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

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Ranking Member

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CAROL SHEA-PORTER, NEW HAMPSHIRE
ADRIANO ESPALLAT, NEW YORK

February 20, 2018

The Honorable R. Alexander Acosta
Secretary of Labor
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Dear Secretary Acosta:

I am writing to request that the Department of Labor (DOL) respond to the outstanding inquiries of the Committee on Education and the Workforce. As a standing committee in the U.S. House of Representatives, this Committee has general oversight responsibilities to assist the House in the "analysis, appraisal, and evaluation of the application, administration, execution, and effectiveness of Federal laws."¹ This includes ensuring the Department is fairly applying, administrating, and executing the federal workplace laws and regulations under its purview.

Specifically, it has been over two months since the DOL received the December 8, 2017 questions for the record following your November 15, 2017 testimony before the Committee. As a reminder, many of the questions Committee Members could have asked you during the hearing were reduced to writing so as to accommodate your premature departure from the hearing. To date, the Members' inquiries have gone unanswered and unacknowledged despite the scheduling adjustment that was afforded to you.

Also, there has been no acknowledgement or response from the DOL regarding the February 2, 2018 oversight letter I sent with Representatives Keith Ellison, Mark Takano, and Suzanne Bonamici requesting documents and information related to the economic analyses regarding the impacts of the Notice of Proposed Rulemaking regarding Tip Regulations under the Fair Labor Standards Act (FLSA). As you know, this letter was in response to a February 1, 2018 report from Bloomberg BNA that the Department had prepared and intentionally withheld an economic analysis quantifying the loss of tip income for tipped workers as part of its NPRM. I would note that this is a time-sensitive matter pertaining to a rulemaking process that may have been compromised.

To that end, I ask that you provide us with the schedule for the DOL's responses to these requests forthwith, as the Committee's oversight responsibilities are hampered by the DOL's

¹ Clause 2 of Rule X of the Rules of the House of Representatives.

The Honorable R. Alexander Acosta

February 20, 2018

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failure to provide responses to post-hearing questions and timely oversight requests. Please contact Véronique Pluviose, Staff Director for the House Committee on Education and the Workforce at [Véronique.Pluviose@mail.house.gov](mailto:Veronique.Pluviose@mail.house.gov) or (202) 225-3725 in following up on this letter.

Sincerely,



ROBERT C. "BOBBY" SCOTT

Ranking Member

Enclosure

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December 8, 2017

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

Dear Secretary Acosta:

Thank you, again, for testifying at the November 15, 2017, Committee on Education and the Workforce hearing titled "Examining the Policies and Priorities for the U.S. Department of Labor."

Enclosed are additional questions from Committee members and me submitted following the hearing. Please provide written responses no later than December 22, 2017, for inclusion in the official hearing record. Responses should be sent to Joe Wheeler of the Committee staff, and he can be contacted at (202) 225-7101.

We appreciate your contribution to the work of the Committee.

Sincerely,

A handwritten signature in blue ink that reads "Virginia Foxx".

Virginia Foxx
Chairwoman

Enclosure

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

Questions for the Record

Hearing: "Examining the Policies and Priorities of the U.S. Department of Labor"

Wednesday, November 15, 2017

Chairwoman Foxx (NC)

1. First off, I'd like to express my appreciation for the Department's actions in rescinding the harmful "persuader rule." And I would like to ask about what further plans you have for the Office of Labor Management Standards (OLMS). As you know, OLMS protects rank-and-file union members by ensuring they have access to transparent information and accountability concerning how union leaders manage dues and provide representation. During the Bush years, OLMS was able to achieve a high level of transparency in the financial dealings of unions. But, under the Obama administration, OLMS backed off of many of these proposals and even stopped performing audits on international unions. The Obama administration also starved this program of enforcement personnel – decreasing the number of full-time equivalents by nearly one-third by 2016. What steps will you take to ensure this agency can again provide robust oversight on behalf of union workers?
2. Recent press reports indicate the Department may include some form of automatic salary threshold update mechanism – possibly linked to inflation – as part of its new notice of proposed rulemaking for overtime. As you know, this concept was a key component in the final overtime regulation issued by the Obama administration and it was heavily criticized by the employer community during that rulemaking. In a lawsuit brought by various representatives of employers, one count of the complaint attacked the automatic update feature as being inconsistent with the authority granted to the Secretary under the *Fair Labor Standards Act*. On August 31, 2017, a district court judge held that the Obama administration's final rule's salary level exceeded DOL's authority and invalidated the final rule, including the automatic updating mechanism. Given these circumstances and the likelihood of a legal challenge to the inclusion of an automatic update mechanism in a new overtime regulation, can you assure the Committee that the Department is not considering such a concept in its new rulemaking?
3. Recent press reports indicate the Department is considering the use of a mechanism in its new overtime rulemaking whereby the salary threshold for determining an exemption varies by geographic regions in a manner similar to the federal government's pay scale. Prior to the Obama administration's final overtime rule and in the aftermath of that administration's excessive increase in the salary threshold, there was discussion of the need to account for different regional economic conditions in determining the appropriate floor for the overtime salary threshold. However, many stakeholders have expressed concerns that creating a patchwork structure with differing thresholds would result in a logistical nightmare for employers who operate in multiple states and regions. Absent the excessive salary threshold increase contained in the Obama administration's final regulation, is such a concept necessary to achieve the objectives of updating the overtime regulations? Considering the problems that regional salary thresholds would create for so many employers, is this approach being seriously considered as the Department

undertakes a new overtime rulemaking? Does the Department have the authority to use such a mechanism under the *Fair Labor Standards Act*?

4. In order to ensure taxpayer dollars are well spent and that at-risk youth receive high quality services, the *Workforce Innovation and Opportunity Act* required local workforce development boards to provide these services through competitive grants or contracts. Unfortunately, your predecessor ignored the requirements of the law and, putting bureaucrats over kids, ignored the competitive procurement requirement when issuing final regulations. What measures have you taken to correct the regulatory malfeasance of your predecessor?
5. I continue to have concerns that the Job Corps program is failing to live up to its mission and that how the program measures success is intentionally misleading. In considering center and program performance why are students who leave the program within the first two months ignored? Does this encourage center operators to kick students who may need more services out of the program within 60 days?
6. When we last held a hearing examining student health and safety within the Job Corps program the program had failed to implement at least four of the Office of Inspector General's recommendations from 2015. What steps has the Department taken to address these recommendations and the recommendations made by the Inspector General in March 2017
7. The Job Corps program's purpose is to serve those who are hard to serve in order to help them become more employable, responsible, and productive citizens. In order to do so more effectively, Congress, as part of the *Workforce Innovation and Opportunity Act*, directed the Department to consider operator performance as part of the procurement process. Unfortunately, I understand that a number of Job Corps centers continue to operate under bridge or sole source contracts. The use of these contracts makes it more difficult to reward good actors and exclude poor performers. Moreover, it makes it hard for operators to recruit and retain high-quality staff. What steps have you taken to improve the contracting process to hold operators accountable, reward good actors, and improve the safety and education of students?
8. The federal government disposes and distributes excess federal property through the GSAXcess program. This program is designed to maximize value to the taxpayer by reallocation of resources between agencies, through donations to state or local agencies, and by sale to the public. In disposing of taxpayer property to private citizens or other private organizations, GSA advertises that there are no "giveaways" and that it "has a responsibility to the taxpayers to receive the best possible return on the tax dollar when [the property is] sold."

Unfortunately, it has come to my attention that under your predecessors the Department of Labor has circumvented the requirements of the GSAXcess program and provided taxpayer property—including cars, trucks, and construction equipment—to politically-

avored organizations free of charge. What measures have you taken to recover this property and to ensure that nothing like this happens again?

HELP Subcommittee Chairman Walberg (MI)

1. Workplace wellness programs have proven to improve health outcomes and well-being, increase productivity and lower health care costs. How will the Department prioritize policies that allow these programs to grow and innovate? How will the Department encourage the use of a broad range of program designs and incentives to meet the health care challenges of the future?
2. Recently, a number of financial services companies have faced lawsuits regarding compliance with the guaranteed benefit policy exemption under the *Employee Retirement Income Security Act of 1974* (ERISA). The lawsuits stem around whether insurers act as an ERISA fiduciary if they reserve the right to periodically change the interest rate on these products. Are you aware of these legal challenges and does the Department have any intention to clarify the confusion around general account guaranteed products?
3. I would appreciate if you could follow-up on whether the Department plans to revise the existing annuity safe harbor to make sure it provides the certainty that plan sponsors need to consider these types of products in their retirement plans. Currently, the Department of Labor (DOL) has a safe harbor regulation that governs the selection of lifetime income providers. However, in speaking with plan sponsors, many feel the DOL's safe harbor does not provide the legal clarity they need to comfortably offer lifetime income products in their retirement plans.

Rep. Rooney (FL)

1. The *Labor-Management Reporting and Disclosure Act* (LMRDA) was passed in 1959 so that workers would have some oversight of the groups or individuals purporting to represent them in the workplace. It also allows workers to see how their dues money or other funds that might be provided to these groups or individuals is being spent. LMRDA established a very broad definition of what types of entities should be considered "labor organizations" subject to the law's jurisdiction.

Today we see organizations called "worker centers" evading the scope of the law. Groups like the Restaurant Opportunities Center, the Coalition of Immokalee Workers, the Committee for Better Banks, OUR Walmart, and others are clearly attempting to "deal with" employers on behalf of specific workers, yet they consider themselves outside the reach of the LMRDA and do not file any of the requisite disclosures by the statute. The House Committee on Education and the Workforce has written to the Department on several occasions asking the Office of Management Standards (OLMS) to properly enforce the law and classify these worker centers as labor organizations. Will you ensure that OLMS properly applies its statute to organizations that are attempting to deal with employers and to classify them as "labor organizations" under LMRDA?

Ranking Member Scott (VA)

1. The House of Representatives recently passed the *Save Local Business Act* (H.R. 3441), which would dramatically narrow the definition of a joint employer under the *National Labor Relations Act* (NLRA) and the *Fair Labor Standards Act* (FLSA). The FLSA has historically relied upon the economic realities test to determine who is deemed an “employer.” H.R. 3441 supplants the economic realities test with a new test that deems an “employer” is a “joint employer” only if it exercises direct, actual and immediate control—and not in a limited and routine manner—over as many as nine “essential” terms and conditions of employment.
 - a. How does the FLSA’s “economic realities test” differ from the definition of the test for a joint employer under H.R. 3441?
 - b. Has DOL’s Wage and Hour Division assessed whether the narrowed definition of a “joint employer” under H.R. 3441 could adversely impact its ability to recover wages for workers who suffer violations of the FLSA?
 - c. If an assessment was conducted under (B) above, please summarize the findings. Please provide a copy of such assessment.
 - d. Experts have indicated that two employers defending a wage theft claim as joint employers under H.R. 3441 could both claim they are not a liable “employer” under the FLSA, because neither “directly, actually and immediately” control all nine (or a preponderance of the nine) essential terms and conditions of employment. They suggest this could “explode uncertainty” and create a chaotic result where there is no liable employer. Is plausible that, as drafted, two or more entities could each control only a fraction of the “essential” terms and conditions of employment (e.g., one does hiring, discipline, and firing, and the other does supervision, work schedule assignments, pay and benefits) and a court or agency could find there would not be any liable employer?
 - e. Does H.R. 3441 provide guidance on how to foreclose the possibility that the legislation could result in there being no liable employer, as discussed above in item (D)?
 - f. Some contend H. R. 3441 is necessary to provide greater clarity regarding the franchisor-franchisee relationship under the FLSA. Please provide a list of cases where a franchisor has been held by a court to be a joint employer with a franchisee with respect to a franchisee’s violation of the FLSA.
2. As described in the executive order issued on October 12, 2017, association health plans (AHP) will be subject to different requirements than other plans. While this will allow lower rates for employers with younger, healthier employees, it would make coverage unaffordable for employers with older workers and those with significant medical needs

who would be left in more traditional plans. How will you ensure an affordable and stable market for employers in the small group market, especially those with older and less healthy employees?

3. Has the Department conducted an analysis on:
 - a. The impact that expanding AHPs will have on small business owners who are older or sicker?
 - b. The impact that expanding AHPs will have on small businesses with workers who are older or sicker?
4. An American Academy of Actuaries February 2017 issue paper stated that unregulated association health plans could pose solvency risks and leave millions without health coverage. If I understand this correctly, expansion of association health plans using the methods described in the executive order may result in reduced state oversight. As you know, the National Association of Insurance Commissioners (NAIC) has come out in opposition to this and to previous AHP proposals. Can you guarantee that the Federal government will not preempt state authority to regulate AHPs?
5. Section 2713 of the *Affordable Care Act* required individual and employer-provided health plans to cover certain preventive services with no cost-sharing. On October 6, 2017, the Trump Administration announced two interim final rules (IRFs) regarding religious and moral objections to contraception coverage, allowing employers to avoid covering contraceptive services. On what substantive legal authority is the Department relying to allow virtually any employer to deny employees and their dependents contraceptive coverage?
6. Your testimony voiced support for House and Senate tax plans. These plans cut the corporate tax rate from 35 to 20 percent, while granting the largest cuts (in both dollar amount and percentage of after-tax income) to individuals in the 95th to 99th percentiles. The Tax Policy Center estimates these tax plans will only increase Gross Domestic Product by 0.6 percent in 2018, with a decline to a 0.2 percent increase in 2027, while spiking deficits by \$1.5 trillion in 2027 and \$3.7 trillion 10 years later.
 - a. Could you provide the economic research findings regarding the job creation impact from tax cuts that favor of high-income taxpayers compared with equivalently sized tax cuts that favor low- and moderate-income individuals?
 - b. Isn't it the case that the stimulative effect of income tax cuts come largely from spending by the bottom 90 percent of taxpayers, which spurs aggregate demand?
 - c. What does the peer-reviewed economic research conclude about the benefits of tax cuts versus a comparable amount of spending on infrastructure and education and job training?

7. The Department of Labor (DOL) has proposed to roll back “ancillary” protections from workplace exposure to beryllium for construction and maritime workers. Eliminating the ancillary provisions across all industry sectors would decrease annualized benefits by 71 percent relative to the final rule, according to the DOL’s Final Economic Assessment. Construction and maritime workers are exposed to beryllium-containing abrasives, such as coal slag, when engaged in abrasive blasting. Companies that market coal slag abrasives to construction companies and shipyards have urged DOL to eliminate the ancillary protections for construction and maritime workers, due to concern about losing market share to competitors who sell beryllium-free abrasives that perform just as well.
- a. Do you agree with the principle that the Occupational Safety and Health Administration (OSHA) should ensure that workers exposed to beryllium in the construction and shipyard industries are provided with protection that is comparable to the protection afforded workers in general industry?
 - b. In August 2017, approximately 1,600 shipyard workers petitioned OSHA not to roll back the ancillary protections under the beryllium rule, because they are concerned about unsafe levels of exposure. In your view, is there no benefit to construction and shipyard workers from ancillary protections, such as airborne exposure monitoring and medical surveillance?
 - c. Have you personally had conversations or meetings with companies, trade associations, unions, lobbyists or lawyers who have urged you to roll back the OSHA beryllium standard for construction or maritime workers?
 - d. If the answer to (C) is yes, please provide a list of such meetings.
 - e. Have you personally had conversations or meetings with companies, trade associations, unions, lobbyists or lawyers who have urged you to retain the OSHA beryllium standard for construction or maritime workers?
 - f. If the answer to (E) is yes, please provide a list of such meetings.
8. DOL has announced that it will postpone the implementation of the enforcement provisions of the fiduciary rule for 18 months. That postponement eliminates an investment advisor’s obligation to comply with the best interest contract provisions, which allows individuals to seek enforcement against investment advisors who provide conflicted advice or engage in other prohibited transactions. You testified that DOL will be in a compliance assistance mode, rather than an enforcement mode during this 18-month period, provided an advisor is acting in what the DOL determines to be in good faith. However, individuals would not have the private right to seek enforcement directly. Why does DOL want to foreclose an investor’s freedom to seek recourse, either individually or on a class basis, especially where the DOL declines to prosecute a violation?

9. The Wage and Hour Division's (WHD) Fiscal Year (FY) 2018 budget justification reads: "WHD is committed to maximizing its resources to achieve the greatest impact on compliance. The agency is using better strategies to plan where resources are best deployed, and to resolve cases in ways that reach a greater number of workers. WHD is focused on investigating employers with the most serious violations rather than burdening compliant employers with investigations that do not uncover compliance problems."
- a. Does DOL believe that complaint-driven investigations alone are adequate to handle severe violations? Under what circumstances would a situation justify strategic, proactive enforcement by DOL?
 - b. For example, if the Department receives wage complaints filed by workers across multiple locations at a company with a history of labor law violations, would the Department's approach be to simply investigate those individual complaints, or would this circumstance trigger an investigation into whether there is a nationwide, systemic problem at this company?
10. How much does DOL expect to obligate for apprenticeship programs in FY 2018 in total?
11. Congress appropriated \$95 million for FY 2017 for apprenticeship grants. How does DOL intend to use these specific funds? What is the Department's strategy for using these funds, and how does it differ from the previous administration?
12. Previous administrations have also used fees from H-1B applications to fund apprenticeship grants. Does the DOL plan to use these funds for apprenticeship grants in FY 2018? If so, how much does DOL expect to obligate?
13. What is the DOL's specific strategy to scale up apprenticeships during FY 2018? Will DOL expand the number of intermediary organizations that are coordinating between employers, educational institutions, labor organizations and apprenticeship candidates so that there infrastructure in each state in the country?
14. Congress is currently deliberating on the FY 2018 appropriations for DOL. The Administration requested approximately \$90 million in FY 2018 for apprenticeship grants. The House of Representatives did not fund apprenticeship grants for FY 2018 in H.R. 3354; in contrast, the Senate provided \$95 million in the FY 2018 Labor/HHS/ED Appropriations Committee report. The House position is that funding for apprenticeship grants should not be appropriated until there is authorizing legislation enacted.
- a. Does DOL require additional authorizing legislation to expand apprenticeships? If so, what specific provisions are you seeking?
 - b. Should Congress enact funding, as requested in the President's FY 2018 budget request, or should Congress hold off funding the President's request until Congress enacts further authorization legislation?

15. During the inaugural meeting of the Apprenticeship Task Force, *Politico* quoted you as stating: "The registered apprenticeship program that already exists does not work." However, the head of Apprenticeship Carolina, a program that has scaled up significantly and is widely considered a model, has stated that registration has been an important factor in its success.
 - a. Could you point to specific independent studies that show the registered apprenticeship program does not work?
 - b. What specifically is wrong with it?
 - c. Is it reparable?

HELP Ranking Member Sablan (MP)

1. I appreciated you visiting me in my office on May 24, 2017, and your commitment to assist on labor issues concerning the Northern Mariana Islands. As you know, the transition to federal labor and immigration laws has created a number of issues in the Marianas. While all efforts are being made to increase the number of U.S. workers in relation to foreign workers, disparate treatment under certain labor laws and inadequate resourcing for enforcement hampers the transition effort.
 - a. The Northern Marianas is excluded from *Wagner-Peyser Act* programs, which curtails its ability to provide necessary employment services to potential U.S. workers looking to fill jobs. I am introducing legislation to add the Northern Marianas to Wagner-Peyser and thus make it eligible for Employment Services funding and for Workforce Information Grants. Will you support this effort by including Wagner-Peyser funding for the Northern Marianas in the Department's Fiscal Year 2019 Budget Request?
 - b. With the President's Executive Order on Expanding Apprenticeships in America seeking to close the skills gap and increase the number of high-quality apprenticeships and the Mariana's efforts to increase the number of U.S. workers, what efforts are being taking by the Region VI/Guam Apprenticeship Office to bolster apprenticeship opportunities in the Northern Marianas?
 - c. The Occupational Safety and Health Administration (OSHA) has been involved in the investigation of numerous injuries and a fatality at a construction site on Saipan and has fined several companies accordingly. These incidents are, in part, due to lack of understanding of and lack of compliance with U.S. labor laws by foreign companies using foreign labor. Although the Marianas receive a compliance assistance grant from OSHA, compliance assistance alone is insufficient. We need full-time "boots on the ground" from OSHA Compliance Safety and Health Officers (CSHOs) to deter violations and prevent these incidents from recurring, instead of the current situation where there are infrequent visits from CSHOs and OSHA's Office in Honolulu. Will

you commit to deploying at least full-time OSHA CHSO to Saipan to more quickly and strongly identify and enforce infractions?

- d. On July 7, 2017, three workers died on Saipan in a confined space incident after entering a well at the utility sewer pump station. Can you provide an update on the status of the OSHA investigation of that incident and the steps being taken to ensure that an event like this does not happen again?
 - e. There have been many protests staged in recent months at a Saipan construction by workers, predominantly foreign and many illegal, over wage theft and unsafe working and living conditions. The Wage and Hour Division has settled with several of the companies involved but has not made the terms of the settlements public. This has led to misinformation and confusion for the workers and a missed opportunity to better educate employers and the community about the seriousness of these violations. When will the Department of Labor (DOL) announce these settlements and will it reveal the full results of its investigations?
2. The Commonwealth of the Northern Mariana Islands (CNMI) 2016 Prevailing Wage and Workforce Assessment Study was provided by the CNMI Secretary of Commerce to DOL's Office of Foreign Labor Certification's National Prevailing Wage Center in September for use in the Foreign Labor Certification process. This is important for both filling necessary jobs in the Marianas economy and ensuring that the wages of U.S. workers are not depressed by the presence of foreign workers in the economy. Has DOL approved the CNMI Prevailing Wage Study and is it being used in evaluating applications?
 3. Congressman Walberg and I have introduced legislation, H.R. 4158, the *Retirement Plan Modernization Act*, which would raise the maximum amount for forced transfers of employer-based 401(k) accounts into Individual Retirement Accounts. In 2014, a Government Accountability Office (GAO) study, *401(K) Plans: Greater Protections Needed for Forced Transfers and Inactive Accounts*, made several recommendations in the area of forced transfers including that the Department of Labor expand the investment alternatives available and convene a taskforce to consider establishing a national pension registry. Could you provide an update on the Department's views on these GAO recommendations? Please also let us know about other policies that the Department is pursuing in regards to forced transfers?
 4. Earlier this year the Education and Workforce Committee received testimony about how DOL could enhance the retirement savings for Americans through regulations. An industry witness highlighted that while 89 percent of workers with access to retirement saving plans such as a 401(k) save for retirement, only 47 percent of workers who do not have access to a workplace plan are doing so. One possible avenue to increase retirement savings is to allow unrelated employers to join together to offer a retirement plan, commonly referred to as an Open Multiple Employer Plan. What are the impediments to these Open Multiple Employer Plans and what steps are the Department of Labor taking to remove those impediments?

Rep. Courtney (CT)

1. Workplace violence in health care facilities is a real, preventable, and persistent issue. A 2016 report by the Government Accountability Office (GAO), which was requested by members of this Committee, found that in 2013, 153,731 healthcare workers reported at least one violent assault in their workplace, including 24,800 cases severe enough that employers reported that workers had missed work days. Almost 6 percent of psychiatric facility aides suffered workplace violence incidents causing them to lose time from work in 2011 – 300 times higher than the lost time injury rate of 0.02 percent for all private sector employees. A study that surveyed staff in a psychiatric hospital found that 70 percent of staff reported being physically assaulted within the last year, according to GAO.

In the process of requesting this GAO study, reviewing its contents and requesting rulemaking from the Occupational Safety and Health Administration (OSHA), it was clear that there are plenty of examples of effective, practical systems that have been put into place in hospitals and other health care facilities to prevent injuries and reduce the frequency and severity of such assaults. While OSHA has issued voluntary guidelines, failure to adopt those “best practices” as an enforceable rule by OSHA would be a lost opportunity for the men and women our nation asks to treat some of the most severely ill patients across the country.

Without such a national standard on workplace violence, OSHA must rely on the General Duties Clause for enforcement, which is only triggered after an employer fails to maintain a workplace free from recognized hazards. The flaw in this strategy is evident: a requirement for a violence prevention program could have prevented the injuries from an assault in the first place. On January 10, 2017, OSHA granted petitions for rulemaking submitted by National Nurses United and the AFL-CIO. Members of Congress supported OSHA taking this step. During the hearing, you stated that “workplace violence is a very important issue to address.” However, this past summer, OSHA took this issue off of its active regulatory agenda and place it on “long term actions.”

- a. What is OSHA doing to address this urgent issue?
 - b. Does the Department intend to advance rulemaking on this issue within the next twelve months? If so, what is the Department doing to prepare such rulemaking?
 - c. Health care workers are on the front lines of the national opioid crisis. What is the Department doing to support these workers who are particularly vulnerable to opioid-related violence?
2. The Department of Labor’s draft strategic plan for the Office of Workers’ Compensation Programs (OWCP) states: “In Fiscal Year 2019, OWCP and OSHA will propose to the administration a Presidential initiative to improve government-wide workplace safety and return-to-work.” In September 2017, an Executive Order eliminated the Federal Advisory

Committee on Occupational Safety and Health (FACOSH), which brought federal workers, their unions and federal managers together to tackle workplace safety issues on a government-wide basis. FACOSH has been a longstanding venue to address these issues, and advises the Secretary of Labor. It has been chaired by the Assistant Secretary for OSHA.

- a. How does eliminating FACOSH square with initiatives to promote government-wide workplace safety and health as a way to help reduce federal workers' compensation costs?
- b. Would you support reconstituting FACOSH as one of several tools to identify and reduce workplace injuries and related workers' compensation costs?
- c. The *Protecting Americas Workers Act* (H.R. 986), which was re-introduced this year, authorizes OSHA to exercise authority over federal workplaces, which, with the exception of the U.S. Postal Service, are presently exempted under the *Occupational Safety and Health Act of 1970*. Would you support legislation to provide OSHA with authority over federal workplaces?

Rep. Fudge (OH)

1. In September, the Office of Inspector General (OIG) published a report asserting that Job Corps has consistently allowed funding to expire. The Employment and Training Administration disputed these findings without providing evidence to the contrary. Please provide the committee with a detailed accounting of funds for the relevant period as well as your existing budget for Fiscal Year/Program Year 2017 in order to address the OIG's findings.
2. As of July 1, 20 percent of slots were unutilized, which suggests not enough effort is being put into outreach and admission.
 - a. What efforts are you undertaking to increase Job Corps enrollments?
 - b. When did Job Corps last update the geographic assignment plan biannually required by the *Workforce Innovation and Opportunity Act*, and when does your administration anticipate completing the next update?
3. Last month, the Department rescinded a notice implementing deep cuts to Job Corps' student capacity.
 - a. Will slot reductions still occur at any Job Corps centers? If so, which Job Corps centers will be impacted?
 - b. What is the justification for these cuts?

4. During your testimony, you noted that there are inefficiencies in Job Corps' administration, specifically noting the overreliance on sole source contracts. Please share the number of contracts that have been awarded in non-traditional ways each year over the last 10 years, specifically: the number of sole-source awards, the number of bridge awards, and the number of Indefinite Delivery/Indefinite Quantity awards.
5. Earlier this year, the Department of Labor proposed cutting the Forest Service portion of the Job Corps budget by \$16 million, despite Congress having fully funded the Job Corps program. A cut of this magnitude will significantly hinder the Forest Service's ability to fill and operate the Civilian Conservation Centers.
 - a. Will DOL be implementing cuts of this magnitude to the Civilian Conservation Centers move forward?
 - b. What is the justification for and the authority cited for cutting the Forest Service Job Corps program?

Rep. Adams (NC)

1. During the hearing, an assertion was made that the Department of Labor has done an assessment of the number of women and their dependents in *Employee Retirement Income Security Act* (ERISA) plans that could lose contraceptive coverage. What are the results of that assessment? How many women and dependents in ERISA plans will lose contraceptive coverage?
2. Ranking Member Scott has introduced H.R. 15, the *Raise the Wage Act*, to bring the minimum wage to \$15 by 2024, a measure all my Democratic Committee colleagues support. Do you agree the current federal minimum wage of \$7.25 an hour is a poverty wage? Would you support raising the wage to \$15 per hour by the year 2024 as H.R. 15 does? As a follow-up, would you support any increase at all?

Rep. DeSaulnier (CA)

1. On November 24, 2017, the Department of Labor promulgated revisions to its final rule entitled "Improve Tracking of Workplace Injuries and Illnesses: Delay of Compliance Date." This action delayed from July 1, 2017, to December 15, 2017, the deadline for employers in certain high hazard industries to electronically submit summaries of their 2016 Occupational Safety and Health Administration (OSHA) Injury and Illness Logs. This rule is necessary so that OSHA can receive and evaluate establishment level injury and illness data in order to enable it to prioritize its scarce inspection resources to the highest hazard workplaces. However, Section 550 of the House consolidated appropriations bill for Fiscal Year (FY) 2018 (H.R. 3354), which was passed by the House of Representatives on September 14, 2017, blocks funding for the implementation of this rule. The rider states: "None of the funds made available by this Act may be used to implement, administer, or enforce the final regulations on "Improve Tracking of Workplace Injuries and Illnesses" published by the Department of Labor in the *Federal*

Register on May 12, 2016 (81 Fed. Reg. 29624 et seq.).” The Senate is silent in its version of the Labor, HHS Appropriations Act for FY 2018.

- a. Does the Department of Labor support or oppose House Section 550, which would block funding for the implementation of the injury and illness reporting rule?
- b. The November 24, 2017 *Federal Register* notice indicated that OSHA intends to issue a separate proposal to reconsider, revise, or remove other provisions of the prior final rule and to seek comment on those provisions. These other provisions deal with large establishment disclosure of de-identified injury and illness logs and anti-retaliation provisions related to worker reporting of injuries. Please identify the data you are relying upon to propose the revision or removal of these “other provisions” of the May 16, 2016 rule?

Rep. Norcross (NJ)

1. On November 3, 2017, the United Steel Workers (USW) formally requested that you convene the Labor Council under Chapter 19 of the US-South Korea Free Trade Agreement. They did so on behalf of the employees seeking union representation at the Macon, GA facility of Kumho Tire, over which the Republic of Korea has a significant ownership stake. The USW has alleged that Kumho required employees to attend “captive audience” meetings against the union, terminated one union supporter, and threatened other supporters with termination. In doing so, the USW alleges that the Korean Government has failed to ensure compliance with U.S. labor law, thus violating the labor provisions of the Agreement and providing cause to request a labor consultation.

In light of this, do you plan to convene the Labor Council to address these violations? What is the status of the USW’s request?

Rep. Blunt Rochester (DE)

1. Rep. Roe and Rep. Polis will soon reintroduce legislation (the RETIRE Act) that would switch the default form of distribution of retirement plan documents and disclosures from paper to electronic. Today, most retirement plan documents are sent in paper despite the advances in technology that would allow for lower cost and more expedited delivery via electronic methods. The Obama Department of Labor started but never finished a regulatory project to update DOL regulations about how technology can be used to distribute retirement plan documents. Will you add an update to DOL’s E-delivery rules to Employee Benefits Security Administration’s regulatory agenda?
2. Despite the changing attitudes toward electronic mediums in all aspects of daily life, the current DOL rules have inhibited plans from adopting “opt-out” electronic delivery practice for retirement plan documents. With the appropriate consumer safe guards in

place, do you agree that it is long past time to modernize our retirement system and allow for greater use of electronic delivery?

3. Earlier this year, our Committee received testimony about ways the DOL could enhance the retirement savings for Americans with common sense regulations. At that hearing, a witness from Transamerica highlighted that 89 percent of workers who have access to retirement saving plans like a 401(k) are saving for retirement but troubled to see that only 47 percent of workers who are not offered a workplace savings plan are doing so. So it seems to me that our goal should be to do everything in our power to help encourage more employers to offer retirement plans, and as a result we will greatly increase the amount of workers saving for retirement. Open multiple employer plans (MEPs) would help address this coverage problem, yet the DOL has blocked unrelated employers from joining together to do just that. Will DOL look at open MEPs and help expand access to retirement savings for millions of Americans?
4. The Transamerica Center for Retirement Studies indicates that 22 percent of companies that do not offer a 401(k) or similar plan would likely consider joining a MEP if they were an available option. Should DOL look to reduce the regulatory barriers that stand in the way of open MEPs?
5. What steps are you taking to increase competitive, integrated employment opportunities for people with disabilities?
6. How are you encouraging innovative pathways into competitive, integrated employment and expanding the capacity of employers to better support people with disabilities?
7. To further advance the goals of competitive, integrated employment, Congress enacted Sec. 511 of the *Workforce Innovation and Opportunity Act* (WIOA) limiting the use of subminimum wage for young workers with disabilities. What steps are you taking to provide oversight of implementation of Sec. 511 and help advance opportunities for young people to achieve competitive integrated employment?
8. How is the DOL partnering with disability agencies like the Rehabilitation Services Administration to ensure that youth and adults with disabilities are included across all public employment services offered throughout the DOL programs and are part of the pool of candidates sought by businesses?
9. WIOA requires common performance measures across systems. What is DOL's intent in using those data to monitor its success in achieving improved wage and earnings of persons with disabilities? Is diversity and inclusion the goal or is improved wages and reduction of federal benefits?

Rep. Espaillat (NY)

1. During the hearing, I asked a question pertaining to wage and hour complaints for immigrant workers and request that the Department follow-up on this question. Specifically, the question focused on news reports from earlier this year, which indicated that as the result of the current Administration's anti-immigration rhetoric and the Department of Homeland Security's overaggressive enforcement efforts, Department of Labor officials have noted a marked uptick in workers' reluctance to file complaints against employers, take part in labor investigations, or even accept back wages collected by the Department on the worker's behalf.
 - a. What specifically is DOL doing to monitor and respond to this situation and reaffirm its commitment to protecting individuals' information during the course of labor investigations?
 - b. What protocols does DOL have in place to ensure that these processes are appropriately being followed?
 - c. Will you commit to continuing to ensure that DOL enforces labor laws regardless of a person's immigration status?

Congress of the United States
Washington, DC 20515

February 2, 2018

The Honorable R. Alexander Acosta
Secretary of Labor
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Dear Secretary Acosta:

On February 1, 2018, Bloomberg BNA reported that the Department of Labor (DOL) prepared and intentionally withheld an economic analysis quantifying the loss of tip income for tipped workers as part of its Notice of Proposed Rulemaking (RIN 1235-AA21), Tip Regulations under the Fair Labor Standards Act (FLSA) (hereinafter “NPRM”). The article states that the DOL “scrubbed an unfavorable internal analysis from” the NPRM, and also states that “senior department political officials—faced with a government analysis showing that workers could lose billions of dollars as a result of the proposal—ordered staff to revise the data methodology to lessen the expected impact, several sources said.”¹

This internal economic analysis reportedly includes estimates that workers would lose billions in income as a result of the rule. If this is correct, such analysis would contradict the NPRM, which stated “[t]he potential benefits and transfers have not been quantified” for the proposed rule.²

If the Department has withheld such analysis and then misrepresented this relevant fact in the NPRM, such conduct raises serious questions about the integrity of the Department’s rule making process.³ Further, a Department spokesperson speaking to *Politico* stated, “after receiving public comment, the department intends to publish an informed cost-benefit analysis as part of any final rule.”⁴ This deviates from the requirements of Executive Order 13563.

Pursuant to our oversight responsibilities under the Rules of the House of Representatives, this letter requests the Department provide **no later than February 5, 2018** the following

¹ Ben Penn, *Labor Dept. Ditches Data on Worker Tips Retained by Businesses*, BLOOMBERG BNA, February 1, 2018, bna.com/daily-labor-report/labor-dept-ditches-data-on-worker-tips-retained-by-businesses

² Tip Regulations Under the Fair Labor Standards Act (FLSA), 82 Fed. Reg. 57395, 57404 (proposed December 5, 2017).

³ Executive Order 13563, Improving Regulation and Regulatory Review, requires agencies to “propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs” and “use the best available techniques to quantify present and future benefits and costs as accurately as possible.”

⁴ Andrew Hanna, *DOL to publish tip pool analysis after comment period ends*, Politico Pro, February 1, 2018, www.politicopro.com/employment-immigration/whiteboard/2018/02/dol-to-publish-tip-pool-analysis-after-comment-period-ends-527753

information related to the economic analyses that are or have been in the possession of the DOL regarding the impacts of the proposed Tip Regulations:

1. Has there been any draft, interim, proposed or completed quantitative or economic analysis, including any cost-benefit analysis, that was prepared, procured or otherwise commissioned by the Department of Labor in the connection with or related to the NPRM?
2. A copy of each and every draft, interim, proposed or completed economic analysis covered in item #1.
3. Were the findings of any of these analyses disclosed in the NPRM?
4. A copy of the methodology used in each draft, interim, proposed or completed economic analysis covered in item #1.
5. A copy of any documents and communications, as defined in Appendix A, involving DOL personnel regarding the preparation or review of such economic analysis covered in item #1, including any communications regarding proposals or directives to change the methodology used to estimate impacts in order to lessen the potential impact of the rule.
6. A copy of all documents and communications that discussed the basis for including or excluding such economic analysis in the NPRM.
7. A list of all meetings held to discuss whether to include or exclude such economic analysis in the NPRM. Please provide the date and the participants in such meetings, whether conducted in person or by teleconference.
8. A list of the names of all DOL officials who were involved in reviewing or deciding whether to include or exclude the results of such economic analysis in the NPRM. Please provide the title and email contact information for each individual.
9. A copy of any documents and communications between the DOL and any private party outside the DOL regarding the economic analysis covered in item #1.
10. A copy of any documents and communications between the Office of Management and Budget and the DOL pertaining to the preparation or inclusion of such quantitative or economic analysis in the NPRM.

Honorable R. Alexander Acosta

February 2, 2018

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Please contact Udochi Onwubiko with the House Committee on Education and the Workforce at Udochi.Onwubiko@mail.house.gov or (202)225-3725 in following up on this request.

Sincerely,



ROBERT C. "BOBBY" SCOTT
Ranking Member
Committee on Education and the Workforce



KEITH ELLISON
Co-Chair
Congressional Progressive Caucus



MARK TAKANO
Ranking Member
Subcommittee on Workforce Protection
Committee on Education and the Workforce



SUZANNE BONAMICI
Vice Ranking Member
Committee on Education and the Workforce

Enclosure

CC: Hon. Mick Mulvaney, Director, Office of Management and Budget

Appendix A

Responding to Committee Document Requests

1. In complying with this request, you should produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy, or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data, or information should not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization, or individual denoted in the request has been or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e, CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box, or folder is produced, each CD, hard drive, memory stick, thumb drive, box, or folder should contain an index describing its contents.
6. Documents produced in response to this request shall be produced together with copies of file labels, dividers, or identifying markers with which they were associated when they were requested.
7. When you produce documents, you should identify the paragraph in the Committee's request to which the documents respond.
8. It shall not be a basis of refusal to produce documents that any other person or entity also possesses, non-identical or identical copies of the same documents.
9. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
10. If compliance with the request cannot be made in full, compliance shall be made to the extent possible and shall include an explanation of why full compliance is not possible.
11. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author, and addressee; and (e) the relationship of the author and addressee to each other.

12. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject, and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
13. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.
14. The time period covered by this request is included in the attached request. To the extent a time period is not specified, produce relevant documents from January 1, 2017 to the present.
15. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data, or information not produced because it has not been located or discovered by the return date shall be produced immediately upon subsequent location or discovery.
16. All documents shall be date-stamped sequentially and produced sequentially.
17. Two sets of documents should be delivered, one set to the Majority Staff in Room 2181 of the Rayburn House Office Building and one set to the Minority Staff in Room 2101 of the Rayburn House Office Building.
18. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all responsive documents in your possession, custody, or control which reasonably could contain responsive documents ; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversations, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings, and motion pictures), and electronic mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape, or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email, regular mail, telexes, releases, or otherwise.
3. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
4. The terms "person" or "persons" mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business, or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
5. The term "identify," when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
6. The term "referring or relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is pertinent to that subject in any manner whatsoever.