

Full Committee Hearing: Nomination of Alex Acosta Secretary of Labor, March 22, 2017

Questions for the Record

Senator Patty Murray

1. Will you continue the work the Department of Labor has instituted to expand registered apprenticeship and other successful training programs for American workers looking to succeed in the 21st century economy? How exactly will you do that? And can you commit to sustaining or expanding funding for these programs?

ANSWER: Apprenticeship programs are a valuable and effective job training tool and expanding access to effective apprenticeship programs is a major facet of positioning our workforce to meet the needs of a changing economy. There are numerous examples throughout the nation of industry, local academic and training institutions and government partnering effectively to train and place workers in growth sectors. If confirmed, I believe my role will be to make sure apprenticeships can be accessed in more communities and by displaced workers who will need to transition to new and growing industries, and I commit to working to sustain these types of programs.

2. What policies would you pursue around worker automation? Around health and safety? Predictable and regular schedules? Providing workers a path to the middle class?

ANSWER: A growing economy combined with improved job training for in demand skills is among the best ways to grow the middle class. Advancing technologies, including automation, will change the types of jobs that are available in our economy. As I discussed at the hearing, we need to make better efforts to align job training with the skills the market demands today and in the future. In this way, workers can acquire skills that empower them to hold high quality jobs that are not automated. Encouraging economic growth and adoption of new technologies along with flexibility and creativity in the workplace will help improve health and safety and scheduling for workers. If confirmed, I look forward to reviewing policies under the Department of Labor's jurisdiction that can affect these areas and hope to benefit from an ongoing dialogue with Congress as to how we can make improvements.

3. The World Economic Forum forecasted a net loss of 5.1 million jobs by 2020 in the 15 leading economies, much of which will be due to automation and robotics. Do you think the government should help workers who have lost jobs to automation? What should that role be?

ANSWER: I believe the Department plays a key role in providing training and career pathways to workers who are likely to be displaced by automation and robotics in the

years to come. This may be the most profound challenge before the Department in the next decade. We need to better align job training with the skills the market demands of its workers, especially as advancing technology changes the types of jobs available in our economy. The Department of Labor, along with state and local governments, industry, and educational institutions, can partner to have substantial positive impact on American workers. If confirmed as Secretary of Labor, I look forward to working with you and Members of the Committee to maximize the impact of every taxpayer dollar Congress directs towards job training programs.

4. According to the National Safety Council, agriculture is the second most dangerous occupation in the United States. Yet under lax labor laws, hundreds of thousands of children work long hours in US agriculture, risking pesticide poisoning, heat illness, injuries from knives and heavy equipment, and life-long disabilities. Children working in tobacco farming also risk acute nicotine poisoning. The National Research Council and Institute of Medicine have reported that children working in agriculture in the US make up only 8 percent of the population of working minors overall, yet account for 40 percent of work-related fatalities among minors. Exemptions for agriculture under the Fair Labor Standards Act (FLSA) allow child farmworkers to work at younger ages, for longer hours, and under more hazardous conditions than other working youths. Teens have to be at least fourteen to work in an office or fast-food restaurant, and can only work for three hours on a school day. But in agriculture, children can work at age 12 with no limit on the number of hours that they work, as long as they do not work during school hours. While other employment sectors prohibit hazardous work before age 18, child farmworkers can perform hazardous duties at age 16. In 2014, the United States' largest tobacco companies recognized the dangers of nicotine exposure and other hazards in tobacco farming by adopting policies prohibiting children under age 16 from working on farms in their supply chains. Yet federal law and regulations provide no special protections for children working in tobacco farming. Agriculture is the second most dangerous occupation in the US. What action will you take to address the double standards in the Fair Labor Standards Act that allow children working in agriculture to work at younger ages, for longer hours, and under more hazardous conditions than other working youth?

ANSWER: I appreciate and share your concerns regarding the safety and health of children and young workers. If confirmed, I will fully and fairly enforce child labor laws designed to ensure children are protected from illegal employment in hazardous occupations and that those children who are eligible to work have safe and appropriate work experiences. If confirmed, I expect to be briefed on matters pertaining to children in the workplace, including agricultural work and tobacco farming, and hope to benefit from an ongoing dialogue with Congress as to how we can advance the goal of child safety in the workplace.

5. Do you believe that children should be protected from nicotine exposure? If so, what action will you take to address the fact that under existing law and regulations, 12-year olds can work legally on tobacco farms for 40 or 50 hours per week?

ANSWER: If confirmed, I expect to be briefed on matters pertaining to children in agricultural work, including tobacco farming. I would need to consult with the Department of Labor staff to get more information to address your question specifically.

6. Women of color are far more likely than white women to be a victim of intimate partner violence, stalking, or sexual assault, and to need to take time off from work to seek assistance. Do you support federal legislative proposals to create job-protected safe leave for survivors of gender-based violence? Do you think the Department of Labor has a role to play in providing protection and support to assist women with remaining in the workforce when they experience gender-based violence? What will you do to ensure that survivors of domestic or sexual violence have access to job-protected safe leave to seek services related to gender-based violence?

ANSWER: Violence of all forms, including gender-based violence, is wrong. Further, gender-based violence can cause psychological issues that impact employment. I believe expanding job-protected leave would require congressional action and, if confirmed, I look forward to working with the President and Congress as discussions regarding leave occur.

7. In 2004 you wrote a letter four days before the election telling a federal judge that it would "undermine" election law enforcement to not let citizens contest the credentials of other voters, and denied that this had racial motivations despite being a part of a larger plan to place poll monitors in predominantly African-American neighborhoods. Additionally, in 2008 you came under scrutiny for allegedly improperly factoring ideological positions in hiring practices. Are you committed to enforcing anti-discrimination laws? Building off of this, do you believe it's time for the nation to pass an anti-discrimination law to protect individuals from workplace discrimination based on their sexual orientation and gender identity?

ANSWER: I am committed to enforcing the anti-discrimination laws that Congress has passed, and any that you and your colleagues in Congress pass in the future. I believe discrimination in the workplace based on sexual orientation or gender identity is wrong, although I support religious entities' freedom to hire consistent with their faith.

8. Do you believe that workers should have the right and opportunity to bargain collectively for higher wages and better working conditions through organizing with their coworkers?

ANSWER: The right to collectively bargain is clearly established in law, as is the right of workers to decide whether to join a union or to refrain from joining a union. The decision of whether to join a union should be left to the individual. If they believe that joining together to bargain collectively will benefit their situation then they should do so.

9. Will you, as Secretary of Labor, advocate for, support, and defend workers' right to advocate for workplace improvements and bargain collectively?

ANSWER: The right to collectively bargain is clearly established in law, as is the right of workers to decide whether to join a union or to refrain from joining a union. The decision of whether to join a union should be left to the individual. If they believe that joining together to bargain collectively will benefit their situation then they should do so, and I would support that choice.

10. Do you think collective bargaining is an appropriate means of increasing the share of the nation's wealth that goes to middle class Americans?

ANSWER: The right to collectively bargain is clearly established in law, as is the right of workers to decide whether to join a union or to refrain from joining a union. The decision of whether to join a union should be left to the individual. If they believe that joining together to bargain collectively will benefit their situation then they should do so. If they believe collective bargaining would improve their share of the nation's wealth, they should pursue their right to do so.

11. Do you think the federal government should take action to foster collective bargaining?

ANSWER: The right to collectively bargain is clearly established in law, as is the right of workers to decide whether to join a union or to refrain from joining a union. The decision of whether to join a union should be left to the individual. If they believe that joining together to bargain collectively will benefit their situation then they should do so.

12. If members are not required to pay dues, do you think the federal government should pay the cost of union representation?

ANSWER: The federal government should not pay for the cost of union representation.

13. Do you agree that labor unions are important to achieving and maintaining fairness and balance in our economy?

ANSWER: The right to collectively bargain is clearly established in law, as is the right of workers to decide whether to join a union or to refrain from joining a union. This reflects a congressional judgement that providing this right can help maintain balance in our economy.

14. Given the overwhelming business opposition to the Fair Pay and Safe Workplaces EO, and your public stance on regulations, how will you address the issue of making sure that only responsible entities that comply with labor laws get government contracts?

ANSWER: I understand that government agencies have suspension and debarment authorities and that the Department of Labor possesses a similar authority in the context of some of its statutes, including the Service Contract Act. If confirmed, in cases of willful and repeat violators, I would not hesitate to exercise that authority as Secretary.

15. Do you think that contractors receiving federal tax dollars should be required to pay middle class wages?

ANSWER: I am informed that the Department sets certain wage rates on federal contracts based on congressional mandate and statistical formulas by sector that flow from those mandates. Congress has the authority to make a decision to increase those rates across the board, and I will enforce the statutes Congress passes.

16. The Department you have been selected to lead is responsible for setting health, safety, and fairness standards for many construction projects and construction apprenticeships. It is well documented that women working in construction face extreme rates of sexual harassment and denigration. Indeed, a study by the Department of Labor itself reported that 88 percent of women construction workers experience sexual harassment at work. Construction has often been referred to as “the industry that time forgot” due to the overt discrimination faced by women who try to get hired into this field and the overwhelming hostility and harassment they face on the job if they are hired. As a result, the percentage of construction jobs held by women has been stuck at less than 3 percent for more than a generation. Many federal contracts are for construction work and the Labor Department has played an important role in addressing harassment and discrimination by federal construction contractors and opening opportunities for women and people of color. Given President Trump’s expressed commitment to infrastructure, federal construction contracts could increase—which means the Labor Department’s role in enforcing these protections against harassment and discrimination will be more important than ever. Can we expect you to implement and enforce critical anti-harassment protections for construction projects and apprenticeship programs, and continue the efforts begun in the present administration to ensure that mega construction projects funded by federal dollars provide real opportunities to women?

ANSWER: Sexual harassment and overt discrimination are illegal. As I noted in my hearing, if confirmed, I would enforce the laws Congress has written fully and fairly, including for apprenticeship and contracting programs, and for large scale construction projects.

17. OFCCP updated its sex discrimination rules last year to implement EO 11246 for the first time in more than a generation. The rules now explicitly address sexual harassment and pregnancy discrimination for the first time. If you are confirmed, will you commit that the Department will uphold these regulations? Will you commit that OFCCP will implement and enforce these protections for employees of federal contractors?

ANSWER: I strongly support equal employment opportunity and preventing sexual harassment and pregnancy discrimination. As I noted in my hearing, if confirmed, I

would enforce the law fully and fairly, including the aspects of executive orders and their implementing rules.

18. After President Obama's executive order allowing employees of federal contractors to accrue up to seven paid sick days per year, the Department of Labor issued a final rule implementing these policies. If confirmed, will you urge President Trump to maintain this executive order and commit to enforce and implement these protections to ensure employees of federal contractors can access these benefits?

ANSWER: The decision as to whether to maintain, amend or rescind Executive Orders belongs to the President. As I noted in my hearing, if confirmed, I would enforce the law fully and fairly, including executive orders that apply to the Labor Department or give the Department additional enforcement responsibilities.

19. According to the Journal of Occupational and Environmental Medicine, working sick costs the national economy \$160 billion annually in lost productivity. Currently there is an Executive Order granting paid sick days to federal contract workers to help avoid the spread of disease. Under your DOL, will you pursue efforts to expand this pro-business, pro-public health and pro-worker standard to all workers?

ANSWER: I believe any attempt to expand paid sick leave would require Congressional action, and if confirmed I look forward to participating in any discussion that occurs on paid sick leave.

20. Unemployment rates are higher for people with disabilities than other groups. According to the U.S. Bureau of Labor Statistics, in 2015 the unemployment rate for people with disabilities was approximately 11%, which is nearly double the unemployment rate for people without disabilities. Overseeing policies and priorities that impact our nation's workforce development system is among the many responsibilities of the Secretary of Labor. One of the target areas of Public Law 113-128 (the bipartisan Workforce Innovation and Opportunity Act or WIOA) was to expand opportunities for people with disabilities to enter the workforce by creating a more accessible workforce system and expanding opportunities for training or apprenticeships. How will you as Secretary build on the opportunities created by WIOA to empower more people with disabilities to enter the workforce?

ANSWER: I certainly support increasing the labor force participation rate of disabled individuals and helping them lead successful and self-sustaining lives. Such efforts contribute to our economy, and as important, to individual self-esteem. If confirmed, I expect to be briefed on programs at the Department that serve the disabled in order to understand how they are succeeding in accomplishing their mission.

21. The Office of Disability Employment Policy sponsors and disseminates valuable research and studies into effective practices for employment of people with disabilities as well as serves as an important coordinating office for cross-federal agency collaborations on disability employment. Will you commit to preserving and strengthening this vital tool for economic self-sufficiency for Americans with disabilities? Will you work with

Congress to you ensure that the Office of Disability Employment Policy, the Office of Federal Contract Compliance Programs, and the Civil Rights Center has the funding and resources necessary to meet their objectives? What, if any, reforms would you make to these offices?

ANSWER: I certainly support increasing the labor force participation rate of disabled individuals and helping them lead successful and self-sustaining lives. The Office of Federal Contract Compliance Programs and the Civil Rights Center also have important roles in promoting and protecting equal opportunity. As a nominee, I have not participated in the current budget discussions. If confirmed, I commit to working with Congress to ensure those offices can meet their objectives.

22. Section 501 of the Rehabilitation Act prohibits employment discrimination against people with disabilities in the federal sector. President Trump has stated that it is important that the final regulations under Section 501 are enforced, and that the Administration “will work with Congress to set an example of the importance and value of hiring people with disabilities.” What will you do to support the president on this issue and ensure that people with disabilities have increased opportunities for employment in the Federal government? What would you propose to President Trump to fulfill this campaign promise?

ANSWER: As I noted in my hearing, if confirmed, I will work to enforce the laws under the Department of Labor’s jurisdiction fully and fairly. I certainly support increasing the labor force participation rate of disabled individuals and helping these individuals lead successful and self-sustaining lives. Such efforts contribute to our economy, and as important, to individual self-esteem.

23. The Department of Labor plays a crucial role in the implementation, enforcement, and public education of the Americans with Disabilities Act (ADA). As stated in the text of the Act, the purpose of the ADA is to, “provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities in addition to defining a central role for the federal government in enforcing the standards of the ADA on behalf of individuals with disabilities.” In an effort to undercut the 26-year old law, some in Congress have proposed legislation to impose a 180-day waiting period before a person with a disability can take action to enforce their rights to gain access to a business, public building, educational institution, or other covered entity. Do you support the intent of this legislation to remove incentives for businesses and other places of public accommodation to comply with the ADA’s accessibility requirements?

ANSWER: I strongly support the ADA. I have not reviewed that particular piece of legislation, but I look forward to working with you and the rest of the Congress on protecting opportunities for the disabled.

24. Section 14(c) provision of the Fair Labor Standards Act, enacted in 1937, authorizes employers to pay sub-minimum wages to workers who have disabilities. In his

campaign's response to a questionnaire from the American Association of People with Disabilities, the National Council on Independent Living and the REV UP Campaign, President-elect Trump stated, "People with disabilities have the right to be paid on parity with all others in the work force so they may earn a fair days wage for a fair day's work. My administration will work with Congress to ensure that labor laws treat people with disabilities fairly." Do you plan to phase out the nearly 80 year-old Section 14(c) of the Fair Labor Standards Act? If not, what are your plans for subminimum wage employment for people with disabilities? What will you do to address the underemployment and wage gaps experienced by people with disabilities, especially people with the most significant disabilities? Will you commit to increasing the number of people with disabilities in competitive integrated employment?

ANSWER: I understand the Fair Labor Standards Act 14(c) exemption is statutory and is an area of concern and interest for many Members of Congress. If confirmed, I want to ensure that individuals with disabilities, who might not otherwise have a job, have access to a good job and are trained for these jobs. While I would need to thoroughly review any particular program or statutory exemption before I committed to supporting or opposing it, I certainly support increasing the labor force participation rate of disabled individuals and helping these individuals lead successful and self-sustaining lives. Such efforts contribute to our economy, and as important, to individual self-esteem.

25. Accurate data is crucial to measuring the health of the economy, including unemployment rates, as well as shedding light on pay practices and discrimination, yet President Trump has criticized the Bureau of Labor Statistics. What would you do to ensure that the government continues to collect and distribute accurate, timely, actionable data from businesses?

ANSWER: Accurate data are crucial. The Bureau of Labor Statistics has a long history of transparent methodology, and the process for modifying that methodology occurs openly and with ample opportunity for robust public input, including from Congress. I am committed to such transparency, and to the integrity of BLS's mission.

26. What steps will you take and what concrete mechanisms will you put in place to hold your own appointees and senior staff accountable for ensuring that there is no political interference in the work of the Department?

ANSWER: I believe all incoming political and senior career appointees receive mandatory ethics training and annual ethics training thereafter. As I noted at the hearing, if confirmed, I would enforce the law fully and fairly without regard to political pressure. I will expect that same commitment from all my subordinates.

27. Do you agree that the process for screening and hiring employees at the Department of Labor should be free from improper political influence?

ANSWER: As I noted at the hearing, the use of political views in the hiring of career attorneys or staff should not be used. The federal government has merit selection processes that should be followed in civil service hiring.

28. For almost a century, the Women’s Bureau of the Department of Labor has sought to advance the interests of women in the workplace, through research, public education, policy development, and advocacy. For example, today the Women’s Bureau provides informational resources to aid women seeking to enter high-paying, traditionally male-dominated jobs in construction, transportation, and protective services; offers one stop know-your-rights guides on issues ranging from equal pay to pregnancy discrimination; and funds research on best practices for establishing state and local paid family and medical leave insurance programs, among many other initiatives. Despite the important work the Women’s Bureau does to ensure equal opportunity for women on the job, the Bush Administration sought to dismantle it. The outcry from the public saved the Women’s Bureau, which has continued to provide valuable tools for women seeking to enforce their workplace rights and expand their workplace opportunities. Do you commit that under your leadership the Women’s Bureau will receive the resources it needs to fulfill its mandate of safeguarding and advocating for the interests of working women, and that you will defend against any attempts to reduce its budgets, or staffing, or otherwise undermine its ability to do its work? In addition, since 2014, the US Department of Labor’s Women’s Bureau has made \$3.15 million in grants available for the development and implementation of state and local paid family and medical leave programs. Under your leadership, would the Department of Labor continue to fund such grants, such as supporting progress on paid leave in the U.S., a policy area President Trump has expressed support for?

ANSWER: The mission of the Women’s Bureau is important. If confirmed, I commit to work with Congress on this matter.

29. Will you keep in place the Wage and Hour Division’s Administrator’s Interpretation No. 2016-1 (“Joint employment under the Fair Labor Standards Act and Migrant and Seasonal Agricultural Worker Protection Act”), which clarified the standards for finding joint employment status between multiple employers under the FLSA and MSPA ? If not, why?

ANSWER: If confirmed, I look forward to being briefed on Wage and Hour Division matters as we develop the Department’s policies and priorities.

30. How do you plan to enforce existing employment laws, such as FLSA minimum wage and overtime protections, in today’s workforce given the large numbers of workers who are hired through a staffing agency but report to work at another company’s premises every day?

ANSWER: As I noted at the hearing, if confirmed, I will work to enforce the laws under the Department of Labor's jurisdiction fully and fairly. I look forward to being briefed on this issue, as this is a growing trend in our economy.

31. The president has said that the current minimum wage is too low, suggesting that it should be raised to \$10 an hour. Do you agree with your future boss that the current minimum wage is too low?

ANSWER: The minimum wage is set federally by Congress but also in states and localities by their respective governments. I recognize that cost of living and other economic factors vary greatly across the United States and that many states and localities have increased the minimum wage above the federal floor. I would evaluate a proposed federal minimum wage increase carefully to see whether the economic benefits outweighed the costs. Ultimately it is Congress' decision whether to raise the federal rate; the Department of Labor has no authority to act unilaterally. I will faithfully enforce whatever rate Congress enacts.

32. A majority of all employees being paid minimum wage are women. Kellyanne Conway's polling company found in a 2014 poll that Americans believe that companies should raise wages and improve working conditions for workers by nearly a 10-1 margin. Do you think that we should raise the federal minimum wage? If so, to what? If not, what is your reasoning for not advocating for a widely popular policy? How do you respond to working families who are long overdue for a pay raise? Should it be tacked to cost of living increases in the future? Should there continue to be a separate tipped minimum wage? Should it be increased as well?

ANSWER: The minimum wage is set federally by Congress but also in states and localities by their respective governments. I recognize that cost of living and other economic factors vary greatly across the United States and that many states and localities have increased the minimum wage above the federal floor. I would evaluate a proposed federal minimum wage increase carefully to see whether the economic benefits outweighed the costs. Ultimately it is Congress' decision whether to raise the federal rate; the Department of Labor has no authority to act unilaterally. I will faithfully enforce whatever rate Congress enacts.

33. Do you believe that employers should pay a wage sufficient for its workers to live on without needing to rely on government benefits? Is it fair for employers to pay wages so low that their workers are eligible for government benefits like food stamps?

ANSWER: As I said at the hearing, I know every member of the HELP Committee wants Americans to find jobs, good jobs, safe jobs, even if there is a difference of opinion as to how to achieve that goal. If confirmed, I hope to benefit from an ongoing dialogue with the Committee as to how we can advance that goal.

34. Some states like California and New York have already enacted a minimum wage of \$15 per hour. Under federal law, workers in these states are generally entitled to one and a half times the \$15 minimum wage for overtime. Will you carry out strong enforcement of workers' overtime rights in those states?

ANSWER: If confirmed, I will work to enforce the laws under the Department of Labor's jurisdiction fully and fairly.

35. The federal minimum wage for tipped workers is only \$2.13 per hour and it's been frozen at that level since 1991. Tipped workers are twice as likely to live in poverty and three times as likely to need food stamps when they make the federal minimum wage of only \$2.13, yet in states where tipped workers get higher base wages, tipped workers are not nearly so disadvantaged. Do you support phasing out the subminimum wage for tipped workers?

ANSWER: The minimum wage is set federally by Congress but also in states and localities by their respective governments. I recognize that cost of living and other economic factors vary greatly across the United States and that many states and localities have increased the minimum wage, including the minimum wage for tipped employees and the allowance for a tip credit, above the federal floor. If confirmed, I look forward to working with the President and Congress as discussions regarding the federal minimum wage and tipped minimum wage occur.

36. There are a number of states that have recently raised their minimum wages through ballot initiative. All won by overwhelming margins in the popular vote. Governor Paul LePage is vowing to fight the raise in Maine, and has stated that the Maine Department of Labor will not enforce parts of it. This could become precedent for other Republican governors to try to nullify the will of the voters when it comes to the minimum wage. Please describe your understanding of the concept of the rule of law, and your respect and deference to the clear will of the voters on this issue.

ANSWER: I am not familiar with the specific circumstances of the enactment of Maine's minimum wage law or of Governor LePage's position on it. I certainly believe in the rule of law. More specifically, no individual or constituency is above the law, and if confirmed as Secretary of Labor I will enforce federal laws including the federal minimum wage.

37. There has been a lot of discussion about worker classification as "independent contractors" in the so-called "gig" or "on-demand" economy, with some arguing that these workers are independent businesspeople, even though their work is 1) in large part dictated by the companies, 2) wages are often set by the companies, and 3) they can be disciplined for poor performance or for refusing jobs. How do you view these workers and these jobs, in the context of the broad definitions of "employee" found in the laws you will be expected to enforce, especially the Fair Labor Standards Act?

ANSWER: An important role of the Department of Labor is to ensure that employers who want to do the right thing have clear compliance guidance from the Department. The use of independent contractors is a legal and valuable business practice. However, in some circumstances, when an employer incorrectly labels a worker as an independent contractor instead of an employee, the employer may not be abiding by their responsibilities to compensate the worker according to the requirements of the law. Employees incorrectly classified as independent contractors may be denied access to critical benefits and protections they are entitled to by law. This incorrect classification may also generate losses to the federal government and state governments in the form of lower tax revenues, as well as to state unemployment insurance and workers' compensation funds. Employers who deliberately misclassify workers undercut law-abiding employers who are making contributions to these systems and paying their workers properly. If confirmed, I look forward to being briefed on matters pertaining to the classification of employees and will work to enforce the laws under the Department of Labor's jurisdiction, including these employment laws, fully and fairly to ensure the protection of workers. If businesses are found to be incorrectly classifying workers, I will fully and fairly enforce the relevant laws.

38. A 2012 GAO report found that on average it takes OSHA nearly 8 years to develop and finalize needed safety and health standards. The most recent standards issued took much longer. The final standard to protect workers against deadly silica dust took nearly 19 years from start to finish, and the rulemaking to protect workers in general industry from fall and slip hazards--leading causes of injury and death--took nearly 40 years. Do you agree that taking 10-20 or even 40 years to develop and issue safety and health rules on major hazards is way too long? As Secretary of Labor, will you commit to seeing that the standards setting process can be made more timely and effective to protect workers against deadly workplace hazards?

ANSWER: I agree that taking 10, 20, or 40 years to develop standards is too long. If confirmed, I look forward to discussing this and many other issues with the Department's OSHA staff, to help ensure the safety of all workers. I understand that OSHA regulations are difficult to promulgate and that many take a number of years as you noted. If confirmed, I will work to ensure that necessary regulations in this area are promulgated as quickly as possible while also complying with the requirements in law for such regulations.

39. Do you think it should be illegal for an employer to retaliate against a worker for exercising her rights under the Occupational Safety and Health Act, the Fair Labor Standards Act, or other labor and employment laws? Will you commit to maintaining a vigorous enforcement program to protect workers against illegal retaliation?

ANSWER: Illegal retaliation should not be tolerated. If confirmed, I will work with the Department's staff to ensure that employers follow the law in this area and will work to

maintain a vigorous enforcement program to protect workers from adverse employment actions based upon exercising a right they possess under these laws.

40. OSHA's existing safety standard for the containerized storage of flammable and combustible liquids – 29 C.F.R. § 1910.106(d) – incorporates the 1969 version of a fire code (NFPA 30 – Flammable and Combustible Liquids Code) that has been updated 15 times since then based on advancements in research and technology, such as improvements in containers and sprinkler systems used in warehouses. Last year, the International Association of Fire Fighters, the National Volunteer Fire Council, and the bipartisan leadership of the Congressional Fire Services Caucus wrote to Labor Secretary Tom Perez urging OSHA to update this existing safety standard in order to better protect the lives of firefighters and workers. Last fall, the Industrial Packaging Safety Alliance (“PackSafe”) filed a Petition for Rulemaking requesting that OSHA's existing safety standard for the containerized storage of flammable and combustible liquids – 29 C.F.R. § 1910.106(d) – be updated to include the most recent version of NFPA 30. If you are confirmed, will OSHA give full consideration to the Petition for Rulemaking filed by the Industrial Packaging Safety Alliance (“PackSafe”) on October 31, 2016 through an open and transparent rulemaking process that allows all stakeholders to weigh-in?

ANSWER: If confirmed, I look forward to reviewing the safety standards to help ensure the safety of all workers. The Occupational Safety and Health Act of 1970 requires OSHA to ensure safe and healthful working conditions and I am committed to carrying out this mission. Where necessary, OSHA will promulgate appropriate and feasible rules to address workplace hazards. OSHA has many other tools at its disposal to carry out the obligations of the Act and to address new workplace hazards as they emerge, including conducting training and education, and providing compliance assistance to employers and employees. If confirmed, I will direct the Department staff to give full consideration to any petitions for rulemaking that are received and will work to ensure that all rulemaking processes are transparent and allow full stakeholder input.

41. Would you recommend that the President sign Joint Res. 83, which is a “Congressional Review Act” resolution to block OSHA's Volks Rule, a regulation that enables OSHA to hold employers accountable for failing to keep accurate records of workplace injuries and illnesses that harm workers? If OSHA cannot hold employers accountable for failing to keep accurate records, how can OSHA help protect workers from the risk of serious injury or death on the job?

ANSWER: If confirmed, I look forward to discussing this issue with the Department's OSHA staff as we look for ways to ensure that employers are fully complying with their responsibilities to record injuries and illnesses that occur in the workplace.

42. Workers often do not report injuries to their bosses due to fear of retaliation. OSHA's final electronic recordkeeping rule includes a provision prohibiting employers from establishing programs that discourage workers from reporting their injuries. Do you support laws protecting whistleblowers from retaliation in the workplace?

ANSWER: No employee should be subjected to illegal retaliation in the workplace for exercising a legal right they possess. The rights of whistleblowers must be protected.

43. In March 2016, the U.S. Occupational Safety and Health Administration (OSHA) released a final rule to reduce workers' exposure to respirable crystalline silica. The rule is expected to save over 600 lives, prevent more than 900 new cases of silicosis each year, and generate net benefits of \$7.7 billion each year. As Secretary of Labor, will you be committed to implementing this life-saving rule?

ANSWER: The President, through an executive action, has directed all Cabinet secretaries to review all rules within each Cabinet agency. If confirmed, this responsibility will fall to me. As part of that responsibility I look forward to discussing this and many other issues with the staff of the Department's Occupational Safety and Health Administration.

44. Both the Bush Administration and the Obama Administration developed special inspection programs to further direct scarce agency inspection resources to target the worst violators—those employers who demonstrate indifference to the OSH Act by committing willful, repeated, or failure to abate violations. These programs for severe violators include inspection activities such as mandatory follow up inspections and increased company awareness of OSHA enforcement. Do you support special enforcement initiatives for the worst violators with follow up inspections and company-wide enforcement for similar hazards?

ANSWER: If confirmed, I will work with the staff of the Department's Occupational Safety and Health Administration to ensure that all workers are protected. I agree that the worst offenders of health and safety standards should be targeted for increased scrutiny.

45. The Fair Labor Standards Act has been the law since 1938. It is needed to prevent child labor abuse and to guarantee basic wage and hour standards like minimum wage and overtime pay for American workers. Do you believe that any existing FLSA rules should be repealed? If so, what are they?

ANSWER: The Fair Labor Standards Act (FLSA) has been the law of the land for nearly 80 years and provides important overtime and minimum wage protections to workers, protections for children who are in the workforce, and recordkeeping requirements. As I noted in the hearing, the FLSA does require updating from time-to-time, especially when it involves dollar values. If confirmed, I look forward to being briefed by Department staff on the FLSA and the history of the Department's updates to the FLSA as we develop the Department's regulatory policies and priorities.

46. Would you use your statutory authority to interpret section 213 of the Fair Labor Standards Act, exempting various employees from the provisions of section 206 (minimum wage, and overtime) broadly, exempting more employees from protection of the minimum wage and overtime provisions, or narrowly, requiring employers to pay the minimum wage and overtime to more employees?

ANSWER: There are many exemptions to the Fair Labor Standards Act’s overtime and minimum wage requirements. If confirmed, I will work to enforce the laws under the Department of Labor’s jurisdiction fully and fairly, including the Fair Labor Standards Act and any exemptions thereunder. I look forward to being briefed by Department staff on the Fair Labor Standards Act, its exemptions, and the Department’s precedent of interpreting and enforcing the statute as we develop the Department’s regulatory policies and priorities.

47. At your confirmation hearing, you stated that it was unclear whether the Secretary of Labor has the authority under the Fair Labor Standards Act (FLSA) to set a salary threshold in defining and delimiting the so-called “white collar” exemption from the FLSA’s overtime pay requirements. A salary threshold has been used as part of the test for exemption by every Secretary of Labor since the FLSA was first enacted in 1938. Every Secretary of Labor to date has been quite clear on the fact that the Secretary of Labor does, indeed, have the authority to set and enforce a salary threshold.
- a. Do you believe that the Secretary of Labor has the authority under the FLSA to set a salary threshold in defining and delimiting the “white collar” exemption?
 - b. If confirmed, will you defend the authority of the Secretary of Labor to set a salary threshold in court, if that authority is questioned or challenged?
 - c. If you answered “No” to either of these questions, please explain in detail (i) the legal basis for your conclusion and (ii) what you would base the “white collar” exemption on if you believe you would be unable to set a salary threshold as Secretary of Labor.

ANSWER: The district court decision enjoining the rule specifically stated that “[t]he Department exceeds its delegated authority and ignores Congress’ intent by raising the minimum salary level such that it supplants the duties test.” *Texas v. DOL*, 4:16-cv-00731 (E.D. Tex. Nov. 22, 2016), at p. 13. Thus, there is a question as to whether a salary threshold change without a coextensive duties test is viable, and if it is, at what point it “supplants” the duties test. I think the authority of the secretary to address this is a separate issue from what the correct amount is. And the litigation needs to be considered carefully, both with respect to what would be the appropriate amount if the rule were to be changed or revised, but also what is within the authority of the secretary to do.

48. You stated at your confirmation hearing, “I think it’s unfortunate that rules that involve dollar values can sometimes go more than a decade—sometimes 15 years—without updating, because life does become more expensive over time.” The final overtime rule addressed this issue through an automatic updating mechanism, increasing the salary threshold every three years to keep pace with inflation. Will you commit to requiring regular, automatic updates to the overtime salary threshold every three years, as is required by the updated overtime rule?

ANSWER: The Fair Labor Standards Act’s overtime salary threshold has not been updated since 2004. When a rule involves dollar values, I believe waiting more than a

decade to update that rule is unfortunate. I do not know if every three years, specifically, is the best solution, but I look forward to being briefed by Department staff on the Fair Labor Standards Act and the history of the Department's updates to the law as we develop the Department's regulatory policies and priorities.

49. DOL's own research and that of other academics shows that somewhere between 15 and 30 percent of employers' policies violate the FMLA, will you commit to addressing these violations?

ANSWER: If confirmed, I commit that I will work to enforce the laws under the Department of Labor's jurisdiction fully and fairly, including the Family and Medical Leave Act.

50. Paid leave policies that only apply to birth mothers are inadequate for today's workforce, where more women are working, fathers are providing more care for children and the population is aging rapidly. Creating a policy solution that applies only to women who give birth would create barriers to women's employment, promote stereotypes and undermine the progress that the United States has made in terms of gender fairness. Would you oppose a maternity-leave only policy and instead encourage the president to consider addressing paid leave for both women and men? For both parental as well as family and personal medical needs?

ANSWER: I recognize that many states, localities, and private sector employers on a voluntary basis, have implemented paid leave laws and policies. I believe attempts to expand paid leave federally would require congressional action. As I mentioned in the hearing in the context of the gig economy, promoting workplace flexibility is something I support, particularly for working parents with young children. If confirmed, I look forward to working with the President and Congress to work through the issues raised in your question.

51. Will you support an update to the FMLA law to allow parents to attend meetings at their children's schools?

ANSWER: As I mentioned in the hearing in the context of the gig economy, promoting workplace flexibility is something I support, particularly for working parents with young children. Amending the Family and Medical Leave Act would require congressional action. If confirmed, I look forward to working with the President and Congress as these discussions occur.

52. There are well-documented health disparities in the LGBTQ community, due to a range of factors, including a higher likelihood of being uninsured, discrimination and lack of cultural competency among health care providers, and the negative health impact of social stigma and discrimination. Due to such disparities, LGBTQ people likely have a higher need for inclusive paid leave policies. Fortunately, states are passing paid leave laws to meet this need. California, New Jersey, and Rhode Island have paid family and

medical leave programs in place, while New York and Washington D.C. approved such programs in 2016. The state of California has had a statewide paid family leave program in place for more than a decade. Research has found that the program has substantial economic and health benefits for working families without burdening businesses. Even the California Society for Human Resource Management found the law “does not pose as many burdens as employers feared it would” and “is less onerous than expected.” During this period, California’s economic growth has outpaced the national average and its economy is now the sixth largest in the world. In recent years, the Department of Labor has provided small grants to states and localities that have allowed them to analyze and conduct feasibility studies on paid family and medical leave policies. As Secretary, will you direct the agency to continue to invest in state paid family and medical leave analysis grants? Will you ensure that reports resulting from these grants are released to the public? Will you pledge to support states considering and adopting paid family leave measures?

ANSWER: I would need to review any particular grant program before I committed to supporting it. If confirmed, I look forward to learning more about the program. I do believe research is important and that results of such research should be made public. Further, I support an individual state’s right to adopt leave measures.

53. In addition to these paid family and medical leave laws, paid sick days laws are now in effect—or soon will be—in seven states and 32 localities. Research from the longest-standing laws shows that they are working well and are not burdensome for employers. For example, both Seattle and San Francisco saw positive job growth after their paid sick days laws took effect. In San Francisco, the first city with a paid sick days standard, the local Chamber of Commerce’s vice president stated that its impact on businesses was “minimal” and that “[b]y and large, [paid sick days] has not been an employer issue.” Evidence from other localities has similarly found low costs to businesses and positive benefits for workers. As Secretary of Labor, in light of the research on the economic and health benefits of paid sick days, will you encourage or discourage other states and localities from adopting paid sick days laws? Would you support or oppose a national standard like the Healthy Families Act? Federal laws do not mandate paid annual leave, paid time off for illness or family care, or paid parental leave. The absence of such policies makes it difficult for employees to balance work and family, which can negatively impact productivity, inhibit the healthy development of children, and make recovery from major illnesses or injuries difficult. Would you propose any policies guaranteeing earned sick days or paid parental leave? What alternatives would you propose to support workers who need time off to care for themselves or their loved ones? What specifics would you like to see enshrined in law to help protect all workers, regardless of income? How do we guarantee that these policies will help all workers, not just wealthier ones who can take advantage of tax breaks? How do we incentivize all companies to provide these benefits, not just provide tax breaks for companies that are already doing the right thing?

ANSWER: I would need to review any legislation or policies before I committed to supporting them. As I mentioned in the hearing, promoting workplace flexibility is something I support, particularly for working parents with young children. I recognize

that many states and localities have implemented paid leave laws. I believe attempts to expand paid leave would require congressional action. If confirmed, I look forward to working with the President and Congress as discussions regarding paid leave occur.

54. Community-based organizations, advocacy groups for the working poor, and individual working people rely on the Department of Labor's Wage and Hour Division and their regional outreach specialists (CORPS specialists) as vital points of contact for reporting and recovering stolen wages. Will you commit to expanding the number of regional outreach specialists to ensure working people legal recourse to be paid for each and every hour they work?

ANSWER: I would need to review any particular program before I committed to expanding it. If confirmed, I look forward to learning more about the program. That said, I certainly support using taxpayer resources effectively in pursuit of Wage and Hour's mission.

55. Fewer than three in ten unemployed workers now receive unemployment benefits, which is a record low (in 13 states, including Florida, North Carolina, and Georgia, where lawmakers slashed the maximum duration of benefits by as much as half, fewer than one in five unemployed workers receives unemployment benefits). This has devastating consequences for the millions of workers currently locked out of the program and for those who will face major layoffs when the next recessions hits. Do you believe that a social insurance program designed to help the unemployed, and their families, maintain basic living standards while they search for another suitable job and to mitigate the immediate and long-term impacts of global financial crises on state and local economies is meeting its objectives if fewer than 15 percent—or even 10 percent—of the unemployed in several states are receiving benefits?

ANSWER: If confirmed, I expect to be briefed on the Department's programs and benefits for the unemployed so that I can understand which services and benefits are the most effective, and best assist workers in finding new careers and mitigating the challenges that come with job loss.

56. It has now been seven years since the last recession officially ended, but as of early this year, only 18 states had enough reserves in their Unemployment Insurance trust funds to pay adequate benefits when the next recession hits. Given the critical role that the UI program plays in alleviating economic hardship, and boosting the economy, do you support federal efforts to restore the solvency of the federal and state UI trust funds, which are regulated by federal law

ANSWER: If confirmed, I expect to be briefed on the UI trust funds, their solvency and how the Department and its resources can best position them to help the most Americans and best accomplish the Department's mission.

57. In 2012, Congress enacted the Layoff Prevention Act (sponsored by Senator Jack Reed), which provided financial incentives to states with work-sharing programs. To date,

twenty-eight states have enacted federally conforming work-sharing laws. The U.S. Department of Labor estimates that work-sharing saved over 160,000 jobs in 2009 alone and over half a million jobs since 2008. Do you believe that programs like work-sharing will be important to helping employers, especially manufacturers, withstand business downturns and any future recessions? Do you believe that work-sharing should be an option for employers in all 50 states?

ANSWER: If confirmed as Secretary of Labor, I will look forward to reviewing the work-sharing program -- which I understand is called the “short-time compensation (STC) program” -- with the states currently operating the STC program, with employers, and also, with Department staff. If confirmed, I expect to be briefed on issues such as work sharing and other innovations in the workplace to understand how they impact employment and economic growth. I support allowing as much flexibility to States, employers and employees as possible under the law.

58. In recent years, ideologically diverse legislative and executive branches of both Federal and state governments have placed an increased emphasis on bipartisan criminal justice reform. The Labor Department’s key initiative that supports criminal justice reform efforts is the Reentry Employment Opportunities (REO) program, which helps connect returning citizens to job training and employment. What is your position on REO? Would you work with Congress to ensure this important program receives the necessary funding and remains a priority for the Trump Administration?

ANSWER: If confirmed, I look forward to learning more about REO. Programs that help reintegrate citizens into the economy post-incarceration are very important and of interest to me. I understand that the Department has several programs that focus in this area, and I look forward to being briefed on all of them. Thank you for making me aware of your appreciation of this program and this issue. I look forward to working with you and other members of the Committee on efforts to help citizens reintegrate into the workforce post-incarceration.

59. Over 30 million adult Americans lack even a high school degree or a GED – double the population of New York City, Chicago, and Los Angeles combined. These Americans include veterans and others with significant barriers to better employment. The challenge is multi-generational: half of their children will also fail to complete high school. As a result, our economy is hurt, our nation is not as competitive as it should be, and people cannot advance in careers and life. As Secretary, how would you address this critical issue?

ANSWER: Our workforce training system must be positioned to provide training and skills to the millions of workers who lack a post-secondary education if they are to prosper in our modern and constantly changing economy. The worker training and apprenticeship programs under the Department’s purview must position these workers with skills that meet the needs of growth industries and sectors.

60. The U.S. Department of Labor is required under the Trade and Development Act of 2000 (TDA) to submit an annual report to Congress on the efforts by countries that receive trade preference under the Generalized System of Preferences (GSP) to combat the worst forms of child labor. The Department currently assesses countries on their progress, identifies positive efforts and remaining challenges, and issues recommendations to address the identified challenges. This is a critical tool the Department uses to raise awareness about the problem of child labor and engage with other governments to address the issue. What will you do to ensure that the report is a useful tool for countries to combat the problem of child labor?

ANSWER: Child labor is a truly troubling problem. I believe that the Department's Bureau of International Labor Affairs is assigned the duty described in your question, and if confirmed, I will work with that office to make certain that any reports in this area contain the information needed to help countries eliminate this problem.

61. The U.S. Department of Labor, in coordination with the Office of the U.S. Trade Representative, is responsible for the monitoring and enforcement of labor provisions of free trade agreements. A recent Government Accountability Office report concluded that there is an overall lack of effective monitoring and enforcement of the labor provisions in our trade agreements. How will you strengthen the efforts of the Department's Bureau of International Labor Affairs (ILAB) to effectively monitor and enforce labor provisions of free trade agreements – especially given the drastic cuts to ILAB proposed in the President's skinny budget?

ANSWER: If confirmed, I look forward to working with ILAB, the Trade Representative and Congress on this important issue. While I have not been involved in the budget process as a nominee, it is worth noting that the President's budget "[fo]cuses the Bureau of International Labor Affairs on ensuring that U.S. trade agreements are fair for American workers."

62. Do you believe that enforcing the Fair Labor Standards Act and preventing wage theft improves the U.S. economy? Why or why not?

ANSWER: If confirmed, I would be responsible for enforcing the Fair Labor Standards Act and will work to enforce this and other laws under the Department of Labor's jurisdiction fully and fairly. The protections provided by wage and hour laws provide a level of economic security to our nation's workforce and help Americans to purchase goods and service to support their families, thereby also supporting America's businesses and improving the economy.

63. Do you believe government should regulate issues regarding wages?

ANSWER: Yes, the government does in fact regulate wages and has for over 70 years.

64. For many decades, the Wage and Hour Division has focused its limited enforcement resources on the industries where wage theft and child labor are rampant. Do you support this type of strategic enforcement, in addition to responding to individual worker complaints?

ANSWER: I support strategic enforcement alongside individual complaints. If confirmed, I will work to enforce the laws under the Department of Labor's jurisdiction fully and fairly.

65. Because women are overrepresented in low-wage jobs, they are especially vulnerable to wage theft and exploitation, and are often reluctant to report violations for fear of retaliation. Do you commit that under your leadership the Wage and Hour Division will not scale back or limit its implementation and enforcement efforts, and that you will defend against any attempts to undermine the Division's ability to conduct robust investigation and enforcement activities, including defending against any budget cuts to the Division?

ANSWER: As I noted at the hearing, if confirmed, I would enforce the law fully and fairly, including Wage and Hour Division responsibilities. Enforcement of these laws will be priority irrespective of the budget Congress ultimately enacts.

66. In addition to responding to individual complaints, recent enforcement strategy at the Wage and Hour Division has emphasized targeted investigations of industries with high numbers of wage and hour violations -- including the fast food, restaurant, hotel, and garment manufacturing industries -- which also employ significant numbers of low-wage workers and women. Under your leadership, will the Department of Labor continue to pursue proactive, targeted enforcement strategies to protect the workplace rights of large numbers of vulnerable workers in high-violation industries, and not rely primarily or solely on a complaint-driven enforcement strategy?

ANSWER: If confirmed, I will work to enforce the laws under the Department of Labor's jurisdiction fully and fairly. Strategic enforcement in high violation areas, alongside individual complaints, is a balanced enforcement strategy I support.

67. The Bush DOL had an enforcement philosophy that directed more significant resources than usual toward helping employers comply with the laws that DOL administers. While compliance assistance must be part of any DOL enforcement agenda, a 2009 GAO investigation and report revealed the flaws in a strategy that put so much emphasis on compliance assistance, to the utter detriment of enforcement. The GAO report documents how phone complaints were routinely ignored and how investigations were often pro forma at best. And without targeted enforcement in high violation industries, where workers are justifiably afraid to complain for fear of retaliation, there is very little chance that these employers will get caught. What is your plan for ensuring that the enforcement agencies at DOL vigorously enforce the laws they are charged with overseeing?

ANSWER: As I noted at the hearing, if confirmed, I would enforce the law fully and fairly. Certainly, compliance assistance for small business particularly is a good way to help explain the laws to good employers who may not understand their responsibilities. Compliance assistance should not, however, be conducted at the expense of overall enforcement.

68. Congress and the administration have taken several steps in the last eight years to expand access to, and improve the quality of, training and employment programs that prepare workers for high-skill, high-wage employment in jobs and occupations that exist right now. That progress includes bipartisan passage of the Workforce Innovation and Opportunity Act (WIOA), which authorizes the nation's public workforce system, and new investments in job-driven training programs, including training programs designed to aid workers affected by global trade. These investments help workers build their skills and raise their wages, and help employers – particularly small- and mid-sized employers that lack large HR and training budgets – find skilled workers. As Labor Secretary, will you continue to invest in worker training, and maintain or expand upon the current level of service and investment that the public workforce system provides to states and local workforce development areas? In your view, what is government's role in worker training?

ANSWER: The Department of Labor, along with state and local governments, industry, and educational institutions, can partner to have substantial positive impact on America's workers. I believe it is important to view job training programs in terms of return on investment, to borrow a metric from the business world. For a modest investment in training, we can prepare a worker to land a good, safe job, to keep that job, to pay taxes—resulting in an overall net return on investment. If confirmed as Secretary of Labor, I will work to shift more responsibility for funding job training and employment services to those States, localities and employers that can demonstrate their effectiveness in addressing the needs of both employers and workers. I strongly believe it is important to invest in worker training. I look forward to working with you and Members of the Committee to realize these stated goals.

69. In 2009, Sen. Jeff Sessions, now the Attorney General, opposed the Lilly Ledbetter Fair Pay Act, which Congress passed to help women bring claims of pay disparity based on gender discrimination. He opposed the Paycheck Fairness Act, which has not passed yet, but would punish employers for retaliating against employees who share wage information and allow employees to sue for damages resulting from wage discrimination. Are you concerned that the Department of Justice may provide less assistance in combatting violations of equal pay laws given Sen. Sessions' record of opposing such laws? Will you continue to make enforcement of equal pay laws a priority, to the same extent as the previous administration?

ANSWER: At his confirmation hearing, Attorney General Sessions pledged himself to equal justice under the law and I have no reason to question the Attorney General's

commitments. If confirmed as Secretary of Labor, I am committed to enforcing all laws committed to the Department of Labor's care, including those relating to equal pay.

70. In order to crack down on violations of equal pay laws, the National Equal Pay Enforcement Task Force made several recommendations, including that the Equal Employment Opportunity Commission ("EEOC"), the Department of Justice ("DOJ"), the Department of Labor ("DOL"), and the Office of Personnel Management ("OPM") coordinate the responsibilities of enforcing the laws prohibiting pay discrimination. Do you think interagency coordination and enforcement efforts including communication among the agencies, coordinating investigations and litigation, identifying areas in which they can issue joint guidance to employers and employees, and conducting joint training as appropriate have made a positive impact on enforcement of equal pay laws? Do you believe these efforts deserve more or less support through funding and staffing? Please include specific examples of where there should be more or less coordination between these agencies.

ANSWER: I would need to look into the task force's accomplishments to make a determination on its effectiveness. As I noted at my hearing in the context of job training, it is generally important for government agencies to work together to increase efficiency and effectiveness.

71. An estimated 5.25 million young people ages 16 to 24 are unattached to school or work. Known as Disconnected Youth, they make up nearly one-third of unemployed people. Youth disconnection is not a challenge confined to urban, suburban, or rural America. In fact, rates of disconnection are particularly high across the south. Given the opportunity to reconnect with the labor market, these young people offer a return of hundreds of billions of dollars in economic productivity and savings to taxpayers. For these reasons, dozens of employers including Walmart, Starbucks, JP Morgan, CVS, Fed Ex, Hilton and others have committed to creating 100,000 opportunities to reconnect these young people with productive and self-sustaining work. Would you support setting a broader goal of reconnecting 1 million opportunity youth? What role do you see for the Department of Labor in re-engaging youth who have left high school without earning a high school diploma? In connecting Opportunity Youth to jobs, workforce and training programs?

ANSWER: I appreciate you raising this issue, and I agree it is vitally important. I share your belief that getting more young people involved in workforce training and apprenticeship programs is an important goal. There are numerous examples throughout the nation of industry, local academic and training institutions and government partnering effectively to train and place workers in growth sectors. I believe that the Department of Labor, along with state and local governments, industry, and educational institutions, can partner to have a critical positive impact on American workers, especially young people who struggle with education and employment. I would be pleased to work with you and other Members of the Committee to identify new ways to reengage these youth and help them succeed in the labor force.

72. In August of 2016, Time Magazine reported that President Trump contracted with a company that employed undocumented immigrants from Poland to work on the site of his flagship Trump Tower in New York City and had them work 12-hour shifts without paying them overtime. According to Time magazine, when the people building the Trump Tower complained that he was stealing the wages they had earned, President Trump had his lawyer threaten to call immigration officials and get the people working on the site deported. While President Trump has denied some of these facts, it is indisputable that some corporations exploit undocumented immigrants who work for them and then threaten to call immigration authorities to silence whistleblowers. Not only does this put undocumented immigrants in an extremely vulnerable position, it ends any chance to ferret out unscrupulous corporations who disregard the law, do not pay overtime, put the people who work for them in dangerous working conditions, and even sexually abuse or traffic their employees. If whistleblowers are deported, after all, the government cannot investigate charges of exploitation or abuse. Will you ensure that DOL investigators protect whistleblowers from their boss making a retaliatory call to immigration authorities? Will you commit to working with the Department of Homeland Security to ensure that DHS does not initiate deportation proceedings against immigrants during on-going investigations over workplace labor law violations or for exercising their rights as workers in the United States? Will you train Department of Labor investigators to be aware that investigations into labor law violations should take precedence over immigration proceedings absent extraordinary circumstances, such as national security? Will you instruct Department of Labor investigators to de-conflict Department of Labor investigations with Department of Homeland Security enforcement activity to prevent a raid against a worksite at which a labor investigation or action is occurring? Will you work with Department of Homeland Security to ensure Department of Homeland Security officials know whom to call to determine if there is an open Department of Labor investigation before initiating a workplace immigration investigation?

ANSWER: I believe that the Department has a longstanding commitment to ensuring that all workplace protections are enforced regardless of workers' immigration status. I have not reviewed it but I believe there is a Memorandum of Understanding between the two cabinet departments that is designed to avoid interfering in each other's enforcement responsibilities. If confirmed, I will discuss this issue with Department of Labor staff and ask them to work with Department of Homeland Security staff to help ensure that both agencies can continue to fulfill their responsibilities.

73. There are numerous press reports already about immigrant workers being afraid to go to DOL to pick up settlement checks for unpaid wages because they fear deportation. Similarly, the press is reporting that immigrant workers, even some that have documentation, now fear complaining about unsafe conditions or wage theft. Advocates report that this is the case as well. As you know well, we must vigorously enforce the employment rights of those workers most vulnerable to exploitation not only to protect their basic human rights, but also, so we don't allow unscrupulous employers to undercut the documented and citizen workforce by hiring and abusing undocumented workers. Indeed, the single best thing we can do to protect all American workers, is to protect all who work in America. But these well-founded fears threaten to sideline the DOL in these

important matters, undercutting the rights of the entire low-wage workforce. If you are Secretary, what will you go to ensure that the DOL remains open to undocumented workers who are being exploited? Will you engage in targeted investigations in industries that tend to hire them and if so, what will you do to protect them from workplace raids? Will you vigorously enforce the current Memorandum of Understanding between DOL and DHS detailing how DHS must defer to DOL's investigations and enforcement actions? Will you fight to maintain this MOU if others want to abandon it?

ANSWER: I believe that the Department has a longstanding commitment to ensuring that all workplace protections are enforced regardless of workers' immigration status. I support that longstanding practice. I have not studied the MOU you reference, but I believe it is important that both agencies avoid interfering in each other's responsibilities.

74. Your statements on immigration and immigrant workers are at odds with statements that President Trump has made. What policies would you like to see? How will you work with President Trump if you are in opposition to one another? What policies do you propose to welcome immigrants to the U.S.?

ANSWER: As I noted at the hearing, I think there is a need to have immigration laws that are transparent and clear, and I do think that we have an issue of abuse with immigrant workers. I think when workers are not part of the system, the system can abuse them. I also think it's important that we enforce immigration laws. I don't see enforcement of immigration laws as separate from immigration reform. As the child of immigrants, I certainly support and appreciate the benefits of legal immigration and the opportunities my family has had. The best way to welcome legal immigrants is to have a growing economy that gives them the opportunity to contribute.

75. As reported by The Washington Post, President Trump is the president of a Charlottesville vineyard that has applied for H-2A workers for multiple years, including for 2017. The DOL plays a key role in implementing and enforcing the H-2A program, both as the regulatory agency that oversees the employer's application process and as the agency tasked with enforcing worker protections under the program. As president, Trump will be overseeing the very agency that will determine whether or not his business's request for foreign workers will be granted. Ethics experts cited in The Washington Post article described President Trump's interest in the H-2A program as a business owner and as the executive authority in charge of the H-2A program as "a classic conflict of interest" which would extend to his appointees. Given this clear conflict of interest, how will you be able to carry out the DOL's responsibilities under the H-2A program?

ANSWER: As I noted in my hearing, if confirmed, I would enforce the laws Congress has written fully and fairly and I have done that throughout my career regardless of the individuals involved.

76. Do you believe that all working people, regardless of their immigration status, should be afforded the same health and safety protections and options for recourse if they are injured on the job?

ANSWER: As I noted in my hearing, if confirmed, I would enforce the laws Congress has written fully and fairly, including health and safety protections, which apply regardless of immigration status.

77. Immigration enforcement is often used by exploitative employers as a tool to intimidate and retaliate against guest workers and other immigrant workers. This depresses wages and working conditions for all workers, and sometimes leads to forced labor and human trafficking on American soil. There have been numerous instances of Immigration and Customs Enforcement (ICE) agents impersonating OSHA officials in order to target immigrant workers, and the recent immigration enforcement surge has included worksite raids and the legal but problematic identification of ICE agents as police officers. The best way to prevent this misuse of ICE resources is to de-conflict and maintain a separation between immigration enforcement and labor enforcement. Do you agree with the principle that immigration and labor enforcement activities should be kept separate? If so, will you maintain or expand the interagency policy established with DHS to de-conflict worksite enforcement activities?

ANSWER: If confirmed, I will fully and fairly enforce the law in this area. I believe it is important that ICE and all DOL agencies avoid interfering in each other's responsibilities.

78. The Labor Department during the Obama Administration issued a number of rules to strengthen protections for working people – their pay, their safety and health, their pensions, and many more. These protections were issued after public notice and a full opportunity for the public to submit comments. After reviewing all these comments, the Labor Department made a decision to issue the rules. Will you commit to following the law and providing a full opportunity for public notice and comment before modifying any of the Obama Administration's regulations that have already been finalized and published?

ANSWER: I will follow the requirements of the law in making changes to any regulations.

79. Data from the Bureau of Labor Statistics indicate that it takes older workers almost a year (about 40 weeks) to return to the workforce after losing their job. This is twice as long as it takes younger workers. Congress created and recently renewed their commitment to the Senior Community Service Employment Program (SCSEP) at the Department of Labor. This program has provided job training to millions of older Americans and has successfully moved them into permanent employment. While President Trump has claimed to be the champion of the American worker, his proposed budget calls to eliminate this employment program for low-income older workers. Should older workers who are unemployed but have the need, desire, and ability to work have access to temporary earn-and-learn training opportunities in their communities? How do you plan

to assist the 67,000 unemployed older workers who will lose SCSEP service under the President's plan—including the estimated 8 older workers from my state of Washington? Will you commit to work with Congress to ensure older workers who are unemployed have access to on-the-job training opportunities through SCSEP?

ANSWER: I would need to review any particular program before I committed to supporting it. If confirmed, I look forward to learning more about SCSEP. As a nominee, I have not participated in the current budget discussions. I note that the President proposes a budget but it is ultimately Congress that will determine the funding levels. That said, I fully believe in assisting any worker, young or old, who seeks to rejoin the labor market but needs help developing in demand skills.

80. As you may know, since the enactment of the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) and subsequent creation of the compensation Program, the Department of Labor and the Department of Energy have worked to process the claims of former employees and contractors who were exposed to radiation and toxins during their service at nuclear weapons facilities across the country. As a senator from the state of Washington, this is a really important issue to me because we have thousands of workers and their families at the Hanford Nuclear Reservation located in the Tri-Cities who helped America win WWII and the Cold War and continue to support a critical cleanup mission at Hanford. For years, I have been battling the slow and complex process that these heroes deal with in trying to secure the compensation and care promised them in a fair and timely manner. In addition, in 2005, I along with my colleagues worked to move this compensation program to the Department of Labor under the premise that it would do much better in processing claims. Yet, I still hear from workers that face a slow claims process, continuous program inefficiencies, endless obstacles to complete their process, and difficulties in receiving the health care and benefits they earned through their dedicated service to the United States. What steps you will take improve this critical program? Would you commit to a comprehensive review of the operations of the Division of Energy Employees Occupational Illness Compensation (DEEOIC) and the Office of Workers' Compensation Program? And to report to this Committee its findings within 90 days?

ANSWER: If confirmed, I will look into your concerns. I will need to consult with DOL staff in order to determine the proper scope of any review and the timelines.

81. As Secretary of Labor, you will serve as the Chairman of the Board of the Pension Benefit Guaranty Corporation (PBGC). The PBGC's multiemployer program reported in its FY2015 Annual Report that its deficit widened to \$52.3 billion and it is likely to become insolvent in 2025.
- a. What do you think should be done to address the continuing solvency of the PBGC's multiemployer program?
 - b. What do you think should be done to address the solvency issues for plans like Central States among other plans that applied to Treasury to cut benefits under the Multiemployer Pension Reform Act of 2014 (MPRA) and were rejected?

ANSWER: If confirmed, I will be Chair of the Pension Benefit Guaranty Corporation's Board of Directors and expect to be briefed on the matter of underfunded multiemployer pension plans. As I noted in the hearing, I have not proposed a plan to address the issue of underfunded multiemployer plans and I wish there were an easy solution. These workers have worked hard for pensions they reasonably expect upon retirement, and I understand that. I look forward to working with Congress and the President as solutions are proposed.

82. During your confirmation hearing when questioned about the looming insolvency of Central States and the PBGC, you would not commit to maintaining pension benefits rather than taking the drastic measure of cutting them because "if you expand it further to include city and state pension funds, you're talking about approximately a \$2 trillion price tag." Could you please discuss what you believe your role as Secretary of Labor is in overseeing city and state pension funds and the authority for such role?

ANSWER: If confirmed, I expect to be briefed on the matter of underfunded multiemployer pension plans and the PBGC's financial condition. I am aware that there are also concerns that many state and local government pension funds are substantially underfunded. Promoting retirement security is part of the Department's mission and good public policy. If confirmed, I look forward to working with Congress and the President as solutions are proposed to resolve pension funding concerns particularly as they relate to the PBGC.

83. Do you think that the PBGC should set its own premiums for its multiemployer and single-employer programs? Please explain why or why not.

ANSWER: If confirmed, I look forward to a briefing regarding the PBGC's authority over premiums. I also look forward to working with Congress and the President as solutions are proposed, including proposals regarding PBGC premiums.

84. Do you think the current premiums for PBGC's single-employer and multiemployer programs are sufficient? Please explain why or why not. Moreover, if you do not believe they are sufficient, please discuss what you believe a sufficient premium range would be.

ANSWER: If confirmed, I look forward to working with Congress and the President as solutions are proposed, including proposals regarding PBGC premiums. The premiums charged need to take into account both the need for funding the PBGC's guaranty programs while also keeping pension costs low so that employers continue to sponsor retirement plans.

85. Do you believe that the current structure of the PBGC Board (the Secretaries of Commerce, Labor and Treasury) is the most effective management structure for the PBGC?

ANSWER: It is certainly important that the interests of plan participants and beneficiaries be represented on the Board. If confirmed, I look forward to briefings on these issues, including the role of the Board of Directors in the management of PBGC and discussing any proposed reforms to the structure with Congress.

86. Do you believe that the PBGC should be given greater authority to work with distressed multiemployer and single-employer plans? If so, what authority do you think is needed?

ANSWER: Supporting the ability of retirement plans to honor commitments made to working men and women is important. If confirmed, I expect to be briefed regarding the PBGC and ways to improve the prospects of distressed multiemployer and single employer plans, and I look forward to working with Congress and the President as solutions are proposed.

87. Do you believe every American who seeks professional investment advice regarding his or her retirement accounts deserves to receive advice that is solely in his or her best interest?

ANSWER: It is important that the retirement savings of working Americans be protected. Working Americans deserve to have access to sound financial advice at fair and transparent prices, and the law requires those who are fiduciary advisers give advice that is solely in the interest of plans, their participants, and beneficiaries.

88. You stated in your confirmation hearing that the conflict of interest rule “goes far beyond simply addressing the standard of conduct” of investment advisers. If after your Presidentially-mandated review, you decide to rescind or significantly scale back the rule, what kinds of protections do you think need to be put in place to ensure that hardworking individuals and retirees receive advice that is solely in their best interest?

ANSWER: Hardworking individuals and retirees should receive advice that is in their best interest. If confirmed, I expect to carefully examine the rule, pursuant to the executive memorandum. If repealed or scaled back, the basic protection articulated above would be important to address.

89. As part of the rulemaking process the Department of Labor undertook in completing the final conflict of interest rule, the Department prepared a 382-page regulatory impact analysis examining in great detail the expected economic impacts of the rule. This was the culmination of a roughly six-year process that incorporated the feedback of thousands of public comments submitted to the Department in multiple comment periods. Included in the analysis were discussion of the exact issues the Administration seeks to study according to the new Presidential Memorandum directing the Department to study the rule. While you made it abundantly clear during your confirmation hearing that President Trump would be your boss and you would follow his direction until you couldn't, do you think it a good use of taxpayer dollars to conduct a study that has already been completed? What do you intend to do with the rule if and when the results of this new study are consistent with the previous study?

ANSWER: The Presidential Memorandum addresses with specificity the fiduciary rule and details the Department of Labor’s obligations to review the rule. If confirmed, I will conduct a review in accordance with the Presidential Memorandum. As Chairman Alexander noted, as a nominee it would be presumptuous to make any regulatory determinations at this time. Indeed, given that the comment period is still open on the questions raised as part of the evaluation, it would be improper for me to prejudge the rulemaking.

90. The Department of Labor’s Employee Benefits Security Administration devotes substantial resources to protecting the contributions made by employees and the matching contributions promised by their employers to employer-sponsored benefit plans, including 401(k)s and health plans. Workers have had their contributions to their pension or health plans withheld from their paychecks without their employers depositing the money in the plans in a timely manner – or even at all in some cases. Instead, these employers kept the workers’ contributions and used them for their own purposes or for other unrelated purposes. What should the Department do to more effectively protect working people against employers’ misuse of their retirement and health money?

ANSWER: If confirmed, I expect to be briefed on matters related to the Employee Benefits Security Administration and will work to enforce the laws under the Department of Labor’s jurisdiction fully and fairly, including taking vigorous enforcement action if employers are unlawfully withholding funding for employee pension and health benefits.

91. During your confirmation hearing, you stated that considering “indirect control or even unexercised potential to control working conditions” when analyzing joint employer status was an “un-traditional approach.” The Restatement (Second) of Agency refers to a master as someone who “controls or has the right to control” another and refers to a servant as one who is “controlled or is subject to the right to control.” (emphasis added) Indeed, the Supreme Court’s considerations are consistent with these principles, as the Court has pointed to whether one “possessed sufficient control over the work of the employees to qualify as a joint employer.” *Boire v. Greyhound Corp.*, 376 U.S. 473 (1964) (emphasis added).

The common law has long acknowledged that control may be indirect, and the *Restatement of Employment Law*, Section 1.04(b) (March 2017) states “An individual is an employee of two or more joint employers if (i) the individual renders services to at least one of the employers and (ii) that employer and the other joint employers each control or supervise such rendering of services.”

Do you believe that these common law principles are “un-traditional” and should be ignored when considering joint employer status under labor and employment laws?

ANSWER: If confirmed, I look forward to being briefed on these matters as we develop the Department’s regulatory policies and priorities.

92. While you were Assistant Attorney General of the Department of Justice’s Civil Rights Division, you chose to write a letter to an Ohio judge in defense of an Ohio voter challenger law just days before the 2004 general election. It is a departure from standard practice of the Justice Department to weigh in on cases involving issues of voters rights and access so close to an election. Furthermore, the Department of Justice had no role in the case.
- a. Why did you choose to write the letter?
 - b. How do you explain your decision, given that the Department of Justice had no role in the case? What was the value in the Department weighing in?
 - c. Did you weigh in on cases involving voter challenger laws or other laws relating to voter rights and access at the time? Were there controversies in other states in which the Department chose to involve itself?

ANSWER: The Department of Justice has a long history of submitting its views of statutes committed to its enforcement. The Department of Justice is charged with enforcing both the Help America Vote Act of 2002 (“HAVA”) and the Voting Rights Act (“VRA”). At the time, HAVA was a relatively new statute. Because of this, there was value in bringing to Judge Dlott’s attention key aspects of HAVA, i.e., that state and local election officials must permit any individual whose name does not appear on the official registration list or whose eligibility to vote is called into question to cast a provisional ballot even if they are unable to answer specific questions posed by election judges; that provisional ballots are part of a congressionally-established balance between ballot access and ballot integrity; and that as a result, non-discriminatory challenge statutes are not prohibited on their face (although they can be prohibited as applied). Provisional ballots would mitigate the impact of the Ohio “challenge statute” at issue in that case, which otherwise may have resulted in the disqualification of some voters without any recourse to confirm their eligibility and to restore their vote. The letter alerting Judge Dlott to HAVA’s requirements was consistent with the Civil Rights Division’s many other efforts to raise awareness of and to enforce HAVA in several states during 2004. Importantly, the Department did not speak to the specific allegations raised by the plaintiffs in that suit, but limited its comments only to the statutes on their face.

93. In 2003, the Civil Rights Division’s Voting Rights Section was tasked with reviewing a plan proposed by the Texas legislature to redraw the state’s congressional districts. Under the Voting Rights Act, states with a history of discriminatory election practices had to receive approval from the Justice Department to make changes to their voting systems. This rule was designed to prohibit changes that would have harmed minority voters. The career attorneys in the Voting Rights Section found that the Texas redistricting plan would have had a discriminatory effect. Yet, senior political officials in the Department overruled the career attorneys and the Texas plan went into effect. The Supreme Court later found that the Texas redistricting plan had “failed to protect minority voting rights.” You chose to recuse yourself from this case and have refused to provide an explanation for your decision. In a congressional hearing in 2004, you stated, “I do believe that my recusal was appropriate, that it was the right thing for me to do. I

have very able deputies, good deputies, and I have full confidence in their decision-making process.” Why did you choose to recuse yourself from this case? And based on the mistake made by political officials to override the correct decision by the section’s career attorneys, do you regret your decision?

ANSWER: Recusal is appropriate where an official has an actual conflict of interest, or where under the circumstances the official may reasonably appear to have a conflict of interest. As I mentioned at my hearing, I have a longstanding friendship with the then Solicitor General of Texas, Mr. Cruz, who was litigating this matter personally. I recused myself out of concern that this contact may be portrayed as a conflict of interest. I take recusal obligations very seriously. It is as important to recuse in cases where recusal is required as it is not to recuse in cases where recusal is not required. In this case I believe my decision to recuse from any involvement in the Department’s deliberations and decision-making was appropriate.