

**DEPARTMENTS OF LABOR, HEALTH AND
HUMAN SERVICES, AND EDUCATION, AND
RELATED AGENCIES APPROPRIATIONS FOR
FISCAL YEAR 2014**

THURSDAY, JUNE 6, 2013

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 11:07 a.m., in room SD-124, Dirksen Senate Office Building, Hon. Tom Harkin (chairman) presiding.
Present: Senators Harkin and Moran.

DEPARTMENT OF LABOR

OFFICE OF THE SECRETARY

STATEMENT OF HON. SETH D. HARRIS, ACTING SECRETARY AND DEPUTY SECRETARY

OPENING STATEMENT OF SENATOR TOM HARKIN

Senator HARKIN. The Subcommittee on Labor, Health and Human Services, Education, and Related Agencies of the Appropriations Committee will come to order.

Apologize for being late. We had a couple of—two or three—votes on the Senate floor. I thank your indulgence.

Again, I want to welcome Mr. Seth Harris back to the subcommittee. Two things I want to thank you for, Secretary Harris, is, one, for participating in that summit we had in Wilmington, Delaware, last week. I just thought your remarks were just outstanding.

I also want to thank you again publicly for your stewardship of the Department of Labor during this period of time.

Thank you for your long work with the Department of Labor, both in this administration and back in the 1990s, when I was—well, let's see, I guess during most of that—well, some of that time I was chair of this subcommittee. Most of the time, I was ranking member, but I thank you for your service in both of those administrations.

Our subject today is just the President's fiscal year 2014 budget request for the Department of Labor, and it comes at a critical time.

While the economy is moving, I think, in the right direction, too many people are unemployed or underemployed, and the Depart-

ment plays a vital role in strengthening the middle class and getting people back to work.

I understand the Department is celebrating its centennial this year, and I would say that its mission has never been more important.

The President's request is roughly equal to the fiscal year 2013 level. I am pleased, however, that within that the President has proposed increases for efforts to, one, prevent the misclassification of workers; two, to protect whistleblowers; and, three, to enhance oversight of the subminimum-wage program for workers with disabilities.

So this funding will help continue the Department's excellent work to protect American workers. And the request also directs additional resources to helping veterans find the civilian jobs they've earned after serving their country.

I just want to mention also that funding for operating the Job Corps' centers would rise slightly by \$21 million. These centers play a crucial role in giving young people the training they need to enter the workforce.

My experience with their work in Iowa has been very positive. So I'm pleased the Department recently lifted its freeze on enrollment at the centers and began accepting new students in April.

I know that there were several reasons why the Department decided to take the cost-saving step of the freeze. I understand that, but, hopefully, we're past that now and we're moving ahead.

The Job Corps centers are too important and dollars too precious to have mismanagement there and to have this freeze, so I look forward to hearing about what we're doing to correct these problems.

So, again, I'll leave the record open for an opening statement by our Ranking Member Senator Moran.

[The statement follows:]

PREPARED STATEMENT OF SENATOR JERRY MORAN

Thank you, Mr. Chairman.

Nearly 4 years after the recession officially ended, the unemployment rate still remains high, at 7.5 percent. A greater share of the population is not working or stopped looking for work than at any time in the past 30 years. If the official unemployment rate accounted for these "discouraged" workers, the real unemployment would be 13.9 percent.

In a time of high unemployment, I remain concerned about the lack of priority the administration has put on funding longstanding employment and training programs. Virtually level funding was provided for Workforce Investment Act programs—the cornerstone of our Nation's employment training. Instead, the Department chose to increase funding for programs that do not provide any direct services to American workers, such as the Workforce Innovation Fund, the One-Stop Center rebranding initiative, and the Bureau of International Labor Affairs.

As more and more Americans are unemployed or underemployed, they are looking towards the Department of Labor to provide services to help them re-enter the labor force. We need to make certain funds are efficiently used and targeted to programs that are most effective.

To that end, I am troubled by the Department's mismanagement of the Job Corps program. Since June 2012, the Job Corps program has endured three enrollment freezes, significant disruption to current and new students, and budget shortfalls totaling close to \$100 million. The Department has never been able to provide a specific cause for the cost overruns or given a clear explanation as to why it happened. Even more alarming, to maintain level funding in fiscal year 2014, the budget request assumes the closure of at least three Job Corps centers.

Mr. Secretary, this is not the way to run a program. The Department failed to anticipate the budgetary challenges it was facing, never determined the root cause

of the shortfalls, and has not taken any significant action to stabilize the financial condition of the program. I do not have much confidence that this program is on stable footing or that the Department has addressed any of the systematic management issues that appear to be plaguing the program. I will have questions, as I am sure will the Chairman and other members of the subcommittee, on this important topic.

Thank you, Mr. Chairman. I look forward to working with you and the Department to target funding that puts Americans back to work.

Senator HARKIN. And I'll turn now to Seth Harris, the Acting Secretary and Deputy Secretary of the Department of Labor.

Prior to joining the Department, Mr. Harris served as a professor of law at New York Law School and director of its Labor and Employment Law Programs.

Mr. Harris also served for 7 years at the Department of Labor during the Clinton administration, as Counselor to the Secretary of Labor and as Assistant Secretary of Labor for Policy, among other positions.

And Mr. Harris is a graduate of the New York University School of Law and a very dedicated public servant.

Mr. Harris, thank you, again. Your statement will be a part of the record in its entirety, and please proceed as you so desire.

SUMMARY STATEMENT OF SETH D. HARRIS

Secretary HARRIS. Thank you, thank you so much, Mr. Chairman. Thank you very much also for those generous words. It was a privilege to be able to spend some time with you and Governor Markell in Wilmington.

I thought that the event that your staff and his staff put together was outstanding. It was all the right participants talking about a critically important issue, people with disabilities in the workplace, so I appreciate your participation and your kind words about mine.

Mr. Chairman, thank you so much for the invitation today to talk about the Labor Department's fiscal year 2014 budget request.

TRIBUTE TO SENATOR LAUTENBERG

But before I turn to fiscal matters, Mr. Chairman, I hope you'll indulge a few words about your departed colleague, Frank Lautenberg. Senator Lautenberg, you may recall, honored me by introducing me to the Health, Education, Labor, and Pensions (HELP) Committee, which you chaired, at my confirmation hearing to become the Deputy Secretary of Labor, and I was privileged to have his support thereafter, and, more importantly, to have his support for the programs and policies of the U.S. Department of Labor.

As you know, Mr. Chairman, because I know he was a good friend of yours, Frank Lautenberg never forgot his humble beginnings in Paterson, New Jersey. And he never forgot how his father labored in that city's silk mills or how the conditions in those silk mills contributed to his father's early death in Frank's teen years.

Frank Lautenberg, as you know, had the wealth to retire in his early fifties, but his deep commitment to social justice and public service drove him to run for a seat in the United States Senate.

And millions of Americans have lived better lives as a result, because he fought to raise the drinking age and won, because he fought to keep guns out of domestic-violence situations and won, because he fought to get smoking out of airplanes and won and be-

cause he fought to free Soviet Jews and other oppressed minorities to immigrate to the United States and won.

And I know you were working right alongside him on all of those issues, Senator, when you were in the House and also here in the Senate.

Senator HARKIN. He was a great friend, if I just might interrupt, and a wonderful member of this subcommittee and the full Appropriations Committee, so we worked together all these years.

Secretary HARRIS. He was, indeed. And if I may say, he was, for me, as a New Jerseyan, he was like New Jersey. He was tenacious. He was audacious. He was progressive and pragmatic. He was an ethnic, but also quintessentially American.

And let me also say, Mr. Chairman, every time I got to see Senator Lautenberg, he joked with me that we didn't need the Bureau of Labor Statistics because his fifth child, ADP, gave us all the information we needed about the labor market.

Of course, that was a joke, so I'm not urging that upon the committee, but he was a wonderful man and a wonderful Senator. And let me just say how proud I am, as a New Jerseyan, to have had him as my Senator, and I'll miss him.

Senator HARKIN. We'll all miss him, and we had a wonderful service. I know you were there and I was there yesterday in New York.

And, as you know, he will lie in state in the Senate this afternoon and then will be interred in Arlington Cemetery tomorrow morning at 8:30 a.m., again, a fitting tribute to, again, such a great, great Senator. And I know all New Jerseyans are very, very proud of him.

Secretary HARRIS. Yes, absolutely.

Senator HARKIN. Thank you, Mr. Harris.

FISCAL YEAR 2014 PRESIDENT'S BUDGET

Secretary HARRIS. Thank you, Mr. Chairman.

So in his State of the Union Address earlier this year, President Obama talked about his central goal, a rising, thriving middle class with ladders of opportunity available to everyone.

He posed three questions that he said should guide all of our decisionmaking. First, how do we make America a magnet for jobs? Second, how do we equip U.S. workers with the skills to succeed in those jobs? And, third, how do we make sure that workers earn a decent living from an honest day's work?

The Labor Department, in our fiscal year 2014 budget proposal, will play a critical role in answering each of those three questions.

This budget proposal would make investments to grow our economy, create jobs, and strengthen the middle class while contributing to a balanced approach to deficit reduction.

For those willing to work hard and play by the rules, it provides support to develop the skills they need to find good jobs with income security in fair and safe workplaces, and it does so while allocating resources responsibly.

As outlined in my written testimony, our budget makes smart and responsible investments in four main areas.

First, turning our unemployment system into a reemployment system with investments in reemployment assessments and serv-

ices and a Reemployment NOW initiative that will allow States to connect people who are receiving emergency unemployment compensation with job opportunities.

Second, building the skills of American workers with investments in innovation and evidence-based strategies for training and a new universal displaced-worker program which combines the best of two existing programs to accelerate the delivery of training and employment services to workers who lose jobs through no fault of their own.

And let me say, Mr. Chairman, our skills agenda includes a commitment to increasing the employment rate of people with disabilities. I know that's a top priority for you as it is for me.

Workers with disabilities want to pay taxes, and they want to support their families, but 80 percent are out of the labor force entirely. And among those who are seeking work, the unemployment rate is an unacceptably high 12.9 percent.

So our budget proposal seeks increased funding for the Office of Disability Employment Policy and builds on past efforts that have gained the subcommittee's support.

Third, helping veterans to find civilian jobs with roughly \$100 million more to improve employment services for those who have served our country so selflessly and courageously.

And, fourth, protecting American workers and their benefits with important increases to bolster workplace safety enforcement and wage-and-hour overtime protection.

The economy has improved demonstrably in recent years. Last month, unemployment fell to its lowest level since December 2008. So we've come a long way from the depths of the great recession, but our economy has not yet unleashed its full potential.

The Federal Government, and the Labor Department in particular, have a critical role to play in catalyzing further growth and job creation and helping to build an economy that grows from the middle class out.

The President believes, and his budget demonstrates, that we don't need to choose between job creation and long-term deficit reduction. That's a false tradeoff. We can and must have both.

PREPARED STATEMENT

As you said, Mr. Chairman, the Labor Department celebrates its centennial this year, and for 100 years, through countless crises and economic transitions, we've risen to the challenge of empowering American workers and strengthening the U.S. economy.

As we begin our second century, we're eager to work closely with the members of this subcommittee and the Congress as a whole so that we may continue that important work.

So, again, Mr. Chairman, Ranking Member Moran, thank you so much for the invitation to testify today. I look forward to your comments and questions.

[The statement follows:]

PREPARED STATEMENT OF SETH D. HARRIS

Chairman Harkin, Ranking Member Moran and members of the subcommittee, thank you for the invitation to testify today. I appreciate the opportunity to appear before you to discuss the fiscal year 2014 budget request for the Department of Labor.

The President's fiscal year 2014 budget proposal invests in the things we need to grow our economy, create jobs, and strengthen the middle class while further reducing the deficit in a balanced way. The Labor Department budget request ensures ladders of opportunity for Americans striving to enter and stay in the middle class. For those willing to work hard and play by the rules, it provides support to develop the skills they need to find good jobs with income security in fair, safe workplaces. It is possible—and, in fact, imperative—that we make these investments at the same time that we allocate resources responsibly and make tough choices to live within our means.

The economic situation has improved substantially, but we have a great deal more to do if our economy is to reach its full potential, particularly in relation to jobs. The Federal Government, and the Labor Department in particular, has a critical role to play in catalyzing further growth and job creation by equipping workers and job seekers with the skills they need to succeed in a 21st century economy. To make America once again a magnet for jobs, the budget invests in high-tech manufacturing and innovation, clean energy, and infrastructure, while cutting red tape to help businesses grow. To give workers the skills they need to compete in the global economy, it invests in education and job training. To ensure hard work is rewarded, it raises the minimum wage to \$9 an hour.

The budget does all of these things as part of a comprehensive plan that reduces the deficit and puts the Nation on a sound fiscal course. The budget also incorporates the President's compromise offer to House Speaker Boehner to achieve another \$1.8 trillion in deficit reduction in a balanced way. When combined with the deficit reduction already achieved, this will allow us to exceed the goal of \$4 trillion in deficit reduction, while growing the economy and strengthening the middle class.

As outlined in the testimony, this budget invests in the future by working to make good jobs available for all American workers in a fiscally responsible manner through:

- turning our unemployment system into a reemployment system;
- building the skills of American workers;
- helping veterans find civilian jobs; and
- protecting American workers and their benefits.

TURNING OUR UNEMPLOYMENT SYSTEM INTO A REEMPLOYMENT SYSTEM

As we work to strengthen and rebuild our economy from the worst economic downturn since the Great Depression, it is critical to provide a helping hand and a viable path back to work for those who have had their lives disrupted by unemployment. The fiscal year 2014 budget proposes a set of aggressive strategies to reduce long-term unemployment and speed reemployment:

- Universal Displaced Worker Program.*—The fiscal year 2014 budget proposes a new Universal Displaced Worker program that will reach more than a million workers a year with a set of core services, replacing two more narrowly targeted programs (Trade Adjustment Assistance and WIA Dislocated Workers) and ensuring that all dislocated workers receive high-quality job search assistance.
- Reemployment Services.*—To help workers receiving unemployment insurance (UI) get the assistance they need to find work, the budget proposes an additional \$30 million for the Employment Service Grants to States to fund reemployment services for UI claimants who are likely to exhaust their benefits. Employment services create a more efficient labor exchange that connects workers and jobs within local and regional economies.
- Reemployment and Eligibility Assessments.*—The Department will invest in research-proven methods by devoting \$80 million for reemployment and eligibility assessments that review beneficiaries' efforts to find new employment, refer them to reemployment services or training, and provide labor market information in their job search. These services are projected to save the State accounts in the Federal Unemployment Trust Fund an estimated \$315 million by helping beneficiaries find jobs more quickly and eliminating payments to ineligible individuals.
- Reemployment NOW.*—Continuing efforts focused on helping the long-term unemployed get back to work, the budget includes a legislative proposal for a \$4 billion Reemployment NOW program. States will receive flexible funding to implement a menu of innovative reemployment initiatives and design, develop, and implement their own strategies to help UI claimants and other long-term unemployed individuals get back to work more quickly.
- Pathways Back to Work Fund.*—Many Americans of all ages need further education and training and better access to job opportunities in order to succeed in today's economy. Building on successful Recovery Act programs that provided

employment opportunities for the long-term unemployed and low-income adults and youths, the budget includes a legislative proposal for a \$12.5 billion Pathways Back to Work Fund to make it easier for workers to gain new skills for long-term employment. This initiative will support various promising strategies designed to lead to employment for low-income youth and adults.

—*Unemployment Insurance.*—The combination of chronically underfunded reserves and the economic downturn has placed a considerable financial strain on States' UI operations. The Department's fiscal year 2014 budget request continues our commitment to strengthening the UI safety net by helping unemployed workers return to work as swiftly as possible while putting the UI system back on the path to solvency and financial integrity. The request continues the administration's aggressive actions to help States combat improper payments in their UI programs with several additional proposals. Specifically, we provide funds for the recently established UI Integrity Center of Excellence and mandate State participation in the Treasury Offset Program, State Information Data Exchange System, and the Prisoner Update Processing System. In addition, the budget proposes legislative reforms to put State UI systems on the path to solvency.

BUILDING THE SKILLS OF AMERICAN WORKERS

As job requirements change, training and employment programs must innovate and adapt to help American workers acquire needed skills for the increasingly knowledge-based economy. The following proposals will help strengthen American economic security by investing in innovation and skills for the American workforce:

—*Training and Employment Services.*—The budget continues the Department's commitment to those who are most vulnerable to economic distress. In 2014, it will be critical to continue to provide unemployed job seekers and underemployed workers the services they need to find new jobs. The recession was especially tough on disadvantaged and low-skilled adults, whose immediate employment and training needs must be addressed to prevent them from slipping further out of the middle class. An increase in the Workforce Investment Act set-aside for statewide activities to 7.5 percent from 5 percent will allow Governors to increase oversight and accountability activities and help improve performance in targeted local areas. The budget fully funds this in order to protect funding for locally provided services.

—*Disability Employment.*—There are significant disparities between the labor market outcomes of people with and without disabilities. The fiscal year 2014 budget proposes \$42 million for the Office of Disability Employment Policy (ODEP). This includes \$5 million for a new Pathway to Careers Demonstration Project to evaluate the use of coordinated service delivery strategies that increase the number of youth and young adults with disabilities who enter community colleges and complete career and technical programs that provide industry recognized credentials. Also included is an increase of \$1 million to implement the Integrated Employment Policy Change Initiative, which will increase the capacity of Federal staff, service providers, and States to implement integrated employment practices. These increases are fully offset by reallocating funds from the Disability Employment Initiative, which will have a minimal impact on the program.

—*Workforce Innovation Fund.*—The workforce system is more important now than ever, but we need to make it more efficient, streamlined, and targeted to serve our growing customer base. To ensure that our investments in employment and training are focused on reform, the budget request provides \$150 million for a competitive Workforce Innovation Fund (WIF). The WIF helps States, regions, and localities to test and implement new and evidence-based strategies, with an emphasis on ideas that entail cross-program collaboration and bold systemic reforms. Of this funding, the budget sets aside \$50 million to test approaches to help veterans and their families, as discussed further below; and \$10 million on strategies targeting disconnected youth.

—*American Job Centers.*—The system of American Job Centers is the core delivery system for employment and training services. To strengthen this system, the budget includes additional funds to promote co-location of services and programs, create better online tools that offer convenient, personalized services, and increase public awareness and use of the American Job Center network.

—*Community College to Career Fund.*—Community colleges play a unique role in creating a flexible, highly-skilled 21st century workforce to help businesses meet the specific emerging needs in their regions. The budget includes a legislative proposal for an \$8 billion fund administered by the Departments of Labor

and Education to provide funding for community colleges, States, and the public workforce system to partner with businesses to train workers in a range of high-growth and in-demand areas, such as healthcare, transportation, and advanced manufacturing.

—*Builds Knowledge About What Works To Increase Employment for Ex-Offenders.*—The budget devotes \$50 million to test and replicate innovative and evidence-based strategies for young ex-offenders. In particular, the budget seeks to test if non-violent youth will reap the same benefits from the Youth ChalleNGe program that other at-risk youth do—such as higher rates of employment, high school or GED completion, and earning college credit. To further spur innovation and direct funding to effective programs, the budget also dedicates \$10 million to Pay for Success programs designed to improve employment and reduce recidivism among ex-offenders.

PUTTING VETERANS BACK TO WORK

Each year, the U.S. military discharges approximately 160,000 active duty servicemembers and 110,000 Reserve and National Guard servicemembers. The unemployment rate for these recently discharged veterans is much too high—we must ensure that they have access to the job opportunities that they have earned. Through the Veterans' Employment and Training Service (VETS), the Department of Labor helps servicemembers and their spouses make the initial transition from military service to the civilian labor force by providing resources and expertise to assist and prepare them to obtain meaningful careers, maximize their employment opportunities and protect their employment rights. Our fiscal year 2014 request provides improved reemployment services to newly separated veterans and focuses resources on veterans with disabilities or other significant barriers to employment. Some key investments in this area are:

—*Veterans' Employment and Training.*—The budget contains significant expansion of services to veterans totaling nearly \$351 million across two DOL agencies. Over the past 18 months, the President has announced a series of actions to combat the high levels of veterans' unemployment and to provide greater support for servicemembers seeking to transition to civilian education and employment. Our request addresses the employment needs of veterans, improves employment services for their families, focuses resources on veterans with disabilities or other significant barriers to employment, and provides improved reemployment services that enable individuals newly separated from the military to successfully transition into civilian careers. The budget includes \$14 million to ensure that our Transition Assistance Program (TAP) meets the estimated demand of our Nation's transitioning servicemembers. We are also requesting an increase of \$38 million for additional Disabled Veterans' Outreach Program specialists to enhance services to transitioning servicemembers, wounded warriors and the spouses and family caregivers of the wounded warriors.

—*Workforce Innovation Fund.*—As mentioned earlier, \$50 million of WIF funding will be devoted to strategies targeting veterans, family members of active duty personnel, and members of the National Guard and Reserves. Examples of the type of innovative practices that might be supported by these grants include: closely assessing the gap between military training and experience and State licensure and other certification requirements and developing programs to provide early intervention to meet the employment needs of claimants in the Unemployment Compensation for Ex-Service members programs.

PROTECTING AMERICAN WORKERS AND THEIR BENEFITS

Worker protection programs are crucial to protecting the health, safety, wages, working conditions, and retirement security of American workers, and it is essential that we take steps to bolster these protections to ensure that our workers are not permanently affected by economic distress. The budget includes nearly \$1.8 billion for the Department's worker protection agencies, preserving recent investments in rebuilding our enforcement capacity and making strategic choices to ensure funding is used for the highest priority activities. Some of the highlights of our worker protection request include:

—*Employee Benefits Security.*—To protect Americans' health and retirement benefits, the Department is requesting \$179 million for the Employee Benefits Security Administration. This money will protect more than 141 million workers, retirees, and their families who are covered by nearly 2.3 million health plans, a similar number of other welfare benefit plans, and nearly 701,000 private retirement plans, which all together hold combined estimated assets of \$7.1 trillion.

- Mine Safety and Health.*—The Mine Safety and Health Administration (MSHA) protects our miners from death, disease, and injuries. The \$381 million budget request for MSHA includes an increase of \$5.8 million for MSHA’s Enforcement programs to enforce and promote mine safety and health laws. The request also includes an additional \$2.5 million to implement recommendations from the Internal Review conducted in the wake of the Upper Big Branch mine disaster.
- Occupational Safety and Health.*—The Occupational Safety and Health Administration (OSHA) must ensure safe and healthful working conditions for working men and women by setting and enforcing standards and by providing training, outreach, education and assistance. The budget provides \$571 million for OSHA, allowing the agency to inspect hazardous workplaces and work with employers to help them understand and comply with safety and health standards. This includes an increase of \$5.9 million to bolster OSHA’s enforcement of the many whistleblower laws that protect workers and others who face retaliation for reporting unsafe or unscrupulous practices.
- Wage and Hour.*—It is imperative that we maintain investments in the enforcement of key laws that protect workers’ wages and benefits. In fiscal year 2014, the Department is requesting \$243 million for the Wage and Hour Division (WHD), including an increase of \$3.4 million for increased enforcement of the Fair Labor Standards Act (FLSA) and the Family and Medical Leave Act (FMLA), two laws that provide important protections to workers, including women, who are struggling to balance work and family. Of this increase, \$2.5 million will be reallocated from the Department’s Women’s Bureau. The WHD request also provides an additional \$5.8 million to develop a new integrated enforcement and case management system. This would allow investigators to capture and use higher quality data, conduct more efficient and effective investigations, target compliance assistance and investigations, evaluate the effectiveness and impact of enforcement, and more easily share information and data with the public.
- Employee Misclassification.*—When workers are misclassified as independent contractors, they are deprived of minimum wage, overtime, unemployment insurance, and anti-discrimination protections to which they are legally entitled. Misclassification, together with the underreporting of cash income for those paid as independent contractors, also costs taxpayers money in lost funds for the Treasury, Social Security, Medicare, the State accounts in the Federal Unemployment Trust Funds, and State programs. The fiscal year 2014 budget proposes nearly \$14 million to combat misclassification, including \$10 million for grants to States to identify misclassification and recover unpaid taxes within the unemployment insurance system and \$3.8 million for the WHD to investigate misclassification.
- Federal Contract Compliance.*—Pay discrimination is a historically under-investigated personnel practice but a critical issue for women and minority workers—according to the latest Census statistics, full-time working women earn 77 cents for every dollar earned by men, and the gap is significantly more for women of color. The fiscal year 2014 budget requests \$108 million for the Office of Federal Contract Compliance Programs (OFCCP) and makes important investments—including an increase of \$1.1 million to strengthen discrimination enforcement efforts—to help ensure that women receive equal pay without discrimination.
- Defined Benefit Pension System.*—The budget proposes to strengthen the defined benefit pension system for the millions of Americans who rely on it by giving the board of the Pension Benefit Guaranty Corporation (PBGC) authority to adjust premiums to take into account the risks that different sponsors pose to their retirees and to the PBGC itself. This action will both encourage companies to fully fund their pension benefits and ensure the continued financial soundness of the PBGC. In order to ensure that these reforms are undertaken responsibly during challenging economic times, this proposal, estimated to save \$25 billion over the next decade, will require a year of study and public comment before any implementation and the gradual phasing-in of any premium increases.
- State Paid Leave.*—Too many American workers must make the painful choice between caring for their families and earning a paycheck they desperately need. While the FMLA allows many workers to take job-protected, unpaid time off, millions of families cannot afford to take advantage of this unpaid leave. The Department’s budget request includes a \$5 million proposal for a State Paid Leave Fund to provide technical assistance and support to States that are considering paid-leave programs.

In addition, the budget request includes legislative proposals to modernize two workers' compensation programs. Both reforms would produce Government-wide savings, and improve the operation of these programs for workers and families who suffer injuries and fatalities in the line of duty:

—*Federal Employees' Compensation Act (FECA)*.—The 2014 budget proposal incorporates longstanding Government Accountability Office, Congressional Budget Office, and Labor Inspector General recommendations to reform FECA. The proposal would amend FECA to establish a single benefit level, convert prospectively retirement-age beneficiaries to a retirement annuity-level benefit, establish an up-front waiting period for benefits for all beneficiaries, permit concurrent receipt of schedule awards and wage-loss compensation and expand assisted reemployment authority. It would also permit the Department of Labor to recapture the entire amount of compensation costs from responsible third parties, authorize the Department to cross-match FECA records with Social Security records to reduce improper payments, and make other changes to improve and update FECA. The reform legislation will also include a provision to allow the Department to add an administrative surcharge to the amount billed to Federal agencies for their FECA compensation costs, thereby shifting FECA administrative costs from the Department to Federal agencies in proportion to their usage. If enacted, the surcharge would not be applied until fiscal year 2015 to give agencies an opportunity to plan for the change. This legislation is projected to save the Department more than \$460 million (and the entire Government more than \$500 million) over 10 years.

—*Defense Base Act (DBA)*.—The growth in Federal contractors working overseas has brought into sharp focus the need for a more efficient approach to the Defense Base Act. The budget proposes a new Government-wide fund to replace the patchwork of contract coverage now in effect under the DBA. Since 2002, the DBA caseload has increased by almost 2,600 percent, from 430 in 2002 to over 11,600 in 2011. The Department has experienced a number of administrative challenges in the wake of the increased workload. Over the past several years, we have been working closely with the Department of Defense, the Department of State, and the U.S. Agency for International Development to reform and improve the operation of the program, and the proposal reflects the culmination of those collaborative efforts. The reform would replace the current DBA program with a new Government-wide self-insurance program that we're calling the Overseas Contractor Compensation program. The financing structure would be somewhat similar to FECA, with benefits paid directly from a Federal fund administered by the Department and agencies billed only for their share of benefits and administrative costs. This proposal would improve service to claimants and reduce the overall costs of the program.

ADDITIONAL PRIORITIES

The Bureau of Labor Statistics (BLS) produces some of the Nation's most sensitive and important economic data. The budget request of \$614 million includes \$1.6 million to add an annual supplement to the Current Population Survey that would collect information relevant to labor force trends, including data on contingent work and alternative work arrangements, and workplace flexibility and work-family balance issues. The BLS request also includes \$2.5 million to modify the Consumer Expenditure (CE) Surveys to support the Census Bureau in its development of a supplemental statistical poverty measure using CE data.

FINDING BETTER AND MORE EFFICIENT APPROACHES

The budget balances some of these investments with responsible and reasonable cuts and a continued focus on increased efficiency and effectiveness. In some cases, that means making difficult choices on funding reductions and realignments that will put America on a more sustainable fiscal course. Consistent with administration-wide efforts to improve efficiency and find savings, the Department's budget proposes to streamline operations by:

—*Modernizing the Delivery of Training and Employment Services*.—The administration continues to explore opportunities to modernize the delivery of training and employment services, including the possibility of reorganizing some of the existing training programs that serve overlapping populations. The fiscal year 2014 budget requests funding to support co-location of workforce investment partner programs and to increase access for services, and also consolidate two more narrowly targeted programs to create a Universal Displaced Worker program.

- Eliminating Certain Overlapping Programs.*—We appreciate the support in the final Continuing Resolution to implement our fiscal year 2013 request to eliminate the Veterans’ Workforce Investment Program (VWIP) and reallocate those funds to veteran employment programs with stronger accountability measures and better outcomes, including Transition Assistance Program (TAP) employment workshops and the implementation of new veteran activities mandated in the VOW to Hire Heroes Act.
- Reforming Job Corps.*—In support of the administration’s continued commitment to improving and reforming the Job Corps program, the budget continues the plan to close a small number of Job Corps centers that are chronically low-performing; identifying and seeking to replicate the practices of high-performing centers; and adopting cost-saving reforms. In addition, the budget puts forward steps to strengthen financial and contract oversight, so the program can continue to provide valuable services to disadvantaged youth while maintaining strong internal controls and ensuring that its contracts are procured at the lowest risk and the best value to the Federal Government.
- Boosting Funding for Rigorous Program Evaluation.*—During this administration, the Department has made a significant commitment to the evaluation of our programs, which over time will allow us to drive more investments toward practices that achieve better outcomes at lower costs. The fiscal year 2014 budget builds on this commitment by increasing to up to 1 percent the amount of program dollars that can be set aside for evaluation, complementing funds provided to the Chief Evaluation Office.
- Modernizing Technology Infrastructure.*—The Department’s IT Modernization program works across agencies to provide new capabilities to help employees work more effectively and efficiently. We are creating a modernized, standardized IT infrastructure that streamlines operations, improves customer service and collaboration opportunities, and maximizes technology return on investment to support agency business missions. In fiscal year 2014, the program will reduce costs and increase efficiency through several initiatives and improvements including as cloud email, web conferencing, mobility, and IT integration.

SEQUESTRATION

Before I conclude my testimony today, I want to briefly address the impact—the significant and very negative impact—of the 2013 sequester on funding job training and worker protection. Arbitrary, across-the-board cuts are not the best economic growth or deficit reduction strategy. We ought to be strengthening investments in those initiatives that create jobs and grow the middle class, while eliminating what we don’t need. And this should be achieved in a common-sense, balanced way, so that low-income and middle-class families do not bear the entire burden and the most fortunate Americans pay their fair share.

Sequestration has serious implications for my Department and the people we serve. These reductions impact our most vulnerable workers just as we are emerging from economic recession. They jeopardize our Nation’s ability to develop and support a skilled workforce that can compete in the global economy, while also jeopardizing the conditions under which they work. While we made choices that protect our most mission-critical activities, it is impossible for the Department of Labor to manage cuts of this magnitude without severe impact on our ability to prepare and protect American workers. This has had a significant impact on our efforts to ensure safe and healthful workplaces, and to ensure that workers get the wages and benefits to which they are entitled.

It’s also important to note that even before the sequester, discretionary spending had already been cut in nominal terms over the past few years. Under the Budget Control Act targets, non-security discretionary spending is on a path to reach its lowest level as a share of GDP since the Eisenhower administration. So the impact of these significant cuts in Federal support for employment and training are magnified, coming on top of already lower levels of Federal workforce funding, as well as reduced State and local efforts as a result of the recent financial crisis and economic recession. At a time when we are just starting to see strong signs of renewed economic growth, this sequester undermines our progress.

We all agree on the need for significant deficit reduction, but we want to work with Congress on a balanced approach toward this goal, combining fiscal responsibility with investments in American workers that will create jobs and strengthen the economy.

CONCLUSION

Promoting the welfare of American workers, job-seekers and retirees is the fundamental mission of the Labor Department, and is critical to the Nation's continued economic recovery and long-term competitiveness. The Labor Department budget calls for targeted investments and significant reforms to help workers gain new skills so they can advance in their current occupations or move into new and growing industries; the proposal would ensure the Department can maintain safe and healthy workplaces; it would strengthen worker voice in the workplace; and it will safeguard critical minimum wage and overtime protections for workers.

The 2014 budget includes smart, evidence-based investments to support workers, and it continues critical funding for training and other resources for job seekers. Our efforts will help to get Americans into good jobs; foster safe workplaces that respect workers' rights; provide a level-playing field for all businesses; and help American workers provide for their families by keeping the pay and benefits they earn. I am committed to pursuing these goals, and I believe strongly that we can do so even as we take steps to reduce the Federal deficit. We at the Department of Labor are ready to work with you in the weeks and months ahead on a responsible path forward.

Mr. Chairman, thank you for inviting me today. I am happy to respond to any questions that you may have.

Senator HARKIN. Thank you very much, Mr. Secretary.

Senator Moran.

Senator MORAN. Mr. Chairman, thank you very much. I'm sorry I was slightly tardy. We had a markup in the Banking Committee. And I'm honored to be here, delighted to be here. I look forward to questioning the Secretary, appreciate your testimony, which I've read, and I'll forgo my opening statement at this point. We'll submit it to the record and proceed with the hearing.

REEMPLOYING INDIVIDUALS WITH DISABILITIES

Senator HARKIN. Very well. Thank you, again, Mr. Harris. Let me just—we'll start a 5-minute round of questions here.

Again, I want to thank you for attending that summit up in Wilmington. You're absolutely right, Governor Markell, as the head of the National Governors Association, has done a magnificent job of organizing the National Governors Association to focus on employment of people with disabilities.

I like to point out that, in the recent downturn, statistics show that for every one nondisabled person that lost their job, three disabled people lost their jobs.

So when we start getting employment back up again, which we are, and it's coming back, I've said many times, it's not enough for one to one. I mean, if there were three for one to go out, we've got to do a better job of reaching out to the people with disabilities who maybe were working before, got laid off and are having trouble getting back into the workforce.

So we know the National Governors Association has focused on this now, and, as you know, we have a lot of employers that have stepped forward aggressively to champion this.

The United States Chamber of Commerce committed a couple of years ago, and we're having another summit with them this July 15, committed to hiring a million more people with disabilities by 2015, a year-and-a-half from now.

So with all of that, what's the Federal role? The Department of Labor, what are they doing to support the State efforts? And the employer interests, and I said the employer interest is growing big in this, in improving employment rates for individuals with disabili-

ities. Do you have any suggestions for us on what else we might be doing here?

DISABILITY EMPLOYMENT INITIATIVE

Secretary HARRIS. Right. Well, I thank you very much for that question. As you know, this is a passion of mine as it is of yours, Mr. Chairman, and I, again, thank you for your outstanding leadership in this regard.

Let me start by talking a little bit about the program that you initiated at the Labor Department, the Disability Employment Initiative (DEI), which I think is a critical partnership between the Labor Department, this committee and Governors to help to move people with disabilities into employment.

We have already distributed \$63 million to 23 States. We have another round of grants that we will make this fiscal year that we think will take the number of States participating in the DEI up to about 30.

We have, as a consequence—and remember that the DEI takes young adults and adults who are currently on Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) and tries to connect them with the employment and training opportunities that they need to get the skills that will allow them to get jobs in high demand occupations in their regions, working principally through the Workforce Investment System.

And we are seeing a significant increase in the number of people with disabilities who are taking advantage of the Ticket To Work Program. Those who are on SSI and SSDI are getting the support they need because of the DEI. We're also serving a much larger number of people with disabilities and more of them are exiting our programs with the skills that they need to succeed.

I'm sorry, Mr. Chairman.

PATHWAYS TO CAREERS DEMONSTRATION PROJECT

Senator HARKIN. Well, let me stop you there and just ask about the DEI. You're right. We started that in 2010.

The President's budget proposes to reduce the funding for this initiative by \$6 million, and then taking \$5 million of that, redirecting it to create a new Pathway to Careers Demonstration Project, which would help community colleges increase access and completion rates for students with disabilities.

I'm not opposed to that. It sounds promising, but I'd like to better understand this proposed cut to the DEI—well, we're up to 30 States now, you say—and putting it into this Pathway to Careers Demonstration Project. Like I said, it might be fine. I just don't know.

Secretary HARRIS. Well, let me explain it and see if I can persuade you on it. So we're beginning to feel like we're running out of dance partners with respect to the DEI.

As I said, we'll be at 30 States by the—we think, around 30 States by the end of this year. And then there'll be another round of funding, if this proposal is adopted, at a slightly lower level.

So we have a few more States who want to participate, but we think we've covered the States that are most enthusiastic and a few more to come.

So what we're doing rather than—I don't like to think of it as cutting the program. Instead, what we're doing is we're proposing to move that money over into two initiatives.

COMMUNITY COLLEGE DEMONSTRATION PROJECT

One is this community college demonstration project, which you reference, which is designed to assure that students who attend community colleges benefit from the services of those community colleges in the best ways possible.

Community colleges are the number one providers of higher education to people with disabilities in our country.

And because of the work of this committee and others on the Trade Adjustment Assistance Community College Program, we have invested, or will have invested over 4 years, \$2 billion in the development of programs that tie community colleges closely to employers and employer associations in their regional economies, to help assure that workers who come out of the community colleges end up with jobs in high demand occupations.

The task here is to assure that people with disabilities are reaping all of those benefits in the way that you were just describing.

EMPLOYMENT FIRST INITIATIVE

Another part of the money will go to invest in the Employment First Initiative, which is designed to try to get States to focus on integrated employment rather than segregated employment for people with severe disabilities.

And this is another area where Governors are taking the lead. That's why I appreciate—

Senator HARKIN. Is that where that extra \$1 million—

Secretary HARRIS. That's where that extra \$1 million will go, yes.

So Governor Markell has taken a lead at the National Governors Association (NGA), but there are a lot of Governors around the country who are trying to figure out how to structure their Medicaid and Workforce Investment Systems to move people with disabilities as early as possible, and as successfully as possible, into integrated employment. This money will help accelerate that effort.

Senator HARKIN. I'll follow up with—because, as you know, we're trying to get our WIA bill through, and part of that coincides with that in terms of using voc rehab and others to start getting young students involved in competitive, integrated employment, kids with severe disabilities. So we'll talk more—

Secretary HARRIS. Happy to work with you in any way we can.

Senator HARKIN. Excellent. Thank you. Senator Moran.

Senator MORAN. Mr. Chairman, thank you.

Your jurisdiction is a wide array of topics, and I appreciate the chance to have a little time to question you.

And I would guess the Chairman may ask questions about the Job Corps. If he doesn't, I intend to pursue that, but I want to talk about a couple that he may not ask about.

REPROPOSING FARM LABOR REGULATION

Back in April 2012, the Department of Labor withdrew its farm labor proposed regulation. And, at that time, in the announcement,

indicated a willingness to work with farm organizations, 4-H, FFA, Farm Bureaus and others, the Department of Agriculture, and also indicated in that announcement, and I quote, "To be clear, this regulation will not be pursued during the duration of the Obama administration."

I'm just asking you, Mr. Secretary, if you would confirm that the department has no plans to repropose that proposal?

Secretary HARRIS. We have no plans to repropose it and we won't be reproposing it during the rest of the Obama administration.

Senator MORAN. Thank you very much. Thank you for your straightforward answer.

DEPARTMENT OF LABOR REPROPOSING FIDUCIARY DEFINITION

On another regulation that was withdrawn in regard to the fiduciary rule, I just wanted you to bring me up-to-date on the Department's efforts on reproposing a regulation regarding the definition of a fiduciary.

It seems to me there continues to be some general concern about what the Department is trying to accomplish, and I would be delighted to hear what that is.

How will this reproposed rule differ than the one from 2010? And what's the relationship on this topic with the Securities and Exchange Commission (SEC) as you pursue this topic?

Secretary HARRIS. Sure. Well, thank you very much for that question. Let me say we did not withdraw the proposal. We did put it out for notice and comment.

We received a mountain, as you might imagine, a mountain of information. We're considering it. As we look through that information, we thought that a reproposal would make sense because it is a complicated and very, very important topic dealing with hundreds of billions of dollars in retirement savings for America's workers.

Here's what we're trying to accomplish, and I'll try to get to each part of your question. I hope I do.

Workers, throughout the course of their work lives, accumulate retirement savings. And they're relying on those retirement savings, along with Social Security and whatever personal savings they have, to support them throughout the course of their lives.

And they turn to financial advisors to give them advice about how to invest sometimes fairly sizable, at least for these workers, pots of money, so that they will get an investment return that will allow them to survive throughout the rest of their retirement with a middle-class income.

What we want to assure is that those financial advisors are giving advice that is in the best interest of the worker or the beneficiary, rather than in the best interest of the financial advisor. So we're trying to avoid conflicts of interest.

We don't want financial advisors to give advice that puts more money in their pockets, rather than putting money in the pockets of the workers or the retirees, by steering them to particular products where there's an added fee for the financial advisor, or where there's a greater commission for the financial advisor.

The idea is to avoid that kind of conflict of interest. We want the advice to be advice that benefits the worker in every case.

We are working closely with the Securities and Exchange Commission, but just to make clear on this, our goal is to be consistent with the Securities and Exchange Commission. We're working with them to accomplish that result. They will publish a definition of fiduciary under the Dodd-Frank law.

Their jurisdiction and our jurisdiction are different. The Securities and Exchange Commission does not regulate all retirement products. They only regulate securities.

So, for example, an annuity, which is a very important part of a lifetime income package for many workers, is not a security and, therefore, would not be subject to the fiduciary protections under the securities law.

Also, the SEC is only authorized to require disclosure of transactions. We haven't reached any conclusions in this regard because we're still working on the rule, but there may be some transactions that just shouldn't happen because they are so conflict-ridden, and even disclosure won't fix them. That's what we're looking at.

So we're looking at the prospect of reproposing the rule so that we can collect even more information from all of the involved stakeholders, and then we'll consider that information in the analysis.

There are hundreds of billions of dollars at stake for retirees, and we want that money in the pockets of working people. It'll help to drive the economy, and it'll assure that their money is available for their retirement.

Senator MORAN. Do you have a sense of how the rule may be different in its reproposed state?

Secretary HARRIS. You know, I don't, because, honestly, the rule has not come to me yet, and we haven't had those discussions.

The Employee Benefits Security agency is still working on the rule in cooperation with the SEC. So they are still in the drafting phase. It hasn't come forward to me, so I haven't had that discussion as yet.

Senator MORAN. Do you know a timeframe?

Secretary HARRIS. Also don't know that yet. The Office of Management and Budget (OMB) will publish the Semiannual Regulatory Agenda I hope soon, and that will give us a sense of what timeline we've agreed to with them. That's still under discussion as well.

Senator MORAN. Mr. Secretary, thank you.

Secretary HARRIS. Thank you, sir.

MANAGING APPROPRIATED JOB CORPS FUNDS

Senator MORAN. Bipartisanship at work. The Chairman is deferring—we both have Job Corps questions. I don't know whether they're similar or not, but I think you would expect us to be interested, particularly from an appropriations process, about what is occurring at Job Corps, and, as you know, there have been some challenges and problems in this regard.

And so I guess what I'm looking for is an update. Let's start with there as to where we are in fixing the problem.

What kind of assurances should we have that the request in this appropriation, the President's budget, is something that we can feel confident will be met?

And if you'd explain what you now believe has gone on in the past that the—there's been a number of reports that indicate that the Department hasn't really solved this problem, don't know what went wrong, and I'm trying to make certain that you have solved this problem, you do know what went wrong and that you're correcting it.

Secretary HARRIS. Right. Well, that's a perfectly fair question and would have been from anybody in the room.

Senator HARKIN. I had the same question.

Secretary HARRIS. And perfectly understandable. So let me begin with an update, and, I think, in the process, try to answer some of those questions.

So Secretary Solis, at my urging, asked the inspector general to investigate the Job Corps financial management system, because we were frankly having trouble getting to the bottom of why we had two financial crises, in program year 2011 and then again in program year 2012, in the Job Corps program.

So the IG has now issued its report. Let me say we agree with all the findings of that report. We cooperated fully with that report. We also agree with all the recommendations of that report.

We had already begun implementing some of the recommendations even before they were issued by the IG. And my direction has been to implement all the recommendations that the IG has offered us.

Here's what the IG found, and we agree with this: The Job Corps was planning to spend more money than it had. I can't, frankly, explain why that is true, but they were planning to spend more money than they had.

They had bad cost projections on the contracts that they had. That was part of the problem, but not the entirety of the problem.

We had a lack of financial-management controls in place. We had a lack of monitoring of contracts. We have cost-reimbursable contracts with our contractors where whatever voucher they submit, as long as it's under the contract, they have to be paid, and the cost can skyrocket. You have to monitor that very closely. We didn't have sufficient monitoring in place.

And, frankly, different parts of the organization and different systems within the organization were not talking to each other appropriately.

But the biggest problem was the program was too big for the appropriation. So I believe, Senator, in response to your question, have we fixed it, I believe we have fixed that problem.

So in cooperation with our contractors, we have reduced enrollment levels in many of the Job Corps centers around the country. Almost all of them have seen reduced enrollments, and that is to put us on a sustainable fiscal footing going forward, not only in program year 2012, but also in program year 2013.

But we also understand that there is a need to put the necessary financial management systems into place to assure that our systems talk to one another and also make sure that our people talk to one another.

We now have a senior career leader with experience in Job Corps, a former leader of Job Corps, who we brought back, who'll be leading the program. I think she'll do an outstanding job.

And I have given clear direction that this is never going to happen again. It's certainly not going to happen during my time in the Department. So I think that we are moving in the right direction. There's more that we need to do.

EFFECTS OF SEQUESTER ON JOB CORPS ENROLLMENT

And let me first say the most important thing that Congress could do to help us would be to turn off the sequester. The combination of the sequester and the cut in the continuing resolution (CR), the last CR, cost the program \$82 million. So the level of enrollment is affected significantly by that loss of \$82 million.

We have proposed in the 2014 budget an increase of \$18 million, but, together with the \$82 million, that would be \$100 million more that we could use towards enrollment of students.

We also have a plan to sit down with our contractors to try to find savings in the parts of the program that are not dedicated to the students. Seventy percent of the cost of the program is students, but there are administrative costs, and we want to bring those costs down, in cooperation with our contractors, and use that to bring up enrollment.

So I think we're at the beginning of getting into a system where we're going to be able to expand enrollments slowly, responsibly, over time, but with the clear direction that we are never going to see a financial crisis again.

Senator HARKIN. I'm glad to hear that, because I know we both feel very strongly about Job Corps centers. They've done a good job around the country in the past.

Quite frankly, I was kind of caught unawares of what was happening there also in the Job Corps centers. I mentioned before you came in that they've lifted the freeze on the students, right?

Secretary HARRIS. We did, April 22.

Senator HARKIN. Yes, so students can now start coming back into the Job Corps center, so that's good, and I know that we'll continue to work with you and monitor this as we go into next year.

I might just say I hope this sequester ends on September 30. I don't think it'll end before then, realistically, around here, but, hopefully, we don't have it beyond September 30.

STATE UNEMPLOYMENT INSURANCE FUNDING

The only other thing that I wanted just to bring up with you, Secretary Harris is this, and that is the State unemployment operations funding cut.

The President's budget request includes a cut of \$252 million for State unemployment insurance (UI) funding. Now, that's the program that determines eligibility and pays unemployment insurance benefits, collects the UI taxes from employers, detects and recovers improper payments and facilitates reemployment for UI claimants.

This proposed reduction of \$252 million is the largest, by far, in the Department's budget. So I just want to make sure I understand the justification for it, and why can we afford to take a \$252 million cut?

Secretary HARRIS. Right. Well, the simple answer to that question is: because the unemployment rate is going down, and it's

going down precipitously, or not as precipitously as we would like, but it's gone down significantly since 2010 by 2½ percent.

Senator HARKIN. Is this anticipatory of further drops in unemployment—

Secretary HARRIS. It's tied to workload. So there is a projection associated with workload that comes out of the midyear economic forecast by the Office of Management and Budget.

But this is a pure formula cut. There's no discretion involved in it. The level of funding for UI administration is associated with the level of UI claims workload and the tax-collection workload for the States. So that reduction is a consequence of this 2½-percent cut that we've seen in the unemployment rate overall since 2010.

But let me say our proposal does include a trigger called the Average Weekly Insured Unemployment (AWIU) that assures that if there is a spike in unemployment—and I don't foresee a spike in unemployment, but in the event that there is a spike—that States will get additional money to be able to handle that spike in their UI administration accounts.

But I want to build on your larger point, which is a very important one, and that is that a lot of States are struggling with their information technology. Some of them are having trouble dealing with improper payments.

But there are resources that we have made available to them over the course of the last 4 years to try to address these questions. There was a \$500 million redact distribution. Under the Recovery Act, we have distributed \$375 million in supplemental budget requests to States to deal with improper-payments issues and also to deal with information-technology issues.

But the information-technology challenge is a very substantial one. For even a single State it can cost as much as \$50 million or \$60 million to redo their UI IT system. And, frankly, we just don't have that money available to us, even if we were to recoup all of this money.

So what we're trying to do is to push States together into consortia, so that they will find economies of scale by working together in their IT reforms which will allow them to do it cheaper.

But there's a good bit more work for the States to do. They have some resources to do it. We're providing additional resources. My hope is that they'll be able to do it soon.

Senator HARKIN. Thank you very much, Mr. Secretary.

Secretary HARRIS. Thank you.

Senator MORAN. I just want to raise one additional topic, Mr. Chairman, and then I'll be finished as well.

SCIENCE, TECHNOLOGY, ENGINEERING, AND MATHEMATICS EDUCATION
AND TRADE ADJUSTMENT ASSISTANCE COMMUNITY COLLEGE AND
CAREER TECHNICAL PROGRAM

One of the areas that I've paid attention to as a senator is science, technology, engineering, and mathematics (STEM) education.

Secretary HARRIS. Yes.

Senator MORAN. STEM training. The programs that I generally think of that promote STEM education are not within the Department of Labor. But I'd be interested in knowing if—in my view,

much of the economic opportunity for people across the country in filling jobs are related to science, engineering, mathematics.

Your thoughts. At the Department of Labor, is there a role that you're playing? Working with other agencies, have you seen an opportunity for us to increase our STEM education—

Secretary HARRIS. Well, thank you. First of all, I agree completely that STEM education is a very important part of the economic future of the United States. And we are playing a significant role in STEM education in the higher education field particularly, and we work very closely with our colleagues at the Department of Education.

We're now in discussions about the President's proposal to reform high schools, so that they produce students who are prepared with the technical skills they need for high demand educations, particularly in STEM, in their regional economies.

But the Trade Adjustment Assistance Community College and Career Technical Program (TAACCCTP), which has already invested \$1 billion in community colleges, now has an additional \$474 million available for community colleges. So get your State community colleges to apply for this money. We have another \$500 million that we'll issue next year. That program is dramatically expanding STEM education in community colleges around the country.

It is not STEM education in the way it's often discussed. It's not Ph.D.'s in physics or Ph.D.'s in computer engineering. It's workers getting trained in advanced manufacturing biosciences, other fields where there are jobs available in their communities right now and where economic development in their communities are premised on the growth of those industries.

What's happened with this money is the community colleges are working together with local employers—in some cases, with international employers, most prominently Siemens working with Central Piedmont Community College in Charlotte. I've been down there a couple of times—to train workers in very advanced skills in these community colleges—computer-driven machining, very sophisticated lab work on biosciences that I've been able to see myself in these visits—that are immediately translating into middle-class jobs in the economy and often are leading students to proceed to a bachelor's degree, 4-year degrees, when they come out of the community colleges.

So it's a dual-track approach. So you're available for employment right away. You're skilled and ready for employment right away. But you also can go out and get a stackable credential that allows you to get a bachelor's degree and maybe a master's degree in the field and continue to climb up the career ladder in that field.

So I think the TAACCCT program has done a tremendous amount to enhance STEM education that's directly related to economic development and also directly related to getting workers into middle-class jobs.

Senator MORAN. Senator Harkin, we need to keep a secret here and let our community colleges know in advance of what the Secretary just said before others are told that.

Mr. Secretary, thank you. I visited an employer, a business in Kansas, recently in which a lot of the demands for employees are

related to phlebotomists, laboratory technicians. Healthcare is a significantly growing opportunity for Americans, and I appreciate your response to my question.

Mr. Chairman, thank you very much.

ADDITIONAL COMMITTEE QUESTIONS

Senator HARKIN. Thank you, Senator Moran, and thank you, Secretary Harris, unless you have something else you wanted to add.

Secretary HARRIS. No, I think that's a great job.

Senator HARKIN. Okay. Then the hearing record will remain open for 7 days for opening statements and questions for the record.

[The following questions were not asked at the hearing, but were submitted to the Department for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR TOM HARKIN

FISCAL YEAR 2014 INCREASES TO BUREAU OF INTERNATIONAL LABOR AFFAIRS BUDGET

Question. The President's budget includes \$95,425,000 for programs and activities undertaken by the Bureau of International Labor Affairs (ILAB). This amount includes an increase of \$2,500,000 and additional staff for monitoring and enforcement of labor issues with new and major free trade partners as well as trade preference partners. Please explain to the subcommittee why it is important for the United States to promote worker rights in countries around the world? How does that help U.S. workers?

Answer. Promoting internationally recognized worker rights in countries around the world helps level the playing field for U.S. workers who face the growing challenges of an increasingly global economy. ILAB monitors and enforces labor obligations under U.S. free trade agreements and the labor eligibility criteria under trade preference programs and engages with U.S. trading partners to help remedy identified problems with worker rights and labor conditions. The additional resources requested will allow ILAB to better meet its various responsibilities, including receiving and investigating complaints under the Labor Chapters of existing Free Trade Agreements (FTAs), acting as the principal liaison with other governments for the administration of FTA labor subcommittees and labor cooperation mechanisms, and providing the research and analysis necessary to address labor rights concerns that arise regarding beneficiaries of U.S. trade preferences and U.S. FTA partners. These new resources will let ILAB increase its efforts to advance a fair and level playing field and encourage a more equitable and balanced system of international trade that helps ensure that the benefits of the global economy are more widely shared.

Question. The budget also proposes to dedicate \$10,000,000 of ILAB's appropriation to more closely integrated efforts to combat the worst forms of child labor and for other worker rights initiatives. Please describe how efforts to combat the worst forms of child labor will continue to play a significant role in these integrated projects.

Answer. ILAB's technical assistance project implementation experience has demonstrated the importance of pursuing a multi-faceted approach to combatting the worst forms of child labor. ILAB child labor elimination projects combine support for improvements in child labor laws and government enforcement efforts with direct services, such as education for children withdrawn from child labor and other support for their families, so that households are not forced to rely on child labor to meet their basic needs. Strengthening respect for all worker rights is also an important aspect of improving conditions for vulnerable households and protecting children in those households. For example, efforts to promote workers' rights to organize and bargain collectively can contribute to increases in wages and household income, reductions in workplace discrimination, and improvements in workplace safety (which reduce occupational injuries that can limit or prevent parents from working), all of which can help reduce instances of child labor. Moreover, supporting broader worker rights helps ensure that as families and governments invest more in education and training for children, those children have better work opportunities as adults and can break the cycle of poverty that contributes to child labor.

As this suggests, ILAB sees efforts to reduce the worst forms of child labor and to promote other worker rights as inherently linked and mutually supportive. ILAB proposes to fund projects within a comprehensive framework that emphasizes an in-

tegrated labor rights approach aimed at improving labor conditions for workers, guarding against and addressing cases of child labor, and promoting greater overall support for international labor standards among governments, employers, and other local stakeholders. The basic elements of these new comprehensive programs will include strengthening labor inspectorates, addressing gaps in labor legislation to increase protections for all workers, building the capacity of civil society and worker organizations, and assisting in the development of policy and social protection programs that target the most vulnerable members of society. These elements are similar to the criteria that ILAB uses to assess countries' efforts in eliminating the worst forms of child labor in its annual child labor report. ILAB believes that this integrated approach will be an effective strategy for promoting long term and sustainable change in countries, including a continued reduction in the worst forms of child labor.

EMPLOYMENT AND TRAINING ADMINISTRATION SET-ASIDE AUTHORITY

Question. The President's budget again proposes to include the Training and Employment Services, Office of Job Corps and State Unemployment Insurance and Employment Service in the evaluation set-aside authority. Mr. Secretary, can you describe how the proposed set-aside funding mechanism for employment and training evaluations will continue to support the Workforce Investment Act (WIA) Adult and Dislocated Worker Programs Gold Standard Evaluation?

Answer. The Department proposes to set aside up to 1.0 percent of the amounts appropriated for WIA Adults, Dislocated Workers, Youth; Wagner-Peyser Employment Service; Job Corps; and Unemployment Insurance for research and evaluation activities. Currently 0.5 percent is available from a more limited number of accounts. While funding is not requested under the direct WIA Evaluation activity, this set-aside sustains sufficient funding for comprehensive, rigorous, and robust workforce system research and evaluation activities across all training and employment programs. Additionally, funding research and evaluations at the Departmental-level allows for the Chief Evaluation Office to more effectively coordinate a cohesive evaluations strategy among offices, including Employment and Training Administration (ETA), to improve the management and effectiveness of programs and activities conducted under WIA.

Approximately 5 percent of the costs of the core evaluation (almost \$1.26 million) will be paid for during program year 2014, using the proposed set-aside.

Question. Please provide information on the costs associated with carrying out this activity as well as information on the status of the evaluation.

Answer. As of June 2013, the random assignment evaluation of Workforce Investment Act (WIA) Adult and Dislocated Worker programs, also known as the WIA Gold Standard study, continues on schedule. The total cost of the evaluation will be more than \$22.9 million over 9 years, of which approximately \$21.64 has been obligated to date and approximately \$10 million spent. (The major cost of the study will be for the follow-up surveys, the first of which began in March 2013.) The evaluation contract has sufficient funds through fiscal year 2013 thus we do not expect to obligate additional funds for the evaluation until fiscal year 2014.

Random assignment of approximately 35,000 individuals began in November 2011 and was completed in March 2013. Approximately 2,000 WIA applicants were randomly assigned to the core services only group; 2,000 were randomly assigned to the core and intensive services only group and the remainder were randomly assigned to the full WIA services group. The latter group is eligible for all services available through the WIA Adult and Dislocated Worker programs.

The study's implementation report will be submitted to the ETA in the spring of 2014, accompanied by the report on the Veterans Supplementary Study, which will provide information about the assistance provided to veterans under both programs, the issues WIA grantee site staff face in providing that assistance, how priority of service is operationalized, how veterans' representatives and other staff interact, and the characteristics and outcomes of veterans who receive American Job Center services.

For the impact analysis, all study participants will be surveyed at 15 and 36 months after random assignment. Administration of the 15-month participant follow-up survey began in March 2013, and is expected to conclude in August 2014. The first impact report, expected in spring 2015, will be based on data obtained through this survey. The final impact report is due in the fall of 2017, following administration of the 36-month survey and collection of State administrative data.

The current contract for this evaluation ends in June 2015. The Department anticipates awarding a short-term contract (for approximately \$1.26 million, which is included in the total cost figure of \$22.9 million cited above) in program year 2014

for administration of the final stages of the 36-month survey, analysis of all survey and administrative data, preparation of the final report, and briefings on study findings.

QUESTIONS SUBMITTED BY SENATOR JACK REED

WORK SHARING

Question. My work sharing legislation was included as part of the Middle Class Tax Relief and Job Creation Act, which was signed into law in February 2012. Since then the Department of Labor has published several pieces of guidance, including most recently, in December 2012, model legislation for use by the States. With Wisconsin passing a work sharing law last month there are now 25 States with programs, but only a fraction of those have entered into 100-percent financing agreements or have brought their work sharing laws into conformity with the new Federal definitions.

Since the release of the model legislation what has the Department of Labor done to encourage more States to adopt work sharing, strengthen existing programs, and save jobs?

Answer. As you note, the Middle Class Tax Relief and Job Creation Act (Act) provides for 100-percent reimbursement for most State Short-Time Compensation (STC) payments, not to exceed 156 weeks and until August 22, 2015. Additionally, the Act provides for the availability of grants to States with conforming legislation. The United States Department of Labor (Department), in both the national and regional offices, has been actively promoting STC and providing technical assistance to States regarding legislation, STC operations, the reimbursement agreement, the grant opportunity, STC program implementation and administration, and financial and reporting matters. Department staff also actively encourage States to enter into the reimbursement agreement and to apply for the grant when they are eligible.

Recently, the Department reached out to individual States that have not yet signed the 100-percent reimbursement agreement or applied for the grant but are eligible to do so at this time. As a result, additional States submitted signed agreements for Federal reimbursement of STC costs. To date, the following 15 States have entered into agreements with the Department for the 100-percent STC reimbursement—Arkansas, California, Connecticut, Iowa, Maryland, Michigan, Minnesota, Missouri, New York, Oregon, Pennsylvania, Rhode Island, Texas, Vermont, and Washington. A total of \$129.9 million has been provided to States as of July 19, 2013, for reimbursement for STC benefits. We note that: (1) Due to sequestration, the reimbursement amount is 94.9 percent for fiscal year 2013; and (2) States may receive reimbursement for weeks of STC payments made before the agreement and addendum are signed, up to the maximum number of weeks of reimbursement available under the Act.

To date, Michigan and Wisconsin are the only States with STC laws that have been approved as conforming to the new Federal definitions and, therefore, could receive the grants. Both States have indicated they will be submitting applications for the grant(s) in the near future. Additionally, Ohio recently enacted a new STC law and it is currently being reviewed by the Department.

While not all existing STC States have enacted conforming legislation yet, many States have legislation moving through their legislatures and the Department expects that once the State laws conform to the new Federal definition of STC established in the Act, additional reimbursement agreements will be signed and the States will apply for the grant(s).

The Department staff also have reviewed all State STC, or “work sharing,” laws and draft legislation, and have been providing extensive technical assistance to support States bringing their STC laws into conformity. The Department sent letters in December 2012 to the States that had an existing STC program explaining the new Federal definition of STC established in the Act and continues to offer States technical assistance in reviewing the State’s draft legislation, and reminding them of the availability of the Federal reimbursement of STC benefits and that they can apply for STC grants as soon as their laws are in conformity with the new Federal definition of STC.

As noted in your question, the Department issued guidance to States, including model legislative language (Unemployment Insurance Program Letter [UIPL] No. 22–12, UIPL No. 22–12, Change 1, UIPL No. 27–12, and UIPL No. 03–13). The guidance and information regarding the Act and the STC program is posted on the Department’s Web site. The Web site also includes a press release issued on June

18, 2012, and a fact sheet regarding the Act and Federal funding available for STC. The links are:

Guidance: <http://www.ows.doleta.gov/unemploy/jobreact.asp>

Press Release: <http://www.dol.gov/opa/media/press/eta/ETA20121266.htm>

Fact Sheet: http://www.ows.doleta.gov/unemploy/pdf/Factsheet_STC.pdf

The Department followed up its December 2012 guidance with two Webinars to discuss the guidance with the States and respond to State questions. A transcript of the Webinars is available on Workforce3One, the Department's online technical assistance platform for workforce professionals, employers, economic development, and education professionals, at <https://www.workforce3one.org/view/5001301136981657606/info>.

The Department also disseminates information about the STC program to States via the Unemployment Insurance (UI) Community of Practice (CoP), a private online community available exclusively to State and Federal UI practitioners on the Department's online technical assistance platform, Workforce3One, <https://learnwork.workforce3one.org>. The UI CoP is intended to expand opportunities for States to communicate and collaborate with each other, and to help the UI community in creating, building and sharing knowledge. In fact, States have used the UI CoP to post information about their STC program to share with other States.

The Department's outreach and promotion efforts also have included presentations at conferences and seminars, specifically meetings of the National Association of State Workforce Agencies (NASWA) UI Directors Committee, NASWA's State administrators meetings, and at a National UI Conference held by Strategic Services on Unemployment and Worker Compensation.

In order to further assist and encourage States to implement an STC program or expand upon an existing program, the Department is in the process of developing a Web site exclusively for State practitioners and the Department (see additional information provided below). The Web site will provide States with resources and tools to create and operate STC programs.

In short, the Department has worked hard to ensure States are aware of the STC program, and available reimbursements and grants, and has provided extensive technical assistance to enable States to avail themselves of these opportunities.

Question. Specifically, how is the Department of Labor using the quarter of a million dollars set aside by the law to reach out to States, encourage adoption of work sharing, and ensure States can tap into the generous financing and grants available under the law?

Answer. Monies have been used to conduct Webinars (discussed in the previous answer) which outlined the benefits of STC program and provided information about the available incentives (reimbursements and grant funds).

The Department has also added staff dedicated to the STC program. The monies have supported the addition of one temporary staff member. Staff has:

- Drafted guidance for States to use to administer their STC programs, including draft legislation States can use so their State law will conform with the new STC requirement;
- Provided one-on-one assistance with States with new STC programs to help develop forms, procedures, and processes to administer their STC programs;
- Provided technical assistance to States with questions regarding the new laws and/or policy questions;
- Provided technical assistance on reporting and funding questions;
- Ensured that the reimbursements to States are provided in a timely and accurate manner; and
- Provided subject matter expertise in the development of the content information for the STC Web site.

Additionally, monies set aside to the Department for STC are being utilized to develop a Web site dedicated to helping States with STC programs to improve their program and provide guidance to States that are contemplating and/or developing an STC program. The anticipated launch of the Web site is late summer 2013. A contractor has been engaged for the development of the Web site.

The Web site will include:

- The Department's Policies and Guidance related to STC;
- Model legislation for States to use in implementing the Act's new STC requirements;
- Samples of State STC procedures;
- STC "toolkit" which includes: sample employer plans, outreach materials, claim forms, and messaging tools;
- Collection of sample brochures, letters, and Frequently Asked Questions;

- Best practices, barriers to implementation, and lessons learned from States who currently have STC programs; and
- Testimonials from STC participants (both employers and workers).

Question. And is there a point person at the Department that can work with States in advance of their next legislative sessions to ensure that work sharing is on the table?

Answer. Yes. While there is a group of Department staff dedicated to State outreach and assistance with regard to STC who proactively offer assistance to the States at every opportunity, there are a few key point people States are working with primarily on legislative matters related to STC, States are in contact with Ms. Suzanne Simonetta, Chief, Division of Legislation.

Department staff members are available to work with States on matters related to STC program operations. States can contact Ms. Lidia Fiore or Ms. Candace Edens for any questions related to STC program operations.

JOB CORPS FUNDING AND CARRYOVER

Question. On May 31, 2013 the Office of Inspector General released its report that clearly identified multiple Departmental financial management deficiencies that led to the Job Corps' program year 2011 and 2012 operational shortfalls. As noted in the OIG's report, after implementing various emergency measures, the Department ultimately failed to obligate \$9 million by the end of program year 2011. If sufficient controls had been in place to account for this excess funding, it could have legally been obligated onto program year 2012 contracts. These resources could have reduced Job Corps' program year 2012 operational shortfall and allowed the program to serve more at-risk youth. How will the Department ensure that any surplus program year 2012 operational funds are carried over prior to June 30, 2013?

Answer. As noted by the inspector general (IG) in the audit report, at the end of program year 2011 the Office of Job Corps (OJC) had \$9 million in unexpended funds which could be used to cover any possible future invoices in the cost-reimbursable center operations contracts. This is a critical change from previous program years in that Job Corps now leaves a small percentage of funding reserved at the end of the program year. These funds are reserved for unrecorded obligations of cost reimbursable contracts. This practice is in line with normal government financial procedures and limits exposure of future year appropriations against the requirement to pay for legitimate expenses from prior year activities. If Job Corps contractors submit vouchers within the next 5 years for program year 2012 activities, procurement law allows the Department to pay these claims with the program year 2012 funding, if available. Any unobligated reserve funding is not available for the next program year's activities, as this money loses its general availability for new obligations on June 30. Except for this "reserve," as of the end of program year 2012 (June 30, 2013), the Employment and Training Administration (ETA) has obligated all its program year 2012 funds from the Job Corps Operations account.

Question. Also, if an excess of funds are carried over for program year 2013 purposes, will those funds be used to increase enrollment capacity that was cut by more than 21 percent at all of the centers, including the Exeter Center in my State of Rhode Island?

Answer. Job Corps may not carry over unobligated program year 2012 Operations funding for program year 2013 activities, as this money is 1-year money and loses its general availability for new obligations on June 30, 2013. Other than a small reserve set aside for costs not yet received for program year 2012, ETA has obligated all of its program year 2012 Job Corps Operations funds. In addition, funds already obligated on Job Corps contracts but not yet spent will remain available to those contractors for Job Corps activities until the end of their contract year. Additionally, because these unspent obligated funds will remain on contracts they would relieve the financial pressure from program year 2013 and could allow for program improvements and increasing On-Board Strength (OBS). As we begin program year 2013, we will look for ways to increase OBS in a responsible manner that can be maintained by future appropriations.

Question. For the past several years, it seems as though the Job Corps budget request has been insufficient to operate the program at the level the Department described in its budget justification. Could you describe how this year's request is sufficient to meet the program obligations?

Answer. The Department's fiscal year 2014 request is based on the work we did in program year 2012 to ensure that, going forward, the Job Corps program is solvent and structured to avoid the same financial challenges we experienced in the past 2 years. Working in partnership with Job Corps contractors, we were able to renegotiate contracts and make the necessary program requirement changes to en-

sure we did not overspend in program year 2012 and to start program year 2013 aligned with our appropriation. This change, along with the transfer authority in the fiscal year 2013 full-year continuing resolution (CR), provides us with a sound basis on which to move forward. In particular, reducing OBS was necessary to ensure that Job Corps program operations are aligned with its appropriated funding because student costs associated with OBS are a significant factor driving program costs. As the Department explores the possibility of increasing the number of students served by Job Corps within our appropriation, we will work closely with the Job Corps community and Congress.

At the requested funding level for fiscal year 2014, we maintain our commitment to operating the program on sound financial footing. Together with an increase of \$17.7 million over the fiscal year 2012 enacted level, the request would add nearly \$100 million to Job Corps Operations for program year 2014 over program year 2013 post-sequestration level. The request reverses the cuts required under sequestration (and allows for growth in OBS from the post-sequester levels) and fully accounts for all costs of the program. Because of the controls we have put in place and since we have accounted for all costs of the program, we believe the requested funding level places the program on a sustainable path forward.

Question. The Department has indicated that pending the results from the cost saving measures that have been initiated, restoring some of the slots that had been cut due to shortfalls and sequestration would be considered. How will the Department allocate new slots as funding becomes available?

Answer. As the Department explores the possibility of increasing the number of students served by Job Corps within our appropriation, we anticipate that distribution of additional slots could be based on many criteria such as center performance, number of student slots available, and other center-specific factors, such as facility capacity. We will work with the Job Corps community and Congress as we take these considerations into account.

QUESTIONS SUBMITTED BY SENATOR JEANNE SHAHEEN

JOB CORPS CENTER IN MANCHESTER, NEW HAMPSHIRE

Question. The State of New Hampshire has been pursuing a Job Corps Center for more than a decade and this effort has been plagued by countless unnecessary delays that have deprived our youth of a critical opportunity to receive valuable education and training. Please describe, in detail, the Department of Labor's (Department) current timeline for constructing and opening the Manchester Job Corps Center. In addition, please include any factors or circumstances that could further delay the timeline requested above.

Answer. As you know, the construction contract for the Manchester center was awarded in April, and the contractor is preparing to break ground this summer. Barring any unforeseen delays due to unusually severe weather or other unplanned interruptions, we expect to substantially complete construction of the Manchester Job Corps center by December 2014. We anticipate awarding the center operations contract in December 2014 or January 2015 should our current construction completion date remain unchanged. Under the current timeline, allowing for a mobilization period of 4 to 6 months, students are expected to begin arriving on center in the summer of 2015.

Question. The Department of Labor (DOL) Inspector General's May 31, 2013, report notes that, for program year 2011, the Department did not account for three facilities when preparing its cost projections for the program. Consequently, the Department did not request funding to operate these facilities, contributing to the shortfall that occurred in program year 2011 and the enrollment freezes that resulted. What steps has the Department taken to ensure that these mistakes will not be repeated as the Manchester Job Corps Center becomes operational?

Answer. The Department has adopted a budgeting approach for operating Job Corps that ensures that the number of students served across the Nation is aligned with our appropriation. This budgeting approach will account for the Manchester Job Corps Center as it becomes operational. We will continue to evaluate the Job Corps operations budget to ensure the funding necessary to operate all Job Corps centers does not exceed budgeted amounts.

Question. Is the Department's fiscal year 2014 request for the Job Corps operations account sufficient to fund existing facilities and ensure that the commencement of operations and student enrollment in Manchester will immediately follow the completion of construction on the facility?

Answer. The fiscal year 2014 request does contain the funding necessary to implement the timeline provided in response to your earlier question. In addition, we believe that the changes we have initiated to ensure that we build a Job Corps program that has the financial controls and tools to operate within its appropriation moving forward.

QUESTIONS SUBMITTED BY SENATOR JERRY MORAN

JOB CORPS FUNDING SHORTFALLS

Question. Mr. Secretary, the Job Corps program is running its second year of funding shortfalls. Over the past year, the program has experienced three enrollment freezes. When the Department of Labor (Department) has been asked by this subcommittee why the program is running shortfalls, it has not received any significant information detailing how these shortfalls occurred. Of most concern, we have received no assurance that they would not happen again in the next program year. The audit released on Friday by the Inspector General stated that the Job Corps program “could not demonstrate they established a sound budget or spending plan, and they did not reconcile all Job Corps financial systems to ensure financial data was complete and accurate.” Therefore, for the subcommittee to better understand the fiscal year 2014 budget request for Job Corps, could you please provide the following information:

How much money was saved on the two enrollment suspensions enacted in program year 2012?

Answer. In program year 2012, the Department, with the support of the Job Corps community, successfully implemented numerous cost-savings measures, including the suspension of enrollment in late November to December 2012 and from January to April 2013. Both actions were difficult but necessary decisions made to ensure that we remained within budgeted levels for the program year and that we would be able to keep our commitment to students who are already in the program. During the second enrollment suspension the Department also took steps to focus on the long-term sustainability of the program. One of those steps involved a reduction to On-Board Strength (OBS), or student slot levels, at the centers, which had a direct impact on the related contracts. In March and April, the Department worked with the contractors to modify the contracts to capture the reductions in funding needed during the contract year, due to both the savings initiatives and the suspension of enrollment. As part of the contract modifications, the Department did not separate out the reductions associated with the enrollment suspension from the various other actions taken, but rather was focused on completing the actions and fully capturing the total savings needed to ensure we stayed within our program year 2012 budget.

Following the contract deobligations, the Department provided the contractors funding for their program year 2012 operations. Following the suspension, the Department is continuing to monitor (1) the enrollment levels, and (2) whether there are any funds remaining on these contracts that may remain after the close of the program year, due, at least in part, to the slower than anticipated “ramping up” of student enrollment. Unspent obligated funds would relieve the financial pressure from program year 2013 and could allow for program improvements and increasing OBS. As we move into program year 2013, we will look for ways to increase OBS in a responsible manner that can be maintained within current appropriations.

Question. Since June 2012 when the Department announced the Office of the Job Corps was running a budget shortfall, the Department of Labor has implemented numerous cost savings measures. How much savings have you recouped during program year 2012?

Answer. In program year 2012, the Department, with the support of the Job Corps community, successfully implemented numerous cost-savings measures. At the end of April when the Employment and Training Administration (ETA) completed its contract modifications and achieved the savings needed to lift the enrollment freeze, the savings realized include:

- \$41.6 million from contract modifications to decrease the original program year 2012 contract values. These include the reduction of contractor administrative costs; reduction of the national media buy contract; reduction in the Job Corps Data Center contract; and modifications to center, Outreach and Admissions, and Career and Transition Services contracts resulting from the January to April 2013 student enrollment suspension.
- \$10.5 million from administrative cuts to reduce expected operational costs. These include the reduction of student bi-weekly stipends, termination of stu-

dent pay when “Not Present for Duty,” reduction of U.S. Department of Agriculture administrative costs, and reductions in expenditures for student stipends during the suspension of enrollment in late November through December 2012 and the suspension of enrollment from January to April 2013.

—\$2.5 million from measures to help avoid or lower costs from previous program years. These include the consolidation of Job Corps center leases, reduction of the U.S. General Service Administration fleet and conversion of the Job Corps accounting services contract.

JOB CORPS CENTER CLOSURES

Question. The congressional justification for Job Corps states that at the end of fiscal year 2014, the targeted number of centers operating is 122. Does this figure mean that 3 centers will be closed in fiscal year 2014?

Answer. The Department continues to finalize the closure methodology and has not yet determined the exact number of centers for closure or the individual centers that will be closed.

Question. The Department has issued proposed methodology to close a “small number” of centers this year. While outyear operating costs in theory would decrease if there were fewer centers, there would be a cost associated with closing a center this year. How much funding of the fiscal year 2014 request for the Job Corps program is associated with closing centers?

Answer. Until we identify which centers will be closed, we are not able to identify precise costs.

Question. How many centers do you expect to close?

Answer. The Department continues to finalize the closure methodology and has not yet determined the exact number of centers for closure or the individual centers that will be closed.

Question. What is the timeline for closures?

Answer. We will implement the selection and closure process following the legislatively mandated activities, including congressional notification, pertaining to center closure required by section 159 of the Workforce Investment Act (WIA). We estimate that it will take a minimum of 6 months to execute closure of a center. If a contract center is selected for closure, we anticipate that the mechanism for closing the contract center will be through a decision not to exercise its option year or to renew a center operator’s contract. If a USDA center is selected for closure, we will continue working collaboratively with the USDA to ensure adherence to the existing Interagency Agreement with USDA.

Question. How many slots will be reduced?

Answer. Until we identify which centers will be closed, we are not able to determine how many slots will be affected. The Department does not plan to reduce the total number of slots in Job Corps as part the center closure process in addition to the OBS reductions made for program year 2013.

Question. Will slots at centers slated to be closed be redistributed to other centers?

Answer. Students affected by the closures will be able to transfer to other centers in order to complete their programs. We are considering options for redistributing slots from the closed centers.

Question. If slots are redistributed to other centers, how will it be decided which centers receive slots?

Answer. We have not yet made a final decision about slot redistributions. However, a decision to redistribute slots could be based on a number of factors including costs of redistribution, facility capacity, and center performance. As we move forward with this process, we will work with the Job Corps community to take these considerations into account.

Question. When will the Department publish its final closure methodology?

Answer. The Department has not yet established a date for publication of the final closure methodology.

JOB CORPS FUNDING TRANSFERS

Question. The continuing resolution provided the Department with the authority to transfer up to \$30 million in fiscal year 2013 from unobligated funds to fund the Job Corps program. The subcommittee was notified in May 2013 that you had transferred \$10 million. Do you expect to transfer additional funds in the remainder of the fiscal year?

Answer. The Department is evaluating the status of Job Corps operations as we finish closing the books on program year 2012. The Department will decide after the start of program year 2013 if it will transfer unobligated Employment and Training

Administration funds to Job Corps to support operations activities for this program year.

JOB CORPS FINANCIAL MANAGEMENT

Question. The Department of Labor's Inspector General issued an audit report of the Job Corps program on May 31, 2013. In part, it stated that the Office of the Job Corps (OJC) "could not demonstrate they established a sound budget or spending plan, and they did not reconcile all Job Corps financial systems to ensure financial data was complete and accurate. Additionally, OJC did not routinely monitor budgeted costs to actual costs nor did they communicate the status of the budget execution to the appropriate officials, including the CFO." How has the Department addressed these significant financial management issues?

Answer. We have accepted the OIG report's findings and recommendations and are implementing strong controls and cost-saving measures, which will help address the problems identified in the report. Regarding the audit report's identification of the events that unfolded around the program year 2011 shortfall, we took numerous actions to address those issues in 2012. In August 2012, ETA established the Office of Financial Administration (OFA), led by a Senior Executive Service (SES) level Comptroller. OFA instituted several initiatives to strengthen and coordinate existing controls and create new controls to ensure that obligations stayed within budget and to track contractor expenditures against their submitted spend plans. Working closely with ETA's Office of Contracts Management (OCM), which was created in 2010 as a SES-led office to consolidate all ETA contracting in the national and regional offices, OFA ensures that Job Corps more timely and accurately accounts for costs incurred in its cost-reimbursement contracts. The added cooperation between OFA and OCM has resulted in significant improvements in the financial oversight of Job Corps. In addition, we instituted a management oversight process to provide advice on short-term and long-term operational planning which included a series of high-level oversight meetings with senior officials throughout program year 2012. As noted in our audit report response, ETA is engaged in reinforcing existing controls and establishing new controls and reporting that will efficiently and effectively provide management with the information and assurances it needs to properly manage the Job Corps program. We are also committed to reviewing the contracting approaches for the program, and determining what type of contracts will allow us to deliver services at the lowest risk and best value to the Federal Government.

Question. The Job Corps program uses cost reimbursable contracts for the majority of its operations costs and program requirements. In both program years 2011 and 2012, the Office of the Job Corps projected that the operations budget would exceed appropriations. In addition, the audit found that the Employment and Training Administration National Office did not monitor total projected Job Corps contract costs against actual contract costs for the period July 1, 2012–September 30, 2012. Without adequate procedures to monitor projected expenditures to actual expenditures, the Department may not be able to respond with timely corrective actions. Therefore, what procedures have the Department put in place to fix this problem?

Answer. The Office of Financial Administration (OFA) within ETA, established in August 2012, headed by a Senior Executive Service-level Comptroller, oversees the now-centralized budget and financial operations of Job Corps along with other ETA programs. OFA works with ETA's Office of Contracts Management (OCM), established in 2010, to ensure that Job Corps monitors costs incurred, and is continuing to improve the timeliness and accuracy of the reporting. The added cooperation between OFA and OCM has resulted in significant improvements in the financial oversight of Job Corps. Together, OFA, OCM, and the Office of Job Corps (OJC) provide a system of checks and balances on expenditures and obligations in the Operations account.

In program year 2012, the Department began to use a control process for obligations that compared the actual obligations recorded in the Department's financial systems of record and a projection based on Job Corps history and current operating decisions to stay within the appropriation level. This comparative analysis was conducted monthly by the national office. In program year 2013 this process of comparing actuals versus educated projections will continue. Additionally, ETA has established budget targets for each center (in conjunction with the reduced student slot levels) and also for each national office contract prior to the start of the program year. This further refinement of the measurement of obligations and projections is a significant improvement that will allow Job Corps to start the program year with its total commitments for program year 2013 within the appropriation.

In addition, during program year 2012, the Department implemented a new control process for expenditures. At the start of a contract year, center contractors are required to submit to ETA spend plans aligned with the value in their contracts. Each contractor then submits monthly expense reports for the center on the Job Corps Contract Center Financial Report (Report 2110), which is comprised of 29 different expense categories. The submitted monthly center financial reports are analyzed by OFA in the national office against the center's overall budget to ensure that they are within the contractor submitted spend plans. When OFA identifies a budget discrepancy, OFA requests the contracting officer (CO)—acting under the direction of the OCM at the national office and the contracting officer's representative (COR) at the OJC regional level—investigate the discrepancy and highlight any issues for the national office. In addition, contracting officer representatives—who are officially responsible for monitoring one or more contracts, including the financial aspects of those contracts—compare the spend plan against the actual expenditures and monitor the centers' expenses on a monthly basis to ensure expenses are valid under the contract. The COR then compares this information with payment vouchers submitted by the contractor and either certifies the voucher for payment or returns it for correction. It is returned if it does not coincide with the information the COR sees on the financial report or if the voucher itself has unallowable or otherwise inappropriate costs. When a contractor unjustifiably exceeds its budget in any of its contracted budget lines, CORs are trained to alert their CO, so that the CO can address the matter with the contractor. This entire control process coordinated between the three ETA offices—OJC, OFA, and OCM—provides assurances that spend plans submitted by contractors are aligned with the center's budget, the actual valid expenses, and the payments made to contractors.

Together, these controls allow Job Corps not only to more effectively plan contracts and obligations at the beginning of the year to match its appropriation, but also to monitor spend rates throughout the year so that OJC is better able to identify and respond quickly to unpredicted changes and anomalies. In addition, for program year 2013 we have negotiated a reduced On-Board Strength (OBS) for each center contract that will ensure that we are operating within our appropriations, and we will continue to monitor the actual budget against contract costs as well as analyze all contractor financial reports. We are also committed to reviewing the contracting approaches for the program, and determining what type of contracts will allow us to deliver services at the lowest risk and best value to the Federal Government.

Question. In the budget requests for both fiscal years 2013 and 2014, the Department proposed reducing the amount of funding available for Job Corps construction. In the Department of Labor's Inspector General's (IG) Semiannual Report to Congress, the IG found that Job Corps "did not always ensure the timely repair of critical and funded maintenance deficiencies at its centers, which exposed students, staff, and visitors to potential safety and health hazards." Even more concerning, the audit revealed that \$32.9 million in unused maintenance funds were expired or were approaching expiration because Job Corps did not effectively manage these funds. Is this the first year unused maintenance funds expired?

Answer. Approximately \$12.7 million in Construction, Rehabilitation, and Acquisition (CRA) funds, which is about 1 percent of total CRA funds from program year 2002 through program year 2011, have been canceled and sent back to U.S. Department of Treasury. ETA is committed to the effective management of CRA funding to ensure maintenance deficiencies are identified, tracked, and repaired in a timely manner, and has implemented better monitoring mechanisms and financial controls to ensure funds are utilized to the fullest extent.

Question. How will the program make changes to ensure maintenance issues are addressed in an appropriate and timely manner?

Answer. To ensure maintenance issues are addressed in an appropriate and timely manner, Job Corps has increased emphasis on tracking and monitoring deficiencies to assist centers in execution and completion of center maintenance and repairs. The Office of Job Corps (OJC) works closely with the Office of Contracts Management (OCM) and the Office of Financial Administration (OFA) to enhance processes and procedures to ensure Job Corps effectively manages center maintenance. Coordinated efforts among the three offices work to improve the timeliness of CRA obligations and management tools to monitor and manage deficiencies.

Question. What changes are necessary to track and monitor the status of unobligated construction funds?

Answer. ETA is committed to ensuring CRA funds are executed timely and appropriately, and to that end, the Offices of Job Corps, Financial Administration, and Contracts Management work closely to provide updated status of funding availability reports. These reports allow the three agencies to identify actions that need

to be taken to obligate construction funds timely. Expiring CRA funds are regularly recaptured prior to expiration and reallocated to other projects that can be obligated in a timely manner.

Question. In response to the IG's recommendations, the Employment and Training Administration has said it has taken or plans to take corrective actions to address the recommendations. What steps have been taken thus far and what actions does the Department plan to take?

Answer. To date, the Office of Job Corps issued a directive to provide clear procedures to ensure centers are effectively managing center maintenance deficiencies, and to ensure deficiencies are accurately identified, tracked, and repaired in a timely manner. Job Corps is also requiring regional offices and centers to report deficiencies updates monthly to the national office. Further, the Office of Financial Administration, Job Corps, and the Department of Labor (DOL) Office of the Chief Financial Officer are working to determine and accurately report total deferred maintenance costs and repairs. Even before the OIG completed its audit, the Department began the process of working on the electronic reconciliation between the information systems used to monitor Job Corps activities. This is also an essential step in implementing several of the other recommendations. We are in the process of determining how best to respond to the other recommendations, and Job Corps will periodically report out on the progress it has made in their implementation.

IMPROVING VETERANS' EMPLOYMENT AND TRAINING SERVICES

Question. Over the past several years, the unemployment rate for veterans has been significantly higher than the national average. While veterans' unemployment rates are improving, the unemployment rate for veterans returning from Iraq and Afghanistan are particularly high, with those under age 25 facing over 20 percent unemployment. Therefore, it is critical that veterans transition effectively out of military service into civilian life. The Government Accountability Office (GAO) has issued several reports on how to better target and coordinate employment and training programs focused on our Nation's veterans. One of the criticisms that GAO cites is the lack of transparency with regard to the extent to which veterans' employment training services are meeting performance goals. In particular, questions were raised regarding whether outcomes are attributable to program participation and challenges with coordinating veterans' employment programs within the Department and across other Federal agencies. Mr. Secretary, can you discuss what the Department is doing to address these concerns?

Answer. Before addressing the GAO report, it is important to note that the President's fiscal year 2014 budget request requests nearly \$100 million for improved re-employment services for veterans. Over the past 18 months, the President has announced a series of actions to combat the high levels of veterans' unemployment and to provide greater support for servicemembers seeking to transition to civilian education and employment. Our request addresses the employment needs of veterans, focuses resources on veterans with disabilities or other significant barriers to employment, and provides improved re-employment services that enable individuals newly separated from the military to successfully transition into civilian careers. The budget includes \$14 million to ensure that our Transition Assistance Program (TAP) meets the estimated demand of our Nation's transitioning service members. We are also requesting an increase of \$38 million for additional Disabled Veterans' Outreach Program specialists to enhance services to certain transitioning service members, wounded warriors and the spouses and family caregivers of the wounded warriors. In addition, \$50 million of the increase for the Workforce Innovation fund will be devoted to building the evidence base on strategies targeting veterans, family members of active duty personnel, and members of the National Guard and Reserves.

The Workforce Innovation Fund, which emphasizes cross-program comprehensive approaches, is one way in which we can respond to the findings of the GAO's its December 2012 report entitled, "Better Targeting, Coordinating, and Reporting Needed to Enhance Program Effectiveness", which recommends improved coordination among Federal agencies and reporting in veteran employment programs.

However, the Department of Labor is not waiting for these resources to take steps to ensure that veterans are provided with the employment assistance needed to successfully enter the civilian workforce. The Department's Veterans' Employment and Training Service (VETS) and the Employment and Training Administration (ETA) have been collaborating on guidance to State Workforce Agencies, which will refocus the workforce system to better meet the needs of veterans. Once released, this will provide detailed guidance regarding the referral of veterans to the appropriate workforce program at 2600 American Job Centers nationwide. Additionally, it will

clarify the roles and responsibilities of the two Jobs for Veterans State Grants (JVSG) staff positions, the Disabled Veterans' Outreach Program (DVOP) specialist and the Local Veterans' Employment Representative (LVER). Finally, it will reiterate the requirement for DVOP specialists to provide increased levels of intensive services to veterans.

The Departments of Labor and Veterans Affairs have continued close coordination in administering the Vocational Rehabilitation & Employment program. In August 2012, VETS and VA conducted a survey of local partnerships to determine best practices and areas for improvement. Using the survey's results, in early fiscal year 2013, the Agencies' joint working group updated the program's technical assistance guide. This guide provides local staff with detailed information on the implementation of the Vocational Rehabilitation and Employment (VR&E) program, including the review and any needed update to the local Memorandum of Understanding with local partners. The workgroup is currently revising the data collection tool to enhance program monitoring and outcomes associated with the employment of veterans.

The Department also continues to collaborate with its Transition Assistance Program partners, chiefly Veterans Affairs and the Department of Defense, as part of the Veterans' Employment Initiative Task Force. Over the past year, the task force has revised the curriculum delivered to all transitioning service members, and the Agencies are currently collaborating to develop a virtual TAP program that will expand the reach of the program to service members unable to attend TAP in a physical location.

Regarding reporting, VETS continues to report program outcomes and activities in its Annual Report to Congress, the Uniformed Services Employment and Reemployment Rights Act Annual Report, the Department of Labor's Annual Performance Report, the Government-wide Performance.gov Web site, and as part of the President's Budget Request. Further, many of the performance indicators are Common Measures, allowing stakeholders and the public to compare outcomes across programs. The key measures for the Jobs for Veterans State Grants, which include Entered Employment, Employment Retention, and Average Earnings, are also tracked for other employment programs administered by DOL.

Finally, the Department is committed to rigorous program evaluation to determine the impact of its employment programs. The Department's Chief Evaluation Officer works with all agencies, including VETS and ETA, to identify evaluation priorities. Currently, the Department is planning to conduct a statistical analysis of services to veterans, and their employment outcomes, using administrative data, and a non-experimental evaluation of service provided to veterans in American Job Centers.

VETERANS SET-ASIDE THROUGH WORKFORCE INNOVATION FUND

Question. I am concerned with the request for a \$50 million set-aside for veterans through the Workforce Innovation Fund (WIF). In this constrained budget environment, shouldn't we use all available funding to provide direct services to veterans seeking employment?

Answer. The Department of Labor (Department) is dedicated to ensuring that veterans have access to the employment assistance that they need to successfully enter the civilian workforce. The Department has adopted an "all hands on deck" approach to serving veterans, and in program year 2011, approximately 1.3 million veterans were served through the collective programs offered by the American Job Center Network. These Department of Labor (DOL) funded employment and training programs are required to provide veterans with priority of service and the Department has taken further steps to ensure veterans who are facing the challenge of transitioning to civilian life are being provided the resources they need. For example, the Department's Gold Card initiative, a joint effort between the Department's Employment and Training Administration (ETA) and Veterans Employment and Training Services (VETS), ensures all unemployed post-9/11 era veterans have access to the intensive and follow-up services they need to succeed in today's job market.

The veteran-focused portion of the Workforce Innovation Fund request would be administered by ETA and VETS and is intended to build knowledge about what strategies are most effective in meeting the needs to veterans reflects the Department's comprehensive approach to serving veterans and This partnership will allow the Department to leverage VETS' expertise while utilizing ETA's robust grant management capacity.

Examples of the type of innovative practices that might be supported by these grants include: closely assessing the gap between military training and experience

and State licensure and other certification requirements and developing programs to provide early intervention to meet the employment needs of claimants in the Unemployment Compensation for Ex-Servicemembers programs. All projects will include a rigorous evaluation component.

QUESTIONS SUBMITTED BY SENATOR RICHARD C. SHELBY

JOB CORPS BUDGET AND ENROLLMENT

Question. Mr. Secretary, the Job Corps program is experiencing its second year of budget shortfalls and has gone through three enrollment freezes in the past 2 years. Over the last 3 years, Congress has continued to appropriate funding at a level equal to the amount requested by the Department of Labor (Department) for this program. However, in both fiscal year 2012 and 2013, the amount requested has clearly been inadequate. Therefore, I would ask the Department to provide the subcommittee the following information:

How much savings were generated with the two enrollment freezes in program year 2012 in aggregate?

Answer. In program year 2012, the Department, with the support of the Job Corps community, successfully implemented numerous cost-savings measures, including the suspension of enrollment in late November to December 2012 and from January to April 2013. Both actions were difficult but necessary decisions made to ensure that we remained within budgeted levels for the program year and that we would be able to keep our commitment to students who are already in the program. During the second enrollment suspension the Department also took steps to focus on the long term sustainability of the program. One of those steps involved a reduction to On-Board Strength (OBS) at the centers, which had a direct impact on the related contracts. In March and April, the Department worked with the contractors to modify the contracts to capture the reductions in funding needed during the contract year, due to both the savings initiatives and the suspension of enrollment. As part of the contract modifications, the Department did not separate out the reductions associated with the enrollment suspension from the various other actions taken, but rather was focused on completing the actions and fully capturing the total savings needed to ensure we stayed within our program year 2012 budget.

Following the contract deobligations, the Department provided the contractors funding for their program year 2012 operations. Following the suspension, the Department is continuing to monitor (1) the enrollment levels, and (2) whether there are any funds remaining on these contracts that may remain after the close of the program year, due, at least in part, to the slower than anticipated “ramping up” of student enrollment. Unspent obligated funds would relieve the financial pressure from program year 2013 and could allow for program improvements and increasing OBS. As we move into program year 2013, we will look for ways to increase OBS in a responsible manner that can be maintained within current appropriations.

Question. Before the enrollment freeze was lifted, each center had to agree to a reduction in On-Board Strength (OBS). How much was OBS reduced within the program?

Answer. For program year 2013, The Department has established an improved system to align contract values to the post-sequestration appropriation based on OBS. As a result, Job Corps will experience a reduction of roughly 9,600 student slots in program year 2013 from program year 2012 contracted levels. As we move into program year 2013, we will look for ways to increase OBS in a responsible manner that can be maintained within current appropriations.

Question. Did all centers receive the same percent reduction?

Answer. We reduced OBS in an across-the-board fashion to ensure all Job Corps centers maintained roughly the same percentage of the overall OBS from their previously contracted level.

Question. Is the reduction in new enrollments and student slots specified in the Congressional Justification due to the OBS reductions implemented earlier this year?

Answer. The enrollment and student slot (OBS) levels in the fiscal year 2014 request are a continuation of the actions taken during program year 2012 to relieve the financial difficulty Job Corps faced and to set the program on a sustainable path moving forward. The nearly \$100 million in funding requested over the program year 2013 post-sequestration level would allow Job Corps to increase OBS by over 2500 student slots from the current program year 2013 levels, along with other important program improvements.

Question. What financial accountability measures have you implemented to ensure that the program does not continue to run shortfalls?

Answer. The Office of Financial Administration (OFA) within ETA, established in August 2012, headed by a Senior Executive Service-level Comptroller, oversees the now-centralized budget and financial operations of Job Corps. OFA works with ETA's Office of Contracts Management (OCM), established in 2010, to ensure that Job Corps monitors costs incurred, and is continuing to improve the timeliness and accuracy of the reporting. The added cooperation between OFA and OCM has resulted in significant improvements in the financial oversight of Job Corps. Together, OFA, OCM and the Office of Job Corps (OJC) provide a system of checks and balances on expenditures and obligations in the Operations account.

In program year 2012, the Department began the use of a control process for obligations that compared the actual obligations recorded in the Department's financial systems of record and a projection based on Job Corps history and current operating decisions to stay within the appropriation level. This comparative analysis was conducted monthly by the national office. In program year 2013 this process of comparing actuals versus educated projections will continue. Additionally ETA has established budget targets for each center (in conjunction with the reduced student slot levels), and also for each national office contract prior to the start of the program year. This further refinement of the measurement of obligations and projections is a significant improvement that will allow Job Corps to start the program year with its total commitments for program year 2013 within the appropriation.

In addition, during program year 2012, the Department implemented a new control process for expenditures. At the start of a contract year, center contractors are required to submit to ETA spend plans aligned with the value in their contracts. Each contractor then submits monthly expense reports for the center on the Job Corps Contract Center Financial Report (Report 2110), which is comprised of 29 different expense categories. The submitted monthly center financial reports are analyzed by OFA in the national office against the center's overall budget to ensure that they are within the contractor submitted spend plans. When OFA identifies a budget discrepancy, OFA requests the contracting officer (CO)—acting under the direction of the OCM at the national office and the contracting officer's representative (COR) at the OJC regional level—investigate the discrepancy and highlight any issues for the national office. In addition, CORs—who are officially responsible for monitoring one or more contracts, including the financial aspects of those contracts—compare the spend plan against the actual expenditures and monitor the centers' expenses on a monthly basis to ensure expenses are valid under the contract. The COR then compares this information with payment vouchers submitted by the contractor and either certifies the voucher for payment or returns it for correction. It is returned if it does not coincide with the information the COR sees on the financial report or if the voucher itself has unallowable or otherwise inappropriate costs. When a contractor unjustifiably exceeds its budget in any of its contracted budget lines, CORs are trained to alert their CO, so that the CO can address the matter with the contractor. This entire control process coordinated between the three ETA offices—OJC, OFA and OCM—provides assurances that spend plans submitted by contractors are aligned with the center's budget, the actual valid expenses, and the payments made to contractors.

Together, these controls allow Job Corps not only to more effectively plan contracts and obligations at the beginning of the year to match its appropriation, but also to monitor spend rates throughout the year so that OJC is more able to respond should unpredicted changes occur. In addition, for program year 2013 we have negotiated a reduced On-Board Strength (OBS) for each center contract that will ensure that we are operating within our appropriations, and we will continue to monitor the actual budget against contract costs as well as analyze all contractor financial reports.

Question. The Department has released proposed methodology to close a "small number" of low-performing centers. How many centers do you expect to close?

Answer. The Department has not yet made any final decisions on the exact number of centers that will be selected for closure as part of a broader reform effort to improve program quality and strengthen accountability.

Question. When do you expect closures to take place?

Answer. We will implement the selection and closure process following the legislatively mandated activities, including congressional notification, pertaining to center closure as required by section 159 of the Workforce Investment Act (WIA). We estimate that it will take a minimum of 6 months to execute closure of a center.

Question. When will the final closure methodology be published?

Answer. The Department has not yet established a date for publication of the final closure methodology.

Question. How much cost savings would be achieved per center closure?

Answer. Until the Department finalizes the closure methodology and identifies which centers will be closed, we cannot specify the savings associated with closure.

Question. The Congressional Justification states a reduction in new enrollments from the program year 2011 level of 63,340 to a program year 2014 target of 49,091. This equates into a 22-percent decrease in new enrollments. Why is there such a significant drop in new enrollments over this period?

Answer. The Job Corps program enrolls students on a rolling basis throughout the year. The program serves students who are currently enrolled and continuously admits new students throughout the program year as students graduate or exit the program. This reduction in the total number of new enrollments throughout the entire program year is caused by the decrease in the total number of students allowed in Job Corps at any given time, also known as OBS. The OBS reduction of nearly 9,500 slots was made to ensure that in future years Job Corps would begin program year 2013 with its contracts below the program year 2013 appropriation, including sequestration. The fiscal year 2014 request allows us to begin to increase these levels while also addressing other programmatic needs. As savings are realized from reform of the Policy and Requirements Handbook (PRH) and other changes, they will be reinvested into the program, including increasing OBS.

Question. If enrollments will decrease by approximately 22 percent between program year 2011 and program year 2014, why is the Department requesting an increase in operations funding in fiscal year 2014?

Answer. The enrollment levels reflect what the Department can actually afford, given the lessons learned from program year 2011 and program year 2012. The Department has proposed to increase OBS above what can be afforded at the program year 2013 post-sequestration level. However, the funding also provides for other important programmatic needs such as investing in more rigorous training and credential attainment measures, experimenting with different contract models, and responding to new developments in the field, including the significant changes to GED attainment slated to begin in January of 2014.

H-2B RULES

Question. Many industries, including the seafood and timber industries, rely on the Department of Labor's H-2B Visa program to find temporary, seasonal workers. The seasonal nature of these industries means that these businesses routinely face shortages of local workers during their peak season. The H-2B program not only keeps these businesses open, but also contributes to the creation of additional, year-round jobs for local workers.

The Department has proposed H-2B rules that would add regulatory burdens and costs to American businesses. In particular, an H-2B worker would be required to receive a minimum of three-fourths of their wages for each 12-week period they are employed, even if they do not work three-fourths of the time due to weather or other unforeseen circumstances. Further, the rule requires employers to pay transportation and subsistence costs to and from the workplace for those workers hired under the program. Many small businesses that use the H-2B program cannot afford these regulations and will ultimately close, which will result in more job losses, including putting the American jobs at those businesses at risk.

Mr. Secretary, what steps will the Department take to ensure valid methods are used to determine wage rates?

Answer. With respect to wage rates in the H-2B program, on April 24, 2013, the Departments of Labor and Homeland Security published an Interim Final Rule to bring the Department into compliance with a court order. Please see the response to Senator Graham's question on H-2B visas provided later in the document. Specifically, a Pennsylvania district court invalidated the provision formerly found at 20 CFR section 655.10(b)(2), which required the application of four skill levels when DOL issues a prevailing wage based on the Occupational Employment Statistics (OES) wage survey. The Interim Final Rule implements a wage determination methodology based on the mean of wages in that occupation, as compiled by the Bureau of Labor Statistics in the OES survey. The OES survey is a semiannual mail survey of nonfarm establishments selected in order to obtain data from every metropolitan and nonmetropolitan area in every State, across all surveyed industries, and from establishments of varying sizes.

GOVERNOR'S SET ASIDE

Question. The Governor's Workforce Investment Act set-aside allows 15 percent of Workforce Investment Act funding to be used by the Governor, at the State-level, to pursue creative workforce development initiatives. Over the past 3 fiscal years,

the set-aside has been reduced to 5 percent. While I appreciate the fiscal year 2014 budget request proposes to increase the set aside to 7.5 percent, I think it should revert to its authorized level of 15 percent. By limiting the amount of funds to Governors' workforce training initiatives, State-wide or regional efforts are stifled. Governors are equipped to identify and address the workforce training needs of their State's local employers and should be given the tools necessary to do so. Why does the Department not support increasing the set aside to 15 percent?

Answer. The set-aside must be viewed in context of the funding level for the WIA formula programs. Without new resources, any increase in the Governor's set-aside would have to come from the local level, where services are delivered. The President's budget request, which includes additional funding to increase the set-aside from 5 percent to 7.5 percent, balances the need for statewide funds with preservation of funding at the local level.

The proposal to increase the statewide reserve funds to 7.5 percent will increase State oversight and accountability activities while ensuring that levels of service do not decrease in local workforce investment areas. If statewide reserve funds were increased to 15 percent at the proposed funding levels without a large increase in overall funding, it would reduce the number of adults, dislocated workers, and youth served at the local level. The Department's proposal balances oversight and accountability responsibilities with the need to preserve services for our program participants.

Question. Are you concerned that under the reduced set aside Governors no longer have the flexibility to implement innovative statewide projects?

Answer. At the 7.5-percent statewide reserve level, Governors may still be able to implement innovative statewide projects. However, given budget constraints, the need to implement statewide projects must be balanced with preserving funds for local workforce investment areas to ensure that service levels of participants can be sufficiently maintained in a time of declining funding. In addition, the Workforce Innovation Fund (WIF) will provide the opportunity for Governors to test innovative strategies and replicate evidence-based practices in the workforce system, emphasizing cross-program collaboration and bold systemic reforms to improve education and employment outcomes for participants. The Round 1 WIF grants are starting the implementation phase, and the Department anticipates identifying promising practices that can be shared broadly with the workforce system in the next few months. The Department anticipates awarding WIF Pay for Success grants by September 30, 2013 and a subsequent round of WIF grants by September 30, 2014.

WORKFORCE INVESTMENT ACT COLLABORATIONS

Question. In these difficult economic times, it is important for the Department of Labor to consider ways to better connect the workforce investment system with employers to meet local labor market needs. The Government Accountability Office (GAO) has recommended that the Department compile information on workforce boards that effectively leverage Workforce Investment Act funds with other funding sources and disseminate this information in a readily accessible manner.

In the Department's response to GAO's recommendation, which were agreed with, the Department stated "the Departments of Labor, Health and Human Services, and Education continue to seek opportunities to develop joint guidance with State and local grantees, and to implement cross-cutting demonstration projects that encourage partnerships." Can you share with the subcommittee details on these efforts?

Answer. In April 2012, the U.S. Departments of Education, Health and Human Services, and Labor issued a joint letter to promote the use of career pathways approaches as a promising strategy to help adults acquire marketable skills and industry-recognized credentials through better alignment of education, training and employment, and human and social services among public agencies and with employers. In this letter, the Departments encourage States to align State resources to support integrated service delivery across Federal and State funding streams to ensure that interested partners and agencies are aware of the commitment to improved collaboration and coordination across programs and funding sources. This letter was distributed to the workforce system via a Training and Employment Notice (http://wdr.doleta.gov/directives/attach/TEN/ten2_36_11.pdf).

The Departments also partnered together to develop the Career Pathways Technical Assistance Initiative, which provided funds to nine States and two tribal entities to develop strategic plans to implement Career Pathways. Based on this initiative, the Departments developed a number of tools to help other States, local areas, and tribal entities develop career pathways systems. These tools are being shared extensively online through a Department of Labor Community of Practice (CoP)

available on the Department's online technical assistance platform at <https://learnwork.workforce3one.org>. The CoP promotes peer-to-peer knowledge sharing and linkages to subject matter experts. The Federal Career Pathways Interagency Team intends to conduct a national Request for Information (RFI) during Program Year 2013 (which begins on July 1, 2013) to elicit more detailed feedback from States and local areas on career pathways implementation, successes, and any obstacles to implementation. The Department of Education is leading the issuance of the RFI, and work will continue across the Federal partners and the State and local systems to support establishing and implementing career pathways.

VETERANS' EMPLOYMENT AND TRAINING SERVICE PERFORMANCE

Question. Providing meaningful training and employment services to our Nation's veterans should be a high priority for the Department of Labor. I remain concerned that both the Government Accountability Office and the Department's Inspector General have found that the Department is not accurately assessing veterans' needs, documenting intensive service activities, or using measurable performance goals to evaluate a program's effectiveness. Mr. Secretary, how is the Department responding to these issues?

Answer. The Department's largest investment in veteran employment services is through employment and training programs at American Job Centers. These include the Wagner-Peyser Employment Services program and the Jobs for Veterans State Grant program. In program year 2011, more than 1.28 million veterans and eligible persons (primarily spouses of veterans provided with the same rights and benefits under the law) received services at over 2600 American Job Centers nationwide. Further, these persons receive priority of service in all DOL-funded employment and training programs.

The Department agrees that it is imperative that the needs of veterans be accurately assessed to ensure that veterans are provided with the employment assistance needed to successfully enter the civilian workforce. To this end, the Department's Veterans' Employment and Training Service (VETS) and the Employment and Training Administration (ETA) have been collaborating on guidance to State Workforce Agencies, which will refocus the workforce system to better meet the needs of veterans. This release will provide detailed guidance regarding the referral of veterans to the appropriate workforce program.

Additionally, it will clarify the roles and responsibilities of the two Jobs for Veterans State Grants (JVSG) staff positions, the Disabled Veterans' Outreach Program (DVOP) specialist and the Local Veterans' Employment Representative (LVER). Finally, it will reiterate the requirement for DVOP specialists to provide increased levels of intensive services to veterans.

Regarding performance metrics for American Job Center services, the Department tracks both the level of services provided to participants, and the outcomes of those services. These metrics provide valuable information for stakeholders and policy makers in developing strategic course corrections or implementing new guidance. For example, given that the entered employment rate for JVSG participants decreased as a result of the economic recession, the Department has worked with State workforce agencies to increase the rate of intensive services provided to veterans with significant barriers to employment. Intensive services, which may include skills assessment, the development of an individualized employment plan, group or individual career counseling, and interview and communication skills development, assist veterans in overcoming these barriers. Over the last 5 years, the rate of JVSG participants receiving intensive services has increased from 20 percent to 31 percent. Recognizing that this rate still is far too low given the number of veterans who require these services to overcome barriers to employment, the Department has made an increase in intensive services a priority.

Many of the performance outcome metrics are mandated Common Measures, allowing stakeholders and the public to compare outcomes across programs. For example, the key measures for the Jobs for Veterans State Grants, which include Entered Employment, Employment Retention, and Average Earnings, are also tracked for other DOL employment programs. These outcomes are provided to Congress and the public in a variety of formats, including the Annual Report to Congress, the Department of Labor's Annual Performance Report, the Government-wide Performance.gov Web site, and as part of the President's budget request.

Finally, the Department is committed to rigorous program evaluation to determine the impact of its employment programs. The Department's Chief Evaluation Officer works with agency, including VETS and ETA, to identify evaluation priorities. Currently, the Department is planning to conduct a statistical analysis of services to veterans, and their employment outcomes, using administrative data, and a

non-experimental evaluation of service provided to veterans in American Job Centers.

WORKFORCE INNOVATION FUND FOR VETERANS INCREASE

Question. As more servicemembers transition to civilian life in the next several years, I am concerned that the budget requests a \$50 million increase for the Workforce Innovation Fund for veterans. This pot of funding will not provide training or employment services to veterans in a time when our veterans need employment services. Why was this increase not directed to the Veterans and Employment Training Service account instead?

Answer. The Department of Labor (DOL) is dedicated to ensuring that veterans have access to the employment assistance that they need to successfully enter the civilian workforce. The Department has adopted an “all hands on deck” approach to serving veterans, and in program year 2011, DOL data show that approximately 1.3 million veterans were served through the Department of Labor-funded programs, in which veterans’ eligible spouses have priority of service. The Department has taken further steps to ensure veterans who are facing the challenge of transitioning to the civilian workforce are receiving the employment services they need. For example, the Department’s Gold Card initiative, a joint effort between the Employment and Training Administration (ETA) and Veterans Employment and Training Services (VETS), ensures that all unemployed post-9/11 era veterans have access to the intensive and follow-up services, including case management, skills assessment, career guidance and job search assistance, that they need to compete in today’s job market.

The requested \$50 million increase in the Workforce Innovation Fund for veterans reflects the Department’s comprehensive approach to serving veterans and will be administered through a partnership between VETS and ETA. This funding—which would in fact support services to veterans, military families, and members of the National Guard—will allow us to test the effectiveness of different strategies for meeting the needs of this population. What we learn from these grants would then help us improve services throughout the workforce system to better meet the needs of veterans.

It is also important to note that this request is coupled with a request for additional funding within the VETS account. That request addresses the employment needs of veterans, improves employment services for their families, focuses resources on veterans with disabilities or other significant barriers to employment, and provides improved re-employment services that enable individuals newly separated from the military to successfully transition into civilian careers.

QUESTIONS SUBMITTED BY SENATOR LAMAR ALEXANDER

FINALIZING THE “ADVICE” RULE

Question. In June 2011, the Department of Labor (Department) proposed a rule that would expand an employer’s reporting requirements of activities undertaken in connection with a union organizing campaign, known as the persuader rule. When is the Department of Labor planning to finalize the “Advice” rule re-interpreting section 203 of the Labor Management Reporting & Disclosure Act?

Answer. Because no final rule has been published, the Department’s proposal to revise its interpretation of “advice” under the Labor-Management Reporting and Disclosure Act (LMRDA) is an ongoing rulemaking. The Department’s Spring 2013 Regulatory Agenda states that final action on the notice of proposed rulemaking (NPRM) is scheduled for November 2013. Additionally, future relevant action taken on this matter will be noted on the Office of Information and Regulatory Affairs (OIRA’s) RegInfo.gov Web site.

Question. What purpose does it serve to require employers to publicly report relationships and confidences where no persuader activity is taking place?

Answer. Section 203 of the Labor-Management Reporting and Disclosure Act (LMRDA) requires employers and labor relations consultants to file public reports with the Department if they enter into an agreement or arrangement for the consultant to undertake activities with an object to, directly or indirectly, persuade employees about their organizing or collective bargaining rights. Section 203(d) explicitly states that reporting is not required if the employer and consultant do not enter into persuader agreements or arrangements.

Question. Why shouldn’t the proposed rule apply to worker centers and other third party labor-backed groups who are also persuading employees?

Answer. Section 203 of the Labor-Management Reporting and Disclosure Act (LMRDA) applies to employers who enter into third-party agreements to persuade employees. Labor organizations already file detailed reports pursuant to LMRDA section 201, which requires the disclosure of payments to third parties. The Department has never applied section 203 reporting to labor organizations and their contractors, and the Department did not propose to do so in the notice of proposed rulemaking (NPRM). The Department received comments on this issue in response to the NPRM, and will consider them in drafting any final rule.

Question. The American Bar Association and the Tennessee Bar Association oppose the proposed persuader rule because of concerns that it could force attorneys to disclose confidential information about their clients. As an attorney, do you agree with the Tennessee Bar Association that attorney-client communications and confidences should be protected?

Answer. Yes, the Department believes attorney-client communications should be protected.

The attorney-client issues you reference were raised in multiple comments to the notice of proposed rulemaking (NPRM). Labor-Management Reporting and Disclosure Act (LMRDA) section 204 exempts attorney-client communications from reporting, which is defined as, “information which was lawfully communicated to [an] * * * attorney by any of his clients in the course of a legitimate attorney-client relationship.” 29 U.S.C. 434. This law was cited in the June 2011 NPRM, which also stated: “By this provision, Congress intended to afford to attorneys the same protection as that provided in the common-law attorney-client privilege, which protects from disclosure communications made in confidence between a client seeking legal counsel and an attorney” 76 Fed Reg 36178, 36192.

The Department will consider comments on this issue in drafting any final rule.

Question. Another major concern with the proposed persuader rule is that it would deter many small and medium size employers from seeking outside counsel to advise them on labor issues, opening them up to violations. Do you think small businesses, who cannot afford in-house legal counsel, have a need to consult with attorneys or labor experts to ensure they are complying with the ever-changing interpretations of the National Labor Relations Act (NLRA)?

Answer. The Department agrees that small businesses may have a need to consult with attorneys or labor experts to ensure compliance with the law. The deterrence-of-legal-advice issue you reference was raised in multiple comments to the notice of proposed rulemaking. The Department will consider these comments in drafting any final rule.

COMPANIONSHIP EXEMPTION UNDER FAIR LABOR STANDARDS ACT

Question. In December 2011, the Department of Labor proposed a new rule that would greatly narrow the application of the companionship exemption under the Fair Labor Standards Act (FLSA). Currently, individuals providing “companionship services” for the elderly or infirm are exempt from minimum wage and overtime provisions. The proposed rule restricts specific tasks such as meal preparation and laundry that an exempt employee may incidentally perform, thereby decreasing the number of employees who could be claimed under the exemption. It will also prohibit the exemption from applying to domestic service employees employed by a third party (i.e., staffing agencies). Is the Department of Labor planning to finalize the companionship rule, and if so, when?

Answer. The Department continues to work with other Federal agencies on the final rule on companionship services. As announced in the NPRM, our goal is to finalize a regulation that reflects the original intent of the legislation to extend the FLSA’s minimum wage and overtime protections to workers who perform domestic service while exempting only those workers who provide companionship services. These workers who perform domestic service are critical to helping persons who need assistance to remain in their homes. The need for a stable, skilled, trained home care workforce is essential to respond to the growing demand for long-term home care for persons of all ages. The Department’s intent is that proposed reforms will bring the regulation in line with congressional intent that domestic workers be covered by minimum wage and overtime pay protections, while at the same time helping to ensure there is a stable workforce available to enable our loved ones to continue to live at home and participate in their communities. We have received numerous comments about the rule and will take those comments into account as we continue review.

Question. While States are not required to cover in-home companionship under Medicaid, most pay a provider rate to agencies for these services. If finalized as proposed, the new rule will force States to either raise rates to continue providing these

services or cut these services and push more seniors into expensive institutional long-term care settings—either way, increasing healthcare costs and burdens on State Medicaid programs. On March 14, 2012, I asked Secretary Solis in front of this subcommittee if she had consulted any State Medicaid Directors about the impact of the proposed rule and if not, whether she is willing to meet with them. She replied that she would be willing to meet with them. Did Secretary Solis meet with any State Medicaid Directors about this proposed rule?

Answer. The Department has had numerous productive conversations with Medicaid program personnel, including State Medicaid directors, as it considered changes to the companionship exemption. The Department has worked closely with the Centers for Medicare and Medicaid Services (CMS) of the Department of Health and Human Services throughout the rulemaking process. During the public comment period, a number of State representatives submitted written comments to the agency for review including representatives from the States of Arkansas, California, Oregon, Tennessee, Virginia and Washington. Additionally organizations such as the National Association of Medicaid Directors submitted written comments.

We also reached out directly to State Medicaid Directors to talk with them to make certain that we understood their programs. Last summer, the Department's Wage and Hour Division held a call jointly with CMS in which we invited all State Medicaid Directors to participate. Over 38 State Medicaid program representatives from 26 States participated in that discussion.

Question. Have you met with any State Medicaid Directors about this proposed rule since you became Acting Secretary?

Answer. No. However, the Department has met with State Medicaid Directors as described above.

Question. Is the Department willing to withdraw the rule to conduct a more comprehensive analysis of the impact on State Medicaid programs and budgets?

Answer. The Department conducted an exhaustive economic analysis as reflected in the published NPRM and, during the ongoing review process, continues to examine and refine that analysis. The final rule will include a thorough analysis of the potential impacts of changes to the companionship exemption, including on State Medicaid programs.

REGULATORY AGENDA REQUIREMENT UNDER REGULATORY FLEXIBILITY ACT

Question. The Regulatory Flexibility Act of 1980 requires Federal agencies to publish a semiannual regulatory agenda that lists regulations that are under development. Agencies must publish their agendas in April and October. Since 2009 the administration has only met the deadline twice. In 2012, the administration missed both deadlines, and finally issued an agenda in December of that year that included 2,387 items (68 from the Department of Labor) without any explanation for the delay. Last year, the Department of Labor missed the deadlines for publishing both Spring and Fall semiannual regulatory agendas. Please explain why the Department of Labor missed each of these deadlines.

Answer. The Regulatory Flexibility Act of 1980 requires Federal agencies to publish a semiannual regulatory agenda that lists regulations that are under development. The Department of Labor prepares and submits its semiannual regulatory agenda to the Office of Management and Budget (OMB), which publishes the semiannual agenda for all Federal Government agencies.

Question. When will the Department of Labor release its Spring Regulatory Agenda for 2013?

Answer. The Department of Labor's Spring Regulatory Agenda for 2013 is not published separately, but is published as part of the "Unified Agenda of Regulatory and Deregulatory Actions," issued by the administration. The Office of Management and Budget determines when the semiannual agenda for all Federal Government agencies is published.

EXPANDING APPLICATION OF THE DAVIS-BACON ACT

Question. On March 22, 2013, the Wage and Hour Division reversed 50 years of precedent by loosening the standard to determine whether members of field survey crews are subject to the Davis-Bacon Act. Since 1962, the Department of Labor has held that a determination of whether certain members of a survey crew were covered under the Davis-Bacon Act was a question of fact. Specifically, Department guidance found that generally, individuals that conduct the actual surveying such as rodmen or chainmen were not covered by the Act. Under the new guidance, the Department has expanded the application of the Davis-Bacon Act to field survey crew members who "use tools or who are performing the work of a trade," a defini-

tion that would apply to all members of a field survey crew. Why is this guidance document not posted on the Department of Labor Web site?

Answer. The Wage and Hour Division has historically recognized that members of survey crews performing primarily physical and/or manual work on a Davis-Bacon covered project on the site of the work immediately prior to or during construction in direct support of construction crews may be laborers and mechanics subject to the Davis-Bacon Act. After a review of the Wage and Hour Division's policies and procedures, as well as information indicating that the composition and work of survey crew members have evolved with new technology that survey crew members use in their work, the Wage and Hour Division concluded that it should clarify the appropriate application of this policy. All Agency Memorandum No. 212, which provides the Wage and Hour Division's March 22, 2013 guidance on surveyors, is publicly available at <http://www.dol.gov/whd/programs/dbra/Survey/AAM212.pdf> and at <http://www.wdol.gov/Index.aspx>.

Question. Do you believe letters and documents like this are important to the public?

Answer. Yes, which is why All Agency Memorandum No. 212, which provides the Wage and Hour Division's March 22, 2013 guidance on surveyors, and similar All Agency Memoranda are publicly available at <http://www.wdol.gov/aam.aspx>.

Question. The guidance document was issued in direct response to a request by the International Union of Operating Engineers (IUOE). Was this the only request the Department of Labor received to change its guidance?

Answer. The request from the International Union of Operating Engineers was the only request received by the Wage and Hour Division addressing this particular issue.

Question. Did the Wage and Hour Division seek the input from other stakeholders on this issue?

Answer. While the Wage and Hour Division did not solicit input from additional stakeholders in the development of All Agency Memorandum No. 212, interested parties continue to have an opportunity to provide information and evidence to the Wage and Hour Division regarding the application of Davis-Bacon labor standards to survey crew members. In addition, because the ruling letter issued to the International Union of Operating Engineers constitutes a final ruling under 29 CFR section 5.13, a petition for review may be filed with the Department's Administrative Review Board in accordance with 29 CFR section 7.9.

Question. The decision by the Department of Labor to apply the Davis-Bacon Act to a privately-funded construction project in Washington, D.C. has elicited criticism from many different corners. The D.C. Attorney General's Office called the project "privately financed, privately constructed, and will be privately owned, privately occupied, and privately operated." The decision could add \$20 million to the overall costs of the project. Initially, the Wage and Hour Division's Branch Chief for Government Contracts ruled the Davis-Bacon Act did not apply. That decision was later reversed by the Acting Administrator of the Wage and Hour Division. Why was the initial decision reversed?

Answer. The Wage and Hour Division relied on existing guidance in determining whether the Davis-Bacon Act applied to the City Center project. After the Branch Chief's initial ruling was issued, the requesting party appealed that determination and asked the Acting Administrator to reconsider it based primarily on the ground that the myriad public benefits that will result from the project render it a "public work" under the Davis-Bacon Act. Upon a further examination of the entire record in the case, as well as the parties' written submissions (including submissions from the project developer, the District of Columbia, and the Carpenters following the initial ruling), the Acting Administrator determined that the project clearly constitutes a public work under the Davis-Bacon Act and its implementing regulations and that the District of Columbia is a party to the contract for construction. The Department's Administrative Review Board recently issued a Final Decision and Order that affirmed the Acting Administrator's ruling.

Question. What new facts, if any, did the Acting Administrator rely on to reverse the initial decision?

Answer. On reconsideration, the Wage and Hour Division carefully considered the written submissions supporting and opposing reconsideration, as well as the entire record in the case, and concluded that the project is a "public work" under the Davis-Bacon Act and the District of Columbia is a party to the contract for construction. We examined the agreements governing the project and determined that the project plainly is being carried on directly by authority of the District. For example, the City Center project exists solely because the District exercised its authority to enter into a development agreement and ground leases with the District's chosen developers, and those agreements give the District authority over such features as

the number of residential units to be constructed, the amount of office and retail space to be created, and the specific design of a public park and other public areas. In addition, the District has continuing ownership of the land on which construction is taking place, as well as direct authority to ensure that the developers maintain the improvements at a level that satisfies “First-Class Standards.” We also concluded that the project will serve the interest of the general public. For instance, the District’s various public space design requirements for the project, including the new park and a central plaza, are intended to benefit the public, as is the District’s ongoing involvement in the City Center project over the course of the 99-year lease terms—a circumstance that differentiates this project from other projects in which the District may sell property without retaining such extensive control over its use. Based on this analysis, we concluded that the project is covered by the Davis-Bacon Act because it constitutes a “public work” and the District of Columbia is party to the contract for construction. The Department’s Administrative Review Board recently upheld this ruling.

Question. Do you agree that the new standard by which the Department of Labor will determine whether the Davis-Bacon Act applies is whether the construction project provides an economic benefit, such as creating jobs or producing tax revenue?

Answer. We do not agree that the CityCenterDC determination represents a new standard. The initial determination and the reconsideration both illustrate that many factors influence the decision about whether particular agreements are contracts for construction and public works under the Davis-Bacon Act.

Question. Do you agree that this is an unprecedented expansion of the application of the Davis-Bacon Act?

Answer. We do not agree that this decision represents an expansion of the Davis-Bacon Act. Our analysis and determinations were based on, and consistent with, existing guidance and interpretations of Davis-Bacon Act coverage.

UNION PRESENCE IN OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
WALKAROUND INSPECTIONS

Question. On February 21, 2013, the Occupational Safety and Health Administration (OSHA) issued an interpretation letter that a union representative who is not an employee of the company may accompany an OSHA inspector during a walk around inspection of the worksite and may even be designated as the employee representative in a non-union workplace. OSHA’s regulations specifically state that, “representative(s) authorized by employees shall be an employee(s) of the employer,” except for good cause. The interpretation letter provides a blanket affirmation that a union representative may participate in the walk around inspection. The new OSHA interpretation letter appears to conflict with existing regulations. Please state if you agree or disagree with this statement and explain why.

Answer. The Department does not agree that the February 21 letter conflicts with existing regulations, or that it constitutes a blanket affirmation for any individual to participate in an inspection. OSHA’s regulations allow compliance officers to permit third parties to be walkaround representatives if they will make a positive contribution to a thorough and effective inspection. Specifically, 29 CFR section 1903.8(a)–(d), allows the compliance officer significant discretion as to who participates in inspections. Section 1903.8(c) explicitly allows walkaround participation by an employee representative who is not an employee of the employer when, in the judgment of the OSHA compliance officer, such a representative is “reasonably necessary to the conduct of an effective and thorough physical inspection.”

Worker participation in OSHA inspections is vital to a thorough and effective inspection. The February 21, 2013 letter clarifies that allowing non-employee third-party representatives (such as a union or community group) to accompany OSHA inspectors on walk-around inspections, if designated by workers at the worksite, is consistent with the intent of section 8(e) of the OSH Act which provides that “[s]ubject to regulations issued by the Secretary, a representative of the employer and a representative authorized by his employees shall be given an opportunity to accompany the Secretary or his authorized representative during the physical inspection of any workplace . . . for the purpose of aiding such inspection.” 29 U.S.C. § 657(e).

Question. OSHA compliance officers who conduct the walk around inspections are explicitly prohibited by the agency’s internal rules from becoming involved in an “onsite dispute involving labor-management issues or interpretation of collective-bargaining agreements.” By allowing a union representative access to a non-union worksite, OSHA is putting its own compliance officers in a position to violate agency rules. Do you agree?

Answer. The Department disagrees with this statement. Third party walkaround participation does not involve OSHA compliance officers in disputes involving labor-management issues or interpretation of collective-bargaining agreements. The participation of workers and their representatives in OSHA inspections is solely related to ensuring a thorough and effective health and safety inspection.

Allowing third party representatives to accompany OSHA compliance officers on an inspection is also solely related to achieving an effective and thorough health and safety inspection. The purpose of a walkaround representative is to assist the inspection by helping the compliance officer receive valuable health and safety information from workers who may not be able or willing to provide such information absent the third party participants. The importance of this process to workplace safety was clearly established in the OSHAct and is not related to labor-management issues.

OSHA's Field Operations Manual instructs OSHA Area Directors to thoroughly assess the credibility and veracity of any complaint filed during a labor dispute and states that "During the inspection, Compliance Safety and Health Officers (CSHOs) will make every effort to ensure that their actions are not interpreted as supporting either party to the labor dispute." Furthermore, 29 CFR section 1903.8(c) states that "Compliance Safety and Health Officers are authorized to deny the right of accompaniment under this section to any person whose conduct interferes with a fair and orderly inspection," which would include any union organizing activity conducted during the inspection process.

Question. How will OSHA ensure that its compliance officers will not involve themselves in an employer's labor-management issues or collective-bargaining agreements?

Answer. OSHA's Field Operations Manual clearly instructs OSHA Area Directors to thoroughly assess the credibility and veracity of any complaint filed during a labor dispute and states that "During the inspection, CSHOs will make every effort to ensure that their actions are not interpreted as supporting either party to the labor dispute." OSHA management and staff are trained to comply with the Field Operations Manual and are required to follow its directions.

QUESTIONS SUBMITTED BY SENATOR LINDSEY GRAHAM

H-2B VISA PROGRAM

Question. Many small businesses rely on the H-2B Visa program to hire foreign nationals to fill temporary, seasonal, nonagricultural jobs to supplement their local workforce. The program provides small businesses an opportunity to maintain their operations with a legal workforce when American workers are unavailable. Over the past several years, both the Congress and the courts have invalidated the Department of Labor's intention to grossly increase wage rates in the H-2B program. Can you provide an update on the current emergency H-2B wage rule and what the next steps the Department will take to ensure this program remains an option for small businesses?

Answer. The H-2B non-agricultural program allows employers to hire temporary foreign workers when there is not a sufficient supply of U.S. workers and when U.S. workers similarly employed will not be adversely affected. We appreciate the importance of the H-2B program to small businesses. The Department promulgated an Interim Final Rule to comply with a court order. On March 21, 2013, the U.S. District Court for the Eastern District of Pennsylvania issued a permanent injunction against the operation of one provision of the prevailing wage methodology that Department of Labor (DOL) has employed in the H-2B program since 2008. *Comité de Apoyo a los Trabajadores Agrícolas v. Solis (CATA v. Solis)*,—F.Supp.—, 2013 WL 1163426 (E.D. Pa. 2013). In response to the court's injunction, the Departments of Labor and Homeland Security issued a joint Interim Final Rule on April 24, 2013 to address that regulatory provision.

The public comment period closed on June 10, 2013; more than 330 comments were received. The Departments will thoroughly review and consider all comments received during this period in arriving at a Final Rule.

Question. Will the Department move forward with its comprehensive H-2B rule?

Answer. On April 26, 2012, the U.S. District Court for the Northern District of Florida, Pensacola Division, preliminarily enjoined DOL from implementing the 2012 H-2B comprehensive Final Rule in *Bayou Lawn and Landscape Services v. Solis*. On April 1, 2013, the Eleventh Circuit affirmed the preliminary injunction, upholding the lower court's legal conclusion regarding a lack of authority for DOL to engage in rulemaking in the H-2B program.

This finding is in contrast to the decision issued on August 20, 2012 by the U.S. District for the Eastern District of Pennsylvania in *Louisiana Forestry Ass'n v. Solis*, which rejected plaintiffs' challenge to DOL's authority to issue the 2011 H-2B Wage Rule. That court held that DOL has legislative rulemaking authority with respect to the H-2B program, and specifically with respect to setting H-2B wages, basing its finding on the statutory authority of the Department of Homeland Security to consult with appropriate agencies.

The Bayou injunction prevents the Department from implementing the 2012 H-2B comprehensive Final Rule.

Question. Has the Department analyzed the effects of the recent emergency wage methodology rule on small business?

Answer. On March 21, 2013, the U.S. District Court for the Eastern District of Pennsylvania issued a permanent injunction against the operation of one provision of the prevailing wage methodology that DOL has employed in the H-2B program since 2008. *Comité de Apoyo a los Trabajadores Agrícolas v. Solis (CATA v. Solis)*,—F.Supp.—, 2013 WL 1163426 (E.D. Pa. 2013). In response to the court's injunction, the Departments of Labor and Homeland Security issued a joint Interim Final Rule on April 24, 2013 to address that regulatory provision; the public comment period closed on June 10, 2013.

The Regulatory Flexibility Act (RFA) imposes certain requirements on Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (APA) and that are likely to have a significant economic impact on a substantial number of small entities. Under section 553(b) of the APA, a general notice of proposed rulemaking is not required when an agency, for good cause, finds that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest. The Interim Final Rule is exempt from the requirements of section 553(b) of the APA because the Department of Labor and Homeland Security made a good cause finding, thoroughly discussed in the Interim Final Rule, that a general notice of proposed rulemaking was impracticable and contrary to the public interest. Because the RFA does not apply, the Departments were not required to, and did not, either certify that the rule would not have a significant economic impact on a substantial number of small entities or conduct a regulatory flexibility analysis. However, consistent with RFA, the Departments encouraged the public to submit comments that suggest alternative rules that accomplish the stated purpose of this interim final rule and minimize the impact on small entities. We are still analyzing more than 330 public comments received on these and other issues impacting all businesses as well as workers, and will consider these comments in arriving at a Final Rule.

CONCLUSION OF HEARINGS

Senator HARKIN. And, again, Mr. Secretary, thank you for your appearance here, and thank you for your outstanding stewardship of the Department of Labor. We appreciate it very, very much.

Secretary HARRIS. Thank you. Thank you, Mr. Chairman.

Senator HARKIN. The subcommittee will stand adjourned.

[Whereupon, at 11:43 a.m., Thursday, June 6, the hearings were concluded, and the subcommittee was recessed, to reconvene at the call of the Chair.]