeches. The Obama/Biden New Energy for America document released in 2008 focuses on green jobs, green technology, green manufacturing, green buildings, and even green veterans. In a speech to the Democratic National Committee in September 2010, Obama boasted,

> "We'd been falling behind and now we are back at the forefront of [research and development]. We made the largest investment in green energy in our his-

* Kenneth P. Green (kgreen@aei.org) is a resident scholar at AEI.

tory so that we could start building solar panels and wind turbines all around the country."[1]

In an August 13 speech, Vice President Joe Biden also sang the praises of greenness:

> "It's not enough to just rescue the economy, we have to rebuild it better—and that work begins with giving American manufacturers the resources to produce the clean, green energy technology that will be the foundation of our 21st century economy. With the launch today of $2.3 billion in Recovery Act tax credits for green manufacturers, we are going to ramp up manufacturing of green energy materials in this country, while creating thousands of new jobs right here in our own backyard. From wind and solar power to electric vehicle technology, our recovery is going to be fueled by the Recovery Act incentives we are offering businesses today that will be the engine of our economy tomorrow."[2]

Former speaker Nancy Pelosi (D—CA) also supports the green cause. A blurb describing a speech Pelosi gave to the Stanley School in Waltham, MA, begins,

> "For a brighter and more prosperous future, we must invest in a green infrastructure, a green economy, and green schools to create a workforce of good-paying green collar American jobs."[3]

Governments do not "create" jobs; the willingness of entrepreneurs to invest their capital, paired with consumer demand for goods and services, does that.

Of course, Senator Harry Reid (D—NV) was not left out. At a Senate Democratic Green Jobs Summit in 2009, Reid boasted of his green accomplishments:

> "We have made unprecedented investments in clean, renewable energy and new, green jobs that can never be outsourced. In 2007 we passed a landmark energy bill that led to the development of clean, renewable fuels here at home, and the creation of critical American manufacturing jobs. We raised fuel-efficiency standards for the first time in a generation, and set new energy-efficiency standards for lighting, appliances, and Federal office buildings and vehicles. In the economic recovery plan we passed this year, we invested $67 billion to develop clean energy, and $500 million more to train a new 'green collar' workforce—Americans who each day will make our Nation more energy efficient and energy independent."

So, at least on the left, it is unanimous: the world's future is green: green energy powering green technologies, creating green houses, buildings, cars, and jobs, jobs, jobs. But is this thinking based on realistic economics, realistic understanding about green technology, or realistic expectations of the growth potential of the green movement? This Outlook examines whether the Government creates jobs through subsidies of any sort and then looks at the troubling European experience with green energy and job creation.

GREEN ENERGY AND GREEN JOBS

To understand the fallacy of the Government creating green jobs through subsidies and regulations, we have to refer to the writing of French economist Frédéric Bastiat. Back in 1850, Bastiat explained the fallacy that underlies such thinking in an essay about the unseen costs of such efforts. He called it the "broken window" fallacy.

The fallacy works as follows: imagine some shop keepers get their windows broken by a rock-throwing child. At first, people sympathize with the shopkeepers, until someone claims that the broken windows really are not that bad. After all, they "create work" for the glass maker, who might then be able to buy more food, benefiting the grocer, or buy more clothes, benefiting the tailor. If enough windows are broken, the glass maker might even hire an assistant, creating a job.

Did the child therefore do a public service by breaking the windows? No. We must also consider what the shopkeepers would have done with the money they used to fix their windows, had those windows not been broken. Most likely, the shopkeepers would have plowed that money back into their store; perhaps they would have bought more stock from their suppliers or hired new employees.

Were the windows not broken, the town would still have had jobs created by the shopkeepers' alternate spending, plus the shopkeepers would have had the value of their original windows. Because the value of the windows was destroyed, however, they—and the village as a whole—have been made poorer.

It is well-understood, among economists, that governments do not "create" jobs; the willingness of entrepreneurs to invest their capital, paired with consumer demand for goods and services, does that. All the Government can do is subsidize some industries while jacking up costs for others. In the green case, it is destroying jobs

in the conventional energy sector—and most likely in other industrial sectors—through taxes and subsidies to new green companies that will use taxpayer dollars to undercut the competition. The subsidized jobs "created" are, by definition, less efficient uses of capital than market-created jobs. That means they are less economically productive than the jobs they displace and contribute less to economic growth. Finally, the good produced by government-favored jobs is inherently a noneconomic good that has to be maintained indefinitely, often without an economic revenue model, as in the case of roads, rail systems, mass transit, and probably windmills, solar-power installations, and other green technologies.

To understand how this works in practice, I now turn to European countries that went hog wild for renewables, while singing the praises of green jobs: Spain, Italy, Germany, Denmark, the United Kingdom (UK), and the Netherlands.

SPAIN

Spain has long been considered a leader in the drive to renewable power. Indeed, Obama singled out Spain as an example in a 2009 speech. The president said,

> "We have enormous commercial ties between our two countries and we pledged to work diligently to strengthen them, particularly around key issues like renewable energy and transportation, where Spain has been a worldwide leader and the United States I think has enormous potential to move forward."[4]

But the story of Spain's green-job leadership took a series of hits shortly after the president's speech. In March 2009, researchers Gabriel Calzada Alvarez and colleagues at the Universidad Rey Juan Carlos released a study examining the economic and employment effects of Spain's aggressive push into renewables. What they found confounds the usual green-job rhetoric:[5]

- Since 2000, Spain spent 571,138 euros on each green job, including subsidies of more than 1 million euros per job in the wind industry.
- The programs creating those jobs destroyed nearly 110,500 jobs elsewhere in the economy (2.2 jobs destroyed for every green job created).
- The high cost of electricity mainly affects production costs and levels of employment in metallurgy, nonmetallic mining and food processing, and beverage and tobacco industries.
- Each "green" megawatt installed destroys 5.28 jobs elsewhere in the economy on average.
- These costs do not reflect Spain's particular approach but rather the nature of schemes to promote renewable energy sources.

Spain has found its foray into renewable energy to be unsustainable. *Bloomberg* reports that Spain slashed subsidies for new solar power plants.[6] As analyst Andrew McKillop observes in the *Energy Tribune*:

> In Spain, where subsidies to the country's massive wind farms and their dependent industries is estimated to have attained as much as 12 billion Euros in 2009, either directly or through "feed-in tariff" subsidy for power sales, government proposals target at least a 30 percent cut in subsidies. Major wind energy producer firms, such as Gamesa, have begun cutting their workforces, while trying to find sales outside Europe, helped by a weaker Euro. In addition and due to Spain's highly exposed deficit finance status, making it a target for market speculators betting its bond rates must rise, the Spanish government is also likely to cut financial backing to existing renewable energy power plants, built with an expectation of guaranteed prices and government subsidies for 25 years.[7]

And then, there is the matter of corruption. As *Bloomberg Businessweek* reports,

> "An audit of solar-power generation from November 2009 to January 2010 found that some panel operators were paid for doing the 'impossible'—producing electricity from sunlight during the night."[8] Further, it appears that the solar power producers "may have run diesel-burning generators and sold the output as solar power, which earns several times more than electricity from fossil fuels." Nineteen people have been arrested in Spain's "clean energy" sector on charges ranging from bribery, to unsavory land deals, to issuing licenses to friends and family, to simple construction fraud.

As the Guardian reports,

> "When Spain's National Commission for Energy decided to inspect 30 solar gardens, it found only 13 of them had been built properly and were actually dumping electricity into the network."[9]

ITALY

A similar situation has played out in Italy, also a leader in wind and solar-power deployment. A study performed by Luciano Lavecchia and Carlo Stagnaro of Italy's Bruno Leoni Institute found an even worse situation:

> Finally, we have compared the average stock of capital per worker in the RES [Renewable Energy Systems] with the average stock of capital per worker in the industry and the entire economy, finding an average ratio of 6.9 and 4.8, respectively. To put it otherwise, the same amount of capital that creates one job in the green sector, would create 6.9 or 4.8 if invested in the industry or the economy in general, respectively—although differences exist between RES themselves, with wind power more likely to create jobs than [photovoltaic] power. This fact is particularly relevant because we didn't even consider the non-trivial value of the renewable energy produced, but we focused on pure subsidies. If we had considered the energy value, the average stock of capital per worker would result even higher. Since subsidies are forcibly taken away from the economic cycle, and allocated for political purposes, it is especially important to have a clear vision of what consequences they beg.[10]

The researchers also found that the vast majority of green jobs created were temporary:

> "Using what we see as inflated estimates, from various sources, of already-existing green jobs, we take between 9,000 and 26,000 jobs in wind power, and between 5,500 and 14,500 in photovoltaic energy, as our starting point. From there, we have calculated that thanks to the subsidies Rome has promised, the number of people working in the green economy will rise to an aggregate total of between 50,000 to 112,000 by 2020. However, most of those jobs—at least 60 percent—will be for installers or other temporary work that will disappear once a photovoltaic panel, or a wind tower, is operative."[11]

And like Spain, Italy has experienced rampant corruption in the renewable sector. Rather than having numerous individuals defrauding the government, however, the mafia is involved. As Nick Squires and Nick Meo report in the *Telegraph*,

> "Attracted by the prospect of generous grants designed to boost the use of alternative energies, the so-called 'eco Mafia' has begun fraudulently creaming off millions of euros from both the Italian government and the European Union."[12]

They go on to report:

> Eight people were arrested in Operation "Eolo," named after Aeolus, the ancient Greek god of winds, on charges of bribing officials in the coastal town of Mazara del Vallo with gifts of luxury cars and individual bribes of 30,000–70,000 euros.
>
> Police wiretaps showed the extent of the mafia's infiltration of the wind energy sector when they intercepted an alleged mafioso telling his wife, "Not one turbine blade will be built in Mazara unless I agree to it."
>
> In another operation last November, code-named "Gone with the Wind," 15 people were arrested on suspicion of trying to embezzle up to 30 million euros in European Union funds. Among those arrested on fraud charges was the president of Italy's National Wind Energy Association, Oreste Vigorito.

Wind and solar power have raised household energy prices by 7.5 percent in Germany, and Denmark has the highest electricity prices in the European Union.

GERMANY

Germany's foray into renewable energy started in earnest in 1997, when the European Union adopted a goal of generating 12 percent of its electricity from renewable sources.[13] Germany's method for achieving such targets was the institution of a feed-in law, which required utilities to purchase different kinds of renewable energy at different rates. In a study of the effects of Germany's aggressive promotion of wind and solar power, Manuel Frondel noted that the German feed-in law required utilities to buy solar power at a rate of 59 cents per kilowatt-hour, far above the normal cost of conventional electricity, which was between 3 and 10 cents. Feed-in subsidies for wind power, he observed, were 300 percent higher than conventional electricity costs.[14]

Needless to say, this massive subsidizing of wind and solar power attracted a lot of investors: after all, if the government is going to guarantee a market for several decades, and set a price high enough for renewable producers to make a profit from, capital will flow into the market. Germany became the second-largest producer of wind energy after the United States, and its investment in solar power was aggressive as well.

But according to Frondel, things did not work out as Germany's politicians and environmentalists said they would. Rather than bringing economic benefits in terms of lower cost energy and a proliferation of green-energy jobs, the implementation of wind and solar power raised household energy rates by 7.5 percent. Further, while greenhouse gas emissions were abated, the cost was astonishingly high: over $1,000 per ton for solar power, and over $80 per ton for wind power. Given that the carbon price in the European Trading System was about $19 per ton at the time, greenhouse gas emissions from wind and solar were not great investments.

Frondel concludes that,

> "German renewable energy policy, and in particular the adopted feed-in tariff scheme, has failed to harness the market incentives needed to ensure a viable and cost-effective introduction of renewable energies into the country's energy portfolio. To the contrary, the government's support mechanisms have in many respects subverted these incentives, resulting in massive expenditures that show little long-term promise for stimulating the economy, protecting the environment, or increasing energy security. In the case of photovoltaics, Germany's subsidization regime has reached a level that by far exceeds average wages, with per-worker subsidies as high as 175,000 euros (US$240,000)."

He adds:

> "In conclusion, government policy has failed to harness the market incentives needed to ensure a viable and cost-effective introduction of renewable energies into Germany's energy portfolio. To the contrary, Germany's principal mechanism of supporting renewable technologies through feed-in tariffs imposes high costs without any of the alleged positive impacts on emissions reductions, employment, energy security, or technological innovation. Policymakers should thus scrutinize Germany's experience, including in the United States, where there are currently nearly 400 Federal and State programs in place that provide financial incentives for renewable energy. Although Germany's promotion of renewable energies is commonly portrayed in the media as setting a "shining example in providing a harvest for the world" (The Guardian 2007), we would instead regard the country's experience as a cautionary tale of massively expensive environmental and energy policy that is devoid of economic and environmental benefits."

As with Spain and Italy, Germany is finding it hard to continue to subsidize wind and solar power at existing levels. In May, the German parliament cut back the subsidy for domestic rooftop solar photovoltaic systems by 16 percent, with free-standing systems cut by 15 percent.[15]

DENMARK

Denmark is yet another country that has made wind power a hallmark of its energy policy. Obama praised it for its aggressive wind-power program, telling an Earth Day audience in Iowa that,

> "America produces less than 3 percent of our electricity through renewable sources like wind and solar—less than 3 percent. Now, in comparison, Denmark produces almost 20 percent of their electricity through wind power." [16]

The U.S. Energy Information Administration tells America's children that "Denmark ranks ninth in the world in wind power capacity, but generates about 20 percent of its electricity from wind." [17] That sounds impressive, but is it true?

Green programs in Spain destroyed 2.2 jobs for every green job created, while the capital needed for one green job in Italy could create almost five jobs in the general economy.

Not according to CEPOS, a Danish think tank, which issued a 2009 report entitled, *Wind Energy, the Case of Denmark*.[18] The CEPOS study found that rather than generating 20 percent of its energy from wind,

> "Denmark generates the equivalent of about 19 percent of its electricity demand with wind turbines, but wind power contributes far less than 19 percent of the Nation's electricity demand. The claim that Denmark derives about 20 percent of its electricity from wind over-states matters. Being highly intermittent, wind power has recently (2006) met as little as 5 percent of Denmark's annual electricity consumption with an average over the last 5 years of 9.7 percent."

The CEPOS study revealed that Denmark can only produce and consume as much wind power as it does due to a convenient circumstance: neighboring countries have a lot of hydro power that can quickly and effectively balance the flow of electricity on its energy grid, allowing it to export surplus wind capacity.

"Denmark manages to keep the electricity systems balanced due to having the benefit of its particular neighbors and their electricity mix. Norway and Sweden provide Denmark, Germany and Netherlands access to significant amounts of fast, short-term balancing reserve, via interconnectors. They effectively act as Denmark's 'electricity storage batteries.' Norwegian and Swedish hydropower can be rapidly turned up and down, and Norway's lakes effectively 'store' some portion of Danish wind power. Over the last 8 years West Denmark has exported (couldn't use), on average, 57 percent of the wind power it generated and East Denmark an average of 45 percent. The correlation between high wind output and net outflows makes the case that there is a large component of wind energy in the outflow indisputable."

Finally, the CEPOS study found that Danish consumers are the ones who take it on the chin. Denmark's electricity prices are the highest in the entire European Union. And the greenhouse gas reduction benefits? Slim to none, since the exported wind power replaces hydro power, which does not produce significant greenhouse gas emissions. The wind power consumed in Denmark does displace some fossil-fuel emissions, but at some cost: $124 per ton, nearly six times the price on the European Trading System.

Regarding green jobs, CEPOS found that,

"The effect of the government subsidy has been to shift employment from more productive employment in other sectors to less productive employment in the wind industry. As a consequence, Danish GDP is approximately 1.8 billion DKK ($270 million) lower than it would have been if the wind sector workforce was employed elsewhere."

Not surprisingly, Denmark is also finding renewable power unsustainable and is backing away from the technology. As Andrew Gilligan reports in the *Telegraph*, the Danish state-owned power industry will no longer build onshore wind turbines, and consumers are complaining about high energy rates and environmental despoliation.

"Earlier this year, a new national anti-wind body, Neighbours of Large Wind Turbines, was created. More than 40 civic groups have become members. 'People are fed up with having their property devalued and sleep ruined by noise from large wind turbines,' says the association's president, Boye Jensen Odsherred. 'We receive constant calls from civic groups that want to join.'"[19]

THE UNITED KINGDOM

Our Commonwealth cousins across the pond have also embraced the "green power means green jobs" theory. The UK (Scotland particularly) has pursued an ambitious wind-power agenda.

Former prime minister Gordon Brown told a Labor Party conference,

"I am asking the climate change committee to report by October on the case for, by 2050 not a 60 percent reduction in our carbon emissions, but an 80 percent cut and I want British companies and British workers to seize the opportunity and lead the world in the transformation to a low carbon economy and I believe that we can create in modern green manufacturing and service one million new jobs."[20]

Ed Miliband, current leader of the opposition, is also big on wind, announcing,

"With strong government backing, the UK is consolidating its lead in offshore wind energy. We already have more offshore wind energy than any other country, we have the biggest wind farm in the world about to start construction, and now we'll see the biggest turbine blades in the world made here in Britain. . . . Our coastline means the offshore wind industry has the potential to employ tens of thousands of workers by 2020."[21]

Party does not seem to be a factor in green-job boosting. Prime Minister (and Conservative Party leader) David Cameron, discussing a deal to work on wind turbines with India, said,

"The innovation and creativity of business won't just help us save the planet, but is expected to create millions of jobs and billions of revenue in the green goods and services market."[22]

Referring to offshore wind, Cameron is equally bullish: "I want us to be a world leader in offshore wind energy," he said, announcing a national infrastructure plan.

"We are making these investments so that major manufacturers will decide that this is the place they want to come and build their offshore wind turbines. This investment is good for jobs and growth, and good for ensuring we have clean energy."[23]

Alas, the UK and Scotland have fared no better than the other countries discussed above in their pursuit of the new green-energy/green-jobs economy, as a recent report by consultancy Verso Economics points out.[24] The study is particularly interesting because its methodology is touted as superior to the methodology used in the Spanish and Italian studies. Verso uses what economists refer to as "input/output" tables to estimate the number of jobs that were foregone in the UK general economy in favor of the green jobs "created" through government subsidies.

Verso's conclusion aligns neatly with those of the Spanish and Italian studies discussed above:

- "The report's key finding is that for every job created in the UK in renewable energy, 3.7 jobs are lost. In Scotland there is no net benefit from government support for the sector, and probably a small net loss of jobs."
- "The main policy tool used to promote renewable energy generation is the Renewables Obligation, which effectively raises the market price paid for electricity from renewable sources. This scheme cost electricity consumers 1.1 [billion] British pounds in the UK and around 100 [million] British pounds in Scotland in 2009–10."
- "This report uses the Scottish Government's own macroeconomic model for Scotland to assess the impact of identified costs on jobs. A similar model was used by the Scottish Government to measure the opportunity cost of the cut in [the value-added tax] implemented in 2008–9. Based on this, policy to promote renewable energy in the UK has an opportunity cost of 10,000 direct jobs in 2009–10 and 1,200 jobs in Scotland."
- "In conclusion, policy to promote the renewable electricity sector in both Scotland and the UK is economically damaging. Government should not see this as an economic opportunity, therefore, but should focus debate instead on whether these costs, and the damage done to the environment, are worth the candle in terms of climate change mitigation."[25]

While the UK and Scotland may have avoided the problems of corruption that afflicted Spain and Italy, they learned something that the warmer countries did not: wind turbines can freeze in winter. Not only do they cease to put out power in very cold weather, they actually need to be heated. As reporter Richard Littlejohn points out in the UK *Daily Mail*,

> "Over the past 3 weeks, with demand for power at record levels because of the freezing weather, there have been days when the contribution of our forests of wind turbines has been precisely nothing. It gets better. As the temperature has plummeted, the turbines have had to be heated to prevent them seizing up. Consequently, they have been consuming more electricity than they generate. Even on a good day they rarely work above a quarter of their theoretical capacity. And in high winds they have to be switched off altogether to prevent damage."[26]

The frozen turbine problem has also occurred in Canada. As Greg Weston of the *Telegraph-Journal* explained in February 2011,

> "A $200-million wind farm in northern New Brunswick is frozen solid, cutting off a supply of renewable energy for NB Power. The 25-kilometre stretch of wind turbines, 70 kilometers northwest of Bathurst, has been shut down for several weeks due to heavy ice covering the blades. GDF Suez Energy, the company that owns and operates the site, is working to return the windmills to working order, a spokeswoman says."[27]

THE NETHERLANDS

The Netherlands is yet another country that went big for wind power; it is the world's third-largest producer of offshore wind power. And while no data are available about green jobs in the Netherlands, there is evidence that it will not be producing many through its green power plants. The new conservative government has radically reversed course and is slashing subsidies to wind and solar power.

According to the journal *Energy Debate*, the Dutch government has lost its faith in windmills. The new government in the Netherlands has taken exception to the massive subsidies required to build and operate wind farms—and, in this case, to the expected export of 4.5 billion euros in subsidies to a German company (Bard Engineering) that would have built, owned, and operated those wind farms. The new prime minister of the Netherlands, Mark Rutte, is reported to have said, "Windmills turn on subsidies."[28]

On November 30, 2010, the government unveiled its new renewables plan, slashing annual subsidies from 4 billion euros to 1.5 billion euros. And not only are the subsidies cut back, what remains will be redirected well away from wind power. As *Energy Debate* explains:

In the new system (somewhat misleadingly called SDE-plus), which will take effect halfway through 2011, the government will allocate subsidies in an entirely different, and rather complicated way. Subsidies are made available in four "stages" (on the basis of first-come, first-served).

1. In the first stage, a government subsidy of 9 eurocents per kWh (or 79 cents per m^3 for gas) is offered, but only to producers of technologies that have "deficits" of less than 9 eurocents. Based on the figures from ECN, these are: biogas ("green gas"), hydropower, power from waste processing installations, and gas from fermentation processes.
2. If there is still money left after this first stage, the second stage will be opened up, in which a subsidy of 11 eurocents per kWh (or 97 cents per m^3) will be offered. This stage will be open to producers of onshore wind power and fertiliser-based gas.
3. Again, if there is money left, there will be a third stage with subsidies of 13 cents per kWh or 114 cents per m^3. This will be open to producers of hydropower and small-scale biomass.
4. The fourth and last stage (15 cents per kWh or 132 cents per m^3) will be open to electricity produced from all-purpose fermentation processes.

Not included in any of the four categories, because they are too expensive, are solar power, large-scale biomass and, indeed, offshore wind power.[29]

Another change in the Dutch attitude toward renewables is how to pay for the subsidies. In the past, subsidies came from the general budget. Moving forward, consumers will see a surcharge on their energy bills. The new direct billing could cool the public's ardor for additional building of "green energy."

According to reports, the new government was planning on a nuclear power renaissance to generate electricity, and one could certainly argue that such a plan would generate "green jobs."[30] However, in the wake of the tragic Japanese earthquake and tsunami in March 2011, such a plan will also undergo a great deal of scrutiny.

The irony here is rich. The Dutch, who have been enamored of wind power for hundreds of years,[31] may have finally had enough tilting at windmills. If even they cannot make it work, one has to wonder if anyone can.

CONCLUSION

Both economic theory and the experience of European countries that have attempted to build a green-energy economy that will create green jobs reveal that such thinking is deeply fallacious. Spain, Italy, Germany, Denmark, the UK, and the Netherlands have all tried and failed to accomplish positive outcomes with renewable energy. Some will suggest that the United States is different, and that U.S. planners will have the wisdom to make the green economy work here. But there is no getting around the fact that you do not improve your economy or create jobs by breaking windows, and U.S. planners are no more omniscient than those in Europe.**

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

Now we turn to Mr. Tom Prinske. And again, we welcome you, and your statement will be made a part of the record.

Please proceed, Mr. Prinske.

STATEMENT OF TOM PRINSKE, OWNER, T. CASTRO PRODUCE COMPANY, CHICAGO, IL

Mr. PRINSKE. Thank you very much for the opportunity, Senator Harkin.

I would like to thank your staff for all the help they have been getting me here and preparing me for this opportunity.

One of the problems with having a visual disability—I have lost two-thirds of my vision—is I can't come with a prepared statement like the others. So while I wouldn't call it shooting from the hip, I would refer to it as my thoughts and my real-life experience.

At a young age, at about 14 years old, it was determined that I was going to lose the majority of my vision, about two-thirds of my vision by the time I was in my mid-20s. And back in the 1970s, there wasn't really much of an opportunity to get the training that was available to completely blind people, which it is kind of ironic that being completely blind may have been a better benefit. But nonetheless, I was very, and still am, grateful for the vision that remains.

As time went on and my vision became worse and worse, I would like to give the perspective to people. And I think with all disabilities, what it does to your psyche is something that, unless you have grown in or have the experience getting a disability is something that you couldn't understand unless it were to happen to you. But eventually, it kind of beats you down to a person that doesn't feel like they are very useful, frankly.

I was right on the brink there. I was brought to the point where I am going to go try and get Social Security help here because I am not going to make it otherwise.

And then one day, as I told in my written story, I woke up with a dream because one of—the little bit of the research I did showed that there were programs available for persons with disabilities—I mean, minorities and female-owned businesses. But for persons with disabilities, there really weren't any programs.

The programs I am referring to are ones for businesses owned by minority and female-owned companies in the State of Illinois. In particular, the Minority and Female Business Enterprise Act was in place for those groups who wanted to take advantage and certify themselves and move toward maybe obtaining Government or State contracts.

The idea I had with my business, what was left of it, frankly, was to maybe participate in that program by sending a letter to my local State representative, Senator Pate Philip, at the time and informing him of what I thought was something that could be looked at. Senator Philip decided to try to amend the Minority and Female Business Enterprise Act to include businesses owned by persons with disabilities, which is really what started to change our business lives once the law was passed.

After becoming a certified disabled-owned business and—I apologize. After being invited by Senator Pate Philip to testify at both the House and Senate committee hearings to help the law get amended, we later found that the vote was totally for the amended change. And after Governor Edgar signed the law into effect in 1992, we became one of the State's first certified disabled-owned businesses.

After I decided to look at how it would help our company, we thought that our best opportunities would be with the private sector and their relationships with the Government contracts, and we can be subcontracted for providing product and service to those private sector facilities. It really made a change in our business.

We grew from before the pre-amendment change, from $100,000 a year to in a few years $1 million a year. And then after that, it just began to continue to progress, mostly because of the fact that private sector really started viewing this—our certification as, first, credible because of the State's certifying policies and then their own in-company social responsibility efforts at doing business with companies with our certification.

It was on a fast track, frankly, to us being viewed by companies that we were able to partner with as a viable resource for product and service.

If I can now go back to the time where my psyche was at its worst, and now imagine where it is. I am a business owner that has grown the company from $100,000 to $1 million, and a few years after that to $5 million, and a few years after that to where we currently are at $6.8 million, with 15 employees. And the feeling, quite frankly, is much different than it was when things were at their worst.

That is really what I want to get to here at this hearing, which is that persons with disabilities have this mountain to climb. And one of the greatest feelings in the world, I am sure you can imagine, is owning and operating your own business and then giving something back to people that don't have disabilities.

There are people without disabilities relying on two partners in this company that are both legally blind, on the work they did for their livelihood. There is a lot of pride there that I don't think—it is one of the gifts that you have been granted when you have a disability. One of the gifts I have been granted is giving back and taking a real important look at making sure my employees are taken care of, and they are getting a fair and above fair wage and that the company is thriving and that it is just a sense of responsibility that, again, I don't think that you can appreciate unless you have achieved what we have been fortunate to achieve.

There are wonderful opportunities out there now for business owners with disabilities that weren't there before. The State of Illinois certification is one. USBLN, U.S. Business Leadership Network is another who has really done a wonderful job partnering and certifying companies like ours nationally and as well as bringing the private sector companies, corporations together to introduce, if you will, these two organizations.

It is something that I can see as being the future of entrepreneurship for persons with disabilities because private sector has taken the role of this social responsibility like they have so many times with minority and women-owned businesses. And I believe that it will be the future for entrepreneurship for persons with disabilities, as well as asking if on the Federal side, we could maybe gain some support that has been lacking in the past.

Thank you very much.

[The prepared statement of Mr. Prinske follows:]

PREPARED STATEMENT OF TOM PRINSKE

INTRODUCTION

My name is Tom Prinske and I am one of two partners of a produce distribution company in Chicago, IL. I would like to express a very warm thank you to the committee and all of those responsible for allowing me this opportunity. I am especially pleased to be here today as we celebrate the 21st anniversary of the signing of the Americans with Disabilities Act (ADA). I am aware that this committee has had a series of bipartisan hearings exploring the issue of how best to improve employment and economic well-being of people with disabilities, and I appreciate this opportunity to talk about what has worked for me as a small business owner with a disability. I am very aware of the shockingly low employment rates of people with disabilities, and I am here to make the case that expanding opportunities for disability-owned businesses is an effective strategy for bringing more people with disabilities into the labor force. Speaking to the theme of today's hearing, I also want to make the point that as people with disabilities continue to fight to make a place for ourselves in the middle class, we have a special responsibility when we take on the role of an employer to give back by treating our employees well and creating ladders of opportunity for others.

MY STORY

When I was in my teens, my parents and I learned that I was going to lose about two-thirds of my vision by the time I was 25 years old. At the time, in the 1970s, it was very difficult for partially-sighted people to obtain much adaptive technology to help with reading or writing. There was help with braille and talking books for the blind, but outside of magnification, there wasn't much available for the partially-sighted. As a result, I barely made it out of high school and really felt as though college was not a possibility.

After high school I worked at a few labor jobs and did what I could to get by, while my vision was getting worse each year. I was given a chance to work with my uncle in his small produce business and I accepted. The only problem was that he had the same inherited eye disease as me, except he was further along than I was at the time. In addition, the business only had annual sales of about $100,000 a year, and it was barely generating enough for us to get by. After I was unable to continue to drive for us anymore we had to hire an expensive driver, and there was a sense that we were definitely going to go out of business in a short time. In fact, we got to the point where I looked into applying for Social Security disability benefits as a means to get by. At 26 years old, that was a tough pill to swallow.

I then began researching how I might be able to generate business under my circumstances. When I was looking at applying for disability insurance, I thought to myself, "I bet the government has some type of opportunity for businesses owned by persons with disabilities," and I began to research that. I quickly learned that there was really nothing in place legislatively for disability-owned businesses, but I did find that there were programs in place for minority- and women-owned businesses at both the State and local levels.

Just as I was about to throw in the towel, I awoke from a nap with an idea. I began researching who my local State legislators were and thought I would write them a letter. The first one I sent was to State Senator James "Pate" Phillip. About 2 weeks after I sent it, Senator Phillip's staff person contacted me and told me that Senator Phillip was not aware of any programs regarding businesses owned by persons with disabilities but that he would like to look into writing a law that would create such a program. A few weeks later, the staff person contacted me and told me that Senator Phillip was going to try to amend the State of Illinois' Minority and Female Business Enterprise Act to include businesses owned by persons with disabilities, and to ask if I would like to help. With our efforts being pre-ADA, the toughest part of the process was writing the definition of a person with a disability. However, we were able to get it done and we now were ready to present it to legislators. I was asked to testify at both the Illinois House and Senate committee hearings and when it was finally voted on, there was not one vote against the amendment. As a result, on January 1, 1992 Governor Edgar signed into law the amended version of the Minority and Female Business Enterprise Act that is now titled The Minority, Female and Persons with Disabilities Business Enterprise Act.

After becoming the first certified disabled-owned business in the State of Illinois, I began to research new potential business opportunities in State facilities. I learned that for my type of business, most of the opportunities were not directly through State contracts but as a sub-contractor for food service management companies that had contracts with the State like Marriott, Sodexo, Aramark, and several others.

With our new certification, I was able to introduce my company to organizations that never would have considered doing business with us in the past. We now were able to fit two needs in these fine organizations. One, as a tool to help them meet potential contract requirements with State facilities, and two, the company's social responsibility efforts in the company's diversity programs.

Marriott and Sodexo were the first to accept our company into their system and we needed to show them that we had the ability to perform. Over the next few years we were able to grow the company to over $1 million a year in sales, and these companies began viewing us as a real asset. We knew that our certification gave us a great opportunity to engage in new business, but there were no guarantees. In my mind, it was critical to express to these companies that we viewed our business relationship with them as an opportunity, not an entitlement. We knew that we had to work at continuing to bring in product and service at fair market value, despite the fact that operating our disabled-owned business had added expenses that our competitors did not experience. This is a real fact for business owners with disabilities. In my business, we need a driver to drive both my partner and I. We need an office person dedicated to reading and working directly with us, adaptive technology for our computers, and several other expenses that fall under the cost of doing business. No other groups have these types of added expenses to their companies. At the end of the year, relative to the disability, these costs can be significant. That is one of the reasons why giving disability-owned businesses a competitive advantage in going after contracts and subcontracts is good policy.

Over time, as we built a relationship with these companies, we earned their trust and saw business expand. We not only were receiving business from the State of Illinois, but also more opportunities to compete for other private sector business. By the fifth year of our certification we had grown our annual sales to more than $2 million dollars while adding two trucks and five employees.

Around this time I began a dialogue with the city of Chicago in an effort to include persons with disabilities in the city's minority- and women-owned business program with the procurement department. I first approached a relatively new office that Mayor Daley had established called the Mayor's Office for Persons with Disabilities. The executive director of MOPD, David Hansen, embraced the idea and we proceeded to begin the efforts of amending the existing ordinance. This effort was a much more difficult one, and did not result in the inclusion of business owners with disabilities into the existing ordinance. We were able to create a separate ordinance that only certified business owners with disabilities, but did nothing to create an incentive for the city to do business with these companies. As a result, it has not been as productive as the State's law.

Nonetheless, we continued to grow our business each year by creating more and more opportunities by partnering with other private sector companies. We began to directly approach larger corporations through their diversity office. Over the years, these companies have embraced the concept and have truly gone beyond the call of duty to not only include business owners with disabilities in their procurement diversity programs, but also to view the disabled community as a hiring resource.

The combinations of all these factors over the past 25 years has brought T. Castro Produce into quite a different look than when I began, and much further than I have ever imagined. The company had annual sales in 2010 of $6.8 million. We are based in a 20,000-square foot warehouse in Chicago, operate six trucks throughout Illinois, and what I am most proud of, we employ 15 people.

One of the most difficult things to deal with in living with a disability is having to rely on people for their help during the course of the day. For instance, I have to get a ride to work each morning and I need my mail read to me. To think that the same person who needs this help can also employ 15 people, gives me the sense that I am not a drag on society, like a lot of persons with disabilities. In fact, the responsibility I feel toward my employees is a direct result of the accomplishments we have achieved in bringing the business as far as we have, despite our disabilities. With our success, we feel strongly that we need to treat our employees with respect and fairness, which is what we as disabled business owners have been trying to achieve for ourselves. I believe it would be quite hypocritical to act otherwise. As a result, we pay our workers a well-above minimum wage in our warehouse, above the going rate for drivers and office personnel, and everyone is offered health care, of which the company pays 70 percent. We are proud of the fact that we have a very low turnover of employees, and we believe it makes good business sense when our customer sees the same drivers over and over, and talks to the same personnel in the office for years. It gives our customers a certain feeling of comfort to see the same face over and over again.

Naturally, none of this would have been accomplished if not for our first certification with the State of Illinois. I am hopeful that more State and local govern-

ments, and the Federal Government, would pass laws similar to the Illinois law so that there would be more of an incentive for people with disabilities to start their own businesses.

Although the public sector has been slow to embrace disability-owned business enterprises in many instances, I have been encouraged by trends I am seeing in the private sector. More and more I am finding through large corporation's Web sites that their diversity programs specifically include persons with disabilities along with minorities and females. The fact that these companies have made commitments to disabled-owned businesses is increasingly evident, as can be seen through the emergence of the United States Business Leadership Network (USBLN). The United States Business Leadership Network (USBLN) has brought both business owners with disabilities and large corporations together. The USBLN® Disability Supplier Diversity Program® (DSDP) offers businesses that are owned by individuals with a disability, including service disabled veterans, an exciting opportunity to increase their access to potential contracting opportunities with major corporations, government agencies, and one another. Through the USBLN® DSDP, a disability-owned business can obtain Disability-Owned Business Enterprise Certification and get connected to a nationwide network of corporate and government procurement professionals, disability advocates, and other certified disability-owned businesses. T. Castro Produce Company is a proud, certified Disability-Owned Business Enterprise of the USBLN®!

The USBLN®'s certification process is extremely rigorous and challenging, thus preventing those without disabilities who might try to "game" the system to achieve certification. At the same time, it does not preclude severely disabled business owners, many of whom rely on others for assistance, in achieving certification. The USBLN has certified several businesses owned by persons with intellectual and other disabilities.

The private sector has moved quickly to join the Disability Supplier Diversity Program by including disability-owned businesses among their preferred vendors, which also include businesses owned by minorities and women. Diversity efforts are intended to include everyone, and most progressive companies know their employees must look like their customers and their customers must look like their vendors. It's time for the Federal Government to step in and step up!

The Federal Government can assist certified disability-owned business enterprises in several ways:

- First, by setting aside Federal procurement opportunities for certified disability-owned businesses, the Federal Government can provide disability owned businesses with significant opportunities to grow and hire more employees, including people with disabilities, by delivering our goods and services to its many Departments and Agencies.
- Second, either through legislation that could begin within this committee or by the President issuing an Executive order, Federal contractors could be encouraged to use certified disability-owned business enterprises in their procurement efforts.
- Finally, the Federal Government can use its platform to recognize leading Federal contractors who embrace disability as an integral part of their Diversity & Inclusion efforts and who participate in this certification program, such as IBM, Sodexo, Merck, Ernst & Young, J.P. Morgan Chase, Marriott International, Freddie Mac, KPMG, Microsoft, QUALCOMM, Southwest Airlines, Sun Trust, Wal-Mart, Wells Fargo, WellPoint and Lowes. The list continues to grow each day.

In closing, I want to reiterate my belief that people with disabilities want to work, make a living, and be part of the middle class. Business ownership isn't for everyone, but it is one proven strategy for helping disadvantaged groups take their place in the middle class and create jobs for other people at the same time. As you know, small businesses are the primary engine for job growth and economic development. As we celebrate 21 years of the ADA, let's recommit ourselves to creating more ladders of opportunity for people with disabilities, and let's make sure that business ownership is part of our strategy.

The CHAIRMAN. Well, Mr. Prinske, thank you very much for a very eloquent statement.

We will start a round of 5-minute questions. And since this is the 21st anniversary of the signing of the Americans with Disabilities Act, Mr. Prinske, I will start with you.

Quite a story. You know, there are four pillars of the Americans with Disabilities Act, four pillars. Two of the four pillars are full participation and economic self-sufficiency.

Mostly we have focused on the issue of providing jobs, meaningful jobs, to people with disabilities. I mentioned earlier that right now, we are facing about a two-thirds unemployment among people with disabilities. But there is a subset of that that has not been focused on very much, and that is the equal opportunity portion of the ADA, married up with economic self-sufficiency, and that is providing the opportunity for people with disabilities to own their own business.

Mr. PRINSKE. That is right.

The CHAIRMAN. We had a project in my State of Iowa some years ago that worked on this, and we found that with just some training in elementary things like bookkeeping and accounting and things like that—Mr. Enzi understands—we found that people with disabilities starting a small business were quite entrepreneurial and grew those businesses and provided goods or services to people in different parts of the State. But it did require some training and did require some input in basic business principles and things like that.

From your experience, I want you to speak a little bit more about what owning a business means to you. What you would say to people with disabilities today who would be thinking about starting their own business.

You said something about how the Federal Government should do what the State of Illinois has done. I am going to look into that. I am not certain that we have that in our Federal laws in terms of minority and women-owned businesses. You say it doesn't apply to people with disabilities?

Mr. PRINSKE. Yes, sir. It does not.

The CHAIRMAN. That needs to be changed. That is what you are saying right?

Mr. PRINSKE. That is what I am saying. That is what I said 20 years ago in Illinois, and Senator Pate Philip made the change then.

The CHAIRMAN. Tell me just a little bit more about your own employees. You have employees. You believe in giving them a shot at the American dream. Tell me more about how you do that, I mean, what you do with your employees.

Mr. PRINSKE. OK. I think, when I put my written statement together, it really, truly would be hypocritical if a person, or myself and my partner, didn't feel like we needed to give back. We felt as though we were very, very fortunate to have an opportunity based on the legislation that came out of Illinois and feel very, very strongly today, how fortunate we are to have the opportunity and to have the business that we have.

Giving back to my employees is a huge part of how I am at work. It is very, very important that we give back. And in particular, looking at persons with disabilities as a first hire is something that my partner and I feel is very, very important.

But I truly feel, Senator, that the Federal Government needs to show now leadership. If State government, and even in the city of Chicago, there is an ordinance in place for putting business owners with disabilities in programs like minority and female-owned businesses, and now with USBLN certifying in a national effort, I truly believe that the Federal Government needs to stand up and say

that persons with disabilities are truly a viable source for entrepreneurship.

One of your first questions, Senator, was, what do I feel about who should be a—how do I view entrepreneurship for other people with disabilities? It is probably the same ratio—I was talking to your staffer, Andy, about that earlier today. It is probably the same ratio as the nonpersons with disabilities.

Not everybody is cut out to be a business owner or an entrepreneur. You know, one of my sons will be, and the other one will definitely not be. But entrepreneurship isn't for everyone. But to create opportunities like there are in place for minority and female-owned businesses, what is more worthy a group, Senator, than persons with disabilities?

The CHAIRMAN. Well, thank you very much.

And I am going to take a look at the Federal contracting dollars. We have been at this before, but we are going to have to take another look at it, I think.

I have further questions for the rest of the panelists. But my time is up. So I will yield to Senator Enzi.

STATEMENT OF SENATOR ENZI

Senator ENZI. Thank you, Mr. Chairman.

I want to thank all the people on the panel. Your testimony has been extremely helpful.

I have more questions than I will be able to ask during the allotted time as well, and we are coming up against a vote. So I hope you would be willing to answer some questions submitted in writing.

I will begin with Dr. Green. From your testimony, I learned that some of the stimulus projects have gone belly up already. Can you elaborate a little bit on that?

Mr. GREEN. Well, these are basically from news reports that are available to anyone. We suffer from a paucity of data.

The company I am thinking of, most recently, an electric car company in California declared bankruptcy after receiving numerous infusions of both State and, I understand, Federal stimulus moneys to build a new electric car company.

Last year, I believe a solar power company, a solar company that was built with stimulus funds closed up. It developed a successful business. Then it closed up and moved it to China. And so, there are some of the battery manufacturers that are not proving out in terms of being unable to come forward with the sort of advanced technologies they promised to produce.

Senator ENZI. You also mentioned that taxpayer dollars are going to fund foreign jobs, as well as being extremely expensive per job in the United States. How is that money going overseas?

Mr. GREEN. This is an interesting problem, and it is one that actually new findings have made even more interesting. The renewable technologies, a lot of the high technologies and renewable technologies—and if I get too deeply in the weeds, just sort of wave at me. They depend on a class of elements some people call them critical energy elements. Other people call them rare earth elements.

These are certain classes of metals primarily that have very unique characteristics. So if you want to build a wind turbine, the generator requires extremely strong magnets. To make these magnets, you need to add these particular metals to the magnets.

The problem is, is that the source of these metals increasingly, in fact, 97 percent of the market is controlled by China, in the rare earth elements. And these metals are used in almost every advanced technology you can name that is on your body now, from your cell phone to your hybrid vehicle, to your battery-operated car, to your wind turbine, to your solar panels. They are doped with these minerals—these metals as well—elements as well.

And so, because they have the metals locally, they are, in fact, using their trade power, perhaps unfairly, to encourage companies to come and build the products there with local labor and local access to the rare earth elements to then ship them elsewhere, to the United States and to Europe, for example. And so, in a sense, what is biasing this movement of the renewal of the funds is the more we look at sort of high-tech outlets, we limit ourselves to these being built abroad, where they have lower environmental standards often, sometimes better on paper, but poorer in practice.

They have access to these rare earth elements, which, by the way, again, the production of it is extremely environmentally difficult and dangerous as well. And so, in a sense, we are losing out on those grounds.

Senator ENZI. Well, I am pleased that a rare earth mine may be opened in Wyoming. They have discovered some of those minerals about 60 miles from my home. So that may ease a little bit of that tension.

I have some other questions, but I will—because I want to know more about the green jobs funded by stimulus dollars costing jobs, but I will move on to Ms. Corey.

You mentioned the social bottom line in your capacity building. Would you support requiring every small business to provide all of the benefits you provide on day one when it hires its first employees. Why or why not?

Ms. COREY. I think that, as I said earlier, all employees should be able to provide for their families and for themselves. And obviously, a living wage and benefits will vary, depending on where a business is located. But I do believe that businesses should be striving to provide those types of benefits to employees as soon as possible.

Senator ENZI. What is your starting wage?

Ms. COREY. Currently, our starting wage is $10 per hour, and we work very quickly, through the professional development plans with our employees, to get that increased as soon as possible.

Senator ENZI. Thank you.

Ms. King, recently there was an SEIU document titled “Contract Campaign Manual,” which was made public as part of a lawsuit against your employer. The manual contains some disturbing tactics, including threatening the employer with costly Government or legal action, telling employees to do no more than what is required in the union contract, telling employees to not solve or suggest solutions for workplace problems, telling employees to refuse to par-

ticipate in employer-sponsored social and charity events, and going after employer's clients, suppliers, etc. That is just a part of it.

This document underscores why so many private sector workers have lost faith in unions. Do you endorse those tactics?

Ms. KING. First of all, let me say that I work for a joint labor-management project. My board is half healthcare employers and half people from SEIU. I am not an officer of SEIU.

But what I can say is that from what I have seen from the work that we are doing with over 600 employers, it is helping workers. It is helping patients, and it is helping those institutions' bottom lines. So I think there are very many positive things that the labor movement is contributing to.

Senator ENZI. Certainly. My time has expired.

Thank you, Mr. Chairman. I will submit additional questions in writing.

The CHAIRMAN. OK, thank you.

Senator Franken.

Senator FRANKEN. Thank you, Mr. Chairman.

Dr. Green, I was intrigued by your explanation of how inefficiently the Government creates jobs using Taxpayer Tom and Bureaucrat Bob. Do you mind terribly if I call you Witness Ken?

Mr. GREEN. Not at all, Senator, and I will not call you anything other than Senator.

Senator FRANKEN. You can call me Senator Al.

[Laughter.]

Now, your conclusion is, "The idea that Government can create jobs in the economy is a myth." I would like to take issue with that conclusion. And so, for a while here, I may be just saying some stuff before I get to any questions.

This hearing will be seen on C-SPAN. C-SPAN stands for Cable Satellite Public Affairs Network. Our first satellite was launched by the Army Ballistic Missile Agency, a Government agency. Of course, our satellite technology was further developed by the Government. Today, we have industries based on satellites. I think you know about GPS and smartphones and all the kinds of jobs that came out of our space program.

This hearing will also be available on the Internet. The Internet was developed by the Government, too, and has created a lot of jobs. I don't know if maybe you have looked at the Internet.

You tell us that your doctorate is from UCLA, a public university. I wonder if any of your professors thought they had jobs. I would suspect that they do.

I think about, oh, this has been going on for a while, kind of here in this country. the Erie Canal. The Erie Canal was built by the government of the State of New York. We all remember Dewitt Clinton. It really connected the Midwest to the Atlantic Ocean and created a lot of jobs. It made it much more efficient for farmers to ship their goods and lumber to the east coast and then to Europe, it connected the Great Lakes to Europe.

The interstate highway system was built by Government. I wonder how many companies rely on the interstate highway system to ship their goods? Rural electrification seemed to create a lot of jobs during the 1970s.

And I will bet you, Witness Ken, that you would be grateful if you got very sick at some point, and that you are saved by a cure that came from research from the NIH that not only saved your life, but then would save your job.

To come to the conclusion that the idea that the Government can create jobs in the economy is a myth, to me, is just absurd. And where did you go undergraduate? Did you go to a public university undergraduate?

Mr. GREEN. Yes, I am proudly public school all the way. Other than third grade when we left New Jersey and I was taken out of Yeshiva, I was a public school student ever—

Senator FRANKEN. So, is the Yeshiva responsible for all of this, everything?

Mr. GREEN. No, of course not, Senator.

Senator FRANKEN. Because we are good. I mean——

Mr. GREEN. I will simply—let me add two words, which I am sure you understand are already in my testimony. Those two words are "on net." Of course, it would be absurd to say that the Government can't create jobs. And it would be absurd to say that——

Senator FRANKEN. Well, that is what you said.

Dr. GREEN [continuing]. I am not helped by healthcare. I have been helped by healthcare. I had a heart attack not that long ago and was very glad to receive a stent.

But the "on net" is the key point, which is, while we would love to believe that we can suspend rules like gravity and things like that, the fact of the matter is there are transferred costs to payments. There are more expensive jobs than less expensive jobs, and there is no evidence that on net the Government can create jobs.

I would just like to say, you pointed out some great examples, and I wish we had an entire hearing for this, because many of the examples you pointed out created many of the environmental problems you now decry. The interstate highway system—a wonderful thing. Many, many benefits. Also led to huge rural and suburban living that have caused urban sprawl, greater driving, greater environmental problems, fractionation of the landscape, ecosystem disruption. The list could go on for a very long time.

Rural electrification, wonderful thing. Electricity is vitally important to lift people out of poverty. Side effects, people living in places—in flood plains, in drought areas, far away from urban centers, causing many of the problems that are bemoaned today environmentally, socially, and otherwise.

Senator FRANKEN. OK, sir. I hate to interrupt. But may I remind you what your actual testimony was, "In conclusion, the idea that Government can create jobs in the economy is a myth."

Now, either that is your conclusion, or it isn't. And if it is not your conclusion, you probably should have said so. And so, when we receive testimony here in the U.S. Senate, we really like the testimony to say what it means and mean what it says.

So if you were going to say now we could have an enormous discussion over net jobs created by the Internet. I think the Internet, it is hard to—do you believe the Internet did not create net jobs?

Mr. GREEN. I actually worked with people who were working on the Internet at UCLA. The question is, what created the jobs? Did the Government pave the way for the technology? Certainly. Was

it private businesses who marketized the technology and created the jobs? Absolutely.

You pointed to satellites. The same thing is true. Did the military and the space program invent some of these technologies, basic R&D? And by the way, I have written in favor of basic R&D as a Government function in the past. Yes, absolutely.

Senator FRANKEN. Why would you do that if doesn't create jobs?

Mr. GREEN. Because it is a genuine market failure. And it is——

Senator FRANKEN. OK. My time is up.

Mr. GREEN. So is mine.

Senator FRANKEN. But I will let you finish because you are Witness Ken.

Mr. GREEN. Thank you, Senator. Thank you, Senator Franken.

[Laughter.]

The bottom line is, is that, of course, you can create jobs. And R&D, as I have written before, is a vital function of—legitimate function of Government because it represents an actual market.

Senator FRANKEN. Ah, thank you.

Mr. GREEN. But as somebody recently joked, the only way to make sense of the manned space program—for example, it is a sad thing, but true—is that it makes a good story if you run it backwards, which is, first, we had no spaceflight capability, then we had low-Earth orbit, then we went to the Moon. And then we now have no spaceflight capability.

So these things are not always sustainable when the Government builds them, and that is something to keep in mind.

Senator FRANKEN. Thank you. And I am sorry to go over my time.

The CHAIRMAN. Thanks, Senator.

Ms. Corey, one of the things we often hear is that the way to increase jobs is to let businesses pay their workers the lowest amount possible, source their materials from the cheapest provider anywhere in the world, be free of any Government regulation or oversight.

IceStone's story is the exact opposite of that. You pay your workers a living wage. You source your materials from the United States, and you work with local government to improve the safety of your factory.

So the question is, how do you stay competitive while taking all of those steps? And what drives IceStone to expand and hire new workers?

Ms. COREY. I believe that the way that IceStone is staying competitive right now rests on the quality of our product, as well as on the location of its manufacturing. Most of our competitors are manufactured or quarried overseas. And as consumers begin to demand more products or services that are available to them locally, the demand for durable surfaces and stone that is sourced locally is also increasing. And so, IceStone, being manufactured in Brooklyn, NY, has definitely had an appeal and has enabled us to remain competitive.

And the first part of that was the quality. As I displayed our sample earlier, the look, the composition, and the aesthetics of IceStone are really what set us apart from our competitors. And so, architects, designers, and builders are able to distinguish IceStone

from other products. And there are very few competitors right now in our space that can produce a similar look that meets the quality standards that IceStone does.

The CHAIRMAN. Tell me about the co-founding of B Corporations, a network of 427 companies that proved businesses have the power to solve social and environmental issues. You say, five States have signed legislation that recognizes B Corporations.

Again, it seems that this goes counter to everything that we are hearing now. That, again, the way to beat your competition is to pay workers less, cut benefits, do everything you can so that they don't unionize, all those kinds of things. But you seem to be going in the opposite direction, and so do the 427 other companies. Again, are they profitable companies?

Ms. COREY. The B Corporations that are part of that network, as well as the businesses that are within the American Sustainable Business Council, are profitable businesses and businesses that are striving toward profitability as well. They range in size.

I think the trend that these businesses are really underscoring is that in order to be profitable, social responsibility and environmental stewardship need to be valued on par with fiscal profitability. And the five States, which have passed that legislation of recognizing B Corporations and holding them to standards, are Hawaii, Maryland, New Jersey, Vermont, and Virginia. There are seven States that have legislation pending.

The CHAIRMAN. Well, I just find that fascinating. The other thing I would like to know is what is the divergence? What is the span, the gap between the income, the payment to the CEO of your company and the workers on the floor? If you don't know that right now, I would like to have you submit that.

Ms. COREY. I know that it is less than a 10× spread between——

The CHAIRMAN. It is less than——

Ms. COREY. Less than a 10× spread between the——

The CHAIRMAN. Ten times.

Ms. COREY [continuing]. Between our gemba, our operations team, and our CEO. And I could certainly submit the detailed answer in writing to you.

The CHAIRMAN. Because one of the things we have seen in the past 30 years has been a tremendous gap opening up between the pay and remuneration for CEOs and other high-ranking people of these publicly held corporations—privately held, too—and the amount of income of the workers in those plants or in those companies.

I think I am right in saying this, that in the heyday of the 1950s, 1960s, maybe early 1970s, I think the gap was around 20 times, between the pay at the top and the bottom, or the workers. I think that has widened. I think the average now in America is, I think, almost 300 times now.

And I just wonder what effect that has on sort of the mindset of those who work there and what that says to them about their worth and their own individual worth, but their worth to the company when CEOs just keep making more and more and more money, and they get golden parachutes, and they have great pension benefits and everything, but the workers don't.

Ms. COREY. Well, IceStone has a very flat structure. Organizationally, we do not have what is commonly found in a lot of manufacturing companies or other corporations, where there is a hierarchy, and there are such gaps in pay, but also in the impact that workers at various levels can have on the operations of the business.

And as I mentioned earlier, the professional development plans that every employee is required to create each year are really helping to keep our company flat and to also bring conversation and transparency between our C suite and between the floor.

Something else that we do is hold a town hall meeting every month. And that town hall meeting, every single member of our company—from our CEO, our co-founder, our VP of sales and marketing, to the employees who are making our product—gather together, share a meal, but also discuss topics of business. We go over our yields. We celebrate birthdays. We share important safety announcements.

Those types of activities at IceStone are really helping—in addition to the minimal gap in pay—are really helping to create a culture where all employees feel valued and all employees feel that they are having an impact on the business.

The CHAIRMAN. Thank you, Ms. Corey.

Senator Enzi.

Senator ENZI. Thank you.

Again, I appreciate all the testimony, and I know votes have started. So we are running out of time here.

But, Ms. Corey, you remind me of a company that I knew before I ever got to Washington. They put out a little video. It was called "The Great Game of Business." The tractor repair company was going broke, and the employees decided to buy it.

Of course, the employees found out they really didn't have any assets, but they were still able to buy it. They did many of these things that you are talking about, where they were very inclusive of the employees and kept them informed of the bottom line and encouraged ideas. I think that is a tremendous way to do business, and I congratulate your company for it.

I didn't get to ask Mr. Prinske a question. Your testimony, Mr. Prinske, it was very, very inspiring, and your presentation today was also. For small businessmen and women, that have disabilities, pursuing the American dream is not an easy road. And you have done it.

In your testimony, though, you mentioned that one challenge for your business is keeping the cost of your products and services competitive when you are faced with higher operational costs. Would you share with us some of the decisions that you have to make in order to mitigate those costs?

Mr. PRINSKE. Well, there really isn't much you can do other than live with them. It is just a cost that I think is a fact of life for business owners with disabilities. When adapting the company to our disability, it is just more of an expense that is not incurred by our competitors, unless, of course, they would have a disability.

I think it is an important fact that we need to realize in the company. But we can't pass it on or complain about it to our customers. It is a reality. And it is something that should be consid-

ered when looking at trying to level the playing field for persons with disabilities to compete like minority and female-owned businesses are.

Those two groups, frankly, don't experience that extra cost. But you are right. I did point out that—and those are real expenses. I mean, to get 25 miles from Elmhurst, IL, to where my warehouse is in Chicago, I have to have a van from work come and pick me up and bring me back, and the same thing on the way home. So those expenses are real.

Senator ENZI. Well, I thank you for coping with that and would appreciate you sharing in some written testimony any ideas that you have for businesses providing those services because it is essential. I congratulate you for what you have done and for what you are doing for the disability community.

We will try and do our part in that, too. I will work with Senator Harkin to see what the Federal requirements are and appreciate you bringing that to our attention.

Mr. PRINSKE. Well, I thank you very much for being—one of the first steps is being part of this group, this hearing. It is important that persons with disabilities are in the picture, and then discussions like this will take place.

I am sure you are aware of that, and that is why you invited me. And I am very grateful to all of you that did invite and allow me to represent persons with disabilities. I appreciate it.

Senator ENZI. Thank you. I will forego the rest of my time.

The CHAIRMAN. Thank you, Senator Enzi.

We have 8 minutes left.

Ms. King, I am sorry. I had a whole number of questions for you. If you don't mind, I will submit them to you in writing.

And again, on the 21st anniversary of the ADA, I couldn't think of a better witness, Mr. Prinske, than you to give some hope and encouragement to people with disabilities that they, too, can become entrepreneurs and own their own business.

Mr. PRINSKE. You are very kind. You are very, very kind. Thank you very much.

The CHAIRMAN. I thank all of our witnesses. You have all, I think, contributed a lot to this hearing.

And again, we will continue. As I said earlier, we have to have more of a national debate on what is happening to the middle class. There are certain facts that are irrefutable in terms of income and slice of the national income and things like that.

What has caused it and what solutions we may have is open for debate and discussion. And I think it can be a healthy debate. But I really believe it is the debate that we have to have.

I know we are all wrapped up now in this other thing that is going on around here, and that is important. But we have got to have a national discussion and debate about, is the middle class worth saving in America? Is it something that makes us a kind of unique country?

If so, what do we do? What do we do to kind of re-energize and rebuild that middle class that has been sinking? As I said, I don't have all the answers, but we need a national discussion on this.

And yes, we can all have differences on how we get there. But through that kind of debate and discussion, we make progress. I

don't think debate and discussion necessarily mean stalemate. It means you get the best ideas out there. You challenge other people's thinking, and out of that, maybe we will come up with some ways to solve this problem.

But I believe it is a very big problem, and this committee is going to continue to have hearings and discussions on this. And hopefully, we can engender a national discussion on what is happening to the middle class and what we do to rebuild it.

I guess implicit in what I just said is that I do feel that it is important for this country to have a solid middle class.

Thank you all very, very much. You see our vote has started, and I am going to be late if I don't get out of here.

Thank you. The record will stay open for 10 days for other questions or submissions.

Again, I thank the panelists for being here today, all of you. Thank you very much.

[Additional material follows.]

ADDITIONAL MATERIAL

RESPONSES BY HILDA L. SOLIS TO QUESTIONS OF SENATOR HARKIN, SENATOR WHITEHOUSE, SENATOR MURRAY, SENATOR CASEY, SENATOR ENZI, SENATOR ISAKSON, AND SENATOR HATCH

SENATOR HARKIN

At the hearing, Senator Isakson asked you about certain data that is collected under the Occupational Safety and Health Act. To followup on this discussion, what is an incidence rate? How is it calculated? Who is required to report this information? For what purpose does the Department of Labor use this information? Does the Department have any rules or regulations that prohibit or disqualify employers from being awarded any contracts based on recordable injury and illness rates?

Question 1. What is an incidence rate? How is it calculated?

Answer 1. In the context of occupational injury and illness statistics, an incidence rate is an expression of the number of injuries and/or illnesses in relation to a fixed unit, such as the number of hours worked, or the number of full-time employees. For example, BLS publishes an incidence rate for total injuries and illnesses per 100 full-time workers calculated as follows: (N/EH) × 200,000, where: N = number of injuries and/or illnesses, EH = total hours worked by all employees during the calendar year, and 200,000 = hours worked by 100 full-time equivalent workers (working 40 hours per week, 50 weeks per year). Other incidence rates may be expressed per 10,000 or 100,000 full-time workers.

Question 2. Who is required to report this information?

Answer 2. OSHA does not require employers to report incident rates as such. Employers subject to OSHA's recordkeeping rule must record work-related injuries and illnesses that meet certain criteria and must prepare a year-end summary reflecting the total number of cases and hours worked. OSHA requires employers in some industries to report information from their injury and illness records to the agency, including total cases and hours from the summary. BLS separately collects data from a statistical sample of employers and uses the data to calculate incidence rates as part of the national injury and illness statistics.

Question 3. For what purpose does the Department of Labor use this information?

Answer 3. Incidence rates are used for a variety of purposes, including identifying industry sectors warranting national and local emphasis programs, identifying emerging trends, setting regulatory priorities, and measuring the impact of various OSHA programs on occupational safety and health.

Incidence rates are also used by employers, researchers, employees and employee representatives, among other groups, in researching the causes of occupational injuries and illnesses and in developing effective abatement measures.

Question 4. Does the Department have any rules or regulations that prohibit or disqualify employers from being awarded any contracts based on recordable injury and illness rates?

Answer 4. Neither the Department of Labor nor OSHA has a rule or regulation that would prohibit or disqualify employers from being awarded contracts based on injury/illness rates.

SENATOR WHITEHOUSE

Question 1. The Department of Labor's ERISA fiduciary proposal takes appropriate steps to ensure that people who give retirement advice stand behind it and look out for the customer's best interest by becoming a fiduciary. I understand the Department is looking at further changes to ERISA that would allow different business models (e.g., commission, managed account, etc.) to give advice as long as they become a fiduciary. Can you tell me where those efforts stand?

Answer 1. On September 19, the Department announced it will re-propose the definition of a fiduciary, with the new proposed rule expected to be issued in early 2012. As we stated in our September 19 news release, we also anticipate issuing exemptions addressing concerns about the impact of the new regulation on the current fee practices of brokers and advisers, and clarifying the continued applicability of exemptions that have long been in existence that allow brokers to receive commissions in connection with mutual funds, stocks and insurance products. The agency will carefully craft new or amended exemptions that can best preserve beneficial fee practices, while at the same time protecting plan participants and individual retirement account owners from abusive practices and conflicted advice.

SENATOR MURRAY

Question 1. How can we expand proven approaches, such as on-the-job training, incumbent worker training, sector strategies and registered apprenticeships?

Answer 1. The Department of Labor is taking multiple steps to identify and expand proven workforce approaches by providing the public workforce system and its partners with increased information on the services delivered by the workforce system that are most cost-effective, demand-driven and high-impact and by developing new venues in which to provide that information.

First, the Fiscal Year 2011 continuing resolution included $125 million for a new Workforce Innovation Fund (WIF) to demonstrate innovative strategies or to replicate effective evidence-based strategies that support greater coordination of systems and structures between workforce development, education, human services and other programs to improve the workforce investment system, leading to better employment and related educational outcomes, connecting employers to the skills they need, and increasing the cost-effectiveness of service delivery. The Department is pursuing an aggressive timeline for publication of the WIF solicitation.

The Department intends that the WIF:

- Invest in projects that are designed to deliver services more efficiently and achieve better outcomes, particularly for vulnerable populations, including individuals with disabilities, and dislocated workers;
- Support both structural reforms and the delivery of services;
- Emphasize building knowledge about effective practices through rigorous evaluation;
- Translate into improved labor market outcomes and increased cost efficiency and other measures in the regular formula programs; and
- Encourage the use of waivers, consistent with program requirements, to facilitate integration and coordination across programs and funding streams.

This investment in innovation and best practices will establish the infrastructure necessary for the continued integration of innovative, evidence-based and cost-saving workforce strategies that will lead to improved service delivery for both job-seekers and employers.

Second, the Department has embarked on an effort to identify and disseminate information on best practices methodologies to benefit the public workforce system. This initiative establishes levels of rigor and uses consistent processes and terms for information on best practices and enhances quality and presentation of practices descriptions.

Third, we have built online communities, which provide a medium in which our grantees can share their experiences with the Department and other grantees. For example, the 21st Century Apprenticeship online community provides a useful forum for apprenticeship stakeholders and the Department to share successful approaches for expanding apprenticeship.

Finally, the Department conducts pilot projects, demonstrations, research and evaluation studies that contribute to improving the understanding of how programs work and the effectiveness of service approaches. In addition, most of the Department's grant programs are designed to accommodate independent evaluation of program outcomes and impacts. For example, the Workforce Investment Act Gold Standard Evaluation of the Adult and Dislocated Worker Program will help policymakers and practitioners assess the impact of WIA-sponsored Adult and Dislocated Worker activities on participants in the programs. The Green Jobs Innovation Fund grants, awarded in June 2011, will help expand registered apprenticeship, pre-apprenticeship, and many other training opportunities in the energy efficiency and renewable energy fields. The $240 million H–1B Technical Skills Training grant program is designed to provide education, training, and job placement assistance in the occupations and industries for which employers are using H–1B visas to hire skilled foreign workers, and the related activities necessary to support such training. The first round of grants, totaling $159 million, were awarded in September 2011 across a variety of high-growth industries, such as advanced manufacturing, energy, health care, and information technology. ETA will award approximately $80 million during the second round of grants, focusing on on-the-job training (OJT) and other training strategies, healthcare-focused projects, and those projects that serve the long-term unemployed. In addition, ETA added additional funds totaling approximately $100 million for high-quality applications that are implementing OJT.

Question 2. I'm particularly concerned about reports regarding skills gaps—that small and mid-sized employers are having a hard time finding skilled workers to fill some of the 3 million job openings currently available. What more can we do

to work with small and mid-sized companies—the very companies that tend to be the engine of our economy—to close that gap?

Answer 2. The Department of Labor's worker training programs and job search assistance for both workers and firms are a vital part of helping the economy run smoothly. The Department of Labor provides crucial training for individuals who have left the formal education system, eligible youth, and workers who find themselves out of work and in need of re-tooling in the middle of their careers. Increasing the skills of U.S. workers is key for long-term growth and for the future competitiveness of our economy.

In addition, the Department of Labor plays a crucial role in providing information to both workers and employers. In any economy, employers will sometimes have a difficult time finding the right worker for the right position. The intermediary role played by the Department of Labor helps to grease the wheels of the labor market and helps the economy function more smoothly.

Problems with intermediation and skills gaps are always present, though unlikely to be the main reason for today's high unemployment. The simple fact is that we currently face a labor market that combines record high numbers of unemployed workers with record low numbers of job vacancies. Although 3 million job openings may seem substantial, there are still more than 1 million fewer job openings than on average in 2007, prior to the recession. With almost 14 million unemployed workers, there are still more than 4 unemployed workers for every open job. This pool of individuals looking for work means that businesses are generally having a much easier time filling their positions than in a stronger economy. For example, each month, the National Federation of Independent Businesses surveys small businesses, and asks whether qualified individuals are applying for their open jobs. In August 2011, 33 percent of employers said they had no qualified applicants. That number is still down dramatically from 4 years ago, when it was 43 percent.

The Department of Labor's Employment and Training Administration (ETA) has a dual-mission—increase employment opportunities for workers and promote economic growth for businesses by supporting skills development that aligns with business needs. The nationwide network of 2,900 One-Stop Career Centers supports businesses, including the small business community, by linking employers looking to hire with Americans looking for work. One-Stop Career Centers work with businesses to post job openings, screen and refer applicants, and provide other services to meet their workforce needs.

Employers are not only customers, but critical partners. State and local workforce investment boards that administer the One-Stop Career Center system at the State and local levels have a majority of members, as well as the board chair, from the business community. Participation on workforce boards is an important way that businesses in key sectors of the economy can help ensure that job training is meeting the needs of area employers. In addition, ETA's grant programs that focus on employment in key industry sectors, such as health care, green jobs, advanced manufacturing, and information technology, are required to have employers as partners.

A recent example of employer partnerships is the Trade Adjustment Assistance Community College and Career Training (TAACCCT) initiative, for which the Health Care and Education Reconciliation Act included a total of $2 billion over a 4-year period. In partnership with the Department of Education, ETA awarded $500 million in TAACCCT grants in September 2011 to community colleges around the country for targeted training and workforce development to help dislocated workers who are changing careers. These grants support partnerships between community colleges and employers to develop programs that provide pathways to good jobs, including building instructional programs that meet specific industry needs.

Another example of strong linkages with employers is the $37 million Jobs and Innovation Accelerator Challenge, a multi-agency grant competition to support the advancement of 20 high-growth industry clusters in rural and urban regions spanning 21 States. The winning projects, announced in September 2011, are driven by local communities that identified their economic strengths. Investments from ETA, the Department of Commerce's Economic Development Administration, and the Small Businesses Administration, as well as technical assistance from 13 additional Federal agencies, will promote economic and workforce development in industries such as advanced manufacturing, information technology, aerospace and clean technology.

ETA also supports small- and mid-sized businesses by supporting entrepreneurs. Many Americans have the motivation and skills to develop a small business on their own, but may lack business experience or more importantly the access to financing.

- ETA released guidance to the One-Stop Career Center system in November 2010 encouraging States to establish parameters for funding entrepreneurial training (*http://wdr.doleta.gov/directives/corr__doc.cfm?DOCN=2957*).

• To help emerging entrepreneurs, the Project GATE (Growing America Through Entrepreneurship) demonstration project teamed ETA training and assistance programs with economic development entities such as local small business development centers, local chambers of commerce, small business loan providers, and other such entities. Current grantees in four States are helping older and dislocated workers launch and grow successful businesses. A random-assignment evaluation of Project GATE, completed in December 2009, found that compared to the control group, participants started their first business sooner, and their businesses had greater longevity.
• ETA is also developing a new Self-Employment Training Demonstration focused on the role of One-Stop Career Centers in supporting self-employment in coordination with Small Business Administration programs.
• In collaboration with Small Business Development Centers, chambers of commerce, economic development leaders, business incubators, and higher education institutions, ETA developed a technical assistance tool kit to help local communities build a strong network for start-up entrepreneurs and small businesses, from their first hires through their first expansion.

ETA has made a significant investment in on-the-job training (OJT) through the award of $75 million in Recovery Act funds for OJT National Emergency Grants to 41 States, the District of Columbia and three federally recognized Native American tribes. OJT is of particular value to small businesses because it can offset initial training costs to fill skilled positions while building organizational productivity as the participant learns job requirements. This initiative so far has led to 2,000 placements with several thousand more placements expected over the course of the next year.

As part of ETA's efforts to improve virtual tools and resources, the "Business Center" site (*http://www.careeronestop.org/business/businesscenterhome.asp*) provides a range of resources to help businesses, including information and tools for financial planning; human resources; information technology; workforce safety; and workplace issues among other services. This site also features a "Job Description Writer", a step-by-step guide that incorporates occupational data to enable employers to write descriptions for job postings and increase chances of hiring a qualified applicant. These free, on-line tools are especially helpful for small- and mid-sized businesses that may not be able to afford to pay for these services.

SENATOR CASEY

Question 1. I would like to praise your focus on job creation. It is clear that the lack of enough good paying jobs is the most pressing issue confronting our economy. As Chair of the Joint Economic Committee (JEC), I have been examining our Nation's manufacturing policy and its role in our economy's future strength. In your view, what more do we need to do to support the manufacturing sector?

Answer 1. The Administration sees a resurging manufacturing sector as part of the American path to recovery, job creation, and sustained economic growth. The manufacturing sector has shown enormous resiliency and strength in our economic recovery so far, with over 300,000 jobs added since the beginning of 2010. Across the Administration, the President recently launched the Advanced Manufacturing Partnership, an effort led by the Commerce Department that brings industry, universities, and the Federal Government together to invest in emerging technologies that will create high quality manufacturing jobs and enhance our global competitiveness.

The Department of Labor has emphasized the importance of the manufacturing sector and its role in the American economy by playing a leading role in ensuring our workforce is trained and prepared to compete for manufacturing jobs across the country, especially in high growth industries, such as high-tech, health care, and green industries.

DOL's competitive grant programs have allowed for the opportunity to support job training for careers in high-growth and emerging industries, including manufacturing.

• The Jobs and Innovation Accelerator Challenge—A joint funding opportunity for high-growth regional innovation clusters, including advanced manufacturing, to compete for $37 million ($19.5 million from the Department) in flexible workforce, economic development and small business development funds to accelerate cluster growth.
• H–1B Technical Skills Training Grants—$240 million in competitive grants to provide training, job placement, and other assistance in the occupations and industries for which employers are using H–1B visas to hire skilled foreign workers. Manufacturing is among the top 10 industries for which H–1B visas are granted.

• Trade Adjustment Assistance Community College Career Training Grants—$500 million in competitive grants to eligible higher education institutions for education and career training programs that can be completed in 2 years or less and prepare TAA-eligible and other workers for employment in high-wage, high-skill occupations, including manufacturing.

In the manufacturing industry, employers also have utilized Registered Apprenticeship for many years to train apprentices in traditional manufacturing occupations. In the past decade, as the manufacturing industry has advanced, DOL has worked with industry partners, particularly the National Institute of Metalworking Skills, to develop competency-based Registered Apprenticeship training models that establish unified skill standards throughout the industry. Today, there are approximately 17,000 active apprentices in Advanced Manufacturing programs and over 3,000 active apprenticeship programs in Advanced Manufacturing, of which 112 were registered in the past year.

In spring 2010, DOL released an updated advanced manufacturing competency model, working in close collaboration with industry partners, such as the National Association of Manufacturers. This employer-validated model outlines the skills necessary to pursue a successful career in the manufacturing industry.

DOL also is promoting the importance of credential attainment with the adoption of a high priority performance goal to increase credential attainment by 10 percent among customers of the public workforce system by June 2012. The Department also issued guidance in December 2010 that describes the credentialing goal, provides information on defining credentials and directs the public workforce system to resources and online tools.

Question 2. I appreciate your continued advocacy on the part of unemployed Americans, especially your emphasis on continuing Unemployment Insurance benefits for those looking for work. The Pennsylvania legislature recently passed work share legislation. How do you think Federal work share legislation can assist in strengthening the employment environment?

Answer 2. The Administration supports the work sharing program as a win-win for both business and workers because it encourages employers to reduce hours rather than lay off workers, and it mitigates the effect of reduced wages on workers and their families by providing workers a partial unemployment benefit. By helping employers keep their staff on the job, it helps weather uncertain times while protecting their investment in worker training, improving employee morale, and staying ready to scale up their production when business returns to normal. We applaud Pennsylvania for enacting legislation that will help workers remain on the job rather than becoming unemployed.

The American Jobs Act includes a proposal to encourage States to implement work sharing programs. The proposal includes a 2-year Federal work share program for those States without pre-existing work share programs and up to 3 years of Federal payment of work sharing benefits for States that either have adopted, or subsequently adopt, a permanent State-based program. The proposal also would provide financial incentives to encourage States to adopt and promote permanent work share programs with employers, and small subsidies to enable an intense marketing campaign to promote work sharing by the Department of Labor. This proposal is similar to the legislation recently introduced by Senator Reed that you have cosponsored.

Question 3. The JEC will soon be releasing a report illuminating the need for Trade Adjustment Assistance (TAA). Among other findings, this report highlights that TAA beneficiaries are typically older workers with no more than a high school education. How do the Department's TAA initiatives support this demographic? Do we need to better target resources?

Answer 3. Trade Adjustment Assistance (TAA) participants come from a variety of backgrounds and industries and therefore, participants enter the program with a wide array of skills and experiences. However, the majority of TAA participants who enter the program face similar challenges in obtaining re-employment, which can include no postsecondary degree, job skills solely in the manufacturing sector, and an average age of 46 with over 12 years of experience in a specific job that may no longer exist.

Under the 2011 Amendments, TAA offers a variety of benefits and services to support workers in their search for re-employment. This includes training in new occupational skills, a job search allowance when suitable employment is not available in the worker's normal commuting area, a relocation allowance when the worker obtains permanent employment outside the commuting area, the Health Coverage Tax Credit (HCTC) covering 72.5 percent of the qualified health insurance premium paid

by an eligible worker, and Trade Readjustment Allowances (TRA) providing income support while workers are enrolled in training. Training and income support are available for up to 117 weeks, with an additional 13 weeks available to support workers who have met established benchmarks while they complete coursework resulting in an industry recognized credential.

In addition to the benefits available to all trade-affected workers, Reemployment Trade Adjustment Assistance (RTAA) benefits are provided to assist certain eligible workers 50 years of age and older. Participation in RTAA allows older workers, for whom retraining may not be appropriate, to accept re-employment at a lower wage and receive a wage subsidy. Eligible workers age 50 or older who obtain new, full-time employment at wages of less than $50,000 may receive a wage subsidy of 50 percent of the difference between the old and new wages, with a maximum of $10,000 paid over a period of up to 2 years.

The 2011 Amendments restore provisions of the Trade and Globalization Adjustment Assistance Act of 2009 (TGAAA), which improved the ability of trade-affected older workers to take advantage of the RTAA program by eliminating the deadline for workers to become re-employed and by eliminating the wage insurance certification. Taken together, these changes provided more flexibility and support to allow trade-affected workers, especially those with no more than a high school education, the time they in particular may need to transition into new employment.

The 2011 Amendments are a result of extensive negotiations with the Administration, Chairman of the Senate Finance Committee, Max Baucus, and Chairman of the Ways and Means Committee, Dave Camp. In these negotiations, we reached a bipartisan agreement on the underlying terms for a meaningful renewal of a strengthened TAA. These Amendments preserves the key goals of the 2009 program to ensure workers harmed by trade the best opportunity to acquire skills and credentials to get good jobs. The recent passage of these critical elements of TAA gives trade-affected workers a good opportunity to retrain and retool for the 21st century economy to get good jobs that keep them in the middle class.

Question 4. Natural gas exploration provides a significant economic opportunity for Pennsylvania. We need to equip local workers for these jobs that come with tapping these resources. I have introduced legislation that would provide on-the-job training for Marcellus Shale workers and I will continue to advocate for resources that prepare our local workforce for these opportunities. Can you speak about efforts already underway by the Department to train these workers?

Answer 4. The Department of Labor recognizes the recovery of shale gas deposits in Pennsylvania, West Virginia and Ohio has been greatly accelerating. The Department awarded Westmoreland County Community College a grant of $4,964,534 to create a comprehensive recruitment, training, placement and retention program for high priority occupations in the natural gas drilling and production industry. The competitively awarded Community Based Job Training grant is titled Marcellus ShaleNet and will serve 4,500 unemployed, dislocated and incumbent workers, low-income workers, youth and veterans between July 1, 2010 and June 30, 2013.

With Westmoreland County Community College serving as the Western "hub" and Pennsylvania College of Technology serving as Eastern "hub," Marcellus ShaleNet brings Workforce Investment Boards, their One Stop Career Centers, industry, and training providers together to build a Marcellus-wide, industry—recognized, uniform training and certification program, aggregating and augmenting existing curricula, and adopting best practices as identified.

SENATOR ENZI

Question 1. The June jobs report from the Bureau of Labor Statistics showed the economy only gained a net 18,000 new jobs, while unemployment remained very high at 9.2 percent. The July jobs report is slightly better, but no matter how you view it, President Obama's claim that the Stimulus would create or save 3.5 million jobs in 2 years has not panned out. Now, some are suggesting that a second, larger stimulus is needed. Why should the American people believe that a second stimulus would yield any better result?

Answer 1. In all, since employment hit its low point in February 2010, the private sector has added nearly 2.4 million jobs. Those are just the net new jobs created. The success of the American Recovery and Reinvestment Act (ARRA) was to prevent the economy from continuing its dramatic decline, as we saw when over 800,000 jobs were lost in January 2009, the month President Obama took office. Without that critical investment in the economy, through tax cuts, support for State and local government and infrastructure improvement projects, we would have had 3.6 million fewer jobs according to the most recent report by the Council of Economic Advi-

sors.[1] The non-partisan Congressional Budget Office has estimated that ARRA boosted the total number of people employed by up to 3.3 million.[2] Mainstream economists, of all political persuasions, agree that the Recovery Act did what it was intended to do by preventing our economy from falling into another depression and boosting employment by several million jobs.

We have made important strides to get the economy back on solid footing, but we still have more work to do. The President's proposed American Jobs Act includes immediate, common sense and bipartisan steps we can take to boost economic growth and job creation:

1. Extend tax cuts, including payroll tax cuts, for middle-class families so people have more money in their paychecks next year. This will help small- and medium-sized businesses, whose customers will be more able to pay for goods and services.
2. Extend unemployment insurance to support workers who are looking for work to pay for basic needs for themselves and their families, while also providing an added jolt to the economy.
3. Re-build America's infrastructure. There are millions of unemployed workers in construction and other industries, while at the same time much of America needs rebuilding. This bill will help private companies hire these workers to rebuild our roads, bridges and highways, and lay the groundwork for future economic growth.
4. Pass the patent reform bill to streamline the patent process so innovative and job-creating ideas can make it to the market faster.

All these ideas have bipartisan support and should be passed swiftly, providing an immediate boost to job creation.

Question 2. The Administration has included a package of expanded provisions for the Trade Adjustment Assistance (TAA) Program into the implementing text of the Korea Free Trade Agreement. These provisions significantly expand the TAA program beyond its existing authorization and will cost nearly $1 billion in new spending. Analysis prepared by both industry and the International Trade Commission indicate that all three of the pending free trade agreements with South Korea, Colombia and Panama will create a large number of American jobs—not destroy them. Do you agree that more American jobs will be created with these agreements?

Answer 2. While these agreements are expected to improve the competitiveness of U.S. exports to South Korea, Colombia, and Panama when their tariffs are removed on a wide range of U.S. products, the Department of Labor does not expect the agreements to have a significant effect on aggregate employment in the United States. This position is supported by the literature of general equilibrium modeling simulations of these agreements, including those done by the International Trade Commission. In the case of the U.S.—Korea FTA, which is by far the most economically significant of the agreements, the simulations find an overall employment impact ranging from negligible to an increase of 280,000 jobs. The agreements with Colombia and Panama are expected to have even less of an impact on aggregate employment in the United States.

Although the aggregate impact on jobs is expected to be negligible, there are likely to be adjustments to the U.S. economy as output and employment adjust to the FTAs, with output and employment losses in some industries and new opportunities in others. Some workers may be displaced from their jobs as a result. This is why the President has signed into law a strong and robust renewal of Trade Adjustment Assistance (TAA) that supports Americans who need training and other services when their jobs are affected by trade. TAA is essential to protect against any displacements U.S. workers will experience as the result of these agreements.

Question 3. How do you address the concerns about even more duplication of workforce training services under the expanded provisions of the Trade Adjustment Assistance program? We know that the Workforce Investment Act (WIA) and other long standing programs already work to help displaced workers. Why should we expand TAA when there are already programs to provide this type of assistance to State governments and community colleges? Is this an effective way for the Federal Government to be spending its resources during a time when we are being asked by the President and constituents to cut spending?

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[1] *The Economic Impact of the American Recovery and Reinvestment Act of 2009, Seventh Quarterly Report,* Council of Economic Advisors, July 1, 2011 *http://www.whitehouse.gov/sites/default/files/cea_7th_arra_report.pdf.*

[2] *Estimated Impact of the American Recovery and Reinvestment Act on Employment and Economic Output from January 2011 Through May 2011.* Congressional Budget Office. May 2011. *http://www.cbo.gov/ftpdocs/121xx/doc12185/05-25-ARRA.pdf.*

Answer 3. As a part of an ambitious trade agenda, it was very important that Congress renew a strong and robust TAA program consistent with reforms enacted in 2009. Renewal of this program is necessary to support Americans who need training and other services when their jobs are adversely affected by trade. As we expand access to other markets abroad, we need to ensure that American workers are provided the tools needed to take advantage of these opportunities and are not left behind in the global economy.

Both WIA and TAA are programs that are designed to serve dislocated workers who are laid off from work in declining industries, and would therefore benefit from federally funded re-employment services to retool their skills for new employment. However, in WIA, this eligibility criterion is applied at the local level and is open to a certain level of flexibility in interpretation. In many cases, WIA participants may only require self-access services (such as local labor market information or computer-based coursework) or shorter training including skill upgrading in order to become marketable.

In contrast, initial TAA eligibility is more narrowly interpreted through a highly standardized investigation process at the Department level, resulting in a written determination as to whether the worker groups are affected by foreign trade. Many TAA workers are faced with the prospect of starting from scratch on new career paths as the U.S. economy and employment adjust to the FTAs, with output and employment losses in some industries and new opportunities in others. Compounding this challenge is the fact that TAA workers are older, with an average age of 46, and that more than two thirds of the program's incoming participants in 2010 only had a high school education or less. The need for these individuals to jumpstart into entirely new careers midlife justifies the specialized range of services and benefits provided to TAA participants.

Additionally, consistent with the overarching focus of all Federal programs at this time, the renewed TAA program contains several provisions designed to see that the program delivers necessary services in the most cost effective manner possible.

- The provision eliminates an additional 26 weeks of income maintenance (TRA) available for workers enrolled in Remedial or Pre-requisite training that was available under the 2002 law.
- Separate funding sources for Training, Administration, Job Search and Relocation, and Case Management have been consolidated under the previous $575 million Training Cap, allowing States to determine the most efficient and effective mix of benefits and services for their enrollees.
- Underutilized funds in States can be re-allotted to States in need during the 2d and 3d year after original allocation when appropriate to maximum available funding for the TAA program.
- Benefit levels for Reemployment Trade Adjustment Assistance have been rolled back to 2002 levels.
- Ensures the final 13 weeks of TRA are available only if trade-affected workers in training are making satisfactory progress toward gaining a credential and need the additional weeks to complete their program.
- Three of six waiver provisions allowing workers to receive income maintenance (TRA) for a limited period while not enrolled in training have been eliminated so that the program focus is firmly fixed on income maintenance only for those seeking retraining. Waivers for Marketable Skills during an extended search for work; Retirement Within the Next Two Years; and Awaiting Recall have been eliminated.

Question 4. A few weeks ago, *USA Today* published a piece titled, "How Unions are Stifling American Growth." It placed the blame for the failed economic recovery on waste and mismanagement of public works projects. The author specifically cites "organized labor's legacy of work rules, jurisdictional disputes and unproductive practices that cause costs to soar through delays and over-staffing." The most outrageous example in the article is a union worker at the new World Trade Center site in New York City that makes $405,000 per year for virtually doing nothing. What has the Administration done to crack down on waste and overspending when it comes to public works projects?

Answer 4. We note that the article you reference is an opinion piece and does not reflect the typical experience of Federal contracting. In particular, we also note that the World Trade Center project that is cited is not a Federal project and not subject to Federal contracting guidelines in the Federal Acquisition Regulations (FAR).

Question 5. I have submitted numerous inquiries to the Department of Labor asking important questions and have not received answers from several of them or a very delayed response. For example, the Department never responded to one letter from March 2010; was late in responding to Questions for the Record from my col-

leagues and I following a May 2010 OSHA hearing; never followed up on a request for updates on a hiring at the Mine Safety and Health Administration; and was late in responding to two other requests and also refused to provide the requested documents in responding to one of those letters. I would like your commitment that the Department be more responsive to congressional inquiries in the future.

Answer 5. The Department takes seriously input and inquiries from members of Congress. We endeavor to respond as appropriate to all requests we receive from committees and individual Senators and Representatives. Due to the nature or complexity of some inquiries, however, delays are sometimes unavoidable. I assure you that the Department will continue to be as responsive as possible to congressional requests.

Question 6. In 2010, the Department failed to get a clean audit for the first time in over a decade. A makeup audit done earlier this year still noted a number of ongoing material weaknesses, as well as a pending possible Anti-Deficiency Act violation. In addition, I am told that the Department's inability to pay invoices in a timely manner has resulted in $1.3 million in interest penalties last year and $424,000 in interest penalties through June 2011. That's $1.7 million in penalties, plus the cost of the makeup audit. What are you doing to prevent it from continuing?

Answer 6. As noted in the independent auditor's report, the inability to obtain a clean opinion was related to the transition to a new financial management system. The "disclaimer of opinion" issued by the auditors was due to the inability of the Department to provide the financial data to the audit team in time to meet the November 15 deadline for issuing an opinion. Two issues were largely responsible for that delay. First, the migration of data from a 20+ year-old financial management system, which no longer met Federal standards to a robust, modern reporting system, proved very challenging and time consuming.

Second, the new financial system provides for the first-ever integration of the financial system with the procurement, grants, travel and HR systems. Since this integration was new to all these systems, the Department experienced the challenges inherent in such an effort. The Department now has its most extensive internal controls and reporting capabilities ever, but the initial efforts created delays in supporting the audit function in a timely manner. Recognizing these issues during fiscal year 2010, the Department focused its efforts on supporting the mission of the Department's agencies and successfully completing the 2010 year-end close. As a result, grants to States and other entities, FECA payments, and procurement activities were all supported in the same manner as in past years, in spite of the implementation issues. In addition, there were no funds unintentionally left unobligated, nor any ADA violations. The ADA violation noted in the question is from a previous audit which was still under review by the department at the time of the 2010 audit.

The Department takes very seriously our fiduciary responsibility, and the need to provide stakeholders the independent verification of our financial management activities that a financial statement audit represents. As a result, we resubmitted the financial statements to the Office of Inspector General, and their independent audit firm, KPMG, for review in January 2011. That review led to an unqualified, or clean opinion, which the Department had held for each of the previous 13 years. However, even though KPMG noted in their review of the Department's resubmission that the conditions which gave rise to the material weaknesses were addressed in a number of cases, their analysis of our resubmitted financial statements did not include a formal re-evaluation of their original findings resulting in the material weaknesses. Therefore, the original material weaknesses, which had been reported by the auditors for a number of years as significant deficiencies, remained to be addressed by the auditors in the 2011 audit. The Department is confident that the number of material weaknesses will be substantially reduced in the 2011 audit report.

Late payment penalties increased significantly last year due to the systems implementation issues discussed above. This year, the rate has dropped consistently. Total late payment interest penalties between October 2010 and August 2011 were approximately $543,000, almost a 60 percent reduction from fiscal year 2010's total of $1.3 million in penalties. In addition, the Department is building upon the capabilities available in the new system to implement an electronic invoicing process in 2011, which will streamline the invoice payment process, and should reduce the late payment rate even further.

Question 7. According to the Labor Department's own annual No FEAR Act report, the number of EEO complaints filed against the Department increased by 37 percent in just 1 year (2009 vs. 2010). Many of your enforcement agencies are reporting results that are substantially inferior to prior years. For example, your wage and hour results in terms of back wages recovered and workers assisted appear to

be lower than all but 1 year since 2001, despite a significant increase in personnel. Given these problems, do you believe your management team is successful? How would you grade them, and can you explain these problems?

Answer 7. As noted, the Department's No FEAR Act reports demonstrate an increase in the number of EEO complaints filed from fiscal year 2009 to fiscal year 2010. However, the number of complaints filed in 2010 was almost exactly the same as the number filed in 2007 (126) and lower than the number filed in 2008 (133) despite an increase in the number of DOL employees that began in 2009. The Department will continue to assess the trends in overall EEO complaints. However, it is also important to note that, although the overall number of complaints increased, the number of complaints that ended with findings of violations was very low; in fiscal year 2009 there was one final action finding discrimination, while in fiscal year 2010 there were two.

The Department takes very seriously its responsibility to ensure that the DOL workplace is free from unlawful discrimination and harassment. At the beginning of her tenure and annually thereafter, the Secretary of Labor issued robust policy statements on Equal Employment Opportunity (EEO) and Harassing Conduct, expressing her commitment to the mandate of equal opportunity for all Department employees and applicants regardless of their race, color, religion, sex (including pregnancy and gender identity), national origin, age, disability, genetic information, parental status, and sexual orientation. Additionally, the Secretary has made clear that harassing conduct by managers, supervisors, or employees, including contractors, at any level, will not be tolerated. In furtherance of the commitment to prevent and eliminate discrimination, harassment, and retaliation, all agencies within the Department are required to conduct self-assessments to identify potential barriers to equal opportunity; enhance accountability by including an EEO element in the performance standards of every DOL manager and supervisor; widely publicize the EEO and Harassing Conduct policies and procedures available for filing complaints; take swift and appropriate action (including disciplinary action) to remedy any violations of the Department's EEO policies; and provide full support to the Department's internal programs related to nondiscrimination, equal opportunity, and diversity. Additionally, the Department implemented a vigorous program to train and educate Department managers and employees on EEO rights and responsibilities.

For fiscal year 2011 (October 2010–September 2011) the Wage and Hour Division collected $224,844,870 in back wages for 275,472 low-wage and vulnerable workers, the largest amount collected in a single fiscal year in the Division's history. Even when the prior administration's performance criteria are used, these results demonstrate that during fiscal year 2010 (October 2009–Septemer 2010), the WHD successfully rebuilt its enforcement capacity. Additional resources for the Wage and Hour Division to hire 250 new investigators were not appropriated until March 2009. During the spring and summer of 2009 the Division engaged in an ambitious recruitment and hiring effort. The first wave of newly hired investigators was brought on board in the fall of 2009, with a second significant wave brought on board midway through fiscal year 2010. During fiscal year 2010, it was necessary for the Division to train these new investigators on how to conduct effective and efficient investigations and to enforce the more than a dozen laws under the Division's enforcement authority. This training is intensive and conducted over a 2-year period. It requires significant investment of time by not only the trainees but also by the Division's management team and senior investigators who conduct the training and provide ongoing coaching and mentoring. This training and commitment of resources continued during fiscal year 2011 and will be completed in fiscal year 2012. These results demonstrate the strength and capability of the DOL's national and regional management team and field employees.

WHD Enforcement Statistics—All Acts	Fiscal Year 2009	Fiscal Year 2010	Fiscal Year 2011
Back Wages Collected	$172,615,125	$176,005,043	$224,844,870
Employees Receiving Back Wages	219,759	209,814	275,472
Complaints Registered	26,311D	31,824	27,112
Enforcement Hours	879,626	1,066,188	1,213,182
Average Days to Resolve Complaint	101	142	177
Concluded Cases	24,922	26,486	33,295

Question 8a. The Office of Labor-Management Standards ("OLMS") came out with a new initiative earlier this year called the "Persuader Reporting Orientation Program" ("PROP"). Essentially, this program examines union petitions filed with the

National Labor Relations Board ("NLRB") and sends notices to employers and their representatives of their obligation to report "persuader activity." Was there any coordination or communication between the NLRB and the Department of Labor on this initiative? If not, why not?

Answer 8a. Periodically, OLMS receives a spreadsheet from the National Labor Relations Board ("NLRB") listing all employers and their legal representatives involved in recently filed NLRB representation petitions. NLRB also makes the information it provides to OLMS publicly available upon request. Because the information is available to the public, there is no written inter-agency agreement or memorandum of understanding regarding the provision of this information.

Using this information, OLMS then sends a letter to the employers and to their representatives in the NLRB proceeding to inform them of their *potential* reporting obligations under the LMRDA, and to explain how to access the reporting forms and instructions in the event that they are required to file. PROP letters are compliance assistance letters, not demand letters.

Question 8b. How much of the OLMS staff is tasked to the PROP initiative?

Answer 8b. The equivalent of one FTE spends an average of approximately 6 hours per week on PROP.

Question 8c. Do you send similar notices to unions of their duty to file under the Labor-Management Reporting and Disclosure Act ("LMRDA")?

Answer 8c. Yes. PROP is modeled after the existing Labor Organization Orientation Program ("LOOP"), under which similar compliance assistance letters are sent to newly-covered unions that have filed their initial Form LM-1 Labor Organization Information Report. The LOOP letters inform these unions of their obligations under the LMRDA or the Civil Service Reform Act ("CSRA") standards of conduct provisions for Federal sector unions, including their continuing obligation to file annual financial disclosure reports.

Question 9. As you know, section 8(c) of the NLRA implements the First Amendment, and protects an employer's right to free speech. If Federal administrative roadblocks intentionally or unintentionally limit an employer's access to effective legal counsel, and thereby keep an employer in the dark about how he or she can legally communicate with his or her employees, does this infringe on an employer's free speech rights? Why or why not?

Answer 9. It would be inappropriate for the Department to offer a legal opinion on the hypothetical presented, and I am aware of no such roadblocks. Of course, the Department is committed to protecting constitutional and other rights.

Question 10a. A union has launched an organizing drive on a small employer. The employer, who does not have any labor relations professionals on its payroll, retains outside counsel in order to understand its rights and obligations under the NLRA. Under the DOL's "Persuader" NPRM, can you please give examples of services that attorney could perform for the employer in relation to the organizing drive that would NOT trigger the Federal reporting requirements?

Answer 10a. In June, the Department published a Notice of Proposed Rulemaking. See Labor-Management Reporting and Disclosure Act; Interpretation of the "Advice" Exemption, 76 FR 36178 (June 21, 2011). The NPRM provided examples of services that an attorney could provide relating to an organizing drive that would not be reportable.

Question 10b. If an attorney reviewed a speech written by the company president to ensure that the speech did not contain any unlawful statements, would this trigger the reporting requirements?

Answer 10b. No. As stated in the proposed instructions, this described activity alone would not trigger reporting because it would be exclusively the provision of advice. *See* 76 FR 36192-93.

Question 10c. If an attorney gives a presentation to managers about what they can and cannot say under the NLRA, would this trigger the reporting requirements?

Answer 10c. No. Pursuant to the proposed instructions such activity alone would not trigger reporting, as it constitutes exclusively the provision of advice. *See* 76 FR 36192-93.

Question 11. Executive Order 13563 requires all agencies, including the Department of Labor to improve its regulations and regulatory review. It states that one way to achieve that improvement is through public participation, including an "open exchange of information and perspectives." Do you think the teleconferences DOL

organized on the OSHA proposed rule on adding an MSD column to injuries logs, meets the spirit of Executive Order 13563?

Answer 11a. OSHA fully met the Executive order's goal of fostering an open exchange of information and perspectives by providing multiple opportunities for public participation on the proposed MSD column requirement. The proposed rule published in the Federal Register in January of this year provided an explanation and economic analysis of the proposal, and allowed the public 60 days in which to submit written comments. This initial comment period was followed by a public meeting and a second opportunity to submit comments following the meeting. At the public meeting, any interested party was allowed to give oral presentations and exchange views with OSHA representatives. After the record closed, OSHA determined that the comments indicated some confusion in the small business community on the scope of the proposed rule, and that further public participation would be beneficial. Accordingly, OSHA, in cooperation with the Small Business Administration's Office of Advocacy, scheduled a series of teleconferences in which small businesses could directly discuss the rule with OSHA representatives. OSHA and SBA Advocacy held three teleconferences, which accommodated all small businesses that expressed an interest in participation. OSHA then published a report on the teleconferences prepared in cooperation with SBA Advocacy, and solicited additional comment from the interested public on both the report and the issues raised in the teleconferences. OSHA allowed 30 days for comment.

In summary, OSHA provided three different opportunities for participation by the public: an opportunity for written comments, a meeting during which the public could give oral presentations and exchange views with OSHA representatives, and three teleconferences where small businesses could present their views without needing to come to Washington, DC in person. OSHA thoroughly satisfied both the letter and the spirit of the Executive order with respect to open exchange of information and perspectives.

Question 11b. Do you believe that the recently proposed "persuader" regulation that will hamper employer efforts to communicate to their employees during union organizing campaigns is consistent with Executive Order 13563?

Answer 11b. Yes, the persuader regulation is consistent with Executive Order 13563.

Question 12. Do you accept that injuries and illnesses are at their lowest rates? If so, please explain why the National Emphasis Program (NEP) is trying to establish that employers are underreporting? What has OSHA found during the more than a year and half of this NEP?

Answer 12. Workplace injuries and illnesses are at their lowest reported rate, according to the Bureau of Labor Statistics (BLS). However, although OSHA considers the BLS injury and illness estimates to be the most accurate and authoritative statistics on the subject, recent academic research (comparing injuries and illnesses reported to BLS to those recorded in State Worker's Compensation databases) has brought into question the accuracy of these data. At the request of Congress, OSHA has taken positive steps, along with BLS and National Institute for Occupational Safety and Health, to address this issue. The Recordkeeping National Emphasis Program (NEP) was implemented to identify and correct individual cases of underrecording of occupational injury and illness. At this point, citations for violations of OSHA's recordkeeping rule have been issued in more than 50 percent of the establishments targeted under this NEP. Although it is still too early to make a conclusive judgment on the NEP, it is OSHA's belief that this high profile program not only leads to correction of the records within the establishments inspected, but will also have the positive effect of leading to more accurate recordkeeping throughout the regulated community.

Another Department effort related to the undercounting of injuries and illnesses is research the BLS is conducting and overseeing to ascertain factors associated with the completeness of the Survey of Occupational Injuries and Illnesses. BLS, three State grantees and a contractor are matching multiple sources of data to find and classify types of cases that appear not to be captured in the BLS survey. Employers are being interviewed regarding their OSHA recordkeeping and workers' compensation claiming practices, to identify circumstances when workers' compensation cases might not be captured on an OSHA log. Final results of the research will be available in 2012. These results and consensus recommendations from the researchers will guide potential changes to SOII or other possible actions to develop more complete SOII estimates.

Question 13. Can you give us an update on the "Bridge to Justice" program? How many cases have your Wage and Hour investigators referred to the American Bar

Association ("ABA")? How many of those cases have led to the filing of private suits against employers? Does the Department, the ABA or the ABA's local bar association affiliates receive any monetary benefit through this program, including from attorneys' fees collected in cases referred by the Department? How will Wage and Hour determine which cases to take and which cases to refer through the ABA?

Answer 13. WHD's role in the ABA Referral System is limited to adding the toll-free number for the Referral System to WHD's standard notification letter sent to complainants in cases where the Department will not pursue a claim. In addition, WHD staff provide the number orally in appropriate circumstances in which WHD does not send a notification letter, e.g., where the worker decides not to file a complaint with the WHD.

The Department decides whether to pursue a claim based on its national and regional priorities and the particular WHD office's current resources and workload.

Complainants who call the Referral System's toll-free number are connected to an automated system that asks them to enter the zip code for their home or place of employment. The system provides the caller with the telephone number of participating ABA-approved local attorney-referral service(s) in their area. The complainant may then choose to contact the local referral service, which would then refer the complainant to an attorney experienced in FLSA or FMLA matters. If no such referral service covers the caller's geographic area, the system informs the caller of that fact.

The ABA reported that, during the period covering the second quarter of 2011, there were 14 instances in which the complainant received attorney referral information from a local referral service, but did not follow up with the attorney; 38 cases were closed after brief advice or service; 13 cases were found to have insufficient merit to proceed; 17 cases were pending as of the date of the ABA's report; and 2 cases were resolved through settlement negotiations without litigation. Please see the ABA's second quarter report on the Referral System, which is enclosed with this response.

The Department does not receive any monetary benefit through the program and the ABA and its participating referral providers do not receive a monetary benefit from the program. Any fees are used to recoup the costs of the referral program. For example, the participating local referral programs pay a nominal annual fee to the ABA to cover the costs of the toll-free telephone vendor. In addition, many bar association referral programs have a percentage fee program in place that requires the attorney who received the referral to return a percentage of any fees collected as a result of the referral, but under the ABA's model rules, which these programs abide by, the percentage fee cannot increase the total cost to the individual client of the legal services provided. These percentage fees help cover the referral program's operational costs. Finally, attorneys who wish to participate and receive referrals pay an annual fee to be on the panel of their local referral provider as an FLSA or FMLA specialist, but again, it is our understanding that these fees cover operational costs and do not provide an overall monetary benefit.

Question 14. Under the "Bridge to Justice" program, private attorneys will be given specific documents to aid them in their lawsuit. They can obtain these documents through what the Wage and Hour Division calls a "special process," but in reality the attorney will simply have to fill out a form provided by the Department. Is the request process open to employers' representatives or third parties?

Answer 14. If a complainant receives the toll-free number from the WHD after it has completed a full or partial investigation of the complaint, WHD will also provide the complainant with a Document Request form. This form allows the complainant or his or her authorized attorney to request: the complainant's own statement, the WHD's back wage computations for the complainant, and copies of any documents the complainant provided to the WHD Investigator. The form also allows the worker or authorized attorney representative to request the case narrative from the file; however, it explains that requesting the narrative will delay the WHD's response because it must be redacted. The complainant, his or her attorney, employers and third parties may continue to request these and other documents in the case investigation file using the Freedom of Information Act.

Employers may use the form to request the same information from the WHD, and such a request would be construed as a FOIA request. Whether requested by a complainant or an employer, information will only be released in closed cases.

Question 15. In staff interviews, the former nominee to lead the Wage and Hour Division, Mr. Leon Rodriguez, committed to reconsidering the elimination of opinion letters in favor of Administrative Interpretations. Do you support reconsideration of this change?

Answer 15. The WHD has a variety of means for issuing policy, interpretations, and guidance regarding the laws it is responsible for administering and enforcing, including regulations, administrator interpretations, field assistance bulletins, fact sheets, e-laws, and opinion letters. All of these continue to be available to WHD. However, the WHD has determined that its limited resources are best spent on those means that address issues of general application and that are of interest to broad segments of employers and employees rather than guidance that has limited application because it is applicable to only a particular set of facts.

Question 16. Given that the Wage and Hour Division has never had a political appointee in charge of it during this Administration, who makes the decisions for that division on behalf of the Administration?

Answer 16. Nancy J. Leppink, who was appointed as Deputy Administrator by President Obama on September 21, 2009, has headed the Wage and Hour Division in an acting capacity since that date.

Question 17. One likely consequence of the FLSA Right to Know regulation being developed by the Wage and Hour Division will be an exacerbation of the already troubling level of multi-plaintiff lawsuits based on subjective interpretations of criteria for exemptions under the FLSA. Is this an outcome the Department supports?

Answer 17. The Right to Know proposed rule is still under development and no final decisions have been made regarding this rulemaking. The WHD has consistently pursued policies that inform both employers and employees about workers' employment status. These policies' primary objective has been to prevent violations from occurring by providing guidance that helps employers "get it right" from the outset and thereby prevents litigation.

Question 18. The President said that many "shovel ready" stimulus projects were not actually "shovel ready." The President's own Jobs Council said that many of these so-called "shovel ready" projects were delayed because of government regulations and burdensome permitting procedures. Do you agree?

Answer 18. At its June 13 meeting in Durham, NC, the President's Job Council presented the President with 11 different broad ideas for creating jobs and getting the economy back on track. One of those was streamlining regulatory and permitting processes. No one—including the Administration—can deny that there are examples of wasteful, redundant, burdensome processes and procedures in the government, and this Administration is dedicated to making government run more efficiently, effectively, and accountably. However, I also agree that, as the Jobs Council said in its recommendations, in the course of our streamlining, we cannot afford to undercut the protections that our regulatory system affords, to workers, to the environment, and to the public at-large.

Question 19. In the Department's Spring 2011 Regulatory Agenda, there are many regulatory proposals that will increase enforcement, reporting, inspections, penalties, etc. in almost every agency. Many can question how imposing more regulatory burdens on businesses, especially small businesses, will encourage job creation. What regulatory proposals are you advocating that WILL encourage job creation?

Answer 19. The Department's regulations do not discourage job creation; they are designed to provide a level playing field for firms following our Nation's labor laws so that they do not face unfair competition while playing by the rules, which could cause a loss of jobs.

The Department's regulations, among other things, make sure that U.S. jobs are good jobs—a concept that means that jobs should be safe, secure, and paid in accordance with legal norms. In other words, our efforts ensure that workers have good jobs.

At the same time, the Department has regulatory projects designed to result in significant savings in terms of dollars and burden-hours. For example:

- OSHA's Standards Improvement Project III (SIP III) rulemaking achieved a 1.9 million burden hour reduction, and we anticipate that OSHA's SIP IV project will similarly yield savings for employers and
- OSHA's Hazard Communication/Globally Harmonized System for Classification and Labeling of Chemicals proposal has estimated savings for employers ranging from $585 million to $789.4 million.

Question 20. The Government Accountability Office ("GAO") found that the Davis-Bacon Act requirement on the home weatherization program money in the stimulus resulted in only a fraction of the projected homes getting upgraded weatherization treatment. Was it a mistake to expand the application of the Davis-Bacon Act to

a construction activity where the Federal Government has never been involved and thus there were no previous wage surveys and wage determinations available?

Answer 20. The Department ensured that the prevailing wage requirements contained in the Recovery Act were properly applied to covered construction activities, including the weatherization program. In a report issued earlier this year, the Office of Inspector General, Office of Audit found that WHD did provide adequate outreach, did conduct timely DBA Recovery Act complaint and directed investigations, and did conduct wage determination surveys for Department of Energy's weatherization program that were timely and reliable.

As the GAO report notes, WHD completed an expedited nationwide prevailing wage survey of weatherization construction on residential projects throughout the United States. The survey was initiated after DOE advised the Department that the classifications and wage rates listed in existing Davis-Bacon residential construction wage determinations were not applicable to the specialized nature of the weatherization work being funded under the Recovery Act. After examining the classifications and wage rates used on weatherization projects, the Department agreed with DOE and immediately began work on the weatherization survey. Wage rates for weatherization projects were published for each county in the United States in September 2009.

Once DOE and the Department agreed that a survey was appropriate, the Secretaries of Energy and Labor issued specific guidance to the weatherization grantees on how to proceed with these projects while new prevailing wage rates were being established. Grantees were told to proceed with weatherization projects using existing on-line residential wage determinations with the caveat that contractors and grantees must compensate workers for any increase in wage rates that resulted from the new weatherization prevailing wage survey. This June 2009 guidance was made available on DOE's Web site.

Question 21. The Davis-Bacon Act has been shown to increase the cost of construction, reduce access to construction projects for minority contractors, and reduce the amount of jobs that Federal construction projects can create. Does the Administration still support the Davis-Bacon Act and its wide application to projects where the only nexus with Federal funding may be a loan guarantee?

Answer 21. The principle underlying the Davis-Bacon Act (DBA) is simple—to provide that the Federal Government's extensive contracting activity does not have the unintended consequence of depressing workers' wages. Whether the Federal construction activity results from a direct Federal contract or is made possible through other forms of Federal assistance, the protections provided by the Davis-Bacon Act and over 60 Davis-Bacon related Acts provide a secure floor on wages. Congress reached that same conclusion when it applied the Davis-Bacon prevailing wage provisions to the many Federal statutes that provide assistance through grants, loans, or loan guarantees.

The Federal Government continues to construct buildings, build dams, and fund housing projects. State highway departments pave roads with Federal funds from the Federal Highway Administration. Local and State governments build water treatment plants, modernize schools, and renovate airports. The DBA therefore is as relevant today as it was when it was first enacted, and it continues to provide stable wage rates and benefits that attract higher-skilled labor. And by attracting higher-skilled workers who are both experienced and productive, construction projects are more often completed on time and at lower cost. Additionally, more and more economic studies dispel the notion that prevailing wage laws drive up the cost of Federal contracting, such as the University of Utah's "Losing Ground: Lessons from the Repeal of Nine "Little Davis-Bacon" Acts (Garth Mangum, Peter Philips, Norm Waitzman, and Anne Yeagle).

Question 22. In this year's Continuing Resolution, the Department received $21 million for worker misclassification initiatives. In May you reprogrammed those funds for other uses, including spending for more enforcement. Can you provide this committee with an accounting on how that reprogrammed money has been spent thus far?

Answer 22. The Department's fiscal year 2011 budget proposal included a request for an additional $21 million for misclassification initiatives; however, the funds for that initiative were not included in the final continuing resolution. The Wage and Hour Division did receive an additional $335,790, which was transferred from the fiscal year 2011 Departmental Management appropriation to prepare for the fiscal year 2012 regional enforcement initiatives.

Question 23. On May 5, the Department finalized the Fair Labor Standards Act "clean-up" regulation first proposed in July 2008. Stakeholders have expressed their

disappointment in the new rule as it bears very little resemblance to the proposed rule. Can you explain why the Department decided not to reopen the comment period or simply publish a new proposal? Don't you think that either of those solutions would have been more in line with the President's Executive order on improving regulations and the regulatory process?

Answer 23. The WHD published a notice of proposed rulemaking, commonly referred to as the "FLSA Clean-Up Rule," because it updates the regulations to reflect a number of statutory amendments to the FLSA dating back to 1974, on July 28, 2008, and the final rule on April 5, 2011. The final rule closely follows the proposed rule. All substantive issues addressed in the final regulation were included in the notice of proposed rulemaking and the final rule is the result of careful consideration of all the comments received during the public comment period.

Question 24. It has been reported that the Department is negotiating a settlement of a long-term union grievance for violations of the Fair Labor Standards Act with regard to hundreds of bargaining unit employees. What is the status of that grievance? How many employees have been reclassified and paid back wages? What are the parties' positions on damages if the matter has not been resolved? What, if any, changes have been implemented to prevent future violations and/or will be required by the settlement? Please provide copies of any directives or changes to policies resulting from the grievance, including any changes to the availability or use of Blackberrys or other similar communications devices by nonexempt staff.

Answer 24. The AFGE Local 12 FLSA Group Grievance is currently before the arbitrator and the parties are in the midst of litigation. Therefore, the Department cannot opine regarding damages and potential liability, if any. The parties, however, were able to negotiate a settlement concerning FLSA designations for positions in the AFGE Local 12 bargaining unit, and in 2009 the Department re-designated 688 positions from FLSA exempt to FLSA non-exempt. The parties have not negotiated back wages for those positions. On September 25, 2009, the NCFLL filed an institutional class grievance mirroring the AFGE Local 12 Group Grievance. The Department is reviewing over 30,000 pieces of personnel data to discern the number of positions that need to be reviewed for FLSA re-designation and is in the process of producing an estimated damage calculation based upon the data. In any event, on January 29, 2010, the Department issued guidance and established requirements (copy attached) to ensure that the FLSA provisions established under 5 CFR part 551 are correctly and consistently applied to all DOL positions and employees and to reduce DOL's vulnerability to future FLSA grievances.

Question 25. Given the recent problems with the top leadership of the Veterans' Employment and Training Service as reported by the Office of Inspector General, how does the Department plan to ensure the agency continues its important mission to serve veterans?

Answer 25. Our commitment to America's veterans remains unchanged. The dedicated team at the Veterans' Employment and Training Services (VETS)—and each and every U.S. Department of Labor employee—will continue their important efforts on behalf of the men and women who return from military service and transition to civilian work. Our Nation's veterans deserve nothing less. VETS' core programs were not affected by the OIG report findings, nor were the new initiatives VETS was working on, such as the TAP redesign. The current VETS leadership will provide the management direction and vision needed to ensure our work is accomplished successfully and with integrity.

Question 26. The enforcement agencies of the Department of Labor need to report transparent data to ensure that Congress can grade them on their performance. For example, I am concerned that the Wage and Hour Division apparently has not updated its annual fiscal year enforcement results since 2008. (available at *http://www.dol.gov/whd/statistics/*). Please provide the enforcement results for fiscal year 2009 and fiscal year 2010 for Wage and Hour using the same statistics and tables reported on the 2008 (and earlier) annual enforcement facts sheets available on the Wage and Hour Web site.

Answer 26. See the chart inserted in the answer 7.

Question 27. I am similarly concerned that the performance of the Office of Federal Contract Compliance Programs (OFCCP) is difficult to evaluate. For example, the agency's enforcement results for fiscal year 2009 and fiscal year 2010, presented in the Labor Department's fiscal 2011 and 2012 budget justifications, show OFCCP collected $9.3 million in fiscal year 2009 for 21,839 workers and $9.75 million in fiscal year 2010 for 12,397 workers. In fiscal year 2008, reportedly using different methodology but with a much smaller budget and more targeted enforcement,

OFCCP reportedly collected $67,510,982 for 24,508 American workers who had been subjected to unlawful employment discrimination. I would like to know the bases for any changes made in the way OFCCP calculates its enforcement results. Please provide the following information for each of the past 4 fiscal years (if possible using both the current and the prior methodology): The amount of back pay collected; the amount of back pay and annualized salary and benefits collected; the number of workers on whose behalf OFCCP obtained financial recompense; the number of compliance evaluations undertaken; the staffing level of the agency; the average length of time a compliance evaluation is open; and the number of compensation cases brought and settled each year.

Answer 27. The reason for the apparent reduction in back pay recovered was a change in the methodology by which the Office of Federal Contract Compliance Programs (OFCCP) reported financial settlements. Prior to fiscal year 2009, the agency used *projected* annualized salaries in its financial settlement reports. That meant that the agency previously estimated the salaries of the employees who were to be offered jobs under the settlement for a year *after* they could return to work, and included those estimates in its reports on the settlement amounts—even though those monies had not yet been paid to the employee by the company and indeed, may never be paid by the company. This methodology artificially inflated the actual back pay settlement amounts reported. In fiscal year 2009, OFCCP began reporting its enforcement accomplishments using *actual* back pay paid to victims of discrimination and discontinued the practice of using *projected* annualized salaries in its financial settlement reports.

For comparative purposes, the table below provides an overview of the OFCCP's financial settlements with back pay, annualized salary and other benefits, total financial settlements and total number of compensated workers. As the table shows, the amount of actual back pay in fiscal year 2011 was significantly greater than the actual back pay for any of the prior 3 years, including fiscal year 2008, and has been on a steady increase since fiscal year 2009.

As to the question about compensation cases, OFCCP settled a total of 28 compensation cases in fiscal year 2011 as compared to the prior 3 fiscal years combined (2008, 2009 and 2010), in which OFCCP settled a total of 26 compensation cases. This continues a 4-year upward trend and is also one indicator that OFCCP's current strategy of ensuring that its compliance evaluations more fully reflect the broad spectrum of the Agency's authorities is aggressively implemented.

OFCCP completes compliance evaluations without discrimination findings on average within 8 months. Reviews with discrimination findings are completed within a 2-year timeframe. Reviews involving financial relief for findings of discrimination were completed within 2 years in fiscal year 2008, 2.3 years in fiscal year 2009, and 2.2 years in fiscal year 2010. We do not yet have this information for fiscal year 2011.

Fiscal Year 2008–Fiscal Year 2011 Comparative Data

[OFCCP Enforcement Results]

	Fiscal year 2008	Fiscal year 2009	Fiscal year 2010	Fiscal year 2011	Total
Back Pay*	$10.83M	$9.31M	$9.75M	12.3M	$42.19M
Annualized Salary & Other Benefits*	$56.67M	$35.36M	$29.82M	$39.2M	$161.05M
Total Financial Settlements*	$67.50M	$44.67M	$39.57M	$51.5M	$203.24M
# Workers	24,508	21,839	12,411	16,356	75,114
# Compliance Evaluations	4,333	3,917	4,960	4,014	17,224
# Compensation Cases Settled	6	7	13	28	54
# OFCCP Staffing Level	555	581	778	748	N/A

*Includes compliance evaluations, complaint investigations, and FAAP enforcement results.

Question 28. I am concerned about the reliability of the Occupational Safety and Health Administration's Integrated Management Information System (IMIS). I understand there are plans to upgrade that system for some time and that much of the software and hardware infrastructure is getting quite old. I would like to know about the reliability of the IMIS system in terms of its ability to continue to serve OSHA and the timeline for any replacement. Please also explain how much has been spent to replace the IMIS system to date, including consulting contracts, and provide copies of all annual Exhibit 300s under Office of Management and Budget

Circular A-11 (and any prior circulars) for this undertaking from 2008 through the present.

Answer 28. OSHA's Integrated Management Information System (IMIS) is a reliable system that is available 24–7, 365 days per year, updated nightly with OSHA data, and equipped with an active contingency site in the event of a disaster. The legacy IMIS system has served the agency well for the last two decades, but is deteriorating. For example, replacement parts for the individual machines cannot be readily found, and maintenance contracts are extremely difficult to establish because few vendors still exist in this business area. OSHA has stockpiled replacement parts for the NCRs, but the knowledge and skill set to actually repair the system is becoming more and more scarce. OSHA had anticipated these difficulties and has prepared for the implementation of the new data program.

To date, approximately $60 million has been spent on the new data program, OSHA Information System (OIS) over a 7-year period, which is consistent with the amount estimated when the project was being developed using the Department's System Development Life Cycle Management (SDLCM) process. Exhibit 300s are attached.

[Editor's Note: Due to the high cost of printing, the Exhibits are maintained in the committee file.]

On March 11, 2011, OSHA initiated field deployment of its OIS, designed to house the Nation's occupational safety and health data, to two Federal field offices located in Boise, ID and Concord, NH. As of August 2011, the OIS has been further deployed to the Federal regions in Denver, Chicago, and Seattle. The next Federal region tentatively scheduled for deployment is the San Francisco region in September 2011. The OIS has also been deployed to five State On-site Consultation Projects in the mid-west, including Colorado, Montana, Wyoming, and the Dakotas. Pending next year's and the following year's agency budgets, the OIS is scheduled for further Federal, State plan, and consultation project deployment in fiscal years 2012 and 2013. The OIS is web-based, and is the next generation replacement for the National Cash Register (NCR) machines. Once the OIS is fully deployed to the field, OSHA will initiate a plan to retire its NCRs.

Question 29. My staff have learned that OFCCP may be investigating individual complaints of discrimination—a responsibility entrusted to the Equal Employment Opportunity Commission (EEOC) under a longstanding Memorandum of Understanding—and then launching broader inquiries based on the investigation of individual claims. Has OFCCP undertaken individual cases? If so, please provide a list of cases undertaken by OFCCP involving individual complainants since Jan. 20, 2009 (without including the complainants name or identifying information) and OFCCP's reason for not referring the matter to the EEOC.

Answer 29. First, Executive Order 11246 allows for individual complaints of employment discrimination to be filed with OFCCP. The procedure under OFCCP's MOU with the EEOC has been that, if the individual's complaint also states a claim under title VII, OFCCP refers it to the EEOC. However, this rule has never been absolute, and the MOU has long preserved OFCCP's ability to coordinate with the EEOC to retain individual complaints when deemed necessary to avoid duplication and ensure effective law enforcement. As indicated below, the very few individual complaints retained by OFCCP have been retained pursuant to this authority.

This MOU does not cover the processing of individual complaints that are filed with OFCCP under either Section 503 of the Rehabilitation Act of 1973 (Section 503) or the Vietnam Era Veterans Readjustment Assistance Act of 1974 (VEVRAA or Section 4212). EEOC has no concurrent jurisdiction with VEVRAA. Coordination on disability issues and complaints under section 503 and title I of the ADA is separately governed by a joint OFCCP—EEOC regulation at *29 CFR part 1641* (EEOC) and *41 CFR part 60-742* (OFCCP).

In fiscal year 2009 (beginning January 20, 2009), OFCCP investigated 65 individual complaints, of which only three were Executive Order 11246 complaints. Meanwhile, 60 complaints (92 percent) were investigated pursuant to section 503 or VEVRAA. In fiscal year 2010, OFCCP investigated 94 individual complaints of which only 10 were Executive Order 11246 complaints, while 83 complaints (88 percent) were investigated pursuant to section 503 or VEVRAA. Through August 15, 2011 of fiscal year 2011, OFCCP has investigated 77 individual complaints, of which seven were Executive Order 11246 complaints, 66 complaints (86 percent) were investigated pursuant to Section 503 or VEVRAA.

The chart below shows the breakout of individual complaints investigated by OFCCP from January 20, 2009 to August 15, 2011. Because the vast majority of individual complaints alleging Executive order violations are, pursuant to the MOU between OFCCP and the EEOC, referred directly to the EEOC, they are not cap-

tured on this chart. The few individual complaints alleging Executive order violations that were investigated by OFCCP were retained, pursuant to the MOU, to avoid duplication and assure effective law enforcement. For example, if OFCCP is in the process of conducting a compliance review of a company against which an Executive Order 11246 complaint is filed, it makes sense for the complaint to be investigated by OFCCP rather than EEOC, to conserve law-enforcement resources.

Reason	Total	Types of Complaint Issues
Executive Order	3	Termination, Wages, Demotion, Harassment, Job Benefits, Job Assignment, Segregated, Retaliation, Other
Section 503	34	Hiring, Termination, Layoff, Recall, Wages, Promotion, Demotion, Harassment, Job Benefits, Job Assignment, Training, Retaliation, Disabled, Other
Section 4212	26	Hiring, Termination, Layoff, Wages, Promotion, Demotion, Seniority, Harassment, Job Benefits, Job Assignment, Training, Retaliation, Disabled, Sabbath, Other
Other	2	Termination, Other
Total fiscal year 2009 (from Jan. 20, 2009)	65	
Executive Order	10	Hiring, Termination, Layoff, Promotion, Demotion, Seniority, Harassment, Job Benefits, Job Assignment, Training, Retaliation, Other
Section 503	36	Hiring, Termination, Layoff, Recall, Wages, Promotion, Demotion, Harassment, Job Benefits, Job Assignment, Training, Retaliation, Disabled, Other
Section 4212	47	Hiring, Termination, Layoff, Wages, Promotion, Demotion, Seniority, Harassment, Job Benefits, Job Assignment, Training, Retaliation, Disabled, Other
Other	1	Wages, Harassment, Job Benefits, Job Assignment, Segregated, Retaliation, Disabled, Other
Total fiscal year 2010	94	
Executive Order	7	Hiring, Termination, Wages, Demotion, Harassment, Job Assignment, Training, Segregated, Retaliation, Disabled, Sabbath, Other
Section 503	35	Hiring, Termination, Layoff, Wages, Promotion, Demotion, Seniority, Harassment, Job Benefits, Job Assignment, Training, Segregated, Retaliation, Disabled, Other
Section 4212	31	Hiring, Termination, Layoff, Recall, Wages, Promotion, Demotion, Seniority, Harassment, Job Benefits, Job Assignment, Training, Retaliation, Disabled, Other
Other	4	Hiring, Termination, Wages, Harassment, Retaliation, Other
Total fiscal year 2011 (as of Aug. 15)	77	
Summary Totals: 3-Yr Executive Order Total	20	Executive Order ONLY
Overall Total	236	Executive Order, Section 503, VEVRAA, and Other

Note: Some complaints alleged more than one basis. In those cases, OFCCP personnel categorized them as ''Executive Order,'' ''Section 503,'' ''Section 4212,'' or ''Other'' (thereby avoiding double-counting). The ''Other'' category is used for complaints that do not allege violations of one of the laws that OFCCP enforces.

Question 30. It appears OFCCP is altering standards and guidance for employers without replacing them with an alternative—leaving Federal contractors to guess at how to comply with the law. Please explain whether the "Interpretative Standards for Systemic Compensation Discrimination" (71 FR 35124, June 16, 2006) were followed for investigating cases of systemic compensation discrimination for the last 2 years, and describe any additional techniques being used by the agency to investigate compensation discrimination? What standards will OFCCP use to evaluate compensation discrimination once the current ones have been withdrawn? Without the Standards and voluntary guidelines how do employers determine if they are compliant with the law? If you are planning to issue other standards, what are you holding employers to in the interim?

Answer 30. There is a pending Notice of Proposed Rescission of the existing 2006 *Interpretive Standards for Systemic Compensation Discrimination and Voluntary Guidelines for Self-Evaluation of Compensation Practices* (2006 Standards). In the

absence of the 2006 Standards, contractors will not have to “guess” at their compliance obligations. OFCCP’s longstanding policy is to follow title VII principles in conducting investigations and analyses of potential discrimination under Executive Order 11246, including compensation discrimination. The agency will continue to hold contractors to title VII principles with respect to equal employment opportunity in their compensation practices.

During the past 2 years (August 2009 to August 2011), the 2006 Standards have applied to OFCCP reviews. However, it is important to note that the 2006 Standards, by their terms, only related to the standards by which a violation will be determined rather than the methodology of investigations or preliminary assessments. During this period, OFCCP identified very few Executive Order 11246 violations involving compensation disparities and they largely involved individuals or small cohorts where the 2006 Standards would not apply. If the Standards are rescinded, OFCCP will develop and issue compensation investigation procedures in the same manner it establishes procedures for investigating other forms of discrimination—through instructions for its compliance officers contained in the OFCCP Federal Contract Compliance Manual (FCCM), directives, and other staff guidance materials. OFCCP will continually refine those procedures to ensure that they are as effective and efficient as possible.

OFCCP works hard to respond to the concerns of contractors and subcontractors. In response to requests from the contractor community, OFCCP publicly stated that the agency intends to further clarify how it is investigating compensation discrimination.

Question 31. Given the fact that the construction industry has an unemployment rate of 20 percent, why is OFCCP seeking to make changes to the requirements applicable to that industry? In revising the construction requirements, will OFCCP look into whether apprentice programs meet affirmative action requirements since contractors often rely on them for new hiring?

Answer 31. Even in times of high unemployment, it is important that Federal contractors and subcontractors comply with their contractual requirements and the law. In order for OFCCP to fully monitor this compliance, the agency must have the tools it needs to effectively enforce the law in the current environment. The construction regulations are over 30 years old. Much has changed in the industry and the workforce since that time. As a result, the requirements need updating to reflect those changes. In considering revising the requirements, OFCCP conducted a series of town hall meetings, webinars and listening sessions to solicit comments on the construction industry’s compliance with Executive Order 11246 and recommendations for revising and updating the regulations that apply to Federal and federally assisted construction contractors and subcontractors.

OFCCP is developing a Notice of Proposed Rulemaking and is considering the effect of apprenticeship programs on construction industry employment during the process. Although OFCCP generally does not have jurisdiction over apprenticeship sponsors because many are not Federal Government contractors or subcontractors or federally assisted construction contractors or subcontractors, OFCCP works closely with the Office of Apprenticeship (OA) within the Department’s Employment and Training Administration (ETA). OA is currently updating its equal opportunity regulations applicable to registered apprenticeship programs. OFCCP and OA are coordinating development or their equal opportunity regulations to ensure that their respective regulations will be complementary.

Question 32. Please explain whether OFCCP is inquiring into Family and Medical Leave Act (FMLA) policies and independent contractor enforcement issues as part of its audits and investigations. How would OFCCP detect and address a violation of FMLA or employment misclassification given that it does not have authority under the relevant statutes? For example, do you anticipate seeking debarment if OFCCP determines there may be misclassification or FMLA violations? Will OFCCP make referrals to other Federal agencies in this or other areas if investigators detect a violation of laws that OFCCP does not enforce? Please provide any documents, including memoranda of understanding, regarding such referrals. Please explain what training OFCCP has provided to it compliance officers about FMLA or independent contractor status.

Answer 32. ***FMLA:*** Under the Executive order and section 503, OFCCP may review leave and other personnel policies to determine whether they either treat women, minority groups, and others protected by the laws OFCCP enforces differently than others, have a discriminatory impact on these employees or applicants, or both. This review does not constitute FMLA enforcement. Should OFCCP uncover evidence of possible violations of the FMLA in the course of its review of such poli-

cies, its Memorandum of Understanding with the Wage and Hour Division (WHD) of the U.S. Department of Labor, which enforces the FMLA, provides that OFCCP will refer any apparent violations to WHD. See attached copy of the Memorandum of Understanding.

Employee misclassification: Pursuant to section 4212 as well as to the Executive order and section 503, OFCCP has jurisdiction to determine whether individuals who work for a contractor are properly classified as employees or independent contractors. That information is essential to almost every aspect of OFCCP's investigations and compliance evaluations, including, for example, establishment of jurisdiction; accuracy of EEO-1 reports; and existence of discriminatory decisions regarding hiring, promotion, termination, and compensation.

Training: In the years immediately preceding this Administration, the National Office of OFCCP did not routinely provide standardized training to its compliance officers (COs). Training occurred on the job, or was provided infrequently by regional or district offices. In August 2010, OFCCP standardized National Office training, with Basic Training being offered to every newly hired CO, refresher training opportunities offered for current COs, and specialty training sessions to be offered on an on-going basis for all COs. FMLA and independent contractor status are both expected to be topics of future specialty trainings. During OFCCP's All-Managers Meeting, held in early August 2011, OFCCP piloted training on FMLA issues.

Question 33. Does OFCCP verify that there is a covered contract before seeking to investigate/audit an entity? What guidance/directives have been issued since January 20, 2009 on jurisdictional requirements to OFCCP staff? Please provide a copy of all such guidance. Please explain whether OFCCP staff believe a jurisdictional objection to an investigation or audit can be waived if a non-Federal contractor initially complies with the agency's requests/investigation but then realizes they are not a covered Federal contractor.

Answer 33. Before scheduling an entity for a compliance evaluation, OFCCP verifies that there is a covered contract at two distinct stages. First, pursuant to an agency initiative called "Contracts First", OFCCP's Data Integrity Team evaluates all possible entities for scheduling by researching the entity's Federal contract activity through Federal contractor Web sites that summarize a company's Federal contracting activity with the Federal Government (i.e., FPDS–NG), and by examining the company's statement on its EEO-1 Report that it is a Federal contractor (i.e., Question 3 data). The "Contracts First" initiative occurs while the annual scheduling list is being developed by the Data Integrity Team, and *before* the scheduling notification letters are issued to companies by OFCCP field offices. If the underlying Federal contract meets the requisite dollar amount for coverage under the laws that OFCCP enforces, and the contract's term is current when the annual scheduling list is developed, then it becomes a candidate for possible scheduling by OFCCP. Secondly, once an OFCCP field office selects that entity for a scheduled compliance evaluation, field staff will generally contact the entity directly by phone to verify its Federal contractor status, physical location, and number of employees at the establishment.

OFCCP's National Office, through its Division of Program Operations, has held many training sessions via webinar presentations to provide guidance for OFCCP field staff on jurisdictional issues. For example, on December 3, 2009, OFCCP's National Office held a joint webinar presentation with attorneys from the Department's Office of the Solicitor for OFCCP. This webinar was created for field staff to address jurisdictional issues and to reinforce the elements needed to establish jurisdiction over scheduled entities (see attached Power Point presentation). This same presentation was provided later as an external webinar for our stakeholders and members of the public.

A jurisdictional objection to an investigation cannot be waived at any time by the scheduled entity during a compliance review or subsequent litigation, even if it initially complies with the agency's request for materials or investigation. The contractor can raise a jurisdictional objection at any time during the review once the contractor realizes that it is not covered. If OFCCP can verify that it has no jurisdiction over a company, it cannot proceed with a review, even if the company has already provided us with documents/materials. OFCCP does, however, have the authority to investigate whether it has jurisdiction over a company.

Question 34. Please provide a list of peer reviewed or agency enforcement data to support the statement in the 2012 OFCCP budget justification that there is still a 23 percent "pay gap" between women and men.

Answer 34. According to the U.S. Census Bureau,[1] women still earn only 77 cents for each dollar earned by a man. This is based on a broad comparison of workers age 15 and older who work full-time, year-round. The wage gap is even greater for women of color: non-Hispanic white women make 75 cents for every dollar earned by a non-Hispanic white man, while African-American women make 62 cents and Latinas make 53 cents for every dollar earned by a non-Hispanic white man.

Question 35. OFCCP and EEOC are reportedly both in the process of requesting information to develop surveys on compensation. Please explain whether allowing both agencies to seek this information separately complies with the Equal Pay Task Force's recommendation "To avoid duplicative data collection efforts, OFCCP and the EEOC will work collaboratively when evaluating data collection needs, capabilities, and tools." How does OFCCP plan to develop and implement this survey and what is the status of the survey development? Will you also commit to ensuring the survey is validated and goes through the notice and comment process before being imposed on the private sector?

Answer 35. OFCCP has been in close communication with EEOC regarding the proposed compensation survey instruments. Neither agency wants to impose duplicative or conflicting data collection requirements on Federal contractors. At this time, each agency is pursuing different but complementary information gathering channels—OFCCP through its recently issued Advance Notice of Proposed Rulemaking is gathering public comment from all stakeholders through a traditional public notice and comment process. EEOC has commissioned an expert panel through the National Academies of Sciences to provide a report and recommendation. These approaches are in fact complementary and were set forth in the Equal Pay Task Force's Pay Equity Report. Indeed, seeking more and broader input before proceeding is a sound regulatory practice. OFCCP's plans are set forth in the ANPRM available at *http://www.regulations.gov/#!documentDetail;D=OFCCP-2011-0005-0001*, which calls for advance public comment and also states that there will be an additional public comment period following the NPRM.

Question 36. As detailed in the 2012 budget justification, OFCCP reportedly plans to release contractor data to allow the public to "[c]onduct automated surveys" regarding OFCCP's enforcement activities and provide information "to various ethnically diverse groups which comprise the general population." How does OFCCP plan to accomplish this and what are the goals of doing so? Please explain how OFCCP will protect privacy for individuals and businesses.

Answer 36. The language quoted refers to OFCCP's ongoing build-out of its new IT system, the Federal Contractor Compliance System (FCCS). By bringing together and integrating several disparate data and reporting systems, the FCCS will greatly improve OFCCP's enforcement activities in a variety of ways. For example, it is being designed so that, among other things, it will:

- Provide fundamental information describing OFCCP, its mission, and the laws it enforces in multiple languages to the public in general and specifically to stakeholders from the "various ethnically diverse groups which comprise the general population;"
- Enable OFCCP to conduct more robust analysis and make better use of statistical workforce data;
- Make data submission during compliance evaluations much more efficient and less time-consuming by providing a secure web portal through which Federal contractors can submit their data electronically;
- Capture and search information about complaints filed with the agency;
- Enhance recordkeeping and records retrieval;
- Survey and evaluate OFCCP's own enforcement activities (these are the "automated surveys" quoted in the Question); and .
- Report aggregate data about OFCCP's enforcement activities to Congress, interested stakeholders, and the public at-large.

The FCCS is being developed to be in full compliance with the Privacy Act as well as the Trade Secrets and Freedom of Information Acts. It will not post or otherwise release private data of contractors or individuals except as permitted under law.

Our ability to provide information in multiple languages will also be greatly enhanced by the FCCS. Fundamental information describing OFCCP, its mission, and

[1] Source: Calculations from U.S. Census Bureau, Current Population Survey, 2010 Annual Social and Economic Supplement, Table PINC-05: Work Experience in 2009—People 15 Years Old and Over by Total Money Earnings in 2009, Age, Race, Hispanic Origin, and Sex, available at *http://www.census.gov/hhes/www/cpstables/032010/perinc/toc.htm* (last visited Dec. 7, 2010).

the laws it enforces will be made available to the broadest possible scope of communities and stakeholders.

Question 37. It is vital that positions in the career senior executive service be filled based on civil service merit requirements so that all candidates who are interested—both inside and outside government—can be considered. Are there any career senior executive service positions that you have filled using emergency authority thereby avoiding merit competition? If so, please explain why.

Answer 37. The Department of Labor (DOL) has not utilized emergency hiring authority to fill any of our current career SES positions.

Question 38. In October 2010, the Employee Benefits Security Administration (EBSA) published a proposed rule revising the term "fiduciary" pursuant to ERISA Section 3(21)(A). The Regulatory Flexibility Act requires Federal agencies to conduct regulatory economic analyses if a rule proposal has a significant economic impact upon a substantial number of small entities. In the preamble to the fiduciary rule proposal, EBSA states that the proposal will directly affect plan sponsors. Why did EBSA not conduct a Regulatory Flexibility Act analysis on small plan sponsors?

Answer 38. In the preamble to the original proposed regulation, the Department performed an initial regulatory flexibility analysis that conformed to the requirements of the Regulatory Flexibility Act. The Department based this analysis on the best information it had available at that time, and solicited public comment on the impact of the rule on small entities. The re-proposal of the rule, which is expected to be issued in early 2012, will ensure that the public receives a full opportunity to review the agency's updated economic analysis and revisions of the rule.

Currently, small employers rely on advice from financial professionals, such as investment advisers, to help them design and implement their retirement plans. The original proposed regulation would protect small employers by making it more difficult for investment advisers to steer these small employers into investment options that pay higher fees to the advisor. It would also hold advisers accountable for any imprudent advice that causes harm to plans and participants.

Question 39. Since the Regulatory Flexibility Act is designed to give small entities the chance to review and understand the potential burdens and costs and then a chance to comment on those proposed burdens and costs, it would be inappropriate for the Department to conduct a Final Regulatory Flexibility Act analysis on small-plan sponsors. Will EBSA re-propose the fiduciary rule with the proper economic analyses?

Answer 39. As stated in the response to Question 38 above, the Department's original proposed rule complied with the requirements of the Regulatory Flexibility Act. As we move forward to re-propose the rule, we will continue to comply with all Regulatory Flexibility Act requirements and take into account the input on our proposal that we have received from stakeholders.

Question 40. The fiduciary rule proposal inquires as to whether a fiduciary duty should attach to disbursements from plans and roll-overs authorized by participants into individual retirement accounts. If the final rule does cover both of these events, could small plan sponsors be held liable for violations of a fiduciary duty related to these events? In addition, would small plan sponsors be held liable for roll-overs conducted by third party service providers (that do not have a contract with the plan) conducted on behalf of former employees?

Answer 40. The Department noted in the preamble to the original proposed regulation that,

> "As a general matter, a recommendation to a plan participant to take an otherwise permissible plan distribution does not constitute investment advice within the meaning of the current regulation, even when that advice is combined with a recommendation as to how the distribution should be invested."

The Department requested public comment in the original proposal as to whether and to what extent the final regulation should encompass recommendations related to taking a plan distribution. As we move forward to re-propose the rule, the public will have the opportunity to provide further input on this issue.

Question 41. Recently, a senior Department official testified before Congress regarding the fiduciary rule proposal. In a response to a question regarding appraisers and/or valuation experts for employee stock option plans (ESOP's), the official responded, ". . . What ERISA's fiduciary rules say is that you have a duty to be fair, objective and meet professional standards of conduct . . ." Courts have found that ERISA fiduciaries have duties of prudence and of loyalty. If the fiduciary proposal is finalized in its current form, will ESOP appraisers and/or valuation experts be

held to both duties of prudence and of loyalty (i.e., exclusive benefit)? Are there any other examples under ERISA where a fiduciary would be held only to a standard of prudence?

Answer 41. The Department's original proposal contemplates that ESOP appraisers and valuation experts who provide an appraisal or fairness opinion for a fee would be subject to the fiduciary duties of prudence and loyalty. The duty of loyalty, however, would generally require no more than that the appraiser provide an objective and unbiased valuation. It is not in the best interest of the plan for the valuation to be incorrect. As stated in the preamble to the proposed rule,

> "The Department would expect a fiduciary appraiser's determination of value to be unbiased, fair, objective and to be made in good faith and based on a prudent investigation under the prevailing circumstances then known to the appraiser."

As we move forward to re-propose the rule, we will respond to concerns about the application of the regulation to routine appraisals.

Question 42. For the past 5 years, please list any regulatory proposal issued by the Department that required an economic analysis pursuant to Executive Order 12866.

Answer 42. Between August 2006 and August 2011, the Department published a total of 82 notices of proposed rulemaking (NPRMs). Of these proposals, the Department conducted an Executive Order 12866 economic analysis on the following eight economically significant items.

Agency	Title	Publication Date	FR Cite
EBSA	Default Investment Alternatives under Participant-Directed Individual Account Plans.	9/27/2006	71 FR 56806
	Fee and Expense Disclosures to Participants in Individual Account Plans.	7/23/2008	73 FR 43014
	Investment Advice—Participants and Beneficiaries	3/2/2010	75 FR 9360
	Definition of the Term "Fiduciary"	10/22/2010	75 FR 65263
ETA	Wage Methodology for Temporary Non-Agricultural Employment H-2B Program.	10/5/2010	75 FR 61578
MSHA	Refuge Alternatives for Underground Coal Mines	6/16/2008	73 FR 34140
OSHA	Hazard Communication	9/30/2009	74 FR 50279
	Walking and Working Surfaces	5/24/2010	75 FR 28862

Quarterly Case Status Report; Period: April 1, 2011–June 30, 2011; ABA Approved Attorney Referral System

SUMMARY—CASE STATUS REPORT

Total Programs Reporting: 40 Programs reporting .

Twenty-one programs have not received any contacts during this quarter.

Nineteen programs have received contact(s) during this quarter, see below for the details.

CASE ACTIVITY

1. Brief counsel/brief services: Case closed as a result of brief advice or other action taken within a few days or weeks of accepting the referral.
   Number of cases: 38.
2. Insufficient merit to proceed. Case closed.
   Number of cases: 13.
3. Case referral made, no followup contact by client. (No contact made to the attorney after referral from the LRIS program.)
   Number of cases: 14.
4. Case open—resolution pending.
   Number of cases: 17.
5. Negotiated settlement *without* litigation: Case closed through negotiation prior to starting court action, resulting in:

Number of cases in this category: *2*.*

a. FLSA: *$24,500* in back wages and *$0.00* in liquidated damages (if applicable) on behalf of *2* * (x number of) workers.

b. FMLA: ____

(type of relief or remedy obtained, i.e. reinstatement, back pay, front pay)

6. Negotiated settlement *with* litigation: Case settled after filing in court of court action, resulting in:

Number of cases in this category: 0.

a. FLSA: $________ in back wages and $________ in liquidated damages (if applicable) on behalf of ________ (x number of) workers.

b. FMLA: ____

(type of relief or remedy obtained, i.e. reinstatement, back pay, front pay).

7. Case resolved through (check one):

Number of cases in this category: 0.

☐ Jury
☐ Bench Trial

a. FLSA decision in favor of plaintiffs with $________ in back wages and $________ in liquidated damages (if applicable) on behalf of $________(x number of) workers.

b. FLMA decision in favor of plaintiff resulting in:

____

____

(type of relief or remedy obtained, i.e. reinstatement, back pay, front pay).

c. Decision in favor of defendants.

* Two different programs reporting amounts recovered: $7,000 and $17,500.

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE EMPLOYMENT STANDARDS ADMINISTRATION'S

WAGE AND HOUR DIVISION

AND

OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

I. BACKGROUND AND PURPOSE

The federal statute involved in this Memorandum of Understanding (MOU) is the "Family and Medical Leave Act of 1993" (FMLA), 29 USC 2601, enacted into law on February 5, 1993, and its implementing regulations at 29 CFR 825, et seq. The Department of Labor (the Department) will enforce Titles I and IV of FMLA, which were generally effective on August 5, 1993, as was the interim final rule published in the Federal Register on June 4, 1993.

FMLA entitles eligible employees to up to 12 weeks of unpaid leave in any 12 months for the birth or adoption of a child, to care for a spouse or an immediate family member with a serious health condition, or for an employee's own serious health condition that makes him or her unable to work.

The purpose of this MOU is to maximize the effectiveness of the enforcement of FMLA by fostering cooperation and coordination between the Wage and Hour Division (WHD) and the Office of Federal Contract Compliance Programs (OFCCP), both of the Employment Standards Administration (ESA). This agreement will clarify the role of each agency; ensure the efficient utilization of resources; and delineate respective responsibilities.

The effect of this agreement will be to increase the number of employers whose policies and practices will be reviewed for conformity with the provisions of FMLA beyond the number of employers otherwise reviewed if only one agency had enforcement responsibility. The MOU will maximize ESA resources by using OFCCP field staff as additional points of client contact to increase the enforcement profile of the Department.

II. AGENCY AUTHORITY AND RESPONSIBILITY

Wage and Hour Division

On August 4, 1993, the Secretary of Labor assigned responsibility for enforcing FMLA to WHD. WHD will obtain compliance from employers through investigation and conciliation, including the assessment of civil money penalties and initiation of legal proceedings under Section 107 of the Act. In addition, WHD has responsibility for promulgating the implementing regulations and program policy, as well as issuing interpretations of the Act. WHD will consult with, coordinate with, and obtain concurrence from OFCCP on program policy and procedure changes that would directly affect OFCCP's responsibilities under this MOU. The two agencies will modify their procedures in accordance with any changes.

Office of Federal Contract Compliance Programs

Under the conditions prescribed in this MOU, OFCCP's primary role will be to review employers' policies and practices for adherence with the provisions of FMLA during the course of its regular compliance reviews and complaint investigations, and refer any apparent violations of FMLA to WHD.

OFCCP Compliance Reviews, Investigations, and Referral Procedures

OFCCP will incorporate a FMLA inspection into their compliance review and complaint investigation procedures. The inspection will determine whether the FMLA notice is posted, as required by 29 CFR 825.300, and whether an employee handbook or other written guidance has been provided to employees in accordance with 29 CFR 825.301.

The results of the FMLA inspections will be referred to WHD on an ESA referral form developed jointly by OFCCP and WHD. OFCCP will be responsible for the printing and distribution of the form. A referral form will be sent to WHD to document each OFCCP inspection and all apparent violations or other investigative leads. Any complaints received during a review or investigation will also be referred to WHD in the same manner. The referral forms provided to WHD that do not indicate any apparent violations or other investigative leads are for informational purposes and will provide WHD with FMLA compliance status and background information in case of future complaints from employees of these same employers.

WHD will record information on the same referral form, concerning the disposition of all OFCCP referrals containing apparent violations of FMLA or other investigative leads and transmit the forms back to OFCCP in a timely manner. If WHD declines to take further action on referrals of violations or other investigative leads, it will include the reason for the declination on the referral form.

Complaint Processing

Persons coming to the OFCCP offices with questions about their FMLA rights and responsibilities will be provided technical assistance literature and directed to the nearest WHD office for further information. Telephone inquiries will be given the telephone number and address of the nearest WHD office and an offer to mail printed FMLA literature to the caller.

OFCCP will immediately refer any written complaints received to the nearest WHD office and the complainant will be notified of the referral. Any complainants will be provided technical assistance literature and directed to the nearest WHD office for additional assistance.

III. IMPLEMENTATION

Liaison

In the National Office, the Office of Program Operations of WHD and the Division of Policy, Planning & Program Development and/or the Division of Operations of OFCCP, as appropriate, shall maintain liaison concerning matters of mutual interest and jurisdiction, including matters set forth in this Memorandum, and shall actively seek to communicate at all levels. Information-sharing at the headquarters level of each agency will include cooperation and coordination in the development of policy, procedures, regulations, training and activity reports that relate to the OFCCP role described herein.

Field level liaison between the WHD and OFCCP is the responsibility of the Regional Administrators for WHD, the Regional Directors for OFCCP and the District Directors (DDs) of both agencies. The goal of this liaison is information-sharing and coordination of the referral program at the Regional and District Office level. The OFCCP RD/DD is responsible for ensuring that FMLA complaints and complainants are effectively and efficiently referred to WHD in a timely manner and that the results of the reviews of employers for compliance with the provisions of FMLA are appropriately documented and referred to

the WHD. The WHD RA/DD is responsible for ensuring that the information received from OFCCP is promptly reviewed and that timely feedback on written referrals, containing information on apparent violations of FMLA, is provided to their OFCCP counterparts.

Training, Information Exchange, and FMLA Materials

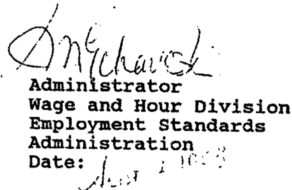
Consistent with available resources, WHD will assist OFCCP in providing training to OFCCP employees on WHD's implementation of FMLA enforcement policy. The OFCCP national office will prepare and disseminate training materials for training of OFCCP field staff. Administrative details regarding such training will be the responsibility of the WHD RA and the OFCCP RD in each Region.

The Office of Program Operations of WHD and the appropriate Division(s) of OFCCP (Policy/Operations) will meet quarterly to review the agencies' ongoing relationship under FMLA.

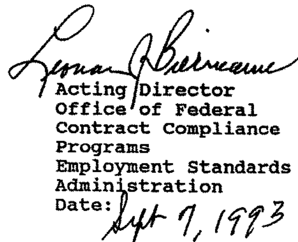
WHD will provide a list of FMLA forms, posters, materials and publications directly to the OFCCP national office, which will arrange for the OFCCP field offices to directly requisition these materials.

IV. AGREEMENT

The provisions of this Memorandum of Understanding become effective on the date of signature. The provisions may be reviewed and jointly modified as appropriate when it is determined by either agency that such review and modification is in the interest of efficiently enforcing the provisions of the Family and Medical Leave Act of 1993.



Administrator
Wage and Hour Division
Employment Standards
Administration
Date:



Acting Director
Office of Federal
Contract Compliance
Programs
Employment Standards
Administration
Date: Sept 7, 1993

Attachment 1

U.S. DEPARTMENT OF LABOR,
OFFICE OF THE ASSISTANT SECRETARY
FOR ADMINISTRATION AND MANAGEMENT,
WASHINGTON, DC 20210,
January 29, 2010.

MEMORANDUM FOR: AGENCY ADMINISTRATIVE OFFICERS,
REGIONAL ADMINISTRATORS, OASAM

FROM: SUZY M. BARKER, Director of Human Resources

SUBJECT: Determination of Fair Labor Standards Act (FLSA) Coverage for Department of Labor (DOL) Positions

This memorandum establishes new requirements for the designation of all DOL. positions as exempt or nonexempt from the provisions of the Fair Labor Standards Act (FLSA), in accordance with provisions of part 551 of title 5, Code of Federal Regulations (5 CFR part 551).

Specifically, all DOL positions at the GS–11 grade level and lower will be designated as FLSA nonexempt, unless a position has been previously designated as exempt by a finalized union agreement relating to the FLSA (including any agreements to which the Department has agreed in the course of pending grievances or other litigation), or the position clearly and compellingly meets exemption criteria under 5 CFR part 551, consistent with the 5 CFR 551.202(a) provision that requires a position to be designated as nonexempt unless it fully meets exemption requirements. If reasonable doubt exists as to whether exemption criteria are met, the position must be designated as FLSA non-exempt.

The Department of Labor enforces the FLSA provisions as they apply to the non-Federal sector. Accordingly, it is expected that the Department will be in full compliance with the Act, and will serve as an example to other Federal sector agencies. It is critical that we demonstrate appropriate application of the Federal sector FLSA provisions to all Department positions and employees. In this regard, the aforementioned new FLSA designation requirements reflect a deliberate initiative within the Department to ensure that the FLSA provisions established under 5 CFR part 551 are correctly and consistently applied to all DOL, positions and employees, and to reduce DOL's vulnerability to future FLSA grievances.

The new FLSA designation requirements established by this memorandum are effective immediately for all new and vacant positions. Position descriptions and PeoplePower records must reflect the appropriate FLSA designation by the time such positions are filled. Additionally, within 30 days of the date of this memorandum, agency and Regional human Resources Offices are directed to review all encumbered positions at grades GS–11 and below that are currently designated as FLSA exempt, determine whether the positions should be re-designated as non-exempt in accordance with the provisions of this memorandum, and update position descriptions and PeoplePower records as appropriate. Human Resources Offices are requested to provide written confirmation to the OASAM Office of Human Resources Policy and Accountability (OHRPA) that these actions are complete. Compliance with these new FLSA designation requirements will be confirmed during future Human Resources Management Accountability Program reviews conducted by OHRPA.

I appreciate your support in implementing the provisions of this memorandum. Please direct questions about this memorandum to Katherine Greenlaw, Office of Human Resources Policy and Accountability, HRC, OASAM, at (202) 693–7737 or *greenlaw.katherine@dol.gov*.

Attachment 2

U.S. DEPARTMENT OF LABOR,
OFFICE OF THE ASSISTANT SECRETARY
FOR ADMINISTRATION AND MANAGEMENT,
WASHINGTON, DC 20210,
January 29, 2010.

MEMORANDUM FOR: AGENCY ADMINISTRATIVE OFFICERS,
OASAM REGIONAL ADMINISTRATORS

FROM: SUZY M. BARKER, Director of Human Resources

SUBJECT: Fair Labor Standards Act (FLSA)-Position Description Requirements

This memorandum establishes new requirements for documenting Fair Labor Standards Act (FLSA) coverage on position descriptions (PDs) within the Department of Labor.

Effective immediately, all new PDs must reflect the following requirements:

1. **Approximate percentage of time spent on each major duty.** An essential component of the FLSA exemption criteria provided under title 5, Code of Federal Regulations (5 CFR part 551) is the "Primary Duty Test," which specifies that exempt work must be performed for a "majority of time." Accordingly, for each major duty required by the position, the PD should indicate the approximate percentage of the employee's time spent performing such major duty. When identifying the major duties, include only those duties that are performed 25 percent or more of the time. Also, since duties can occur on a cyclical basis within the year, remember that the percentage of time spent should be based on the full annual cycle of duties performed. The sum of the percentages listed in the position description should equal 100 percent.

2. **The basis for FLSA exemption or coverage.** The FLSA determination must be included on all new PDs by completing and incorporating the FLSA checklist (Attachment A) within the body of the position description. This checklist is a sum-

mary; however, the complete rationale for the FLSA determination must be documented by completing the appropriate worksheet (Attachment B). The worksheet must then be retained with the official copy of the PD.

Implementation of the new requirements and utilizing the attached tools will provide a consistent approach in documenting FLSA determinations for positions departmentwide. Please direct questions about this memorandum to Katherine Greenlaw, Office of Human Resources Policy and Accountability, HRC, OASAM, at (202) 693–7737 or by email at *greenlaw.katherine@dol.gov*.

Attachment 3

U.S. DEPARTMENT OF LABOR,
OFFICE OF THE ASSISTANT SECRETARY
FOR ADMINISTRATION AND MANAGEMENT,
WASHINGTON, DC 20210,
January 29, 2010.

MEMORANDUM FOR: AGENCY ADMINISTRATIVE OFFICERS,
REGIONAL ADMINISTRATORS, OASAM

FROM: SUZY M. BARKER, Director of Human Resources

SUBJECT: Management of Overtime Pay, Compensatory Time Off, and Credit Hours for FLSA Exempt and Nonexempt Employees

The following is a brief, general overview of overtime pay, compensatory time off, and compensatory time off for travel. We would like agencies to distribute this information to all employees so that they can be aware of their rights and responsibilities regarding the approval of overtime work and the Administration of the time and attendance system.

It is the responsibility of supervisors to properly manage their employees' work schedules, to authorize overtime work when it is necessary to accomplish the mission of the organization, and to approve employees' bi-weekly time and attendance submissions as appropriate. Knowledge of these rules will enable supervisors to ensure that the regulations are adhered to, and that employees receive the compensation to which they are entitled. Servicing human resources offices can provide valuable guidance and assistance based on their knowledge and familiarity with the Office of Personnel Management's (OPM) governmentwide regulations and the Department's implementing policies.

FAIR LABOR STANDARDS ACT (FLSA)

The Fair Labor Standards Act is a Federal law administered by the Department of Labor that protects workers by providing minimum standards for both wages and overtime entitlement and rules governing overtime pay. Included in the Act are provisions related to child labor and equal pay. While the Department of Labor has responsibility for administering and enforcing the FLSA in the private sector, OPM administers the provisions of the FLSA for Federal employees. These OPM provisions, which apply to Federal employees and are addressed in this memorandum, are not identical with the regulations applicable to the private sector, but are consistent where practicable to maintain compliance with the FLSA.

FLSA NONEXEMPT OR EXEMPT

The duties of an employee's position determine whether an employee is covered (nonexempt) or not covered (exempt) by the FLSA. Each agency's servicing human resources office determines FLSA coverage, and this information is contained in Block 7 of each employee's position description cover sheet (OF–8) or Block 35 of the Standard Form 50 (i.e., "E" for exempt, and "N" for nonexempt). These documents are available in each employee's electronic Official Personnel Folder (eOPF). Nonexempt employees are covered by the FLSA rules while exempt employees are covered by rules in title 5 of the United States Code (U.S.C.).

OVERTIME PAY RULES

Employees not covered by FLSA (i.e., FLSA exempt)

• Overtime work must be officially ordered or approved in writing by an authorized official. Employees shall use DOL Form DL–1–105, available on LaborNet, to document ordered or approved overtime.

• Overtime hours are for work ordered or approved in advance, performed over 8 hours per work day or 40 hours per work week. For flexible work schedules, over-

time hours are generally for work ordered or approved in excess of 80 hours per biweekly pay period. (But see below for guidance on the difference between overtime work and credit hours.)

- For exempt employees whose rate of basic pay does not exceed the rate of pay for GS–10, step 1, the overtime hourly rate is 1.5 times their hourly rate of basic pay. For exempt employees whose rate of basic pay exceeds GS–10, step 1 and whose pay is below or equal to the GS–10 step 10 level, the overtime hourly rate (when overtime work has been properly approved) is the greater of: (i) 1.5 times the rate of basic pay for GS–10, step 1, or (ii) 1.0 times the employee's hourly rate of basic pay. For all other DOL employees (i.e., those whose rate of basic pay exceeds the GS–10 step 10), DOL generally provides an equivalent amount of compensatory time off for all authorized irregular or occasional overtime.
- The "biweekly pay cap" limits the amount of premium pay (overtime pay, night pay, Sunday pay, holiday premium pay, compensatory time off, and some others, such as Law Enforcement Availability Pay, and Standby Duty Pay) that an exempt employee may receive in any 2-week period, to the greater of the pay for GS–15, step 10 (including any applicable locality pay or special rate supplement) or the rate payable for Executive Schedule level EX–V ($145,700 in 2010). In emergency or mission-critical situations, an annual premium pay cap may be used instead of a biweekly pay cap.
- When the biweekly pay cap is reached, FLSA exempt employees may still be ordered to perform overtime work without receiving further compensation.

Employees covered by FLSA (i.e., FLSA nonexempt)

- Overtime hours are for work performed that is over 8 hours in a day or 40 hours in a workweek. For employees on flexible work schedules, overtime hours are generally those in excess of 80 hours per biweekly pay period. (But see below for guidance on the difference between overtime work and credit hours.) Employees shall use DOL Form DL–1–105, available on LaborNet, to document ordered or approved overtime.
- Creditable overtime work includes work ordered or approved by an authorized official. In addition, generally any work that is "suffered or permitted" (e.g., overtime work not officially authorized or approved by an authorized official but of which management was aware) is also creditable as overtime hours. However, for employees on a flexible work schedule, overtime hours are defined to include only hours officially ordered in advance. (See below for guidance on the difference between overtime work and credit hours.) A supervisor is responsible for preventing the performance of unauthorized work.
- Nonexempt employees on a flexible work schedule will be paid overtime compensation for overtime as defined in 5 U.S.C. § 6121—i.e., "overtime" includes all hours in excess of 8 hours in a day or 40 hours in a week that are officially ordered in advance, but does not include credit hours voluntarily worked.
- The overtime hourly rate (when overtime work for such employees has been properly approved) is equal to 1.5 times the employee's "hourly regular rate," which is computed by dividing total remuneration (not just basic pay) by the total number of hours of work for the given period (usually 1 week).
- No hourly, biweekly, or annual pay caps limit FLSA overtime pay; overtime work must always be compensated.

COMPENSATORY TIME OFF

Employees not covered by FLSA (i.e., FLSA exempt)

- For employees on flexible work schedules, at the employee's request, compensatory time off may be approved in lieu of overtime pay for any overtime work, whether regularly scheduled or irregular or occasional overtime work,
- For employees not on a flexible work schedule, at the employee's request, compensatory time off may be approved in lieu of overtime pay only for irregular or occasional overtime work.
- The agency can require the payment of compensatory time off (rather than overtime pay) only for FLSA exempt employees with pay greater than GS–10, step 10 (including applicable locality pay and special rate supplements), and only in lieu of overtime pay for irregular or occasional overtime work.
- FLSA exempt employees whose pay exceeds the biweekly pay cap (as defined above) cannot receive "premium pay," which includes both overtime pay and crediting of compensatory time.
- FLSA exempt employees have 26 pay periods after the pay period in which compensatory time is earned to use the hours. Any hours unused after 26 pay periods will be forfeited.

Employees covered by FLSA (i.e., FLSA nonexempt)

• For employees on flexible work schedules, at the employee's request, compensatory time off may be approved in lieu of overtime pay for any overtime work, whether regularly scheduled, or irregular or occasional overtime work.

• For employees not on a flexible work schedule, at the employee's request, compensatory time off may be approved in lieu of overtime pay only for irregular or occasional overtime work.

• FLSA nonexempt employees may never be ordered to take compensatory time off in lieu of overtime pay.

• The biweekly pay cap does not apply to FLSA nonexempt employees.

• FLSA nonexempt employees have 26 pay periods after the pay period in which compensatory time is earned to use the hours. The nonexempt employee will be paid for any hours unused after 26 pay periods at the overtime rate in effect when the hours were earned.

OVERTIME VS. CREDIT HOURS FOR FLSA EXEMPT AND NONEXEMPT EMPLOYEES

• Under the flexible work schedules, which are in use throughout DOL, it is important to distinguish overtime hours from credit hours. In accordance with 5 CFR 610.404, employees on a flexible work schedule at the Department of Labor need to sign in and out every day to account for their time worked. Hours that an employee on a flexible schedule voluntarily works—to accrue hours in excess of the basic work requirement—are credit hours, not overtime hours.

  • For example, an employee has an assignment which requires several days to complete, and chooses to work extra hours on 2 days to complete the assignment. If the employee exceeds the 80-hour basic work requirement for the pay period, the extra hours will count as credit hours.

• An employee on a flexible schedule—whether FLSA exempt or FLSA nonexempt—receives overtime pay or compensatory time if ordered to work beyond 8 hours on a given day or 40 hours during a given week. Employees shall use DOL Form DL–1–105, available on LaborNet, to document ordered or approved overtime.

  • For example, if an employee informs the supervisor that he/she cannot complete an assignment by the established deadline unless he/she works overtime and the supervisor authorizes the overtime work by signing the DL–1–10, the employee will receive compensatory time or overtime pay, as appropriate, for work performed in excess of 8 hours in a day or 40 in a week to complete the assignment.

• An employee may accrue no more than 24 credit hours for carryover from pay period to pay period.

• Credit hours are not included in the premium pay cap.

COMPENSATORY TIME FOR TRAVEL OF FLSA EXEMPT AND NONEXEMPT EMPLOYEES

• Compensatory time for travel is earned by an employee, without regard to whether he or she is FLSA exempt or nonexempt, for time spent in a travel status away from the employee's official duty station when such time is not otherwise compensable. See DOL Spotlight No. 890 for more information.

• Compensatory time for travel is not included in the biweekly pay cap.

• "Travel status" includes only the time actually spent traveling between the official duty station and a temporary duty station, or between two temporary duty stations, and the usual waiting time that precedes or interrupts such travel—typically 1 hour for air travel within the United States and 2 hours for international travel.

• Both FLSA exempt and nonexempt employees have 26 pay periods after the pay period in which compensatory time for travel is earned to use the hours. Any hours unused after 26 pay periods are forfeited, regardless of the employee's FLSA coverage.

The following references are also provided for your convenience:

OPM Regulations

Covered by Title 5 (5 U.S.C.): 5 CFR part 550.
Overtime and Compensatory Time for FLSA Nonexempt Staff: 5 CFR part 551.
Compensatory Time Off for Travel: 5 CFR part 550, subpart N.

DOL Policies

Overtime and Compensatory Time for FLSA Exempt Staff Covered by Title 5 (5 U.S.C.): DPR 550.
FLSA Nonexempt Staff Covered by the Fair Labor Standards Act: DPR 551.

Compensatory Time Off for Travel: DPR 550; Spotlight 890 at *http://www.labornet.dol.gov/DCS__FileSystem/Spotlights/Spotlight890.doc*.

U.S. DEPARTMENT OF LABOR,
OFFICE OF THE ASSISTANT SECRETARY
FOR ADMINISTRATION AND MANAGEMENT,
WASHINGTON, DC 20210,
January 29, 2010.

MEMORANDUM FOR AGENCY HEADS

FROM: T. MICHAEL KERR

SUBJECT: Application of the Fair Labor Standards Act (FLSA) in the Department of Labor (D0L)

This correspondence establishes new requirements for the application of the Fair Labor Standards Act (FLSA) within DOL, as the Act is administered by the Office of Personnel Management (OPM) for Federal sector positions under the provisions of part 551 of title 5 Code of Federal Regulations (5 CFR 551). In addition, this memorandum transmits guidance to assist DOL, management officials, human resources representatives, and employees in implementing these Departmental requirements and in understanding the implications of FLSA coverage for overtime and compensatory time off.

DOL enforces the FLSA provisions as they apply to the non-Federal sector. Accordingly, it is expected that the Department will be in full compliance with the Act and will serve as an example to other Federal sector agencies. It is critical that we demonstrate appropriate application of the Federal sector FLSA provisions to all Department positions and employees. In this regard, the requirements and guidance provided with this memorandum reflect a deliberate initiative within the Department to ensure that the FLSA provisions established under 5 CFR part 551 are correctly and consistently applied to all DOL, positions and employees and to reduce DOL's vulnerability to future FLSA grievances.

Please find attached the following:

- **Memorandum for Agency Administrative Officers/Regional Administrators, OASAM: Determination of Fair Labor Standards Act (FLSA) Coverage for Department of Labor (DOL) Positions** (Attachment 1). This memorandum requires all DOL positions at the GS–11 grade level and lower to be designated as FLSA nonexempt, unless a position has been previously designated as exempt by a finalized union agreement relating to the FLSA (including any agreements to which the Department has agreed in the course of pending grievances or other litigation), or the position clearly and compellingly meets the exemption criteria under 5 CFR part 551. This requirement is consistent with 5 CFR 551.202(a), which requires that a position must be designated as nonexempt unless it fully meets the exemption requirements. If reasonable doubt exists as to whether exemption criteria are met, the position must be designated as FLSA non-exempt.
- **Memorandum for Agency Administrative Officers and OASAM Regional Administrators from the Director of Human Resources: FLSA Position Description Requirements** (Attachment 2). This memorandum requires all new DOL position descriptions (PDs) to reflect the approximate percentage of time spent on each major duty, and to reflect the basis for FLSA exemption from coverage within the body of the PD. The memorandum additionally requires the complete rationale for the FLSA determination to be documented and retained with the official copy of the PD.
- **Memorandum for Agency Administrative Officers and OASAM Regional Administrators from the Director of Human Resources: Management of Overtime Pay, Compensatory Time Off, and Credit Hours for FLSA Exempt and Nonexempt Employees** (Attachment 3). This memorandum, which is suitable for distribution to all employees, provides a general overview of overtime pay, compensatory time off, compensatory time off for travel, and credit hours under flexible work schedules, so that supervisors and employees can be aware of their rights and responsibilities regarding the implications of FLSA designation on eligibility for and approval of overtime work.

Two additional accountability initiatives further emphasize appropriate application of the FLSA as a priority within this Department:

- **The DOL performance management forms for executives and GS managers and supervisors have been updated for the fiscal year 2010 performance cycle to include the responsibility for complying with the ELSA requirements.** Specifically, the managerial competency for "Resource Management"

has been modified to require executives, managers, and supervisors to prevent staff from working unauthorized overtime hours by consistently applying FLSA and DOL policy regarding overtime, maintaining an awareness of staff hours worked and organizational goals accomplished, and ensuring that staff are knowledgeable of how the FLSA designation impacts overtime eligibility and authorization. This new requirement was announced in my September 24, 2009, memorandum to Agency Heads: Closing-Out Fiscal Year (FY) 2009 Performance Appraisals and Establishing FY 2010 Performance Plans for Senior Executive Service, Senior Level, and General Schedule Employees.

- **The DOL Human Resources Management Accountability Review Program has been expanded to include review of FLSA exemption designations.** Specifically, human resources accountability reviews led by the OASAM Human Resources Center's Office of Human Resources Policy and Accountability now include a review of selected FLSA exemption designations for purposes of ensuring compliance with governmentwide and DOL requirements.

Finally, the Department will soon release a comprehensive tutorial regarding the implications of FLSA designation through the LearningLink portal. All DOL personnel will be required to complete this course, which is intended to supplement the guidance addressed in this memorandum.

I appreciate your support in implementing the provisions of this memorandum and the attachments.

Please direct questions about this memorandum to Katherine Greenlaw, Office of Human Resources Policy and Accountability, HRC, OASAM, at (202) 693–7737 or *greenlaw.katherine@dol.gov*.

U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division—All Acts

WHD division enforcement statistics—All acts	Fiscal year 2001	Fiscal year 2002	Fiscal year 2003	Fiscal year 2004	Fiscal year 2005	Fiscal year 2006	Fiscal year 2007	Fiscal year 2008	Fiscal year 2009	Fiscal year 2010
Back Wages Collected	$131,954,657	$175,640,492	$212,537,554	$196,664,146	$166,005,014	$171,955,533	$220,613,703	$185,287,827	$172,615,125	$176,005,043
Employees Receiving Back Wages	216,647	263,593	342,358	288,296	241,379	246,874	341,624	228,645	219,759	209,814
Complaints Registered	29,085	31,413	31,123	31,786	30,375	26,256	24,950	23,845	26,311	31,824
Enforcement Hours	998,937	1,070,600	1,032,879	1,000,739	969,776	951,971	899,406	882,419	879,626	1,066,188
Average Days to Resolve Complaint	139	129	108	92	85	93	97	97	101	142
Concluded Cases	38,051	40,264	39,425	37,842	34,858	31,987	30,467	28,242	24,922	26,486

Fair Labor Standards Act Back Wages

	Violation	Back wages collected	Percent of FLSA back wages	Employees receiving back wages (duplicated)	Percent of employees receiving FLSA back wages
Fiscal Year 2009:					
Minimum Wage	9,176	13,918,600	10	40,235	21
Overtime	8,792	119,215,069	90	175,496	92
Fiscal Year 2010:					
Minimum Wage	10,529	21,043,700	16	52,530	28
Overtime	8,788	107,545,263	84	166,295	90

Back Wages Collected For Workers in Low-Wage Industries

Low-wage industries statistics fiscal year 2010	Cases	Back wages	Employees	Low-wage industries statistics fiscal year 2009	Cases	Back wages	Employees
Agriculture	1,259	$3,153,957	5,744	Agriculture	1,379	$1,404,125	5,523
Day Care	694	$1,018,255	3,028	Day Care	714	$1,074,842	3,310
Restaurants	3,759	$16,415,519	23,042	Restaurants	3,818	$17,016,109	24,375
Garment Manufacturing.	374	$2,142,336	2,215	Garment Manufacturing	371	$2,413,839	2,734
Guard Services	565	$11,751,811	10,631	Guard Services	563	$7,623,120	10,093
Health Care	1,194	$12,456,283	20,888	Health Care	1,046	$12,616,148	18,266
Hotels and Motels	724	$1,935,241	4,051	Hotels and Motels	806	$1,762,195	4,256
Janitorial Services	507	$2,774,972	2,543	Janitorial Services	447	$2,170,279	3,261
Temporary Help	237	$1,676,467	2,524	Temporary Help	216	$5,982,453	8,937
Total Low-wage industries.	9,303	$53,324,841	74,666	Total Low-Wage Industries.	9,360	$52,063,110	80,759

Low-wage industries statistics	Fiscal year 2001	Fiscal year 2002	Fiscal year 2003	Fiscal year 2004	Fiscal year 2005	Fiscal year 2006	Fiscal year 2007	Fiscal year 2008	Fiscal year 2009	Fiscal year 2010
Back Wages Collected	$32,470,183	$38,608,612	$39,595,382	$43,141,911	$45,783,743	$50,566,661	$52,722,681	$57,549,45	$52,063,110	$53,324,841
Employees Receiving Back Wages	69,469	86,432	80,772	84,897	96,511	86,780	86,560	76,903	80,759	74,666
Cases in low-Wage Industries	14,267	14,016	12,962	12,625	12,468	11,172	11,382	10,299	9,360	9,303

WHD Continues Strong Child Labor Enforcement

Child labor statistics	Fiscal year 2001	Fiscal year 2002	Fiscal year 2003	Fiscal year 2004	Fiscal year 2005	Fiscal year 2006	Fiscal year 2007	Fiscal year 2008	Fiscal year 2009	Fiscal year 2010
Directed Child Labor Cases	2,021	2,105	2,031	2,155	1,406	952	1,285	1,269	1,341	591
Cases With Child Labor Violations	2,103	1,936	1,648	1,616	1,129	1,083	1,249	1,129	887	684
Minors Employed in Violation	9,918	9,690	7,228	5,840	3,793	3,723	4,672	4,734	3,448	3,333
Minors Per Case	4.7	5	4.4	3.6	3.3	3.4	3.7	4.2	3.9	4.9
Cases With HO Violations	876	747	654	459	396	361	410	466	394	308
Minors Employed in Violation of HOs	2,060	1,710	1,449	1,087	1,091	994	1,000	1,617	1,183	863

Family And Medical Leave Act Enforcement

FMLA enforcement statistics	Fiscal year 2001	Fiscal year 2002	Fiscal year 2003	Fiscal year 2004	Fiscal year 2005	Fiscal year 2006	Fiscal year 2007	Fiscal year 2008	Fiscal year 2009	Fiscal year 2010
No. of Complaint Cases	2,700	3,501	3,565	3,350	2,784	2,161	1,983	1,889	1,841	2,094
Percent of No-Violation Cases	48%	50%	54%	55%	51%	49%	45%	47%	49%	58%
Nature of Complaint:										
Refusal to Grant FMLA Leave	629	741	815	697	647	522	459	416	412	468
Refusal to Restore to Equivalent Position	360	400	370	369	328	261	242	220	239	230
Termination	1,123	1,503	1,567	1,473	1,132	870	764	757	763	913
Failure to Maintain Health Benefits	62	71	46	48	50	31	29	39	33	36
Discrimination	616	786	767	763	627	477	489	457	394	447
Status of Compliance Action										
No Violation Cases	1,323	1,766	1,911	1,848	1,429	1,069	896	894	911	1,207
Employer Not Covered	58	63	68	75	37	39	27	29	30	36
Employee Not Eligible	164	224	199	238	176	152	82	105	109	156
Complaint Not Valid	953	1,281	1,417	1,301	1,058	765	689	655	660	869
Other	168	198	227	234	158	113	98	105	112	146
Violation Cases	1,447	1,735	1,654	1,502	1,355	1,092	1,087	995	930	887
No. of Employees Affected	1,627	2,077	1,867	1,742	1,626	1,200	1,675	1,082	2,951	910
Amount of Back Wages	$2,983,936	$3,731,929	$2,397,876	$2,311,781	$1,867,807	$1,772,342	$1,573,501	$1,532,505	$1,533,927	$1,630,817

SENATOR ISAKSON

Fiduciary Rule

Question 1. Millions of middle-class Americans rely on IRAs to supplement their retirement savings. A vast majority of those participants are satisfied with their IRAs and maintain ongoing relationships with their broker-dealers. Despite this, you have clearly expressed the view that absence of fiduciary status for those who sell IRAs is a problem that needs fixing. You have not offered any concrete study or evidence of any data that suggests a problem exists that needs fixing—or indeed that can be fixed by a new definition of fiduciary. You and others at the DOL have offered anecdotal examples of bad investor experiences over the years—which, frankly, isn't surprising given the turmoil we've had in the markets. Beyond anecdotes, which do not count as evidence, what is the evidence of a persistent or pervasive problem caused by broker-dealer conflicts of interests in the IRA markets?

Answer 1. There is a great deal of evidence that conflicts of interest are widespread in the marketplace for investment services and that these conflicts have resulted in lower returns and higher fees for retirement investors. This has been demonstrated through the Department's own investigations and cases, SEC and GAO reports, published securities cases, academic literature, and other sources. Some examples of these include: GAO, 401(k) *Plans: Improved Regulation Could Better Protect Participants from Conflicts of Interest*, Report to the Ranking Member, Committee on Education and the Workforce, House of Representatives, GAO-11-119 (Jan. 2011); Securities and Exchange Commission, Office of Compliance Inspections and Examinations,

Protecting Senior Investors: Report of Examinations of Securities Firms Providing "Free Lunch" Sales Seminars, Sept. 2007, at *http://www.sec.gov/spotlight/seniors/freelunchreport.pdf*, Daniel Bergstresser, et al., *Assessing the Costs and Benefits of Brokers in the Mutual Fund Industry*, The Review of Financial Studies, 22, no. 10, Oct. 2009. Further, while the impact on an individual person or plan in 1 year might be small due to these conflicts, even a few basis points per year of excessive fees compounds over time and can detrimentally impact the retirement income security of America's workers and their families.

Question 2. Respected economists conclude that the Proposed Fiduciary Rule would not generate benefits large enough to outweigh its costs. Is the DOL intending to perform any study to assess these costs, particularly the cost of the impact of the rule on IRAs?

Answer 2. OMB requires that an agency cannot put forward a final or proposed rule without an economic analysis complying with Executive Order 12866, which requires agencies to perform a comprehensive regulatory impact analysis (RIA) for any economically significant regulatory action. The Department provided an RIA for the proposed regulation that assessed the costs and benefits associated with the proposal. Currently, we are in the process of conducting an expanded RIA that will take into account comments received from stakeholders on the initial RIA that was published with the proposed rule. As we move forward to re-propose, the extended rulemaking process will ensure that the public receives a full opportunity to review the agency's updated RIA, which will address the rule's impact on both ERISA plans and IRAs.

Question 3. As unemployment remains stubbornly high and we are facing significant cuts in government spending, I think you will agree that we should be doing everything possible to protect private sector jobs. In April, there were 317,000 brokers in the United States who would immediately lose their jobs if the proposed rule became effective. This is the number of brokers who currently are licensed to sell IRAs, but who are not licensed to provide fiduciary advice. Hundreds of thousands more broker-dealers' jobs are at risk of being lost as a result of the industry restructuring that would occur, moving retail customers into self-directed accounts and away from professional service relationships. To what extent has the DOL analyzed the impact of the Rule on jobs? It appears that your continued momentum regarding the promulgation of this rule is in contradiction to President Obama's Executive order mandating that Federal agencies review their regulations to ensure that they are not impeding economic growth and job creation.

Answer 3. We respectfully disagree that 317,000 brokers will immediately lose their jobs if the proposed rule becomes effective, or that hundreds of thousands more jobs will be at risk of being lost. Your question relates to assertions included in the Oliver Wyman Study (Wyman Study) on the impact of the original proposed fiduciary definition on IRA consumers. This study indicates that, by imposing fiduciary duties on brokers, the proposed regulation would increase costs for IRA holders in

that they will lose access to brokerage and advisory services, thus diminishing their retirement savings.

We believe the analysis performed in the Wyman Study is open to challenge in at least two ways. First, the Wyman Study presumes that, under the proposed regulations, brokers would no longer be paid by commissions for advising IRA consumers, and that all IRA accounts will have to be converted to advisory accounts which will increase costs. The proposed regulation, however, would not prevent brokers from being paid by commissions for advising IRA consumers. Existing administrative exemptions granted by the Department currently allow fiduciary broker-dealers to receive commissions. To the extent that brokers would need additional relief, the DOL is prepared to consider additional exemptions for fee arrangements that are beneficial to plan participants and beneficiaries. Second, the Wyman Study presumes that there are only two business models available for advising IRAs: a broker model with conflicted advice and a registered investment adviser model. The Department believes a rule can be redrafted to leave ample space for alternative models that are tailored to client needs, competitively priced, and which mitigate conflicts of interest. Finally, broker-dealers would also have the option to become registered investment advisers.

The Department believes that it has complied with the requirement in Executive Order 13563, "Improving Regulation and Regulatory Review" to examine outdated and outmoded regulations. The Department retrospectively reviewed its current investment advice fiduciary rule and determined it was outdated because it had not been updated since it was issued more than 35 years ago and does not reflect current practices in the investment advice marketplace. Further, the Executive order requires Federal agencies to assess all costs and benefits associated with any rule and available regulatory alternatives. The Department conducted such an assessment in connection with the original proposed rule and believes that investment results will be better without conflicted advice, which will in turn increase retirement security. Consistent with the President's Executive order, the extended rulemaking process will ensure that the public receives a full opportunity to review the agency's updated economic analysis and revisions of the rule.

Question 4. Can you address the concerns raised in the comments and studies that the Proposed Rule will have the effect of significantly reducing IRA retirement savings of millions of middle-class Americans, perhaps by as much as $240 billion by 2030?

Answer 4. This question relates to data cited by the Wyman Study. As we explain in our answer to Question 3 above, we believe that the analysis in the Study is open to challenge. Please see our response above to Question 3.

Question 5. Nearly 36 percent of client-facing representatives will not be properly licensed to service investors under the DOL Rule. Moreover, to adapt, the industry likely will shift accounts to advisors who earn their living based on the assets under management. These advisors won't have the bandwidth to service small accounts that don't add enough to their bottom lines. As a result, the combined job losses and industry adaptations are likely to result in significantly reduced access to financial services, particularly for working-class and middle-income Americans. Since this seems to be the very group that the DOL is attempting to protect, how do you respond?

Answer 5. We respectfully disagree with the premise that there are only two business models, for reasons stated in the answer to Question 3. Our original proposed regulation protects small employers by making it more difficult for investment advisers to steer them into investment options that pay higher fees and would hold advisers accountable for any imprudent advice that causes harm to plans and participants.

Question 6. Several respectable economists expect a significant decrease in IRA savings because of this proposed rule, which seems contrary to your intended purpose. Rather it seems to be that the proposed rule is a disguised tax increase on the already struggling middle class. As fewer IRAs are opened, the growth in retirement asset values will be taxed as capital gains, instead of protected in a tax-advantaged vehicle. The impact to the consumer will be diminished investment returns, but the coffers of the government will grow. It is becoming increasingly apparent that some in the Administration actually want fewer IRAs and 401(k)s since these accounts enjoy tax advantages which diminish governmental tax receipts. Isn't it true that fairly construed, the rule is a middle-class tax increase disguised as a consumer protection device?

Answer 6. No, it is not true and we respectfully disagree with the premise of the question. The Department is seeking to protect the millions of employers, workers

and IRA holders who need and rely on investment advice for their retirement savings. The original proposed rule addresses conflicts of interest that are widespread in the marketplace for retirement advisory services. When an adviser's compensation is directly tied to specific investment recommendations, there is a real danger that the recommendations will not be based solely on the customer's interest in a secure retirement, but instead will reflect the adviser's own financial self-interest. As stated in the response to Question 1 above, evidence indicates these conflicts have resulted in lower returns and higher fees for retirement investors. While the impact on an individual person or plan in 1 year might be small due to these conflicts, over time excessive fees can detrimentally impact the retirement income security of America's workers and their families.

Question 7. Members from both parties and both chambers of Congress have expressed concern to the DOL about the Proposed Rule and more are doing so each week, yet the DOL seems to be increasing its efforts to finalize the Rule by the end of 2011. In fact, the DOL has not responded to my letter or the inquiries of many of my colleagues. Why do you feel it is so necessary to ignore these concerns and push ahead?

Answer 7. We appreciate your letter and the letters from your colleagues on the proposed regulation. As Assistant Secretary Phyllis C. Borzi stated in her August 12 response to your letter, the Department is committed to developing and issuing a clear and effective final rule that takes proper account of all stakeholder views.

On September 19, the Department announced it will re-propose its rule on the definition of a fiduciary. The decision to re-propose was in part a response to requests from the public, including Members of Congress, that the agency allow an opportunity for more input on the rule. Consistent with the President's Executive order, the extended rulemaking process also will ensure that the public receives a full opportunity to review the agency's updated economic analysis and revisions of the rule. The new proposed rule is expected to be issued in early 2012. When finalized, this important consumer protection initiative will safeguard workers who are saving for retirement as well as the businesses that provide retirement plans to America's working men and women.

Injury and Illness Prevention Program (I2P2)

Question 8. The Administration has aggressively touted the reductions they believe will occur from the regulatory look back process underway as a result of Executive Order 13563, and in particular gains that will be made under regulations from OSHA. Leaving aside the credibility of those claims, won't the burdens of the I2P2 regulation under development at OSHA entirely overwhelm whatever burden reductions are produced by this look back effort?

Answer 8. Executive Order 13563 states that "Our regulatory system must protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation." It also requires regulatory agencies such as OSHA to conduct look back reviews of existing regulations to identify those that are outmoded, ineffective, insufficient, or excessively burdensome.

OSHA still is in the process of developing the Injury and Illness Prevention Program rule. OSHA has held five stakeholder meetings across the country to give all interested parties an opportunity to inform our development of the rule. OSHA has learned much from the variety of approaches taken by 15 States that have required such programs of some or all of their employers. OSHA will base its proposal on the real world experience of employers and the substantial data on reductions in injuries and illnesses from employers who have implemented similar programs—including the companies in our Voluntary Protection Programs. OSHA will develop a flexible proposal that is appropriate to large and small businesses.

Question 9. The Administration's claims of burden reductions from the look back effort include this from Cass Sunstein's *Wall Street Journal* op-ed of May 26:

> "The Occupational Safety and Health Administration is announcing today that it is eliminating over 1.9 million annual hours of redundant reporting burdens on employers, saving tens of millions of dollars every year."

Doing a little math and dividing the 1.9 million burden hours by the 6.05 million firms with employees in the country, according to the Census Bureau, yields about 20 minutes (a third of an hour) of reduced burden. How do you imagine 20 minutes of burden reduction making a difference? Isn't it true that these redundancies are being eliminated because nobody is following them anymore?

Answer 9. The burden hour reductions that Administrator Sunstein referenced in the May 26 *Wall Street Journal* op-ed resulted from the Department of Labor's Occupational Safety and Health Administration's Standards Improvement Project—

Phase III (SIP–III) rulemaking. SIP–III is the third in a series of rulemaking actions to improve and streamline OSHA standards. The Standards Improvement Project removes or revises individual requirements within rules that are confusing, outdated, duplicative, or inconsistent.

The 20-minute burden hour savings per firm that you calculated assumes that all 6.05 million firms are impacted by the SIP–III final rule and that each of these firms would have the same burden hour reduction. This calculation is incorrect. The largest burden hour reduction in the SIP–III final rule results from OSHA removing the requirement that firms develop and maintain training records for employees who must receive training on personal protective equipment (PPE) ((29 CFR 1910.132(f)(4)). This burden reduction was determined by the total number of workers who wear PPE and who are required to be trained. Therefore, the burden hour savings per impacted firm is determined by the number of worker training records that no longer must be generated.

Based on the SIP–III rulemaking record, OSHA believes that instead of requiring employers to develop and maintain PPE training records to assure OSHA that training had been conducted, the Agency could use other, less expensive means, such as observation, to determine if workers have received adequate training on their PPE. Based on this finding, OSHA removed the burden to maintain these records.

Regardless of the amount of burden hours saved, if OSHA identifies a paperwork requirement that does not serve to promote the mission of the Agency to save and protect American workers, the Agency has and will continue to eliminate such unnecessary requirements.

Question 10. Given that fatality and injury and illness rates are at their lowest levels since data was first collected, exactly how will imposing more enforcement and citations from OSHA in the form of the Injury and Illness Prevention Program (I2P2) regulation improve this trend? How will this help employers create more jobs?

Answer 10. OSHA's goal in issuing new standards is not to do more enforcement or issue more citations, but to encourage employers to comply with the best practices laid out in the standard—in this case to work cooperatively with their employees to develop a systematic program to identify and correct health and safety problems in their workplaces.

The most recent data shows that 4.1 million serious injuries occurred in 2009 and 4,547 fatalities occurred in 2010 on the job. Far too many workers are still getting injured, sick and killed at work. OSHA believes that there is good evidence that the Injury and Illness Prevention Program rule will help reduce these numbers.

OSHA still is in the process of developing the Injury and Illness Prevention Program rule. OSHA has held five stakeholder meetings across the country to give all interested parties an opportunity to inform our development of the rule. OSHA has learned much from the variety of approaches taken by 15 Sates that have required such programs of some or all of their employers. OSHA is basing its proposal on the real world experience of employers and the substantial data on reductions in injuries and illnesses from employers who have implemented similar programs—including the companies in our Voluntary Protection Programs. OSHA will develop a flexible proposal that is appropriate to large and small businesses.

OSHA believes that the resulting reduction in workers' compensation costs, resultant premium reductions over time, and reductions in indirect costs will save U.S. employers billions of dollars each year, make them more competitive on the world market and free up capital for business expansion and job creation.

Tree Care Industry

Question 11. Earlier this year, Assistant Secretary Michaels indicated to me that OSHA would consider taking on a new regulatory initiative to separate arborists and tree care workers from traditional loggers. As another regulatory agenda was just published without the inclusion of an ANPRM on tree care operations, when will you initiate the process to better protect these thousands of middle-class workers who work to make our communities safer and more livable?

Answer 11. This is one of many areas where OSHA has been asked by employee and employer associations to issue new standards and regulations. Unfortunately, the regulatory process is quite lengthy and resource intensive. Because OSHA's resources do not permit the agency to engage in rulemaking in all areas where new or revised OSHA standards are needed, where possible, OSHA looks at non-regulatory alternatives that can provide effective worker protection.

OSHA currently has standards that protect both traditional loggers and tree care workers. OSHA's logging standard 29 CFR 1910.266 is a vertical standard that provides comprehensive coverage for logging operations. Because the nature of tree care

operations involve care and trimming instead of removal, and the scale of the operations is generally smaller than logging operations, the logging standard does not apply to most tree care operations. This does not mean tree care workers are unprotected; both the OSHA general duty clause and other general industry standards apply to tree care workers. OSHA has determined that together they are sufficient to adequately address tree care worker health and safety protections.

In August 2008, OSHA issued a compliance directive, CPL 02-01-045, to detail how OSHA's general duty clause and general industry standards apply to tree care operations. OSHA has determined that this compliance directive has strengthened our tree care enforcement efforts and enhanced our ability to protect tree care workers. It outlines the application of existing OSHA standards such as personal protective equipment requirements, fall protection requirements, hazard communication, first aid, and so forth to protect the health and safety of workers in the tree care industry. The Agency also has in place extensive compliance assistance efforts to provide information on health and safety to this industry and is working to enhance those compliance assistance efforts to specifically target Latino workers.

This decision does not rule out rulemaking on tree care at a future time. OSHA will continue to consider taking on this new regulatory initiative when resources and other priorities permit. OSHA has decided, however, that where resources or other priorities do not allow us to work actively on a standard, that standard should be removed from the regulatory agenda until such time as resources permit the agency to make significant progress on it.

Noise Interpretation

Question 12. At what point did you realize the OSHA noise reduction proposal to require employers to implement costly engineering or administrative controls instead of better and less expensive personal protective equipment was not a proposal worth pursuing? Did you know about this proposal before OSHA published it? Did it go through OIRA review?

Answer 12. The proposal would have clarified that the noise standard's existing requirement for use of "feasible" administrative or engineering controls is to be given its plain, ordinary meaning consistent with the meaning of the word feasible throughout the OSH Act and its standards. OSHA issued the proposal because occupational hearing loss remains a serious problem in workplaces and the agency believes that the existing interpretation permits overreliance on personal protective equipment in some situations. Between 2004 and 2009, the Bureau of Labor Statistics has reported that more than 144,000 OSHA recordable hearing loss cases occurred in private industry. The reported annual number of cases ranged between 19,500 and 28,400 during the 2004 to 2009 period.

OSHA did not withdraw the proposed interpretation because the agency decided that personal protective equipment was better or less expensive. Evidence shows that personal protective equipment, such as ear plugs or ear muffs, while effective under laboratory conditions, may be far less effective in actual working conditions. For example, earplugs and earmuffs are only effective if they fit properly, if they are worn all the time and if workers are trained to use them properly. Another problem with personal protective equipment is that earplugs and ear muffs can interfere with hearing all kinds of noises that employees at work need to hear, such as equipment back-up warnings, people's shouts, and changes in workplace conditions.

Engineering controls are generally preferable because they eliminate harmful noise at the source, while allowing employees to hear audible warnings and communicate with each other. Engineering controls may also be less expensive than personal protective equipment in some situations. For example, engineering controls can include such inexpensive measures as mufflers, sound blankets or curtains, dampeners, and routine lubrication and maintenance on noisy equipment. In some instances, the application of a relatively simple engineering noise control can reduce the noise hazard to the extent that further costly requirements of the OSHA noise standard (e.g. audiometric testing, hearing conservation program, provision of hearing protectors, etc.) are unnecessary.

OSHA withdrew the noise interpretation because it became clear from the concerns raised by some employers and business associations that effectively addressing the noise problem requires more public outreach. OSHA therefore decided to step back and look at the entire problem of workplace noise and how we can develop a comprehensive approach to the serious problem of hearing loss.

OSHA has begun the outreach process by developing a new occupational noise exposure web page (*http://www.osha.gov/SLTC/noisehearingconservation/index.html*) and is working on scheduling an informal stakeholder meeting this fall to engage in a dialogue with employers, workers, noise control experts, manufacturers, and public health professionals on how to prevent occupational hearing loss. The

meeting time will be used to gather and share information on best practices for noise reduction in the workplace, including a discussion on personal protective equipment, hearing conservation programs and engineering controls.

This proposal went through normal Department of Labor review and clearance. As this initiative was a proposed interpretation of an existing OSHA standard and not a new standard or regulation, it did not go through OIRA review.

Persuader Rule

Question 13. Under DOL's proposed persuader rule, employers will face civil (and possibly criminal) sanctions if they do not properly disclose certain relationships that they have with attorneys and clients. Due to the threat of such penalties, some employers will likely forego receiving professional legal advice about the rights and responsibilities under the NLRA. How does this help employees?

Answer 13. The employer-consultant reporting proposed rule is currently in the comment period, and the Department will review and consider any and all comments submitted on the matter addressed in this question. The Department is committed to protecting the rights of employers, employees, unions, and their members as prescribed by the LMRDA.

The potential sanctions for reporting violations derive from section 209 of the LMRDA, and they apply equally to unions, union officials, employers, and consultants. There are no civil sanctions, monetary or otherwise, for violations of the LMRDA reporting provisions. The Secretary, however, is authorized to bring a civil action for such relief (including injunctions) as may be appropriate, if it appears that any person has violated or is about to violate any of the reporting provisions. Criminal sanctions apply only to *willful* conduct and not merely to a failure to "properly disclose certain relationships." The Department also intends to continue its efforts to provide compliance assistance and outreach to employers and consultants, as it does with unions and their officials.

SENATOR HATCH

Question 1a and b. I have serious concerns with the Office of Labor Management Standards proposed changes to the current LMRDA reporting requirements under section 203(b). Under current law, organizations that provide services where the object is to persuade employees in the midst of a union campaign to disclose their fees and arrangements. But, for more than half a century, the LMRDA has exempted services that amount to "giving or agreeing to give advice," which has long been interpreted to exclude law firms and consultants performing services like reviewing statements and materials to determine their legality without having any interaction with employees.

Under the DOL's proposed rule, the advice exemption will be more or less obliterated, and any counseling that is directly or indirectly related to persuading employees will be reportable. This would presumably include reviewing materials drafted by employers to determine if they will make the employer vulnerable to unfair labor practice charges.

In your view, won't this proposal discourage employers from seeking legal assistance before communicating their views on unionization to employees? Will we not see an increase in unfair labor practices among un-counseled employers, especially among smaller employers, as a result of this proposal? How is this desirable national labor policy?

Answer 1a and b. Under the proposed rule, the LMRDA will continue to exempt reporting for agreements that exclusively consist of services that constitute the "giving or agreeing to give advice." The proposed rule would change the way that the reporting trigger, pursuant to the exemption, is applied.

As stated above, the employer-consultant reporting proposed rule is currently in the comment period, and the Department will review and consider any and all comments submitted on the matter addressed in this statement and question. The Department is committed to protecting the rights of employers, employees, unions, and their members as prescribed by the LMRDA.

Question 2. The Department of Labor's controversial changes to the reporting requirements under the LMRDA were released on the same day the NLRB announced a change to union election rules, paving the way for quickie elections and eliminating procedural protections for employers and employees. So, basically, in a single day, the Labor Department proposed to limit the amount of information an employee would receive and the NLRB proposed to limit the time an employee has to consider this information before having to vote for or against a union.

To what extent were the DOL and NLRB communicating regarding these two proposals? Was it purely a coincidence that these two highly controversial proposals

were announced on the very same day and with, at least initially, the very same 60-day comment period? Combined, what do these two rules say about the Obama administration's respect for a worker's right to be fully informed when deciding whether to join a union?

Answer 2. The Department did not engage in communication with the NLRB about these proposed rules, nor did the Department and the NLRB coordinate the publication dates of the two proposed rules. Moreover, as you are aware, the NLRB is an independent Federal agency that does not report to the White House, OMB, or the Department.

While the Department cannot comment on the NLRB's proposed rule, the Department, as stated in the NPRM, views reporting of persuader agreements or arrangements:

> "as providing employees with essential information regarding the underlying source of the views and materials being directed at them, as aiding them in evaluating their merit and motivation, and as assisting them in developing independent and well-informed conclusions regarding union representation and collective bargaining." 76 FR 36182.

Thus, transparency for workers is at the core of this proposed rule, as the proposed rule helps ensure that workers are fully informed about the information bearing on the exercise of their protected rights. *Id. 1, see* also 76 FR 36187.

Questions 3 and 4. We are currently facing the highest unemployment levels in recent memory. Job creation continues to be sluggish and more and more Americans are simply giving up in their efforts to find a job.

Do you agree that reducing unemployment, training workers for new jobs, and stimulating the economy should be the Department of Labor's highest priority? If so, what do the proposed changes to the LMRDA reporting requirements (Section 203(b)) have to do with these goals? Will any new jobs be created as a result of this proposed rule?

Answer 3 and 4. The Department of Labor is currently working on multiple fronts to reduce unemployment and create new jobs. Securing a sustainable economic recovery is critical. The Department will continue to help foster an economy in which good jobs are available for everyone. Additionally, the Department has ongoing responsibilities to administer and enforce numerous statutes that protect workers and establish workplace standards, including the LMRDA. DOL continues to perform these functions as well.

Question 5a. I have a number of questions as to how the DOL came up with the proposed changes to reporting requirements for persuader activities under the LMRDA.

What empirical evidence do you have to support this rule change after 50 years of consistent, well-established interpretation of the advice exemption under Section 203 of LMRDA aside from the few questionable academic studies cited in the Notice of Proposed Rulemaking?

Answer 5a. In proposing these changes to section 203 reporting, and as explained in the NPRM, the Department reviewed the available peer-reviewed literature on the subject of labor relations consultants. *See* 76 FR 36185-87. Additionally, we reviewed our own reporting data, which, in connection with the available literature showing that, on average, 75 percent of employers hire consultants to orchestrate counter-campaigns to union organizing efforts, appeared to reveal potentially significant underreporting. *See* 76 FR 36186.

Question 5b. Further, the Department's most recent view of the advice exemption, including the distinction between direct and indirect contact, dates from 1989, and was not subject to notice-and-comment rulemaking. *See* 76 FR 36179-82.

What are the harms this rule is trying to address? Have a large number of employees complained to the Department of Labor about legal advice their employers receive from law firms during union organizing campaigns? If so, why weren't these complaints cited in your proposed rule?

Answer 5b. The Department does not have a record of complaints from employees regarding legal advice their employers receive from law firms. The NPRM does not propose that such activity triggers reporting. As explained in the NPRM and above, the reporting seeks to provide workers with information about the underlying source of the views and materials being directed at them, which the NPRM demonstrates is not currently available to workers. *See* 78 FR 36186.

Question 5c. To what extent is this proposed rule the result of consultation with union leaders and organizers? And, how much input, if any, did you seek from employers and business owners?

Answer 5c. The Department sought input from the public at a stakeholder meeting held in May 2010, which was attended by unions and their officials, as well as employers, consultants, and their representatives. The Department provided notice of the meeting to the public through a *Federal Register* notice. The Department's own experience in interpreting and administering section 203 of the LMRDA, along with the input provided at the stakeholder meeting served as the basis of the Department's proposal.

RESPONSE TO QUESTIONS OF SENATOR HARKIN BY DEBORAH KING

Question 1. It's great that so many employers have made the choice to contribute to the funds that you're describing. Can you talk about the benefits that employers reap from their contributions? What's the case that you would make to an employer (or group of employers) in another State or region for why they should set up funds like 1199 runs?

Answer 1. Virtually all healthcare employers have experienced shortages or skill gaps in their workforce, which have made it difficult for them to deliver quality, cost-effective health care. For example, shortages of nurses have resulted in increased recruitment and wage costs, with employers needing to go abroad to recruit and/or being forced to increase salaries dramatically because of the shortages. Other strategies, such as the use of agency nurses or excessive overtime have jeopardized consistency and quality of care. I would tell employers that experience with joint labor management training funds have shown that with assistance, there are many incumbent healthcare workers in service or clerical jobs who can be supported to become the pipeline to fill such shortages and/or to enhance their skills to meet changing demands. The ROI is great, reducing the cost of recruiting and inflated salaries and providing the skills needed to achieve the clinical and patient care outcomes, which are increasingly affecting reimbursement rates.

In addition, training funds have created added value for and positive engagement and cooperation between unions and employers and have spurred collaborative relationships that might not otherwise exist. Training funds are helping both employers and our members change and adapt to the shifting delivery models in healthcare. Negotiated education benefits are a draw for workers and an important factor in retention that helps both employers and workers. Training incumbent workers and providing them with access to a career ladder increases retention and employee morale and brings workers with demonstrated commitment to their employers and to the job into higher skilled occupations.

Training funds also help create systemic changes in the education system, making colleges and other educational vendors more responsive to worker and industry needs.

Question 2. As you know, this committee has jurisdiction over the Workforce Investment Act and many of us are working hard to get that reauthorized in the near future. Along with WIA, what do you think the Federal Government can do to support programs like yours that are working so well to move people into the middle class? Are there any Federal policy barriers that impede the job-training system's ability to scale up best practices?

Answer 2. We totally support the value of WIA and its reauthorization, however, WIA itself could be strengthened to support training management initiatives like ours. WIA's value structure does not reflect many of the positive attributes that labor-management partnerships bring to the table.

- The current WIA system favors short-term training and immediate placement into entry-level/low-wage positions. In general, training within the healthcare industry requires a much longer timeline than training within other industries. The healthcare industry requires highly skilled workers and often requires participants to obtain college level courses and credentials. Labor-management partnerships not only value job placement, but they emphasize career pathways and lifelong learning.
- Secondly, incumbent healthcare workers are an important source to fill higher level positions and WIA does not currently include incumbent workers as a significant target of public investment. In addition, programs that promote incumbents can open entry level positions for the unemployed.
- WIA does not have performance measure metrics that document industry-recognized certificates, wage gain, entry into college, nor outcomes for reaching targeted populations with multiple barriers. WIA is a "work first" model that counts job

placement, and not occupational development and employment with responsible employers.

Question 3. In a previous hearing on this topic, one of our witnesses talked about how they felt that you either needed to be rich or poor to get benefits from the government and that those in the middle were being left behind. In that context, can you tell us more about the idea behind the Job Security Fund? What is working to help workers who experience periods of unemployment and underemployment stay in the middle class?

Answer 3. The idea behind the JSF was that employers in one industry (in this case, healthcare) in a particular region would take responsibility for the workforce in that region (previous experience has shown that there was a 3 to 7 percent turnover rate each year through attrition and retirement). It made sense to create an employment service and re-training benefits to keep experienced workers in the industry. Grants to labor management partnership to seed such projects would be helpful in replicating this model in other parts of the country. In addition, Department of Labor funding to support short-term training where there is a demonstrated employer commitment to employ workers laid off in the same industry could help workers stay in well paying, high road jobs.

Question 4. When you think about the career pathways in the healthcare and allied health sectors, what do you (or employers or Federal, State, or local governments) need to do to make more of the jobs along those pathways (even entry-level jobs) "good jobs" with family-sustaining wages, health benefits, and retirement plans?

Answer 4. Promote incumbent worker training: Incumbent worker training and education has proved to be an effective strategy to move workers into "good jobs." Training can give workers the skills and credentials to advance along a career ladder into a new position or occupation, and to move out of jobs that then become new employment opportunities for others. This training "escalator" can have an especially dramatic impact on entry-level workers who are often stuck in low-wage jobs because they lack the skills or education to advance into family-sustaining occupations and careers. In Los Angeles, for example, the Worker Education & Resource Center has been training lower-wage workers for high-demand jobs and occupations in healthcare. Program graduates have advanced to new occupations such as Registered Nursing, Licensed Vocational Nursing, and Health Information Technologist, resulting in 359 new vacancies in low-wage healthcare occupations such as nursing attendants, clerks, and laboratory assistants. With ARRA funds, WERC's program is now also helping unemployed individuals gain the skills and education necessary to apply for these vacancies. Once employed, incumbent worker training can repeat the job creation cycle.

In addition to training, increasing the minimum wage and fully implementing healthcare reform will dramatically improve the quality of these jobs.

RESPONSE TO QUESTION OF SENATOR HARKIN BY SARAH COREY

Question 1. Can you please provide the committee with additional detail comparing executive pay to the pay of the average employee at IceStone? What is the ratio between the CEO's annual compensation compared to the annual compensation of the median manufacturing worker?

Answer 1. IceStone's pay ratio between the CEO and an hourly factory employee is 8:1. The pay ratio between the next level of leadership (which includes IceStone's VP of Sales & Marketing, senior director of business development, controller, and managing partner) and an hourly factory employee is 6:1.

RESPONSE TO QUESTIONS OF SENATOR ENZI BY SARAH COREY

Question 1. Thank you very much for your testimony. You mentioned that IceStone's growth would not be possible without State and Federal capital. Now that the company has grown to employ 45 full-time men and women and you have a growing customer base, I have a two-part question. First, for this fiscal year, what percentage of capital is generated from State and Federal programs? And second, would IceStone continue to be a viable company without such support?

Answer 1. This year, IceStone, LLC did not receive any capital from State or Federal programs. In previous years, IceStone has received a cumulative 5 percent of its capital from State and Federal programs.

IceStone has benefited from such programs, without which its products would not be where they are today. In 2007 for example, the company received support from the New York State Environmental Investment Program to purchase a new polisher

and construct a foundation for the equipment. This capital investment has resulted in increased product yield; a greater percentage of the slabs IceStone produces each month are saleable with this new machine.

Question 2. I read in your testimony about IceStone's "social bottom line," as well as the "capacity building" programs the company is able to provide its employees. Are IceStone employees unionized?

Answer 2. No, IceStone employees are not unionized.

Question 3. I understand that IceStone pledges to pay employees a "living wage" and your starting wage is $10 an hour. Does the living wage take into account the size of the employee's family or number of dependents?

Answer 3. At this time, IceStone pays full-time employees a living wage, which starts at $10 per hour with benefits that include a dental and vision plan. As our revenues increase and loans become readily available to IceStone, we will have the ability to provide living wages that do factor in the size of the worker's family.

Question 4a and b. It sounds like IceStone does a great deal of job training for employees "in house." Have you participated or drawn employees from any Federal- or State-funded job training programs?

If so, do you have suggestions for improving these programs? If not, are you aware of Federal or State funded job training programs in your area?

Answer 4a and b. Yes; IceStone has worked with the Brooklyn Workforce Initiative, a government-funded non-profit, to recruit skilled workers.

RESPONSES TO QUESTIONS OF SENATOR ENZI BY TOM PRINSKE

Question 1. Your business experienced a substantial amount of growth after Illinois State Governor Edgar signed "The Minority, Female and Persons with Disabilities Business Enterprise Act" into law. From your testimony, you also mentioned that you have worked with your local municipality—the city of Chicago—to create incentives for the city to work with businesses owned by persons with disabilities. How many business owners are benefiting from these two laws?

Answer 1. I have attached the most recent annual report from the State of Illinois' Business Enterprise Program (BEP)[1] for you to reference. The report provides the most recent details for all three groups in the program, minority (MBE), woman (WBE) and persons with disabilities (PBE). According to the attached report, there are disabled-owned businesses participating in the BEP program, and together they accounted for $48 million in contracts with the State of Illinois.

In addition to providing the annual report, BEP runs the certification process which allows entrepreneurs with disabilities to become certified to participate in the program. This certification has proven more valuable for my company in our dealings with the private sector than in our dealings with the State of Illinois or the city of Chicago, because we are able to use it to position our company as a disability-owned vendor for purposes of corporate diversity sourcing and social responsibility programs. Although my company has not been able to use the certification to obtain subcontracts from companies doing business with Illinois or Chicago, other disability-owned companies have been able to use the certification successfully in the subcontractor arena as well.

Unfortunately, the BEP program did not bear the fruit for business owners with disabilities as much as I hoped it would. While the 2010 BEP report shows a reasonable participation by PBEs, the fact is the numbers include both business owners with disabilities and non-profit businesses that employ high percentages of disabled workers. While the original amendment did not have non-profits in the language, unbeknownst to me, a few years later it was amended again to include non-profits. Also, it must be noted that the BEP annual report does not distinguish between business owners with disabilities and non-profits when breaking down the numbers. The only time I am aware of the report separating the PBE for-profits and the non-profits is in the beginning of the report where it shows 112 non-profits and 128 total disability-owned vendors. The original intent of the legislation was to promote the use of for-profit businesses owned by persons with disabilities as it promotes the use of minority-owned and women-owned businesses. I have also attached a copy of the highlights of legislation we are proposing, to correct this flaw. If passed, it will in part, require the program to distinguish between business owners with disabilities and non-profit employment programs like sheltered workshops. This will then allow the program to be held accountable for the low participation and or, not achieving

[1] The material referred to may be found at *http://www2.illinois.gov/cms/business/sell2/bep/Documents/BEP__Council__Documents/Business__Enterprise__Program__FY2010__Report.pdf.*

the goals of the statute which is 2 percent of State expenditures. In regard to the city of Chicago, unfortunately, business owners with disabilities have not fared much better. I believe that there are about the same number of for-profit businesses certified in the city of Chicago's program as in the State of Illinois program (16–18). The problem there seems to be twofold. First, the disability-owned business initiative for Chicago is totally separate from the successful MBE and WBE programs in the city, which have explicit goals and typically exceed those goals. Second, the disability-owned business program for Chicago is based on a confusing voucher system that has proven difficult to understand and use and has not been adequately promoted by the city.

I believe at the time these two pieces of legislation were introduced, we took the best possible approach to getting something done. In my opinion, and if I had an opportunity to develop the legislation now, I would try to include persons with disabilities in the definition of a minority, as opposed to making an entire separate group. That way, we could establish goals for disability-owned businesses that would be similar to the goals that have been established for minority-owned and women-owned businesses. This would ensure total inclusion into existing programs that are already effective.

After having said all that, I guess you would be wondering how I was able to grow my business the way I have. The answer is through private sector opportunities. The one extremely beneficial thing both programs did was certify business owners with disabilities in their respective programs. I then took my certifications to private sector companies and their procurement diversity programs and asked if their programs were inclusive for business owners with disabilities. In almost every case the answer was yes. In my case, they then would provide me with little opportunities which grew into bigger ones until we got where we are today. While I seem to be one of the most successful stories coming out of either program, the irony is, our company does not show up in either program's reporting. I have a total of zero direct contracts or sub-contracts with either the State of Illinois or the city of Chicago. However, without my certifications, I'm out of business. That is why what USBLN is doing with their Disability Supplier Diversity Program (DSDP) is vital to the long-term growth of promoting businesses owned by persons with disabilities. As you can imagine, with DSDP certifying disabled-owned companies like mine, the USBLN has been successful in securing private sector commitments from large corporations, opening opportunities for the certified businesses, and linking corporations with credible vendors that fit into their existing social responsibility programs.

I hope this long answer was helpful to you. In closing, I would just like to add that the Federal Government's position with how they view business owners with disabilities is very important to the work we are all doing here on the local level. We truly need you to step up and agree that disability-owned businesses can and should benefit from the same Federal incentives that have long existed for minority-owned and women-owned businesses.

ATTACHMENT.—HIGHLIGHTS OF LEGISLATIVE CHANGES TO THE BUSINESS ENTERPRISE FOR MINORITIES, FEMALES, AND PERSONS WITH DISABILITIES ACT AND THE ILLINOIS PROCUREMENT CODE

- Distinguishes a business owned by a person with a disability as a separate business from that of a not-for-profit agency serving people with severe disabilities.
- Provides same opportunities and preferences to obtain State contracts to persons with disabilities who own businesses as those afforded to businesses owned by minorities, females, veterans with disabilities, and not-for-profit agencies serving people with severe disabilities.
- Ensures at least one business owned by a person with a disability is appointed as a member of the Business Enterprise Council as indicated in the Business Enterprise Act.
- Ensures two representatives from businesses owned by a person with a disability are appointed to the State Use Committee as indicated in the Procurement Code.
- Includes businesses owned by a person with a disability in the Procurement Code requirement to develop a 5-year plan for increasing the number of products and services purchased for females, minorities, veterans with disabilities, and not-for-profit agencies serving people with severe disabilities.

- Distinguishes businesses owned by a person with a disability from those of not-for-profit agencies serving people with severe disabilities in the Business Enterprise Act Annual Report analysis of goal achievement and summary of the number and dollar amount of contracts awarded.

[Whereupon, at 12:25 p.m., the hearing was adjourned.]