

**U.S. Senate Committee on Health, Education, Labor and Pensions**

**March 22, 2017 Hearing: Nomination of Alex Acosta to serve as Secretary of Labor**

**Questions for the Record Submitted from Senator Elizabeth Warren**

**CONFLICTS OF INTERESTS**

1. Do you believe President Trump should fully divest from The Trump Organization in order to prevent conflicts of interest for you and other federal government agencies?

**ANSWER:** I have no personal knowledge of these issues, which are outside the scope of the Department of Labor's responsibilities. With regard to me personally, if confirmed, I will regularly consult with the Department's ethics counsel to avoid conflicts of interests.

2. Will you commit to enforce wage and hour and occupational health and safety regulations against The Trump Organization if the company violates these laws and harms its employees?

**ANSWER:** As I noted at the hearing, if confirmed, I would enforce the law fully and fairly with respect to all organizations, including the Trump Organization.

3. What is your specific plan for insulating yourself and DOL from conflicts of interest related to DOL actions that may impact the Trump Organization?

**ANSWER:** I worked with the career ethics staff at the Department of Labor and the Office of Government Ethics to ensure any possible conflicts of interest were addressed as part of my ethics clearance. If confirmed, I would continue to work with ethics staff to address conflicts of interest.

4. Will you commit to closing the revolving door and preventing Labor Department employees from personally profiting from their activities at the Department?

- a. Will you prevent Labor Department employees from working on issues that directly impact a previous employer?

**ANSWER:** I am committed to seeing that employees of the Department of Labor fully comply with all ethics laws and regulations, including the restrictions contained in 18 U.S.C. 208 and 5 C.F.R. 2635.502. Non-career employees are also subject to additional restrictions contained in Executive Order 13770 ("Ethics Commitments by Executive Branch Appointees"), which includes a requirement that they sign an ethics pledge.

- b. Will you demand that, prior to appointment, political appointees pledge that they will not work in industries related to or significantly subject to Labor Department regulation for three or more years upon leaving federal service?

**ANSWER:** As discussed above, upon appointment all non-career employees are required to sign the ethics pledge set forth in Executive Order 13770. By signing this pledge, the non-career employee commits to "...not, within 5 years after the termination of my employment as an appointee in any executive agency in which I am appointed to serve, engage in any lobbying activities with respect to that agency." All employees, including non-career appointees, are also subject to the applicable post-employment conflict-of-interest provisions in 18 U.S.C. 207.

5. On January 28, President Trump issued the *Ethics Commitments by Executive Branch Employees* Executive Order, which prohibits executive branch appointees from participating "in any particular matter involving specific parties that is directly and substantially related to [their] former employer or former clients, including regulations and contracts" for "a period of 2 years from the date of my appointment."<sup>1</sup> The beachhead team at the Department of Labor, however, includes individuals who have previously lobbied on issues in DOL's jurisdiction, including the Davis-Bacon Act and the Conflict of Interest Rule.<sup>2</sup>

- a. Will you commit that, if confirmed, you and all of your subordinates at the Department of Labor will follow this "lobbying ban"?

**ANSWER:** I am committed to complying with the quoted provision, and ensuring that my subordinates do as well.

- b. Will you commit to firing anyone on the DOL beachhead team who does not meet the terms of this rule?

**ANSWER:** I am committed to seeing that anyone who is found to have violated the provisions of Executive Order 13770 will be disciplined appropriately in accordance with applicable personnel procedures.

## **POLITICIZATION OF DOJ's CIVIL RIGHTS DIVISION**

6. Do you agree with the DOJ Inspector General in 2008 that, as Assistant Attorney General for Civil Rights, you failed to appropriately supervise your staff?
  - a. If so, to what do you attribute this failure?

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<sup>1</sup> <https://www.whitehouse.gov/the-press-office/2017/01/28/executive-order-ethics-commitments-executive-branch-appointees>

<sup>2</sup> <https://www.propublica.org/article/labor-department-hire-could-presage-collision-trump-construction-unions>;  
<https://projects.propublica.org/graphics/beachhead>

b. What lessons did you learn from this incident?

**ANSWER:** As I indicated at my hearing before the Committee, the conduct described in the OIG's report was wrong and should not have taken place. The OIG concluded that I was not aware of the misconduct. Nonetheless, it occurred on my watch as Assistant Attorney General. I am well aware of what happened, and committed to ensure it is not repeated. Since then, I am a more hands-on manager. I have also learned to better oversee and monitor subordinates while not micromanaging their performance. As U.S. Attorney, I walked around the office often in order to learn what AUSAs were doing. This day-to-day contact was important, and helped me better understand and monitor day-to-day AUSA activity.

7. During your confirmation hearing for your DOJ position, Senator Kennedy asked you about preventing a politicized hiring process. You answered by saying: "I would hope that the hiring process looks for the best qualified individuals... by ensuring that those who are participating in the process, those who do the interviewing understand what the role is and what the role is not. That's something I think should be emphasized to all participants in the hiring process, and certainly if confirmed I would do that."<sup>3</sup>

a. Given your explicit commitment to Senator Kennedy, how did you let the DOJ politicized hiring scandal happen under your watch?

**ANSWER:** As I indicated in my previous answer, the conduct described in the OIG's report was wrong and should not have taken place. The OIG concluded that I was not aware of the misconduct. Nonetheless, it occurred on my watch as Assistant Attorney General. If confirmed, I will make it abundantly clear that such conduct will not be tolerated.

8. If you are confirmed as Secretary, will you commit to preventing politicization of DOL? How will you do so?

**ANSWER:** If confirmed, I will make it abundantly clear that such conduct will not be tolerated. If I learn of inappropriate conduct I will take appropriate disciplinary action, including dismissal.

9. During Mr. Trump's campaign, there were reports that even volunteers were required to sign non-disclosure agreements. And following his election, there were also reports that transition officials were requesting information about career employees who worked on issues such as climate change at the Energy Department or women's issues at the State Department.<sup>4</sup> Any implication that people who worked on advancing policies that the

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<sup>3</sup> United States Senate, Committee on the Judiciary, July 2003. Online at <https://www.gpo.gov/fdsys/pkg/CHRG-108shrg91833/pdf/CHRG-108shrg91833.pdf>

<sup>4</sup> [https://www.washingtonpost.com/news/josh-rogin/wp/2016/12/22/trump-team-asked-state-department-for-info-on-womens-issues-programs-stoking-fears-of-another-witch-hunt/?utm\\_term=.50b42eb8cf86](https://www.washingtonpost.com/news/josh-rogin/wp/2016/12/22/trump-team-asked-state-department-for-info-on-womens-issues-programs-stoking-fears-of-another-witch-hunt/?utm_term=.50b42eb8cf86)

new President disagrees with may be targeted or retaliated against could create a chilling effect on non-political federal employees simply trying to do their jobs.

- a. If you are confirmed, will you commit to protect the rights of all civil servants in the Department of Labor?
- b. Those rights include the right for civil servants to communicate with Congress, and in fact it is against the law to deny or interfere with their right to do so.<sup>5</sup> If you are confirmed, do you commit to protect this fundamental right for government employees?
  - i. How will you do so?

**ANSWER:** Civil servants have many protections under the law and I would follow the law. If I learn of inappropriate conduct I will take appropriate disciplinary action. If confirmed, I commit to protect the rights of all civil servants in the Department.

## **BUDGET**

10. President Trump's preliminary 2018 budget proposal includes a 21% cut to the Department of Labor's budget.
  - a. Will you commit to advocating against large cuts to the Department's budget?
  - b. If so, how specifically will you do so?
  - c. What level of spending on the Department as a whole do you believe is necessary to fulfill its mission?

**ANSWER:** I note that the President proposes a budget but it is ultimately Congress that will determine the funding for the Department. If confirmed, I look forward to participating in that process so that I can understand the goals, performance and resource needs of programs in order to deliver the greatest value to the American people. As I noted at the hearing, I think the principles that need to be used to guide spending are how successful is the program and does the program address particular needs.

11. How do you believe that a 21% cut to the Department of Labor would affect the agency?
  - a. How many career staff do you expect would lose their jobs?

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<sup>5</sup> 5 U.S.C. § 7211

- b. Which programs do you expect would be eliminated or significantly cut?

**ANSWER:** As a nominee, I have not participated in the current budget discussions. The publicly available Labor Department chapter is all the information I have. The labor department chapter details some proposed cuts and eliminations and is available at page 31 here: [www.gov/sites/whitehouse.gov/files/omb/budget/fy2018/2018\\_blueprint.pdf](http://www.gov/sites/whitehouse.gov/files/omb/budget/fy2018/2018_blueprint.pdf). I have insufficient data to answer the question more specifically.

12. President Trump's budget proposes completely eliminating the Senior Community Service Employment Program, which helps low-income seniors seeking employment.<sup>6</sup>

- a. Do you believe that eliminating or significantly reducing funding to the Senior Community Service Employment Program would be a wise decision?
- b. If so, why?
- c. If not, will you commit to aggressively advocating for funding for the Senior Community Service Employment Program?

**ANSWER:** As a nominee, I have not participated in the current budget discussions. If confirmed, I look forward to participating in that process, so that I can understand the goals, performance and resource needs of programs such as this one in order to deliver the greatest value to the American people. I do believe older Americans encounter difficulty finding jobs and that quality programs for this community are important.

13. President Trump's budget proposes significant cuts to Job Corps, a DOL program that helps disadvantaged youth enter the workforce.<sup>7</sup>

- a. Do you believe that making large cuts to Job Corps would be a wise decision?
- b. If so, why?
- c. If not, will you commit to aggressively advocating for Job Corps funding?

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<sup>6</sup> [https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/budget/fy2018/2018\\_blueprint.pdf](https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/budget/fy2018/2018_blueprint.pdf);  
[https://www.washingtonpost.com/business/economy/labor-dept-cuts-target-job-training-programs-for-seniors-disadvantaged-youths/2017/03/15/4aba0966-0999-11e7-93dc-00f9bdd74ed1\\_story.html](https://www.washingtonpost.com/business/economy/labor-dept-cuts-target-job-training-programs-for-seniors-disadvantaged-youths/2017/03/15/4aba0966-0999-11e7-93dc-00f9bdd74ed1_story.html)

<sup>7</sup> Id.

**ANSWER:** If confirmed, I expect to be briefed on the Job Corps program and the performance of each of the more than 100 Job Corps centers. I look forward to learning more about the centers in each state. I expect our focus will be on helping Job Corps centers best provide to students the services and training central to their core mission. If I conclude that a center is the best way to train a particular population, I will advocate to fund it.

14. President Trump's budget proposes significant cuts to the Office of Disability Employment Policy, which helps people with disabilities succeed in the workplace.<sup>8</sup>

- a. Do you believe that making large cuts to the Office of Disability Employment Policy would be a wise decision?
- b. If so, why?
- c. If not, will you commit to aggressively advocating for funding for the Office of Disability Employment Policy?

**ANSWER:** I certainly support increasing the labor force participation rate of disabled individuals and helping them lead successful and self-sustaining lives. The President, however, proposes the budget and it is ultimately Congress that determines the budget.

15. Do you support President Trump's proposed elimination of the OSHA-funded small grant programs that provide workers in dangerous jobs with life-saving information such as how to protect themselves from chemical hazards, prevent falls, and guard themselves against dangerous machines?

- a. If so, why?
- b. If not, will you commit to aggressively advocating for funding for these programs?

**ANSWER:** As a nominee, I have not participated in the current budget discussions. That said, if confirmed I look forward to being briefed on all aspects of the Department's budget and will work to ensure that workers are protected while the taxpayers' dollars are spent in the most effective ways possible. If, after review, I believe this program offers the most efficient use of funds to encourage safety then I will advocate for it.

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<sup>8</sup> Id.

## VOTER SUPPRESSION AND DISCRIMINATION

16. When you were the head of the DOJ's Civil Rights Division the Texas State Legislature proposed a redistricting plan that the U.S. Supreme Court found "failed to protect minority rights," you recused yourself with no explanation. Your deputy overruled several career attorneys and analysts and allowed the redistricting plan to proceed.
- a. To your knowledge, why did your office overrule DOJ career appointees' recommendations with regard to the Texas voting rights cases?
  - b. Why did you recuse yourself from that case?

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

17. Will you commit to respect the policy findings and conclusions of DOL experts and career staff?

**ANSWER:** If confirmed, I will certainly need the advice of career staff to ensure I am fully informed about issues. I respect their expertise. Policy decisions are ultimately for the leadership of the Department.

18. In 2004, while you were the head of the DOJ's Civil Rights Division, you defended an Ohio voter challenge law that disproportionately disenfranchised African-American voters. Despite there being no formal intervention in the case by your office, you submitted a letter-brief to the judge arguing in favor of the voter challenge law, just four days before the 2004 presidential election.
- a. Why did you submit a letter-brief in that case?
  - b. In how many other voting rights cases in which DOJ did not formally intervene nor submit an amicus brief did you submit a letter-brief?

**ANSWER:** The Department of Justice has a long history of submitting its views of statutes committed to its enforcement. The Department of Justice is charged with enforcing both the Help America Vote Act of 2002 ("HAVA") and the Voting Rights Act ("VRA"). At the time, HAVA was a relatively new statute. Because of this, there was

value in bringing to Judge Dlott's attention key aspects of HAVA, i.e., that state and local election officials must permit any individual whose name does not appear on the official registration list or whose eligibility to vote is called into question to cast a provision ballot even if they are unable to answer specific questions posed by election judges; that provisional ballots are part of a congressionally-established balance between ballot access and ballot integrity; and that as a result, non-discriminatory challenge statutes are not prohibited on their face (although they can be prohibited as applied). Provisional ballots would mitigate the impact of the Ohio "challenge statute" at issue in that case, which otherwise may have resulted in the disqualification of some voters without any recourse to confirm their eligibility and to restore their vote. The letter alerting Judge Dlott to HAVA's requirements was consistent with the Civil Rights Division's many other efforts to raise awareness of and to enforce HAVA in several states during 2004, and although I recall full amici briefs, I do not recall other less-impactful letter briefs. Importantly, the Department did not speak to the specific allegations raised by the plaintiffs in that suit, but limited its comments only to the statutes on their face.

19. What key challenges do you see in enforcing labor laws that protect workers' civil rights? Which areas of enforcement will you prioritize?

**ANSWER:** The Department shares responsibilities for labor and civil rights enforcement with a number of other agencies. If confirmed, I would consult with career staff to identify the areas of greatest need and direct available resources to address those areas, but I would also want to make sure that the Department was coordinating with the other agencies that share the same responsibility.

At the Department of Labor, I would work with the agencies involved in civil rights to ensure that their efforts have the greatest benefit for those who are discriminated against, serve as a deterrent by example for those who accidentally or purposely discriminate, and increase overall compliance.

20. What metrics will you use to determine whether DOL is fulfilling its role in protecting workers' rights and stamping out discrimination?

**ANSWER:** I believe results matter and need to be quantified, but it can be hard to measure reductions in discrimination. For example, one high impact case can reduce discrimination more than several lower impact matters. As a prosecutor, I used government resources carefully to bring the best cases possible and get the best resolutions for the largest number of victims. I also brought smaller individual cases. I will follow that model at the Department if confirmed.

21. What key challenges do you see in enforcing labor laws that protect workers against discrimination? Which areas of enforcement will you prioritize?



**ANSWER:** If confirmed, I would consult with career staff to identify the areas of greatest need and direct available resources to address those areas, and I would also want to make sure that the Department was coordinating with the other agencies that share the same responsibility.

22. Which workers do you believe are at greatest risk of discrimination? What specific actions will you take to protect them?

**ANSWER:** If confirmed, I would consult with career staff to identify the areas of greatest need and direct available resources to address those areas, and I would also want to make sure that the Department was coordinating with the other agencies that share the same responsibility for discrimination prevention. I note that there may very well be different issues dependent on wage rates, industries, and regions of the country.

### **ENFORCEMENT AND REGULATION OF WAGE AND HOUR LAWS**

23. Will you commit to continuing enforcement of DOL wage and hour and workplace safety standards?

**ANSWER:** Yes.

24. What metrics will you use to assess the effectiveness of your enforcement efforts?

**ANSWER:** Each enforcement agency may have different metrics because of the nature of their responsibilities and legal authorities. Increased compliance with the law is a great metric to consider but can be hard to measure. For example, one high impact case can reduce violations more than several lower impact matters. As a prosecutor, I used government resources carefully to bring the best cases possible and get the best resolutions for the largest number of victims. I also brought smaller individual cases. I will follow that model at the Department if confirmed,

25. If President Trump's 20.7% proposed budget cut is enacted, it will be virtually impossible to maintain the level of enforcement the previous administration obtained. How will you prioritize enforcement activities and investigations in the Wage and Hour Division if this budget is enacted?

**ANSWER:** As budgets are reduced, high impact cases become more important as they tend to offer more impact per dollar. It is important, however, to bring smaller individualized cases as well.

26. President Trump has expressed criticism of the DOL Overtime Rule. Will you commit to defending the Rule, which would extend overtime protections for millions of American

workers, in court, starting by appealing the injunction that is currently in place preventing implementation of this rule?

- a. If not, what are your specific plans for updating regulations so that only bona fide executives, rather than low-income workers, are exempt from overtime protections, as the FLSA requires?

**ANSWER:** As I noted at my hearing, I am sensitive to the fact that the overtime rule has not been updated since 2004. If confirmed, this is an issue I will look at very closely and commit to examining the rule and the legal basis of the judge's decision.

27. I am concerned about DOL's duty to ensure that all employers are held accountable for abuses of their employees-including large corporations that try to shirk responsibility through franchises, over whose policies and balance sheets they maintain significant control. Will you hold parent companies responsible for violations of the minimum wage or overtime laws of the workers in their franchises where the parent company is legally culpable?

**ANSWER:** This answer would be dependent on a specific set of facts. If confirmed, I will work to enforce the laws under the Department of Labor's jurisdiction fully and fairly.

28. What are your specific plans to protect the rights of workers of franchised companies?

**ANSWER:** If confirmed, I look forward to receiving input from the Department of Labor staff and Congress to improve the working conditions and opportunities for all Americans.

29. Workers' ability to collect back wages is a crucial part of the enforcement of Wage and Hour Laws. Yet recent reports indicate that some workers are turning down back pay because they fear deportation in light of President Trump's anti-immigrant policy and rhetoric.<sup>9</sup>

- a. If confirmed, will you commit to investigating this phenomenon to determine whether workers are declining back pay because they fear deportation?
- b. If you find that this is taking place, what is your plan for ensuring that all workers who experience wage theft are able to access back wages, regardless of immigration status?

**ANSWER:** The Department of Labor's Wage and Hour Division enforces the Fair Labor Standards Act, and other laws in its purview, without regard to immigration status. If confirmed, I look forward to being briefed by DOL staff and learning more about these

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<sup>9</sup> <https://www.bna.com/workers-turn-down-n57982084889/>

concerns and I will work to enforce the laws under the Department of Labor's jurisdiction fully and fairly, including wage and hour laws, to protect all workers' rights.

30. What will you do to improve the implementation and enforcement of federal labor law and ensure that all American workers can work in a safe and healthy environment, achieve financial security, and retire in old age?

**ANSWER:** As I noted at the hearing, if confirmed, I will enforce the law fully and fairly. I also look forward to working with Congress to further improve safety, security, and retirement of workers.

31. Some employers misclassify their employees as independent contractors in order to avoid wage and hour laws and other basic worker protections, paying taxes, and fair competition with other employers. In what specific ways should the Department of Labor improve its efforts to (a) identify misclassified workers and (b) conduct enforcement actions against employers that misclassify them?

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

### **WELLS FARGO, RESTAURANT ASSOCIATES, AND OTHER ONGOING INVESTIGATIONS**

32. Will you continue all ongoing investigations at the Wage and Hour Division of DOL to ensure that workers will not suffer setbacks in their effort to recover lost wages as a result of the change in leadership?

**ANSWER:** As a nominee, I do not have specific knowledge of investigations in which the Department of Labor is engaged. As a general matter, I will enforce the law fully and fairly, and I expect investigations to go forward.

33. Will you continue with debarment proceedings of Restaurant Associates to ensure that the workers who feed federal workers and Senate employees aren't cheated out of their wages and to ensure that federal taxpayer dollars are being used responsibly?

**ANSWER:** As a nominee, I do not have specific knowledge of this matter. As a general matter, I will enforce the law fully and fairly, and I expect ongoing enforcement to go forward.

34. Will you continue with any other ongoing debarment proceedings?

**ANSWER:** As a nominee, I do not have specific knowledge of other ongoing debarment proceedings. As a general matter, I will enforce the law fully and fairly, and I expect ongoing enforcement to go forward.

35. Will you promise to continue the Department's ongoing investigation of wage and hour violations at Wells Fargo?

**ANSWER:** As a nominee, I do not have specific knowledge of this matter. As a general matter, I will enforce the law fully and fairly, and I expect investigations to go forward.

### **IMPLEMENTING DOL'S CONFLICT OF INTEREST RULE**

36. The memorandum President Trump issued on February 3 requires you to conduct a new economic and legal analysis of the Conflict of Interest Rule, and, depending on the results of this analysis, publish a new rule or rescind the rule. DOL has already asked for public comment on this analysis. Additionally, DOL has closed the comment period on a proposed 60-day delay of the April 10 applicability date of the rule.

- a. Did the President or anyone in the White House, on the transition team, or at DOL consult you about the contents of his memorandum? If so, please list the names of all parties you consulted with and send any correspondence on this topic.
- b. If you are confirmed before the 60-day delay of the fiduciary rule is finalized, will you stop the delay?
- c. Do you think the costs to investors of the delay are justified? If so, please explain who you have calculated the benefits of the delay and please identify the parties that would benefit from the delay under your analysis.

- d. Do you agree with President Trump's decision to call for additional analysis of the Conflict of Interest Rule?
- e. What information will you review as part of this assessment?
- f. Will you commit to only reviewing information that is independent and is not funded or otherwise compromised by financial industry players with a vested interest in the findings?
- g. Please identify all political staff at DOL that will conduct the analysis.
- h. Do you have any reason to believe that the findings of the new analysis will be any different from the detailed, multi-year analysis of the costs and benefits of the rule that was already conducted by DOL before the proposed rule was issued or in the extensive Regulatory Impact Analysis that was issued at the time the rule was finalized? If so, why?
- i. The memorandum asks you to consider litigation costs and possible disruptions to the financial services sector in your economic and legal analysis, Will you also consider the full benefits of the rule for retirees and consumers in addition to any potential costs for the financial industry? Will you consider the costs to financial advisers who have already invested in complying with the rule?
- j. The DOL finalized the Conflict of Interest Rule after a long process of extensive public comment periods, meetings with stakeholders, and days of public hearings. Will you commit to following the same process before finalizing any new change of the Rule, in order to allow the public to comment on the DOL's new analysis?
- k. Big banks that make huge sums of money from selling high-fee, high-commission products to investors have made it very clear in Washington that they do not support the Conflict of Interest Rule, to the point of drowning out the voices of thousands of Americans who have lost a large portion of their retirement savings because of bad advice from someone who with conflicted interests. Before you make any final decisions on the Rule, will you commit to soliciting input from the victims of bad retirement investment advice?
- l. Will you refrain from taking any additional action to delay or limit the rule until your analysis is complete?
- m. Will you commit to informing Congress on an ongoing basis of the status of this analysis?

**ANSWER:** (a), (g): As a nominee, I did not participate in discussions regarding the Presidential Memorandum and do not know who will handle the analysis at the Department of Labor.

(b)-(f), (h)-(l): As I noted at the hearing, the Presidential Memorandum addresses with specificity the fiduciary rule and details the Department of Labor's obligations to review the rule. If confirmed, I will conduct the review in accordance with the Presidential Memorandum. Under the Administrative Procedure Act, all stakeholders may comment and their views must be considered by the Department. As Chairman Alexander noted, as a nominee it would be presumptuous to make any further regulatory determinations at this time. With that said, it is important that the retirement savings of working Americans be protected. I support empowering Americans to make their own financial decisions, to facilitate their ability to save for retirement and build the individual wealth necessary to afford typical lifetime expenses, such as buying a home and paying for college, and to withstand unexpected financial emergencies.

(m) If confirmed, I look forward to working with Congress as we develop the Department's regulatory policies and priorities to safeguard retirement security.

37. On February 14, I sent a letter to the White House and DOL asking about reported involvement by a Financial Services Roundtable lobbyist in the development and drafting of President Trump's memorandum. I have not heard back from either the White House or DOL.<sup>10</sup>

- a. Will you commit to responding the questions I asked in that letter about the potential involvement by a Wall Street lobbyist from a leading advocacy organization for the financial services industry?

**ANSWER:** I have not received a copy of your letter, and without knowing the contents of the letter it would be inappropriate for me to make specific commitments.

38. My office has issued two reports on kickbacks like lavish vacations, tropical cruises, and other prizes that are offered as incentives to salespersons in the annuities industry.<sup>11</sup> Do you believe that these incentives could encourage a salesperson to recommend a product that is not in the best interest of the customer?

**ANSWER:** It is important that the retirement savings of working Americans be protected, and certainly there are individuals that may put their personal interests ahead of their clients in many industries where that is potentially unethical and illegal.

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<sup>10</sup> Elizabeth. "Warren Questions White House, Labor, Financial Services Roundtable on Report that Wall Street Lobbyist Reviewed Drafts of Trump Executive Orders and Memorandums." Online at: [https://www.warren.senate.gov/?p=press\\_release&id=1451](https://www.warren.senate.gov/?p=press_release&id=1451)

<sup>11</sup> Elizabeth Warren. "Villas, Castles, and Vacations: How Perks and Giveaways Create Conflicts of Interest in the Annuity Industry." Online at: [http://www.warren.senate.gov/files/documents/2015-10-27\\_Senator\\_Warren\\_Report\\_on\\_Annuity\\_Industry.pdf](http://www.warren.senate.gov/files/documents/2015-10-27_Senator_Warren_Report_on_Annuity_Industry.pdf)

39. If a family member or personal friend were to ask you about how to pick a financial adviser, would you recommend that he or she pick an adviser with a fiduciary duty to their client, or not?

**ANSWER:** If asked, I would recommend to my friend someone who I knew and trusted. I would also advise that in my experience the best advisors in professional fields are transparent about their fees and products, including as to compensation structure.

40. In your confirmation hearing, you refused to offer your personal views on or commit to implementing the Conflict of Interest Rule. You said that, if confirmed as Secretary of Labor, you would work for the President, which is troubling in light of President Trump's anti-worker statement and policies.

- a. Will you commit to expressing disagreement with President Trump if and when his rhetoric or policy proposals, including Executive Orders, conflict with the DOL's mission to promote the welfare of wage earners, job seekers, and retirees?
- b. To the extent they conflict, will you commit to relying on the expertise of the DOL career staff rather than the political interests of the White House in making decisions about the Conflict of Interest Rule and other policies on which hundreds of millions of workers and retirees are relying?
- c. Will you commit to following the Administrative Procedure Act, which governs the rulemaking process, in all rulemakings you participate in if confirmed?
  - i. Will you do so even if the President asks you to do otherwise?

**ANSWER:** All Cabinet officers work for the President. That does not mean, however, that one cannot express disagreement on particular matters. As I stated, if confirmed, I will advocate for the mission of DOL. This includes disagreement regarding priorities or implementation. Once a decision by the President is made, however, I have an obligation to implement it or to resign. I certainly respect the expertise of staff. At all times, I will follow the law as I understand it. No one, including the President of the United States, is above the law, including the APA.

### **PROTECTING WORKERS FROM DISCRIMINATION**

41. On June 14, 2016, the Office of Federal Contract Compliance Programs (OFCCP) at DOL issued a final rule, Discrimination on the Basis of Sex, which updated OFCCP's sex discrimination regulations to explicitly include "the protections against compensation discrimination; sexually hostile work environments; discrimination based on pregnancy, childbirth or related medical conditions; and discrimination based on unlawful sex stereotypes, gender identity, and transgender status."<sup>12</sup>

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<sup>12</sup> United States Department of Labor, "U.S. Labor Department Announces Updated Sex Discrimination Regulations for Federal Contractors" (June 14, 2016) (online at <https://www.dol.gov/newsroom/releases/ofccp/ofccp20160614>).

- a. Would you commit to fully enforcing this rule, should you be confirmed as Labor Secretary?
- b. Please describe the specific steps you would take to improve enforcement of this rule, and the specific metrics you will use to measure the effectiveness of the rule and its enforcement by DOL.

**ANSWER:** The President, through an executive action, has directed all Cabinet secretaries to review all rules within each Cabinet agency. If confirmed, this responsibility will fall to me, including for this rule. With that said, I strongly support equal employment opportunity and, if confirmed, I will apply the law fully and fairly to prevent sex discrimination in areas under authority of the Secretary of Labor.

42. DOL's Civil Rights Center "oversees EEO in programs and activities receiving federal financial assistance" from DOL. The Office of Federal Contract Compliance Programs, meanwhile, oversees EEO programs among "employers holding federal contracts and subcontracts."<sup>13</sup>

- a. Will you ensure that DOL's Civil Rights Center is fully funded, so that Americans are protected from discrimination on the basis of race, religion, sex, national origin, disability, or genetic information?
  - i. If confirmed, will you commit to continuing the Civil Rights Center's work?
  - ii. What metrics will you use to evaluate its success or failure?
- b. Will you ensure that DOL's Office of Federal Contract Compliance Programs is fully funded, so that employees of federal contractors are protected from discrimination on the basis of race, religion, sex, national origin, disability, or genetic information?
  - i. If confirmed, will you commit to continuing the Office of Federal Contract Compliance Programs' work?
  - ii. What metrics will you use to evaluate its success or failure?

**ANSWER:** As a nominee, I have not participated in the current budget discussions. I note that the President proposes a budget but it is ultimately Congress that will determine the funding for the Department's agencies. Although the level of budget reductions have

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<sup>13</sup> U.S. Department of Labor, "Equal Employment Opportunity" (online at <https://www.dol.gov/general/topic/discrimination>).



not yet been approved by Congress, some reduction is likely. I cannot commit to insulate any one program from some reduction. Each enforcement agency may have different metrics because of the nature of their responsibilities and legal authorities. I am aware that each federal agency has developed comprehensive metrics and reports on them regularly. If confirmed, I will consult with staff and review the performance metrics DOL enforcement agencies have been using to see if there might need to be changes and then evaluate the agencies accordingly. The missions of both of these offices are important and I would work to ensure they can perform their responsibilities.

### FEDERAL CONTRACTORS

43. Now that Congressional Republicans and President Trump have rescinded the Fair Pay and Safe Workplaces Executive Order, what authorities does DOL have to ensure that contracting agencies have access to and can consider prior labor violations in procurement decisions (as federal law and acquisition regulation requires)?<sup>14</sup> Will you implement these authorities?

**ANSWER:** I understand that government agencies have suspension and debarment authorities and that the Department of Labor has existing capacity in the context of some of its statutes, including the service contract act. For example, I am informed that for certain contracts, the contracting officer at a federal agency would be required to check if the potential contractor had received a recent review by OFCCP before awarding a contract. I am committed to providing agencies this data so they can make an informed decision.

44. The Establishing Paid Sick Leave for Federal Contractors Executive Order (Executive Order 13706) requires federal contractors to offer covered employees up to 7 days of paid sick leave each year, giving sick leave to around 1.15 million workers.<sup>15</sup>
- a. Would you advise President Trump to retain this Executive Order?
  - b. Will you commit to enforcing this Executive Order?

**ANSWER:** The decision as to whether to maintain, amend or rescind Executive Orders belongs to the President. As I noted in my hearing, if confirmed, I would enforce the law

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<sup>14</sup> 41 U.S.C. §6706; 41 U.S.C. §6504; 41 U.S.C. §3144; Manuel, K. "Responsibility Determinations Under the Federal Acquisition Regulation: Legal Standards and Procedures." Congressional Research Service (January 4, 2013). Online at: <https://fas.org/sgp/crs/misc/R40633.pdf>.

<sup>15</sup> "Final Rule: Executive Order 13706, Establishing a Paid Sick Leave for Federal Contractors." *Wage and Hour Division, United States Department of Labor*. Online at: <https://www.dol.gov/whd/govcontracts/eo13706/>;

fully and fairly, including executive orders that apply to the Labor Department or give the Department additional enforcement responsibilities.

45. The Establishing a Minimum Wage for Contractors Executive Order (Executive Order 13658) gives 200,000 workers raises by setting the minimum wage for federal contractors at \$10.10, with modest cost-of-living increases going forward.<sup>16</sup>

c. Would you advise President Trump to retain this executive order?

d. Will you commit to enforcing this executive order?

**ANSWER:** I believe that the vast majority of federal contractors pay this wage irrespective of the Executive Order. The decision as to whether to maintain, amend or rescind Executive Orders belongs to the President. As I noted in my hearing, if confirmed, I would enforce the law fully and fairly, including executive orders that apply to the Labor Department or give the Department additional enforcement responsibilities.

46. The Sex Discrimination Regulations Executive Order (Executive Order 11246) prohibits discrimination on the basis of pregnancy and childbirth, gender identity, and sexual orientation, and updated guidelines on fair pay and sexual harassment for contractors.<sup>17</sup>

e. Would you advise President Trump to retain this executive order?

f. Will you commit to enforcing this executive order?

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

47. In addition to the Executive Orders described above, what are your specific plans to address the widespread labor law violations by contractors of the federal government? If confirmed as Labor Secretary, what will you do to ensure that taxpayer dollars are spent more responsibly?

**ANSWER:** I understand that government agencies have general suspension and debarment authorities and that the Department of Labor uses a similar authority in the context of some of its statutes, including the service contract act. If confirmed, I would

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<sup>16</sup> “Fact Sheet: Final Rule to Implement Executive Order 13658, Establishing a Minimum Wage for Contractors.” *Wage and Hour Division, United States Department of Labor*. Online at: <https://www.dol.gov/whd/flsa/eo13658/fr-factsheet.htm>.

<sup>17</sup> “OFCCP’s Sex Discrimination Final Rule, Fact Sheet.” *United States Department of Labor*. Online at: [https://www.dol.gov/ofccp/SexDiscrimination/SexDiscrimFinalRuleFactSheet\\_JRFQA508c.pdf](https://www.dol.gov/ofccp/SexDiscrimination/SexDiscrimFinalRuleFactSheet_JRFQA508c.pdf);

need to discuss this issue with DOL staff to better understand your concerns and what additional authorities DOL may have in this area.

## **WORKPLACE HEALTH AND SAFETY**

48. Will you commit to pursue all penalties allowed by law for employers who put their workers in harm's way?
- a. Will you commit to pursuing criminal penalties, including jail time, for employers who willfully violate OSHA and cause the death of an employee?

**ANSWER:** If confirmed, I look forward to discussing this and many other issues with the Department's OSHA staff, to help ensure the safety of all workers. I support the use of all of OSHA's penalties. If criminal penalties are warranted in a given situation they will be pursued. When the evidence demonstrates a willful violation of a specific OSHA standard that causes the death of an employee, an employer may be liable for criminal sanctions. In such cases, if confirmed, I will direct OSHA to continue to refer potential criminal matters for consideration by Department of Justice (DOJ) pursuant to established procedures, including the recently executed Memorandum of Understanding between OSHA and DOJ in 2015.

49. Will you commit to ensuring that OSHA is fully funded so that it can continue its inspection and enforcement efforts?

**ANSWER:** As a nominee, I have not participated in the current budget discussions. I note that the President proposes a budget but it is ultimately Congress that will determine the funding for the Department's agencies. Although the level of budget reductions have not yet been approved by Congress, some reduction is likely. I cannot commit to insulate any one program from some reduction. Each enforcement agency may have different metrics because of the nature of their responsibilities and legal authorities. I am aware that each federal agency has developed comprehensive metrics and reports on them regularly. If confirmed, I will consult with staff and review the performance metrics DOL enforcement agencies have been using to see if there might need to be changes and then evaluate the agencies accordingly.

50. Even when OSHA is fully funded, it can't inspect every workplace every year. What types of inspections will be the highest priority to the agency, and what industries will you prioritize for inspections?

**ANSWER:** If confirmed, I look forward to discussing this and many other issues with the Department's OSHA staff and working with them to make certain that the appropriate

prioritizations for inspections are in place to help ensure the safety of all workers. As specified in the OSH Act, OSHA operates a balanced program of enforcement, compliance assistance, training, outreach and voluntary collaborative programs to maximize its effectiveness. OSHA cannot inspect all 8 million workplaces it covers, and as such prioritizations are required. The industries with the highest hazards will receive top priority.

51. In June, OSHA's new Silica Rule, which will save hundreds of lives by protecting the 2.3 million workers exposed to silica in their workplaces from diseases like silicosis and lung cancer, went into effect.<sup>18</sup>

- a. In your hearing, you would not commit to enforcing the silica rule because the President's January 20<sup>th</sup> Memorandum asks agency heads to delay rules that are not yet in effect by 60 days. But the silica rule is already in effect. Will you commit to ensuring that the upcoming compliance dates for industry are implemented as currently set forth in the final rule?
- b. Will you commit to enforcing this rule and inspecting workplaces to ensure that this rule is being properly implemented?
- c. Will you defend the rule against any ongoing legal challenges in the courts?

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

52. Will you enforce the beryllium rule if you are confirmed?

- a. Will you commit to adhere to the currently scheduled compliance dates and not delay of the effective date of this life-saving rule any further?

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

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<sup>18</sup> "OSHA's Final Rule to Protect Workers from Exposure to Respirable Crystalline Silica." Occupational Safety and Health Administration. *United States Department of Labor*. Online at: [https://www.osha.gov/silica/factsheets/OSHA\\_FS-3683\\_Silica\\_Overview.html](https://www.osha.gov/silica/factsheets/OSHA_FS-3683_Silica_Overview.html).

53. On February 22, just hours after your nomination hearing, the Senate repealed OSHA’s “Volks Rule” using a resolution of disapproval under the Congressional Review Act. The rule clarifies OSHA’s authority to hold employers accountable for their continuing obligation to maintain accurate injury and illness records for five years. As a result, underreporting of workplace injuries and illnesses will skyrocket and the odds that a worker is injured on the job will increase.

- a. How will the Department of Labor enforce OSHA’s recordkeeping requirements in the absence of this important rule?
- b. How will you ensure that the DOL’s statistics on workplace injury rates remain accurate, considering that employers will not be required to maintain accurate records after six months?

**ANSWER:** I believe the Occupational Safety and Health Act still requires employers to maintain records for five years and that the DC Circuit overturned an attempt to apply a continuing violation previously given the Act’s six month statute of limitations. If confirmed, however, I look forward to discussing these and many other issues with the Department’s OSHA staff to make certain that employers comply with the law regarding the recording of injuries and illnesses in the workplace in order to ensure that all workers are protected.

### **FAIR SCHEDULING LEGISLATION**

54. As Secretary of Labor, what specific steps would you take to improve the working conditions of low-wage workers in the food service, retail, and cleaning sectors?

**ANSWER:** If confirmed, I look forward to receiving input from DOL staff and Congress to improve the working conditions and opportunities for all Americans, and particularly those in low-wage sectors.

55. Will you support the passage of the Schedules that Work Act, which would help workers address unstable and unpredictable schedules?<sup>19</sup>

- a. If not, what are your plans for introducing fairness into work schedules so that workers are able to arrange for childcare, juggle a second job, or go back to school?

**ANSWER:** I would need to thoroughly review that legislation before I committed to supporting it. As I mentioned in the hearing in the context of the gig economy,

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<sup>19</sup> [https://www.warren.senate.gov/?p=press\\_release&id=896](https://www.warren.senate.gov/?p=press_release&id=896)

promoting workplace flexibility is something I support, particularly for working parents with young children.

## **WORKFORCE DEVELOPMENT**

56. Will you commit to fully implementing the Workforce Innovation and Opportunity Act (WIOA)?

**ANSWER:** As you know, WIOA was enacted in 2014 and many implementing regulations have been promulgated. If confirmed as Secretary of Labor, I also will work to maximize the impact of every federal taxpayer dollar directed to job training programs and employment service formula grants while discussing shared responsibility for these grants by States, localities and employers. I do support and commit to fully implementing the Workforce Innovation and Opportunity Act.

57. Will you commit to aggressively advocating for any and all funding that is needed to implement WIOA?

**ANSWER:** As a nominee, I have not participated in the current budget discussions. If confirmed, I look forward to participating in that process, so that I can understand the goals, performance and resource needs of programs such as this one in order to deliver the greatest value to the American people. Further, I believe that job training can offer substantial positive returns on tax payer dollars and do commit to aggressively advocate for it.

58. In light of the importance of summer jobs programs for disadvantaged youth, will you commit to expanding the summer jobs program for youth so that every young person who could benefit from a summer job will have access to one?

**ANSWER:** If confirmed, I look forward to being briefed on the Department's activities and programs related to providing summer jobs for disadvantaged youth.

59. Important Workforce Innovation and Opportunity Act (WIOA) programs are designed to connect people with disabilities to employment opportunities. How will your administration ensure that state and local workforce plans and boards use these programs and related funding streams to improve employment outcomes for people with disabilities?

**ANSWER:** If confirmed, I expect to be briefed on WIOA and all related programs and implementing regulations, so that I can understand the goals, performance and resource needs of programs such as this one. Taxpayer dollars are scarce and it is important that

we ensure that state and local workforce plans and boards use these programs and related funding streams to improve employment outcomes for people with disabilities. I believe metrics should be used to measure outcomes success.

60. What will you do as Secretary to encourage self-employment and entrepreneurship among Americans with disabilities?
- a. Will you support the Office of Disability Employment Policy's START-UP program, which provides technical assistance and training to states to promote entrepreneurship among Americans with disabilities?

**ANSWER:** I would need to review any particular program before I committed to supporting it, but I certainly favor increasing the labor force participation rate of disabled individuals and helping them lead successful and self-sustaining lives.

### **LABOR STATISTICS**

61. Do you have doubts about the non-partisan objectivity of the Bureau of Labor Statistics?
- a. If so, what evidence do you have to support those doubts?
  - b. If not, do you believe it is appropriate for the President to attack the credibility and objectivity of an independent government agency like the BLS?

**ANSWER:** As I noted at the hearing, the Bureau of Labor Statistics has kept statistics for decades. And it has a transparent procedure that makes clear how they calculate statistics. And I think that procedure is very important because BLS keeps data that is used not just for today but for the future. BLS provides several measures of unemployment. There is, however, legitimate disagreement as to which particular BLS measurement for the unemployment rate tells the true story of the economy.

62. If confirmed, will you commit to defending the independence of the Bureau of Labor Statistics?

**ANSWER:** Yes. As I noted at the hearing, the Bureau of Labor Statistics has kept statistics for decades. And it has a transparent procedure that makes clear how they calculate things. And I think that procedure is very important because BLS keeps data that is used not just for today but for the future.

63. What steps will you take to ensure that the BLS's professional staff continue to collect and report employment and related data free from any political interference?

**ANSWER:** BLS must be viewed as a reliable collector of data. If confirmed, I will insist that BLS continue its tradition of being insulated from political interference.

64. If confirmed, will you commit to aggressively advocating for full funding of the Bureau of Labor Statistics?

**ANSWER:** As a nominee, I have not participated in the current budget discussions. I note that the President proposes a budget but it is ultimately Congress that will determine the funding for the Department's agencies. Although the level of budget reductions have not yet been approved by Congress, some reduction is likely. I cannot commit to insulate any one program from some reduction. That said, as I mentioned at the hearing, I certainly understand the value of BLS and support its mission.

65. The Department of Labor announced last year that it would conduct a survey on contingent and alternative employment as part of the May 2017 Current Population Survey, after collecting no such data since 2005, with the intention of continuing the CPS supplement on alternative work arrangements every two years going forward.<sup>20</sup>

- a. Will you advocate for continued funding to conduct the contingent worker supplement to the CPS?
- b. Will you commit to conducting the supplement at regular intervals in the future and to communicating the results of that survey to Congress and the public?
- c. What steps will you take to ensure that DOL regulation, compliance, and enforcement policy adapts to the results of this survey and the changing nature of the workplace and safety net in the United States?

**ANSWER:** I would need to review any particular program before I committed to supporting it. That said, as I mentioned at the hearing, I certainly understand the value of BLS data and the "gig" economy is something that the Department of Labor needs to address. Data from such a BLS survey may be helpful, and I would support its collection. One reason for this is that the data will assist DOL in adapting to the changing nature of the workplace.

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<sup>20</sup> <https://blog.dol.gov/2016/03/05/measuring-gig-work>