

**DEPARTMENTS OF LABOR, HEALTH AND  
HUMAN SERVICES, AND EDUCATION, AND  
RELATED AGENCIES APPROPRIATIONS FOR  
FISCAL YEAR 2004**

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**WEDNESDAY, APRIL 9, 2003**

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

The subcommittee met at 9:35 a.m., in room SD-138, Dirksen Senate Office Building, Hon. Arlen Specter (chairman) presiding.  
Present: Senators Specter, Byrd, Harkin, and Murray.

DEPARTMENT OF LABOR

OFFICE OF THE SECRETARY

**STATEMENT OF HON. ELAINE L. CHAO, SECRETARY OF LABOR**

OPENING STATEMENT OF SENATOR ARLEN SPECTER

Senator SPECTER. Ladies and gentlemen, the Appropriations Subcommittee on Labor, Health and Human Services, and Education will now proceed. This morning, we have the distinguished Secretary of Labor.

Secretary Elaine Chao was sworn in on January 31, 2001, the 24th Secretary of Labor. She had been president and CEO of the United Way Foundation, served as director of the Peace Corps and Deputy Secretary for the Department of Transportation under President George H. W. Bush, distinguished fellow at the Heritage Foundation, MBA from Harvard Business School and an undergraduate degree from Mount Holyoke. She has also studied at MIT, Dartmouth, and Columbia University. She is a veritable Ivy League participant.

Madam Secretary, we welcome you this morning. We are examining your budget and the activities of your Department, and it is always a difficult matter to allocate funding, but the subcommittee is concerned that the discretionary budget request for fiscal year 2004 is more than \$368 million under the current budget, and we realize that budgets are established by the Office of Management and Budget of the administration, but we express concern about decreases and elimination of programs. The dislocated worker assistance program is down by more than \$78 million, and that's a very difficult area. Just yesterday at a hearing of the Steel Caucus we heard the concerns of dislocated workers who were being impacted

by the acquisition of Bethlehem Steel by the International Steel Group.

We note the elimination of a program on reintegration of youthful offenders, which in my view is a very important program, trying to take youthful offenders out of the crime cycle, something I worked with for many years as District Attorney of Philadelphia, and have on the Judiciary Committee, and the elimination of the program of youth opportunity grants, cuts in mine safety and health, a tough issue. We had an enormous problem in my State, Somerset County, with a mine disaster last summer. This subcommittee held hearings there, and cuts in that program are troubling. Cuts in the OSHA training grants and the job training pilot program and international labor affairs are all matters of concern to the subcommittee.

With those opening comments, Madam Secretary, we are pleased to have a chance to discuss these issues with you in an ongoing relationship, and we now look forward to your testimony. The floor is yours.

#### SUMMARY STATEMENT OF HON. ELAINE L. CHAO

Secretary CHAO. Thank you, Mr. Chairman. I hope you will not let the Ivy League background be held against me.

Senator SPECTER. I would consider it very much in your favor, having some association myself.

Although the days I spent at the University of Oklahoma, which has been very non-Ivy League compared to the fancy Yale Law School or the fancy University of Pennsylvania, I think non-Ivys have a lot to recommend them, too, but so do we Ivys, Madam Secretary.

Secretary CHAO. Mr. Chairman, thank you for the opportunity to present the Department of Labor's fiscal 2004 budget. The focus of this budget can be summarized in two words, employment and enforcement. The fiscal year 2004 budget and the President's Economic Growth Package reflects this administration's commitment to helping Americans find good jobs and to ensuring that our workers remain skilled, safe, and fairly compensated.

The total request for the Department in fiscal year 2004 is \$56.2 billion in budget authority and 17,503 FTE, of which \$11.5 billion is the discretionary portion.

The Department is proposing several changes to the Workforce Investment Act which we believe will improve accountability, eliminate duplication, enhance the role of employers in training and placement, and increase State flexibility. We request \$2.6 billion for youth employment and training programs to help young people make a successful transition to the world of work, family, and responsibility.

The proposal includes \$1 billion for a reformed youth grants program. Twenty percent of these funds will be set aside for challenge grants to cities and rural areas experiencing unique youth development needs. \$3.1 billion is requested for adult employment and training programs. As part of WIA reauthorization, we propose to consolidate adult dislocated worker State grants together with employment services. This will give States the flexibility to target re-

sources where they're needed most, eliminate duplication, and serve more participants than ever before.

In addition, we request \$47 million to increase marketplace demand for people with disabilities as part of the President's New Freedom Initiative. Some of these funds will be used to test a new pilot disability employment survey by BLS and the Office of Disability Employment Policies. This administration is also strongly committed to meeting the employment needs of our veterans. We requested \$220 million and 250 FTE to maximize employment opportunity for veterans and to protect their employment rights when they return.

These are just a few highlights of the Department's proposed employment and job training initiatives, which are described in much greater detail in my written statement.

#### WORKER PROTECTION

Enforcement of the worker protection laws is both an obligation and a priority of this Department. During our tenure, wage and hour enforcement has achieved new records. Last year, we recovered \$126 million of pension assets for beneficiaries, and occupational injury and illnesses rates have reached historic lows, but as we all have said, more can be done.

Among our requests is included an increase in certain civil money penalties for MSHA and Wage and Hour, \$5.3 million for OSHA's expanded outreach and assistance program, including specific funding for outreach to non-English-speaking employers and employees, strengthening MSHA's enforcement, education, and compliance assistance programs for small mines, an additional \$12.3 million and 69 FTE to enhance enforcement in the Employee Benefits Security Administration, and \$2.5 million and 20 FTE to strengthen the Inspector General's request for labor and racketeering initiatives.

The cornerstone of worker safety is OSHA and the Mine Safety and Health Administration. Consistent with their goals, OSHA and MSHA will continue to focus on the most serious hazards and dangerous workplaces. Requests for the Department's other enforcement agencies are detailed in my written statement.

The Department's 2004 budget, of course, also includes initiatives for implementing the President's Management Reform Agenda and, as I mentioned at the beginning of my statement, I believe that the President's fiscal year 2004 budget request for the Department reflects the administration's strong commitment to helping Americans find jobs and to strengthening enforcement of our employment laws.

And with that, thank you very much for inviting me to be here today, Mr. Chairman, and I will be glad to answer any questions. [The statement follows:]

#### PREPARED STATEMENT OF HON. ELAINE L. CHAO

Mr. Chairman, and distinguished Members of the Subcommittee, thank you for the opportunity to appear before you today to present the Department of Labor's fiscal year 2004 Budget.

The Department of Labor (DOL) continues to heed the call of President George W. Bush that "Government should be results-oriented—guided not by process but guided by performance." The Department's fiscal year 2004 budget was developed

with just such a focus—and the outcome is the Department’s first-ever integrated performance budget.

With the ongoing war against terrorism and the related conflict in Iraq, every department of the government must continue to take a hard look at all of its programs. We must provide more funding for those programs that work; reform and revitalize those that can be improved; and cut or eliminate those that have not proven effective, are duplicative of other programs, or are not currently a great national priority. The Department’s budget was developed with this outlook in mind.

The total request for the Department in fiscal year 2004 is \$56.2 billion in budget authority and 17,503 full-time equivalents (FTE). The request for the Department’s discretionary programs is \$11.5 billion.

The Department’s fiscal year 2004 budget was developed around four critical themes designed to make a difference in the lives of America’s working families: *Helping Americans Find Jobs*; *Protecting Americans’ Employee Benefits*; *Protecting America’s Workers*; and *Bringing DOL into the 21st Century*.

#### *Helping Americans Find Jobs*

In 2003, the Administration will use the opportunity presented by the expiration of the Workforce Investment Act (WIA) to make significant improvements in Federal job training and employment programs. These reforms will improve accountability; eliminate duplication through program consolidation; enhance the role of employers in the national workforce system; and increase state flexibility.

This theme will be further accomplished through Personal Reemployment Accounts (PRAs) for job seekers who are at risk of exhausting their Unemployment Insurance benefits. The President’s economic growth plan, released January 7, 2003, includes \$3.6 billion for this new tool, which states will have considerable flexibility to design. The accounts will provide up to \$3,000 to job seekers to allow them to purchase the training, re-employment, or supportive services needed to get back to work.

The fiscal year 2004 budget and the President’s Economic Growth package reflect the Administration’s commitment to assisting American workers find and keep work—and will accomplish the Department’s first focus of helping Americans Find Jobs. Through funding for job training, a new initiative to help unemployed workers, and reform of existing programs, the Administration is improving opportunities for American workers. The 2004 budget proposes a major overhaul of the administrative structure of the Unemployment Insurance (UI) system, which is an unwieldy relic that badly needs an overhaul. This proposal would make the UI system more responsive to the needs of workers and employers by giving states flexibility and control.

#### PROTECTING AMERICANS’ EMPLOYEE BENEFITS

Effective last month, the Department changed the name of its Pension and Welfare Benefits Administration to Employee Benefits Security Administration, or EBSA. This was done to better reflect the agency’s mission and direction. Though newly named, EBSA continues to lead the way in protecting workers’ health and retirement security.

As I will touch on later, this budget includes resources to enhance employee benefits and retirement security. With these additional resources, EBSA expects to dispose of 19 percent more civil and criminal cases compared with fiscal year 2003 and restore, protect, or recover \$69 million more in pension plan assets. This proposal to increase the EBSA budget—at a time when other national priorities such as the war on terrorism and homeland security are so compelling—is a reflection of the Administration’s commitment to protecting workers’ and retirees’ benefits.

In fiscal year 2004, the Department’s Office of Inspector General will continue its role in bolstering DOL’s efforts related to this theme through initiatives aimed at achieving the OIG strategic goal of safeguarding and improving worker and retiree benefit programs.

#### PROTECTING AMERICA’S WORKERS

While occupational injury and illness rates have reached historic lows, more can and must be done. In fiscal year 2004, DOL will continue to balance enforcement and compliance assistance activities through the ongoing efforts of its Occupational Safety and Health Administration (OSHA); Mine Safety and Health Administration (MSHA); the Employment Standards Administration’s Wage-Hour Division, Office of Federal Contract Compliance Programs (OFCCP), and Office of Labor Management Standards (OLMS); and the Office of Inspector General (OIG). Initiatives include:

- Strengthening existing enforcement by proposing increases for certain Civil Monetary Penalties under MSHA and Wage and Hour;
- \$5.2 million and 3 FTE to expand and improve OSHA's outreach and assistance, including efforts to reach non-English-speaking and contingent workers, provide small business assistance, and increase the number of Voluntary Partnership Programs;
- Strengthening MSHA's enforcement and creating a new Small Mine Office to provide information and assistance to small mining operations; and
- Related efforts include the OIG's Labor Racketeering Initiative, to which \$2.5 million and 20 FTE will be applied in fiscal year 2004 to address union corruption.

#### BRINGING DOL INTO THE 21ST CENTURY

The final theme of the Department's fiscal year 2004 budget will be accomplished by several initiatives related to the DOL's ongoing implementation of the President's Management Agenda. These include a \$20 million, first-year investment in a new department-wide accounting system for the Office of Chief Financial Officer, which will update and improve Departmental financial management. \$48.6 million is also requested in fiscal year 2004 for the Department's successful Information Technology Initiative, which will, in part, consolidate all DOL agency requests in support of the President's Management Agenda component Expanded E-Government. For fiscal year 2004, \$23.5 million is also requested for the Department's Management Initiative to centrally manage DOL's efforts on implementing the other four government-wide initiatives on the President's Management Agenda.

Further, in fiscal year 2004, DOL intends to resubmit two legislative proposals to restore the solvency of the Black Lung Trust Fund and improve and update the Federal Employees' Compensation Act (FECA). Because it integrates administrative and worker benefit costs and provides an incentive to improve workplace safety, the fiscal year 2004 Budget also re-proposes the FECA Surcharge.

The Department will also continue to advocate viable options to reform its Unemployment Insurance program and will support legislation allowing employers to offer employees the option of taking paid time off in lieu of receiving overtime pay.

#### EMPLOYMENT AND TRAINING PROGRAMS

Overall, the fiscal year 2004 discretionary request for the Department's Employment and Training Administration is \$9.2 billion in discretionary funds and 1,360 FTE. The fiscal year 2004 budget request for Employment and Training Programs is \$6.389 billion in new budget authority.

These resources will be combined with the estimated 2004 spending of \$2.0 billion on Personal Reemployment Accounts included in the President's Economic Growth Package.

##### *Youth*

A total of \$2.6 billion is requested in fiscal year 2004 for employment and training programs for Youth. This investment will help young people make a successful transition to the world of work and family responsibility. This proposal reforms the youth program through reauthorization of WIA. The reformed Youth Grants program will be funded at \$1.0 billion, the same level at which Youth Activities is funded in fiscal year 2003. Twenty-five percent of the Youth funds will be used to provide Challenge Grants to promote collaborative and innovative approaches to preparing youth for success in the labor market.

##### *Adults*

A total of \$3.1 billion is requested in fiscal year 2004 for employment and training programs for Adults. The proposal reflects a new program to be authorized by an amended WIA that will consolidate the former Adult and Dislocated Worker Employment and Training Activities, together with the Employment Service.

The new consolidated adult program will include formula grants and a National Reserve, and will give States the ability to target resources where needed, facilitate coordination, and eliminate duplication in the provision of services to adults. With this request, we expect to be able to serve more participants than ever before.

##### *Other Employment and Training Programs*

The fiscal year 2004 budget includes \$742 million for Other Employment and Training Programs. This includes \$101.0 million, approximately the same as fiscal year 2003 levels, for new methods of providing workforce and related information through One Stop Career Centers using America's Labor Market Information System (ALMIS). In fiscal year 2004, a \$500,000 initiative is included for the Wage

Record Interchange System (WRIS), in order to help States better track performance. Efforts to improve access to One Stop information and services include enhanced technology for serving individuals including those with disabilities.

In fiscal year 2004, an increase of \$49.4 million will be provided as the first of a two-year investment to eliminate the 300,000 case backlog in the permanent Foreign Labor Certification program. In addition, funding will be provided in the Program Administration account to provide the Federal support necessary to address the backlog. To effectively address the situation, the backlog elimination will begin in fiscal year 2003 as DOL makes changes to the program that will prevent future backlogs by expediting certification and eliminating the state role in the processing of applications.

In fiscal year 2004, the budget includes \$20 million for Work Incentive Grants, the same level provided in fiscal year 2003, to enhance the prospects of employment for individuals with disabilities. This effort is undertaken in conjunction with the Department's Office of Disability Employment Policy to increase the participation of individuals with disabilities in DOL programs and services. These grants augment the capacity of the One Stop Career Center system to deliver a full array of effective employment and training services to people with disabilities. Likewise, this effort will ensure that people with disabilities are better prepared to enter, re-enter, and remain in the workforce. In fiscal year 2004, the program will increase by about five percent the number of individuals placed in unsubsidized employment after program exit.

#### *Office of Disability Employment Policy*

The U.S. Department of Labor's Office of Disability Employment Policy's (ODEP's) mission is to provide leadership to increase employment opportunities for adults and youth with disabilities. ODEP is additionally tasked with serving as the lead agency in the Department's implementation of the employment-related goals of President George W. Bush's New Freedom Initiative. ODEP's fiscal year 2004 budget request of \$47.3 and 65 FTE million will be used to increase marketplace demand for people with disabilities and support DOL's strategic goals through implementation of demonstration programs.

A primary area of emphasis will be on developing a reliable statistical measurement to determine the employment rate of people with disabilities because of the critical need for such data to inform policies and programs. In fiscal year 2004, ODEP and Bureau of Labor Statistics will pilot test disability employment rate questions through the Current Population Survey.

#### *Veterans' Employment and Training Service*

The Department's Veterans' Employment and Training Service (VETS) is requesting \$219.9 million and 250 FTE to maximize employment opportunities for veterans, protect their employment rights and meet labor market demands with qualified veterans. VETS meets its primary responsibilities through the funding of state veterans employment and outreach specialists, referred to as Disabled Veterans' Outreach Program (DVOP) and Local Veterans' Employment Representative (LVER) positions.

As our Nation continues its war on terrorism, the activation of thousands of Reservists and National Guard members has made providing technical assistance to them and their employers one of the highest priorities for the Department. The Department, through VETS, administers USERRA—the Uniformed Services Employment and Reemployment Rights Act—a law that protects the jobs of these servicemembers at this critical time in our Nation's history.

The 2004 request funds the Homeless Veterans Reintegration Project at \$19 million, an increase over the 2003 level. This program will provide employment and training assistance to homeless veterans, with expected job placements and retention of approximately 9,000 veterans.

#### WORKER PROTECTION

As we have recently discussed, Mr. Chairman, I remain deeply committed to enforcing the many laws that protect workers' safety and economic security. As demonstrated in the following initiatives, the Department's fiscal year 2004 budget was crafted to only strengthen that commitment.

#### EMPLOYMENT STANDARDS ADMINISTRATION

The Department's Employment Standards Administration (ESA) administers and enforces a variety of laws designed to enhance the welfare and protect the rights of American workers. The budget request to conduct these programs in fiscal year 2004 is \$529.8 million and 4,360 FTE, down \$38.4 million from fiscal year 2003.

This decrease is due largely to reduced funding for the Health and Human Services component of the Energy Employees Occupational Illness Compensation Program.

*Office of Workers' Compensation Programs*

As mentioned earlier, ESA's budget request includes a legislative proposal to finance the operations of the FECA program via a surcharge. Under this proposal, the direct budget authority for FECA program administration (\$87.6 million) would be replaced with offsetting collections to be paid by Federal agencies based on their employees' pro rata share of workers' compensation benefits. Integration of the full cost of FECA benefits and administration in the appropriate agencies will boost Federal agencies' incentives for improving safety in their workplaces.

The Budget includes additional legislative proposals to promote benefit equity and to discourage unnecessary claims in the FECA program. Specifically, the budget proposes to amend FECA to move the waiting period before the continuation-of-pay period, conform the FECA benefits of future beneficiaries over the age of 65 to a benefit level typical to what they would receive under Federal retirement programs, and make a number of other changes to improve and update FECA.

*Wage and Hour Division*

The discretionary funding request for the Wage and Hour Division (WHD) is \$5.4 million and 3 FTE higher than in fiscal year 2003. Wage and Hour will continue to use its multi-pronged approach of compliance assistance, partnerships, and enforcement to further its goals to promote high quality workplaces, a secure workforce, and customer satisfaction. The budget also includes \$0.3 million and 3 FTE for enhancing compliance assistance to small and minority businesses. Wage and Hour's mandatory funding would decrease by an estimated \$7.1 million from fiscal year 2003 due to the expiration of the American Competitiveness in the Twenty-first Century Act on September 30, 2003, and the corresponding reduction in fee revenues from the H-1B visa worker program.

WHD's budget includes a legislative proposal to increase civil penalties for child labor violations that cause the death or serious injury of a young worker. Our proposal would increase the maximum penalty from \$11,000 to \$50,000, for any type of child labor violation that leads to death or serious injury. We also propose to raise to \$100,000 the maximum penalty for willful or repeat violations that lead to death or serious injury of a young worker. This proposal would provide the Department with the tools needed to address the most serious of child labor violations.

*Office of Labor-Management Standards*

The fiscal year 2004 budget request for the ESA's Office of Labor-Management Standards is \$40.6 million and 372 FTE. OLMS enforces provisions of Federal law that require reports from unions and others and establishes certain standards for union democracy and financial integrity. OLMS conducts criminal investigations (primarily union funds embezzlement) and investigative audits of unions; conducts civil investigations (primarily concerning union officer elections); supervises remedial union officer elections, as required; administers statutory reporting requirements; and provides for public disclosure of filed reports.

The fiscal year 2004 budget request includes \$5.3 million and an additional 75 FTE for enhanced outreach assistance activities and enforcement to ensure compliance with the Labor-Management Reporting and Disclosure Act. The budget request maintains resources for electronic filing and Internet public disclosure of the statutorily required reports. The budget also includes a proposal to authorize OLMS to impose Civil Money Penalties on unions, union officers, employers and consultants, and bonding companies that fail to file their required financial reports on a timely basis. The intent is to improve compliance, not penalize inadvertent lapses in filing reports.

*Office of Federal Contract Compliance Programs*

Total funding for OFCCP in fiscal year 2004 will increase by \$2.0 million. OFCCP continues to ensure that federal contractors' hiring, promotion, and pay practices fully comply with federal equal employment opportunity laws. OFCCP targets and effectively remedies systemic discrimination in companies it monitors, extending the level playing field to large numbers of Americans working or seeking employment in thousands of establishments across the nation. OFCCP has recently put in place a case management process that makes key improvements to investigations and information management and continues to work closely with the Office of the Solicitor to bring legal expertise to bear on its investigations.

## OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

The cornerstone of worker safety is the Occupational Safety and Health Administration (OSHA), which promulgates and enforces occupational safety and health standards and provides compliance assistance to employers and employees. OSHA also assists Federal agencies in establishing and maintaining occupational safety and health programs and provides funding for state-administered safety and health consultation programs. To meet its goals of reducing workplace injuries, illnesses, and fatalities, OSHA will focus on the most serious hazards and dangerous workplaces and expand compliance assistance opportunities. The fiscal year 2004 OSHA budget request is \$450.0 million and 2,236 FTE.

*Standards and Guidance*

OSHA's standards and guidance activities provide for the development, promulgation, review and evaluation of occupational safety and health standards and non-regulatory products. In fiscal year 2004, OSHA will continue to base all standards on clear and sensible priorities and review existing rules to revise or eliminate obsolete and confusing standards or provisions. Consistent with the findings of the Administration's Performance Assessment Rating Tool (PART), OSHA will also conduct more rigorous cost-benefit analyses of its proposed standards. The fiscal year 2004 budget provides \$14.5 million and 85 FTE for this activity.

*Federal Enforcement*

OSHA's Federal Enforcement activity increases compliance with workplace standards under the Occupational Safety and Health Act of 1970 through the on-site inspection of work places and by encouraging employers and employees to see safety and health as adding value to their businesses and their lives. OSHA will continue to target inspections based on the worst hazards and the most dangerous workplaces. In fiscal year 2004, the budget request for federal enforcement activity is \$165.3 million and 1,581 FTE.

*Compliance Assistance*

The Agency will assist employers by continuing important programs like the Voluntary Protection Program and the State Consultation Program, which provides free, on-site compliance assistance for small employers. OSHA will also increase its efforts to reach vulnerable populations like non-English-speaking and contingent workers. The total request for compliance assistance activities is \$124.0 million and 356 FTE.

## MINE SAFETY AND HEALTH ADMINISTRATION

The Mine Safety and Health Administration (MSHA) protects the safety and health of the Nation's miners through enforcement of the Federal Mine Safety and Health Act of 1977. The fiscal year 2004 budget request for MSHA is \$266.8 million and 2,334 FTE. MSHA created an additional budget activity for fiscal year 2004, Program Evaluation and Information Resources (PEIR). In the past, PEIR activities (including information technology and support of the Government Performance and Results Act) have been funded by drawing resources from each of MSHA's budget activities. The fiscal year 2004 Budget requests funds for these activities in a separate line (funding for PEIR activities is level with the fiscal year 2003 President's Budget).

*Enforcement: Coal*

The Coal Mine Safety and Health activity is responsible for ensuring the safety and health of the Nation's coal miners through special emphasis programs, compliance and training assistance, and periodic regular inspections and special investigations. The fiscal year 2004 request includes \$113.4 million and 1,086 FTE for this activity, including \$350 thousand for the cyclical replacement of health and safety sampling equipment.

*Enforcement: Metal/Nonmetal*

The fiscal year 2004 Budget includes \$66.4 million and 622 FTE for Metal and Nonmetal Mine Safety and Health activities. These activities promote a healthful working environment in the Nation's metal and nonmetal mines and mills—and MSHA will accomplish this goal through compliance and training assistance, periodic regular inspections, and special investigations.

The request includes a \$2.0 million and 20 FTE increase over the fiscal year 2003 request for health, safety, and compliance assistance to respond to the growth of the metal and nonmetal mining industry. The request also includes an increase of \$200 thousand for the cyclical replacement of health and safety sampling equipment.

*Educational Policy and Development*

The fiscal year 2004 request includes \$2.4 million and 21 FTE for a new Small Mine Office. The Office will help small mining operations by providing compliance assistance, guidance, and training; and reviewing regulations that impose undue burdens on small mines.

## RETIREMENT SECURITY

President George W. Bush and I share the priority of ensuring increased retirement security—and the Department of Labor continues to lead the Nation's efforts in achieving such a goal.

## EMPLOYEE BENEFITS SECURITY ADMINISTRATION

The name change that I mentioned earlier—from the Pension and Welfare Benefits Administration to the Employee Benefits Security Administration—does not alter and only strengthens the agency's mission: to protect the pension, health, and other benefits of participants in private sector employee benefit plans. In fiscal year 2004, the total request for EBSA is \$128.6 million and 930 FTE. This is an increase of \$12.3 million and 69 FTE over fiscal year 2003. The request includes \$8.6 million and 69 FTE for the Department's Enhanced Retirement Security initiative which was designed to bolster compliance assistance and enforcement efforts related to pension and health fund protections.

In accomplishing its mission, EBSA directly affects the livelihood of over 150 million people who participate in Employee Retirement Income Security Act (ERISA)-covered plans, and protects the U.S. economy's single largest source of capital for investment: pension funds. EBSA will employ an integrated approach that encompasses programs for enforcement, compliance assistance, interpretive guidance, legislation, and benefits research to protect employee benefits and retirement security for our Nation's workers and retirees.

*Enforcement and Participant Assistance*

Mr. Chairman, since I appeared before this Subcommittee last year, EBSA has received 185,000 calls for assistance from Americans with questions about their retirement or other benefit plans. Many of those calls led to investigations. It is this activity that conducts criminal and civil investigations, performs reviews to ensure legal compliance, and further ensures compliance with applicable reporting requirements, as well as accounting, auditing, and actuarial standards. During 2002, as a result of EBSA's enforcement action, there were 134 criminal indictments issued, 4,925 civil investigations closed with monetary results of over \$832 million. The 2004 request includes an initiative to enhance retirement security and nationwide enforcement coordination. In fiscal year 2004, the budget request for enforcement and participant assistance is \$106.7 million and 800 FTE.

*Policy and Compliance Assistance*

This activity conducts policy, research, and legislative analyses on pension, health, and other employee benefit issues. Agency staff supporting this activity provide compliance assistance, especially to employers and plan officials, draft regulations and interpretations, and issue individual and class exemptions from regulations. In fiscal year 2004, the budget request for this activity totals \$17.4 million and 108 FTE.

*Executive Leadership Program*

This activity provides leadership, policy direction, strategic planning, and administrative guidance in the management of employee benefits security programs. It provides analytical and administrative support for financial and human capital management and other administrative functions related to coordination and implementation of government-wide management initiatives. This activity also manages the technical program training for enforcement, policy, legislative and regulatory functions. In fiscal year 2004, the budget request for this activity totals \$4.5 million and 22 FTE.

## OFFICE OF INSPECTOR GENERAL

The Department's request for the Office of Inspector General is \$67.1 million and 473 FTE for fiscal year 2004, an increase of \$4.9 million and 20 FTE over fiscal year 2003.

### *Program Activities*

The OIG budget includes resources for audit; program fraud; labor racketeering; special evaluations and inspections of program activities; and executive direction and management. The OIG performs audits of the Department's financial statements, programs, activities, and systems to determine whether information is reliable, controls are in place, resources are safeguarded, funds are expended in a manner consistent with laws and regulations and managed economically and efficiently, and desired program results are achieved.

The OIG also administers an investigative program to detect and deter fraud, waste, and abuse in Departmental programs and to identify and reduce labor racketeering and corruption in employee benefit plans, labor management relations, and internal union affairs.

The fiscal year 2004 request includes \$2.5 million and 20 FTE to conduct a nationwide comprehensive initiative to combat labor racketeering relative to: pension and health care plan corruption and organized crime or corruption affecting industries and union leadership.

### INTERNATIONAL LABOR AFFAIRS

As I referenced before, Mr. Chairman, the Department's budget request was developed with careful consideration of all the realities now facing our country. Development of the Bureau of International Labor Affairs (ILAB) budget was no exception. During the budget process, we had to set priorities to fund from our limited pool—and our Nation's current economic and employment conditions must be included more prominently in this equation. As a result, our fiscal year 2004 request for ILAB is \$12.3 million and 60 FTE. This is a reduction of \$135.0 million and 65 FTE from fiscal year 2003.

The fiscal year 2004 budget request refocuses ILAB on U.S. international policies and programs of greatest concern to American workers. ILAB will continue to coordinate the Department's global responsibilities in 2004 and to provide expert support for many of the Administration's international initiatives, including the promotion of core labor standards. The Bureau will continue to represent the U.S. Government at the International Labor Organization (ILO) and on the Employment, Labor and Social Affairs Committee of the Organization of Economic Development. The Bureau will also continue to fulfill the Department's responsibilities related to our participation in the development of U.S. trade policy and the negotiation of trade agreements.

The Department will continue to play a supportive role for other federal agencies in their efforts to further prevent and eliminate child labor and combating the spread of HIV/AIDS and will help to ensure that those priorities are addressed.

### IMPLEMENTING THE PRESIDENT'S MANAGEMENT AGENDA

Before I close today, Mr. Chairman, I also want to highlight the Department's ongoing efforts to implement the President's Management Agenda—as well as to discuss our recent experiences with the Office of Management and Budget's Program Assessment Rating Tool (PART).

At my fiscal year 2003 appropriations hearing last year, I briefed the Subcommittee on the Department's progress in implementing the President's Management Agenda. As you know, Mr. Chairman, the President's Management Agenda is an aggressive strategy for improving the management of the Federal government with a focus on five government-wide areas: *Strategic Management of Human Capital; Competitive Sourcing; Improved Financial Performance; Expanded E-Government; and Budget and Performance Integration*. Further, DOL is also one of just five Cabinet agencies with Agenda responsibilities related to *Faith-based and Community-based initiatives*.

On a quarterly basis, the Office of Management and Budget has continued to rate the government's progress in implementing the President's Management Agenda on a "stoplight" color grading scale—and DOL continues to lead the way. As of the most recent OMB scorecard of December 31, 2002, DOL received a Yellow baseline rating for Human Capital with a Green progress score. For Competitive Sourcing, DOL received a Red baseline score with a Yellow progress rating. For Financial Management, DOL received a Yellow status score with a Green rating for progress—the exact same scores for E-Government, Budget and Performance Integration, and Faith-based and Community-based Initiatives. With that assessment, DOL continues to lead all Cabinet agencies in Status scores.

As OMB Director Mitchell E. Daniels, Jr., indicated at OMB's mid-session review last summer, "Labor has demonstrated a sustained commitment to implementation of the management agenda and is making good progress. A key component of the

department's success is its Management Review Board, which monitors progress by regularly reviewing department-wide reform implementation."

*Program Assessment Rating Tool (PART)*

Improving programs by focusing on results is an integral component of the President's budget and performance integration initiative. As such, the Administration rated effectiveness with its PART for approximately 20 percent of Federal programs. As part of this process, nine DOL programs were reviewed in calendar year 2002: Bureau of Labor Statistics; OSHA; EBSA (formerly PWBA); Office of Federal Contract Compliance Programs; FECA; Community Service Employment for Older Americans; Dislocated Worker Assistance; Trade Adjustment Assistance; and Youth Activities. Each program was rated on *Purpose, Planning, Management, and Results/Accountability* and the experience provided an invaluable management tool.

Highlights and results of the reviews, along with discussion of reforms we will make to address certain weaknesses identified using the PART, are included in the agency-specific sections of the Department's Congressional Budget Justification. We are already working with OMB on the programs to be reviewed in the next round of PART.

CONCLUSION

Mr. Chairman, this is an overview of what we have planned at the Department of Labor for fiscal year 2004.

I will be happy to answer any questions you may have on the Department's fiscal year 2004 budget request.

Senator SPECTER. Thank you very much, Secretary Chao.

Picking up on the issue of dislocated worker assistance, there are enormous problems in many industries, but using the steel industry as illustrative, as you are well aware, the American steel industry—before I proceed with the questioning, let me turn to Senator Murray for an opening statement.

OPENING STATEMENT OF SENATOR PATTY MURRAY

Senator MURRAY. Thank you very much, Mr. Chairman. Thank you for your statement, Madam Secretary, and I do have questions. Let me just say quickly that last Friday's March unemployment report brought more bad news for working men and women in this country of another 108,000 jobs lost nationwide, and that's on top of the nearly 2.4 million Americans who have lost their jobs since this administration took office. I'm really disappointed that the fiscal year 2004 budget request for the Department of Labor's Employment and Training Administration fails to recognize the workforce needs of this country and continues a pattern of short-changing and denying American workers access to the training and resources that they are increasingly requiring.

PREPARED STATEMENT

We're seeing tremendous suffering across the country in terms of economic hardship and record long-term joblessness, and I think we all know that studies have shown that 75 percent of the American workforce will need to be retrained to merely retain their jobs. In Washington State we have lost 80,000 good-paying jobs since September 11 in our aerospace airline and information technology industries, and there's not much future hope in those industries in the short term, and hopefully it will look better in the long term, but I think we really need to train a skilled workforce, and I am concerned that we are not meeting those needs.

Mr. Chairman, I do have a number of questions, and I appreciate the opportunity for opening remarks.

[The statement follows:]

PREPARED STATEMENT OF SENATOR PATTY MURRAY

Madame Secretary, thank you for your testimony.

Last Friday's March unemployment report brought more bad news for the working men and women of this country.

—Another 108,000 jobs were lost nationwide.

—That's on top of the nearly 2.4 million Americans who have lost their jobs since this Administration took office.

Unfortunately, the fiscal year 2004 budget request for the Department of Labor's Employment and Training Administration (ETA) fails to recognize the workforce needs of this country.

It also continues a pattern of shortchanging and denying American workers access to the training resources they need and that employers increasingly are requiring.

At a time when American workers are suffering continuing economic hardship and record long-term joblessness, the Bush budget proposes a cut of \$678 million for Workforce Investment Act-funded programs.

Recent studies have shown that 75 percent of the American workforce will need to be retrained merely to retain their jobs.

In Washington we have lost 80,000 good-paying jobs since 9/11 in the aerospace, airline and information technology industries, with little prospect for near term rehires.

And while the U.S. economy's demand for a skilled workforce has increased dramatically over the last 20 years, federal funding to meet these needs has decreased by 25 percent.

I am concerned that we are not meeting the needs that exist.

DISLOCATED WORKER ASSISTANCE

Senator SPECTER. Thank you, Senator Murray. Senator Murray's point is in line with the question that I was about to propose, Madam Secretary.

The steel industry is only illustrative of one of the industries which is victimized by foreign subsidies and dumping, and the President personally intervened with the tariffs which were put into effect a little more than a year ago, and in Pennsylvania we are looking at very difficult times with dislocated workers, and it is not just a Pennsylvania problem, it is a national problem.

On our Steel Caucus meeting yesterday we had concerns expressed by Senators from West Virginia and Maryland and Minnesota. Are the funds which will be allocated for dislocated worker assistance sufficient, in your opinion?

Secretary CHAO. Let me make a statement at the outset that the number of people served will not change, and the \$78 million—

Senator SPECTER. How can that be, with the cut of some \$78 million?

Secretary CHAO. Because primarily, the workforce investment system still has approximately \$1.7 billion in overhang. That is a figure that we have talked about in the past, but it seems as if every year there continues to be about \$1.7 billion in overhang. Our commitment to helping dislocated workers cannot be questioned and during these particular times we are, of course, aware and want to help workers who are having a difficult time.

There is a whole array of assistance programs available to dislocated workers, and that includes a one-stop career center, that includes transitional assistance, of which there have been two temporary extensions of unemployment insurance benefits. There is trade adjustment assistance as well, so we believe the current figures, including the overlay, and also what we're trying to do is con-

solidate the three funding streams, dislocated workers, adult programs, and employment services under the Workforce Reinvestment Act through the consolidation of all the different programs, we believe that there will be actually more resources that will be more flexibly applied to where it is needed most, to workers who need it.

#### PENNSYLVANIA TAA FUNDING

Senator SPECTER. Madam Secretary, Pennsylvania has had insufficient funding in that line with the current larger allocation, and I am advised by State officials that Pennsylvania was just allocated another \$10 million in fiscal year 2003 for training, and that those funds may be used both to enroll new trainees and pay for costs stemming from trainees already enrolled. Is that correct?

Secretary CHAO. We can take another look at that, but if I understood the question, apparently Pennsylvania has committed more money for training under this program than was available in both fiscal year 2002 and 2003. We have been working with the State on exploring various options to address this need, but the problem is that, absent specific statutory authority, obviously the funding available in a particular fiscal year could not be used for a prior year obligation, which is what we found.

Senator SPECTER. Well, would you take a look at that and see if there is some way that can be worked out to the satisfaction of the State officials?

Secretary CHAO. We will take another look.

Senator SPECTER. Pennsylvania has seen what has been termed to me a major mismatch between eligible recipients and Federal dollars. Aside from deferring new applications, what is the Labor Department's position as to how to allocate those funds?

Secretary CHAO. I am not totally informed on the specifics of your question, so let me go back and ask about that.

Senator SPECTER. All right. We would appreciate it if you would supplement your testimony here today when you have had a chance to review that.

[The information follows:]

#### PENNSYLVANIA TRADE ADJUSTMENT ASSISTANCE

The Trade Adjustment Assistance (TAA) program provides assistance to workers adversely impacted by trade. Workers certified by the Department of Labor under the TAA program are eligible for an array of services, including income support and job training. Once the Department of Labor certifies workers as eligible for TAA services, states are responsible for enrolling certified workers into reemployment services, which may include job training. Only training, income support, and out-of-area job search and relocation allowances may be funded by TAA; other reemployment services are provided through other WIA One-Stop delivery system partners.

Under the Trade Act of 2002, which amended the TAA program, the total resources available for training nationwide is capped at \$220 million, an increase of \$110 million available annually prior to the amendment. Because this is a "capped entitlement," individuals are entitled to training to the extent that funds are available. DOL distributes these funds to states upon review of information provided by states that includes estimates of the number of individuals who would require training and anticipated costs.

In recent years, the \$110 million cap was reached well before the end of the fiscal year. In an effort both to better manage the limited funds available to serve trade-impacted workers and to better integrate the trade program services with the Workforce Investment Act (WIA) Dislocated Worker program services, DOL's Employment and Training Administration (ETA) issued guidance to states in September

2000 reminding them to coordinate with WIA Dislocated Worker programs to fund training for trade-impacted workers.

In February 2003, officials from the Commonwealth of Pennsylvania met with the Assistant Secretary of Labor for ETA, Emily Stover DeRocco, regarding \$16 million owed by the State to providers for training invoices involving TAA participants that was in excess of the TAA training funds provided to the State for fiscal year 2002. Fiscal year 2003 TAA training funds could not be used since the costs were incurred prior to the fiscal year 2003 funds being appropriated.

Currently, ETA is working with the Commonwealth to address an additional shortfall in trade training funds for fiscal year 2003, which has the potential of impacting services to workers and payment to educational institutions and training providers. The deficit has raised serious concerns regarding the Commonwealth's operation of the TAA program and management of training funds.

ETA senior officials visited the Commonwealth and determined that the shortfall of funds in both years was caused by state employees approving and contracting for training for eligible workers without regard to the TAA training funds made available by ETA. State officials justified this because of what they believed to be the entitlement nature of the program. They indicated that, up until this recent problem, they did not concern themselves whether funding was available at the time of state obligation, as long as it was available when the bills had to be paid. The result was unpaid fiscal year 2002 bills and fiscal year 2003 training commitments that are not backed by Federal funds.

A letter was sent to the state requesting they review the \$16 million in invoices from last year to identify how much was for training that began after July 1, 2002 that could be financed from currently available National Emergency Grant (NEG) monies and they determine the amount committed to workers for training begun or scheduled to begin after October 1, 2002 that is not presently covered by Federal TAA funding.

Also, subsequent to these findings, while awaiting the results of the Commonwealth's review, an additional \$11.5 million in TAA funds for fiscal year 2003 were provided to cover the cost of new and future obligations incurred. State officials elected to use these monies to reduce the fiscal year 2003 shortfall and allow participants already in the program to continue their training.

The state did undertake a review of records as requested and responded on April 28th. They indicated that:

- \$14.6 million in fiscal year 2002 training invoices has been paid for from non-Federal funds or are unpaid. The Commonwealth submitted a request for National Emergency Grant funds to cover these costs.
- There is an estimated shortfall this year of \$16.2 million in fiscal year 2003 obligations for training already approved by the Commonwealth. Total obligations are \$37.9 million compared with the Federal awards of \$21.7 million for TAA training.
- The Commonwealth estimates that an additional \$14.1 million needed to cover the costs of services for TAA applications currently pending.

Pennsylvania has been encouraged to use other available resources, including unexpended formula funds provided under WIA, to meet the needs of trade-impacted workers. The WIA funds that may be used to assist these workers are provided through dislocated worker and adult funding streams, and include funds reserved by the state for statewide activities and funds allocated to local workforce investment areas pursuant to substate funding formulas.

In addition, we are currently reviewing Pennsylvania's application for National Emergency Grant funds under WIA to satisfy fiscal year 2002 needs occurring after July 2002. We are also considering the \$16.2 million and the \$14.1 million current year's requirements along with needs identified by other states. As you know, sufficient funds will not be available this year to satisfy demand. A final decision on the amount that will be made available to Pennsylvania is pending analysis of the needs of all states.

Senator SPECTER. With 14 seconds left I am going to not pose another question which I couldn't get out in that length of time, and yield at this point to Senator Murray.

#### UI EXTENSION FOR AIRLINE WORKERS

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

Madam Secretary, let me start with the issue of the unemployment insurance benefits for airline workers. I was really dis-

appointed yesterday to see the President's opposition to a temporary extension of unemployment insurance benefits to our unemployed airline industry workers who have lost their jobs.

I was very heartened to see that 67 Republicans in the House joined all of the House Democrats to instruct the appropriations conference to help our workers, but if you can just tell us today, as Secretary of Labor, do you agree with the administration that we should provide billions of dollars in Federal aid to our industries without doing anything to support our workers who have played by the rules and have lost their jobs?

Secretary CHAO. The Department's total outlay last year, mandatory plus discretionary, was about \$71 billion. The majority of that was for unemployment insurance. Included in that was \$12 billion for our workforce investment system, which basically helps people train for new jobs. So, in essence, 97 percent of the Department of Labor's \$71 billion budget is divided among unemployment insurance, transitional assistance, and training needs of workers, dislocated workers—

Senator MURRAY. Well, you understand that many of our airline workers have skills that are not transferable. They're Boeing machinists, they're airline workers who have very specific skills and training. We all, I think, expect the airline industry to get back on track hopefully in the near future rather than in the later future, but just saying, well, you get unemployment for a short amount of time and then we expect you to retrain for another industry, both leaves our airline industry in the future short of workers, but it also sets a very high expectation that somehow we're going to retrain thousands of people for jobs that don't exist.

The unemployment extension merely helps these people through a difficult time in our Nation's economy through tragic circumstances that have occurred in the airline industry beyond anybody's control.

Secretary CHAO. I agree with that. I didn't finish my answer. We do have also national emergency grants, of which I've given out, I believe, about \$150 million to help specifically airline workers in this industry. We've had two extensions of unemployment insurance and right now potentially a worker can get up to 65 weeks of benefits.

We do have serious concerns about singling out one group of workers, and from an administrative point of view of how does that work—

Senator MURRAY. Well, let me go right to that. In fact, Mitch Daniels said in his letter, and I quote, to provide benefits for a specific industry would be unusual, unfair, and potentially harmful to our national unemployment system. Well, Madam Secretary, is it the administration's position that trade adjustment assistance, which does provide benefits to specific industries, is also unusual and unfair?

Secretary CHAO. Trade adjustment assistance was certainly expanded in the last TPA discussions.

Senator MURRAY. But it is a program that provides to specific industries, correct?

Secretary CHAO. It is for people who have been harmed by trade.

Senator MURRAY. To specific industries. So under the standard that an unemployment extension for airline industries is, and I quote: “unfair and potentially harmful because it provides benefits for a specific industry, and by the same standard, trade adjustment assistance would be”——

Secretary CHAO. Well, that’s law by now, so I don’t know whether it makes any sense to rehash that.

#### MIGRANT AND SEASONAL FARM WORKERS

Senator MURRAY. Okay. Well, let me ask a different question.

It appears that the Department no longer believes that a national program for migrant and seasonal farm workers is needed. How are we going to avoid burdening our Governors and local one-stops with the responsibility of trying to serve workers who may work and reside in their States for brief periods during this time of huge and growing State deficits?

Secretary CHAO. The original intent of this program for migrant workers was to help them train for new skills so that they can get out of this low-paying and very difficult work. As it has turned out, based on experience, we have found that this program was used much more for income support.

If indeed these resources are to be used to supplement income and to be used as income support, there are other programs which this can be melded into.

Senator MURRAY. Such as?

Secretary CHAO. Well, I think they should be linked into the workforce investment system overall, and other available programs.

Senator MURRAY. There isn’t enough money in the workforce system now. If we say to all seasonal workers and migrant workers, we’re now expecting you to be taken care of under that program, too, we are adding a huge burden to that.

Secretary CHAO. Well, the workforce investment system right now is underutilized, first of all, and second, the migrant workers, segregating them into a specific area will not be helpful to fully integrating them into local communities.

#### GAO REPORT REGARDING WIA SPENDING

Senator MURRAY. Well, let me go back to that, because I’m confused. You keep arguing that employment and training services can be accomplished without impacting service delivery because of carryover funds in the WIA formula programs, but the GAO conducted an investigation and found the administration’s argument inaccurate, and it said, and I quote: “our analysis of Labor’s data shows that States are rapidly spending their funds.”

In fact, nationwide, States have spent 90 percent within 2 years, even though the law allows 3 years to spend the money, and, in fact, my State was to have spent 98 percent of their formula funding in 2001, so I don’t understand how we keep hearing you say that. I mean, I have the GAO report here.

Secretary CHAO. May I answer that?

Senator MURRAY. Yes.

Senator SPECTER. She’s correct, you may answer, even though the red light is on.

Secretary CHAO. We obviously disagree with the GAO report. I think we all need to take a look at the balances outstanding, and clearly, in every single State there are positive balances. This balance is not only for 1 year but, in fact, it's for every year. So there is a disagreement about whether to use obligations versus expenditures, and there is a disagreement as to how much the overlay means, but when it continues year after year, I think that needs to be looked at.

But let me also say the total level of funding remains the same in our proposal. Primarily, we are consolidating these various different programmatic streams, because it's very confusing for the recipient, to have to go to all these different programs. What we want to do through Workforce Investment Act reauthorization, which we discussed before, is to make the program simpler, give the States more flexibility so that there is more leeway with which to allocate resources to these various different groups of people who need assistance.

Senator MURRAY. Mr. Chairman, my time is up, but I would like permission to submit my other questions for the record.

Senator SPECTER. By all means, Senator Murray, they will be submitted.

The ladies and gentlemen who are standing in the rear can find seats here along the side, or if you're intending a career in journalism you can sit at that table.

If you plan to be Senate staffers you can sit in the chairs behind the podium. If you plan to be Senators, you may sit in the chairs at the dias here.

Now I turn to my distinguished ranking member, Senator Tom Harkin, Democrat of Iowa.

Senator HARKIN. Thank you very much, Mr. Chairman. Sorry I'm a little late.

Senator SPECTER. It looks like the journalists have it, Tom. That table is filled.

Senator HARKIN. A wise choice.

#### INTERNATIONAL CHILD LABOR

Madam Secretary, I hope your staff has given you all the stuff. I'm sure they know what I'm going to talk about.

Secretary CHAO. I hope so, too.

Senator HARKIN. Child labor. Child labor, child labor—

Secretary CHAO. Thank you.

Senator HARKIN [continuing]. Child labor. Let me repeat for you what you said to me last year, if I can get my proper page out here, in a hearing, since you zeroed out all these things in the budget. You said—this is your words. So please be assured that we are not differing at all in terms of the goal. This is on the international program for the elimination of child labor, ILAB. We want to work with you on this. The issue is how best to do so and how we can work, and how ILAB can absorb all this money in such a short period of time, but the commitment, I assure you, is absolutely there. We look forward to working with you on that. Well, I will work with you on it.

Well, here we are. Your budget justification touts the fact that ILAB child labor programs targeted more than 103,000 at-risk chil-

dren in fiscal year 2002, exceeded its goal of targeting 90,000 children. Your own document, I quote, says: "13 countries established a total of 15 new action plans, demonstrating concrete commitments at the highest levels of local and national Government to eliminate child labor." Well, that's pretty good news. That's good news.

Well, now your budget eliminates all funding aimed at preventing exploitive child labor. The U.S. contribution to IPEC is zeroed out. The money to provide bilateral assistance to other countries, to promote access to basic education for child labor, a critically important part of this, is zeroed out. Now, tell me about your absolute commitment.

Secretary CHAO. Well, this request doesn't mean that the Department will play no role in supporting international efforts to prevent and also eliminate, child labor. Rather, we hope to use the inter-agency process to make sure the Government agencies active in international affairs address these priorities on an ongoing basis.

Ongoing ILAB projects will also not come to an abrupt halt. There is still funding remaining for 2-year moneys appropriated in fiscal year 2003. I think the overall goal is that our technical assistance projects will continue to operate as ILAB transitions into a more policy-oriented role rather than a grant-making one.

Senator HARKIN. Well, I'm not certain I know what all that means. I don't know what that means, Secretary Chao. To me, that's gobbledygook written by somebody back there in your Department, but it's some kind of a gobbledygook justification for zeroing this out. I mean, I'm looking at the figures. This says something to me. Total ILAB, \$12.2 million. Do you know what we enacted last year?

Secretary CHAO. \$147 million.

Senator HARKIN. \$148 million. Senator Specter and I and others on a bipartisan basis enacted that, and you're telling me with \$12 million you're going to continue the program, and that it's a total commitment.

Now, I don't know. I mean, I take you at your word, but I don't know. I don't know if this is OMB, or where this is coming from, but somebody's got their priorities terribly wrong, whoever came up with this. I mean, your own Department has shown that this is working. It's doing great stuff around the world.

I mean, you know, I realize—I look around and I see all what we are doing now, and our military is strong, and we're very powerful, but I've got to tell you, this means more to people in third world countries than anything else we're doing, getting those kids out of those jobs, getting them a basic education, and when it has the imprint of the United States on it, that means something, and it's happening in countries that we're going to have some problems with in the next few years, and for \$148 million it seems to me that that's a mere pittance of what we're spending in other areas.

Well, Madam Secretary, I'm just really disappointed. I'm just really disappointed in this, and I hope that we can come up with the money. It's a tight year, and obviously we have to take our cues—I know the burden the chairman labors under. I've had that position myself. I know what it's like to labor under a position where the budget comes out, and the administration, especially if

it's one of your own party, isn't supporting something like this. It's very tough.

But I hope that you'll take back to OMB and to the White House that they're making a terrible mistake here, a terrible mistake. It just paints the United States once again as uninterested in helping kids around the world break the bonds of child labor.

Oh, yeah, we'll say nice things about it. Oh yeah, we're opposed to child labor, we don't like that, but when it comes to putting the money out and doing things that have proven effective by your own Department's standards, and then we cut it back, I think it paints a very bad picture of the United States in many, many parts of the world, and it's dooming a lot of kids to continue that cycle, that generational cycle of poverty, no education, so they're condemned to living a life of menial work, and then their kids, the same thing.

Well, I've said enough. I don't need to say any more, but I'm really disappointed in this.

Thank you.

#### MINE SAFETY AND HEALTH

Senator SPECTER. Thank you, Senator Harkin.

Madam Secretary, turning to the issue of mine safety, last October 21 this subcommittee held a hearing in Johnstown on the mine disaster at Quecreek, and in this year's budget we have \$10 million allocated for digitizing mine maps. There was a problem with mine maps. The 2004 budget proposes an overall increase of 35 staff, but coal mine inspectors will not be increased.

Would you take a look at that and respond to the subcommittee in writing as to your best efforts to try to increase coal mine inspectors within the allocated funds, and would you also include a specification as to how you're going to use the \$10 million for mine mapping activities, and when you propose to start on that? Since we were so late in getting a budget to you, you understandably wouldn't be in a position to tell us what you've done in the short interval, but if you would respond in writing—

Secretary CHAO. I will do so.

Senator SPECTER [continuing]. The subcommittee would appreciate that.

Secretary CHAO. Are you interested in getting some of the answers now, or would you like me to submit it in writing?

Senator SPECTER. What was that?

Secretary CHAO. Would you like some of the answers now, or would you like me to submit it in writing?

Senator SPECTER. I would like it in writing—

Secretary CHAO. Okay.

Senator SPECTER [continuing]. Because there are so many other priority subjects to be covered.

[The information follows:]

#### PROPOSED PLAN OF THE MINE SAFETY AND HEALTH ADMINISTRATION DISTRIBUTING FISCAL YEAR 2003 APPROPRIATIONS OF \$10 MILLION FOR DIGITIZING MINE MAPS AND DEVELOPING TECHNOLOGY TO DETECT MINE VOIDS

As defined in the House/Senate Conference agreement, \$10,000,000 was appropriated to MSHA "for digitizing mine maps and developing technologies to detect mine voids, through contracts, grants, or other arrangements, to remain available until expended." Due to the across-the-board budget rescission of .0065, the \$10 mil-

lion is decreased by \$65,000 to \$9.935 million. The purpose of this undertaking is to mitigate potential hazards to miners resulting from water and gas inundations when mining in close proximity to abandoned mines.

MSHA proposes a 3-year disbursement plan to allocate the funds in accordance with congressional intent. The funds will be allocated in two areas. The first area will be for use by state mining agencies for "Digitizing Mine Maps." The second area will be funding "Applied Technology Demonstration Projects." These projects will demonstrate the viability of new or existing mining technology to identify abandoned mines (voids) and the extent of their workings.

MSHA proposes allocating 40 percent of the funds to mine mapping and 60 percent to void detection. MSHA will disburse to the states \$2,000,000 the first year and \$1,000,000 each of the following years for mine mapping. MSHA will disburse funds for Applied Technology Demonstration Projects on a periodic payment schedule over the life of the project.

*Digitization of Mine Maps.*—It is estimated there are approximately 150,000 abandoned mines in Kentucky, 15,000 in Pennsylvania, 6,000 in Virginia, and 100,000 in West Virginia. In February 2003, MSHA held a meeting with representatives of various Federal agencies with responsibility for mine maps. Representatives from the Department of Interior's United States Geologic Survey (USGS), Bureau of Land Management (BLM) and Office of Surface Mining (OSM) attended. MSHA found that OSM provides funding to the states for hardware and software purchases for digital mine mapping efforts. OSM is currently surveying the states to determine the number of abandoned mines, the extent of state map digitizing efforts, and details of the current status of that state's work. When MSHA receives the OSM survey results, the Agency will be able to identify states' needs and develop the specific criteria to be used to distribute the funds. MSHA and OSM have discussed the possible transfer of funds to OSM through an Interagency Agreement. OSM could distribute the funds along with funds they are already providing the states. As an alternative, MSHA may enter into contracts directly with the states.

Once all known maps are digitized, detailed information on abandoned mines will be available prior to mining. This will reduce the likelihood of mining into abandoned mines.

*Applied Technology Demonstration Projects.*—MSHA is aware of technologies that exist which show potential for detecting in-seam voids (detection of abandoned mines). We expect companies that specialize in some of these technologies to submit proposals for demonstration projects. Also, experts at universities and contractors for government agencies such as DOE and DOD may submit proposals. Some promising technologies that MSHA hopes to have contractors explore:

*Subterranean Robots Demonstration Project.*—Field Robotics represents proven technology. Robots can be used to physically enter, provide a visual image, and ultimately map abandoned underground mines that are not safe for human entry. In addition to the drive components and navigational system, robots can be equipped with sonar and laser scanners to measure and map fine details. The primary challenge is to develop mine-worthy robots that can be adapted to the aggressive and diverse mine environment, with sufficient mobility through debris, mud, water, and dry conditions. For example, researchers from the Robotics Institute at Carnegie Mellon University have already field-tested a mine-mapping robot, that traversed more than one mile in a mine in 3.5 hours. They are interested in developing borehole robots for both wet and dry coal mine conditions.

*Ground Penetrating Radar (GPR) Sensors Demonstration Project.*—Technology located underground on the working section may be available that can "sense" at least 22 feet into a coalbed to detect air or water-filled voids. The system involves a radar device encased within an MSHA-approved flameproof enclosure. The device could be periodically moved to the mine face and readings taken to determine the presence of and distance to either an air- or water-filled void, differentiate between the two, and provide the operator with a graphical display of the conditions.

*Seismic Reflection Demonstration Project.*—Seismic technology may be a method to identify abandoned mines. It can be either a surface- or underground-based device. Surface-based devices are used to identify coal bed methane for the oil and gas industry. This technology may be adapted to detect air- or water-filled voids. Since this type of testing is widespread in the oil/natural gas industry, there would likely be a number of companies capable of demonstrating this technology under a variety of field conditions.

In-seam seismic techniques have proven successful in some situations. Possible projects may be to use the continuous mining machine cutting drum as a seismic source, and automating the system to cause a fail-safe shut-down of equipment before cutting-through into an abandoned mine. Borehole seismic tomography projects

to demonstrate mine-to-borehole and borehole-to-borehole seismic methods may also be viable.

*Long-Hole Directional Drilling Demonstration Project.*—This technology would demonstrate whether directional long-hole drilling could be used to establish the minimum width of an outcrop barrier by drilling a hole that is parallel to, but offset from, the outcrop line of a coal seam. This could identify the intact width of outcrop barriers in cases where an impoundment overlies the outcrop of a seam that is being actively mined. It would require investigating the capabilities, limitations, and safety considerations inherent to using this system underground. Further development and use of borehole geophysical instruments could enhance the capabilities of long-hole drilling immensely by accurately assessing the trajectory of an undulating coal seam. Adding geophysical logging tools would also allow the driller to determine the distance that the drill string is from the mine void, whether the void contains air or water, the thickness of the coal seam, and any geologic anomalies that could impact inundation risk.

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#### FILLING COAL MINE INSPECTORS POSITIONS

Filling vacant coal mine inspector positions can be a lengthy process, especially due to the requirements for background investigations and medical examinations. MSHA has taken steps to compress that process where possible. MSHA Assistant Secretary Dave Lauriski has initiated an aggressive recruiting effort to fill vacant coal mine inspector positions. He has established specific deadlines for filling positions.

MSHA has traditionally filled inspector positions by selecting applicants for consideration from standing registers of eligible candidates. To increase the pool of applicants, MSHA is now supplementing this process by posting individual vacancy announcements for specific geographical locations. This will allow individuals whose names are not on the standing registers to apply and be considered for a particular vacancy. The Agency is placing vacancy announcement notices on the web site of the Department of Labor and the USAJOBS web site of the Office of Personnel Management. State employment offices access the USAJOBS site and make the announcements available. MSHA staff are recruiting applicants at job fairs and at universities. This aggressive recruitment effort will enable the Agency to fill vacant positions in a more timely manner.

#### ERGONOMICS

Senator SPECTER. Turning to the issue of ergonomics, last year in April you proposed to reduce ergonomic injuries through voluntary guidelines, but to have enforcement under OSHA's general duty clause. OSHA, I am informed, has conducted more than 400 nursing home inspections in the last year and 103 ergonomics inspections were conducted in industries other than nursing homes. Would you give us the detail in writing as to where those 103 ergonomic inspections were conducted, and give us your evaluation as to whether you think the inspections are adequate, and advise us as to how much funding is being directed to those inspections to evaluate voluntary compliances?

Secretary CHAO. We will do so.

Senator SPECTER. And the general duty inspections have disclosed, have resulted in citations, four citations, and we are advised that others are reportedly in progress. The subcommittee would like to know what has happened with those citations, what others are in progress, and whether you consider four citations to be adequate on some 491 inspections which have been conducted.

Secretary CHAO. Well, musculoskeletal injuries have actually dropped 10 percent last year. We will provide the answer, of course. In trying to work on these four general duty clauses, we want to make sure that they are effective. We talked a lot of target inspections and how we wanted to make sure that we are able to

use leverage and utilize most effectively this general duty clause to get at the bad actors. We will ensure that there is some kind of further followup with relation to our four-prong strategy of our ergonomics plan.

Senator SPECTER. Well, we need to evaluate what your voluntary guidelines are producing. Off-hand, on the surface, it would appear to me that 103 ergonomic inspections in all other industries beyond nursing homes is a small number. Do you think that's adequate? Tell me now.

Secretary CHAO. We're very committed, as I mentioned before, to ensuring that ergonomic injuries decline, and last year's results facts speak for themselves. There's been a 10-percent decrease in ergonomic—

Senator SPECTER. Madam Secretary, I understand your commitment.

Secretary CHAO. Yes.

Senator SPECTER. My question is, is that a sufficient number of inspections for all industries other than nursing homes?

Secretary CHAO. We conduct 37,000 inspections, so in addition to other inspections, these are just totally focused on other industries.

Senator SPECTER. You conduct how many inspections?

Secretary CHAO. 37,000.

Senator SPECTER. My red light is on, and I'm going to observe the time limit which I'm asking everyone else to do.

Secretary CHAO. I will submit the answer.

Senator SPECTER. So if you would respond—

Secretary CHAO. I will.

Senator SPECTER [continuing]. In writing, we would appreciate it. [The information follows:]

OSHA has targeted ergonomic inspections to industries with high rates of musculoskeletal disorders. Inspections under OSHA's National Emphasis Program (NEP) for Nursing and Personal Care Facilities, which focuses on patient-handling hazards, began on September 17, 2002. Since this time, OSHA has completed over 469 inspections in Nursing Homes under the Nursing Home NEP. Over the past winter, Regional and Area Offices implemented Local Emphasis Programs (LEPs) to address ergonomics in several other industries with high rates of musculoskeletal disorders.

In all, OSHA has assessed ergonomic conditions in 675 of the inspections opened between January 1, 2002 and March 31, 2003. These inspections include 469 in nursing and personal care facilities pursuant to the NEP; 106 in other industries as a result of SST inspections or complaints or referrals; and 50 inspections in industries targeted by ergonomic-related Local and Regional Emphasis Programs.

Inspection type	Time period	Number of inspections
Nursing Homes under the Nursing Home NEP .....	September 17, 2002 through March 31, 2003 .....	469
Ergonomic Related—Non-Nursing Homes .....	January 1, 2002 through March 31, 2003 .....	106
LEPs—Ergonomic Related .....	December 15, 2002 through March 31, 2003 .....	50

The resources utilized to address ergonomics in both the fiscal year 2003 and fiscal year 2004 budget request are contained within all of OSHA's budget activities and are not separately identified or earmarked to address ergonomics or any other specific issue. Rather, the comprehensive approach to ergonomics involves focused activity by the entire agency in addressing the four prongs of the ergonomics policy: industry specific and task-specific guidelines, strong enforcement, outreach and assistance, and research.

As part of our four-pronged approach to ergonomics, OSHA is increasing its outreach and assistance efforts through its Ergonomics Webpage, cooperative programs, and other means.

OSHA's cooperative programs are achieving tangible results and are an integral part of our strategy to reduce workplace ergonomics hazards. OSHA recently entered into a national partnership with the U.S. Postal Service, the National Postal Mail Handlers Union and the American Postal Workers Union to address ergonomic hazards in postal facilities. In addition 15 of OSHA's National Alliances focus on ergonomics.

The level of interest in OSHA's initiatives and activities is demonstrated by participation in stakeholder meetings, visitors to our ergonomics web page, inquiries regarding enforcement policy, alliances and partnerships which affect ergonomics, requests for consultation and compliance assistance, and interest in the work of the National Advisory Committee for Ergonomics.

OSHA has committed to achieving significant overall reductions in workplace injury and illness rates. Reducing the number of injuries due to ergonomic hazards is an important part of meeting these goals.

Senator SPECTER. We have been joined by the distinguished former chairman of the Appropriations Committee, former president pro tempore, current ranking member of the full committee.

Senator BYRD. Thank you, Mr. Chairman.

We've had great success in sending a man to the moon and bringing him home to earth again, but we've never been able to perfect a good public address system.

#### MINE SAFETY AND HEALTH INSPECTORS IN WEST VIRGINIA

Can you hear me, Madam Secretary?

Secretary CHAO. I sure can, thank you.

Senator BYRD. Last January, an air shaft explosion killed three workers at the McElroy mine in Cameron, West Virginia. According to news reports, MSHA's District 3 office, where the McElroy explosion occurred, was extremely short-staffed. One news journal reported that, according to MSHA records, between December 2001 and December 2003, when the McElroy mine should have had six surface inspections, it had been inspected only once. No underground inspections were performed. The MSHA district manager reportedly requested additional inspectors and resources, but was granted less than half of his request because of personnel shortages.

Now I read that the President has proposed to cut MSHA's budget for coal enforcement activities below the \$119 million appropriated for fiscal year 2003 to \$113.4 million in fiscal year 2004. Coal miners toil every day in an occupation where an accident can mean loss of a life. They trust that MSHA will do all that it can to reduce the risk of accidents. Why are there not enough inspectors in MSHA's District 3 office to conduct adequate safety inspections, and is insufficient staffing a problem that is widespread through MSHA?

Secretary CHAO. The simple answer is no, it is not. In fact, if you look at the last year's results there has been a 30 percent increase in site visits, 83,000, there's been a 21 percent decrease in fatalities, 11 percent decrease in injuries, 8 percent increase in citations and orders at coal mines.

The number of mines and inspection completion rates for coal mines actually stayed, from about—a 99 percent completion rate, which is an impressive number. The issue is that the number of coal mines has actually decreased since 1997, the last 5 years alone. There were 2,600 coal mines in 1997. Today, there are only 2,000, and yet the number of inspectors have remained the same.

In the next year we expect to add 35 increased coal miner inspectors, 20 metal/nonmetal inspectors, and another 21 to make sure the small mine companies and operators are abiding by the law as well, and we want to help them understand what their responsibilities, and also help the employees, the workers understand what their rights are. So we in fact have about a 76 increase, new inspectors coming on board.

Senator BYRD. The UMWA wrote to me just a few days ago to apprise me of their concerns with regard to the number of MSHA inspections at our Nation's mines. The UMWA wrote that the MSHA District 3 office in Morgantown, West Virginia is bringing MSHA inspectors in from Pennsylvania and housing them in hotels to inspect District 3 mines in an attempt to keep up with MSHA's mandatory inspection requirements.

The UMWA cited a series of accidents that have occurred since last April in Kentucky, Illinois, Pennsylvania, and West Virginia. Last year's Quecreek accident alone endangered 18 miners. Had it swung the other way, which it easily could have, fatalities would have increased last year greatly, rather than decreased, so are we really giving MSHA all of the resources it needs to protect our miners from these kinds of accidents?

Secretary CHAO. We actually have increased MSHA's budget, so we believe yes. With the problem specifically with district number 3, that is a district that we have heard complaints about. The UMWA has been very concerned about that. Many of the steps, actually, that we've taken are actually in response to what they want.

Senator BYRD. Would you say that again? Would you say that again, what you just said?

#### MSHA DISTRICT 3 REGIONAL OFFICE IN WEST VIRGINIA

Secretary CHAO. District number 3 is a district that we know has had some complaints, and a lot of the complaints circled around personnel. We have made certain changes. Certain other allegations of personnel changes were not true. That's the district that again—

Senator BYRD. What allegations were not true?

Secretary CHAO. That certain managers were moved out. That is not true. The one manager that was moved out, the UMWA wanted the person moved out, so we've done that.

Senator BYRD. If there are reports that mines are not being inspected because of the shortage of personnel, how can you be sure about whether more MSHA inspectors are needed?

Secretary CHAO. With the inspection completion rate of 99 percent, there is only 1 percent that we can do better. We will certainly try to do that, but I think there are very few other endeavors in which you have a 99 percent completion rate. As I mentioned, while there are injuries and fatalities, which are intolerable, the overall record in terms of safety has actually improved quite a bit in the last year.

As I mentioned, we have had a 30 percent increase in inspection citations, and an 8 percent increase in orders. There have been decreases in fatality rates. In fact, the mining industry had one of its best years in the last year, in terms of safety. The number of inju-

ries dropped as well, and we are adding 76 more inspectors in this coming year.

#### RETIREMENT OF MSHA INSPECTORS

Senator BYRD. Madam Secretary, you have been lucky. As I indicated earlier, if last year's Quecreek accident had swung the other way, which it easily could have, fatalities would have greatly increased last year rather than decreased.

The United Mine Workers of America also raised concerns about the upcoming retirement of a number of MSHA inspectors. MSHA has said that it takes 1 to 2 years to train a new inspector. When you tell this subcommittee that the President's budget request for MSHA is adequate to hire inspectors, are you considering these impending retirements?

Secretary CHAO. Yes, we are. It does take a great deal of skill to manage the personnel resources that are available within the Department. Part of the issue also is that it is difficult sometimes to find people at the locations in which they are needed. Many times an inspector, or a potential inspector, would not want to move to another part of the country or region in which he or she is not familiar.

There have been attempts in the past to accelerate the responsibilities, the time in which it would take for an inspector to get into their inspection activities, and we don't approve of that either. We want to make sure that the mine inspectors are doing their job, that they're highly qualified and highly skilled, because as you said, we want to make sure the miners get home every night, but we view this responsibility very seriously.

Senator BYRD. I helped to craft the 1969 and 1977 Federal Mine Health and Safety Acts. I did so with the belief that we need strong mine safety standards that are enforced through frequent inspections, and further, that appropriate stiff penalties be imposed on those mine operators who wilfully violate the law and endanger the lives of the Nation's coal miners, so I am concerned about this administration.

What I'm concerned about is how this administration is reconciling MSHA's enforcement and compliance assistance roles. I see resources and personnel being shifted away from enforcement activities. I hear about the failure to cite safety violations. I hear that violations at our site have sometimes languished unchecked for months. I hear about personnel transfers because of complaints from coal mine operators to administration officials that MSHA enforcement actions are too tough.

MSHA is not a consulting firm. It was created to enforce our mine safety laws. Just as the FBI should not act as a consultant to criminals, MSHA should not act as a consultant to coal companies that wilfully violate the law. Why should MSHA be distracted from its principal responsibility of enforcing our mine safety laws and protecting our miners so that it can act as an advisor to coal companies that break the law?

Secretary CHAO. Well, first of all, those allegations that you have cited earlier in your statement are just not true.

Senator BYRD. Which allegations are not true?

Secretary CHAO. The coal operator who claimed that he moved certain personnel out. There is a very comprehensive answer to those spurious charges by Dave Lauriski, the Administrator of MSHA, that is in the Courier-Journal, and I will send that over if you have not seen it already.

Second of all, I think some people would take exception to the——

Senator BYRD. You will send that over, you say?

Secretary CHAO. Sorry?

Senator BYRD. You say you will send that over?

Secretary CHAO. I will do so, yes.

Senator BYRD. How soon will I see that?

Secretary CHAO. Just to make sure, I will send it over.

[The information follows:]

[From the Courier-Journal, Louisville, KY, March 16, 2003]

#### MSHA SAYS: "PROTECTING MINERS COMES FIRST"

(By Dave Lauriski, Special to The Courier-Journal)

*The writer is assistant secretary of Labor for mine safety and health.*

Over the last two years, the Bush administration has instituted a culture of accountability and performance in the enforcement programs that protect miners' lives—and the clear result is that miners are safer than ever before. But you wouldn't know it from the biased and baseless screeds The Courier-Journal is negligently posting on its opinion pages today.

Here are the facts:

- We conducted 87,957 mine inspection and enforcement events in 2002—an increase of 30 percent since the previous administration.
- Over the last two years, citations and enforcement orders issued against coal mine operators passed the 125,000 mark—up 8 percent since the last administration.
- During that same period, we assessed mine operators with \$27.3 million in civil penalties—an 11 percent jump.

Here are the results:

- Because of our no-compromise enforcement policy, fatal injuries at mines have declined to their lowest point in history.
- Coal mine injury rates have fallen by nearly 10 percent since we came into office, and are lower than at any time in the last 20 years.
- The only way to achieve results like these is to insist that protecting miners comes first—not protecting the bureaucracy, the industry or individual coal operators.

For these reasons, it is both stunning and sad to see Cecil Roberts, president of the United Mine Workers of America, sign his name to an irresponsible opinion piece that accuses the administration of putting politics ahead of miners' safety. Cecil is a decent man, and we have worked well with him on mine safety issues. But the arguments he makes—mostly cribbed from a West Virginia radio story—are flatly contradicted by the facts and even conflict with the views expressed by senior leaders in his own organization.

Roberts says he has grounds to be "suspicious" of the reassignment of MSHA's District 3 manager, insinuating that it was payback for enforcement actions against Robert Murray, a politically active coal operator. That's odd, because the organization that Roberts runs has complained bitterly about the District 3 manager and demanded that we take action.

Roberts' own safety director wrote to MSHA, "A number of complaints have been filed with the MSHA District 3 and Arlington offices. . . . As you know, miners became so fed up with the actions of the Agency and particularly the MSHA District 3 manager that they staged a protest at an MSHA meeting two months ago." The UMWA has accused the District 3 management of "tolerating hazardous conditions," turning "a blind eye" to violations and stopping MSHA inspectors "from issuing enforcement actions." Richard Eddy, president of UMWA District 31, also wrote to complain about decisions made by MSHA's District 3 manager. Eddy urged me to "take whatever actions you deem necessary."

Seemingly unaware of all this, Roberts blames the reassignment of the District 3 manager on “threats” allegedly made by coal operator Robert Murray. As we say in the country, that dog won’t hunt.

Roberts also alleges that I met with Murray in April 2002 and that “the result of those meetings was the sudden reassignment of District 2 officials Kevin Stricklin . . . and Tom Light, whose reassignment Murray [had] bragged about. . . .” None of that is remotely true. There was no such April meeting. And Kevin Stricklin is still with District 2; the only “reassignment” he had was a leadership development rotation as assistant to the coal administrator, one of the most highly responsible positions at MSHA. The same goes for Tom Light, who is also still with District 2 and, far from being punished, was promoted to the second-ranking job in the regional office.

Finally, Roberts claims that Murray asserted his political influence to threaten two other MSHA enforcement officials in the District 3 office. Regardless of any threats made by anyone, I’m the one who is responsible for all personnel decisions in MSHA—and both of those officials are still at their posts.

The only MSHA official mentioned by Roberts who was permanently transferred is the former manager of District 3. But Roberts’ own safety director and local union president are on record insisting that action be taken against him. So why is Roberts cooking up conspiracy theories against this administration? I refuse to believe that Roberts would play politics with miners’ safety—even though he has falsely accused MSHA of doing the same. Roberts appears to be the victim of overzealous staff who failed to do good research and left him out to dry.

The truth is that the Bush administration and MSHA take miners’ safety very seriously. One of the first decisions the new administration made was to fully defend and enforce the Black Lung Program regulations that were issued in the waning days of the previous administration. Mine operators like Robert Murray strongly urged the administration to back down. Instead, we took the side of protecting miners’ health—a decision strongly endorsed by The Courier-Journal and Cecil Roberts’ UMWA.

Today, we are setting new records in enforcement and reduced injury and fatality rates. But we are not resting on these achievements, because our job is to bring miners home to their families, safe and sound. In our budget for next year, we proposed tougher penalties for mine safety violations and added funding to hire 55 more mine inspectors. And we continue to pursue a major enforcement case against the Ohio Valley Coal Company—owned by none other than Robert Murray.

The accusation that anyone in this administration assigns a higher value to political contributions than to miners’ health and safety is insulting and clearly disproved by the facts. It is uncharacteristic of Roberts to make such irresponsible attacks. However, placing these baseless claims on the opinion page does not absolve The Courier-Journal from the responsibility of doing some basic fact checking before printing them.

Senator BYRD. It won’t be like your response to my January letter, will it, the response that just came yesterday?

Secretary CHAO. What response?

Senator BYRD. The response to my January letter.

Secretary CHAO. I’m not—you’re saying it came in too late, is that what—

Senator BYRD. Pardon me?

Secretary CHAO. Are you saying that it came in too late?

Senator BYRD. Well, I wrote you in January. I got a response yesterday, the day before this hearing.

Secretary CHAO. We have lots of letters to answer, but I apologize for that. We will certainly do better in terms of our reply.

Senator BYRD. You’ve got lots of room to improve.

#### COAL MINING INSPECTORS

Secretary CHAO. We’ll try.

The second thing also is, I think there might be some exception, some people who would take exception that coal miners, operators would be compared to criminals. I think that there are lots and lots of rules and regulations—

Senator BYRD. Nobody is comparing coal miner operators to criminals.

Secretary CHAO. There are lots of rules and laws—

Senator BYRD. Have you ever lived in a coal mining camp?

Secretary CHAO. No. I lived in Queens, New York, in a little tenement house when I came to America.

Senator BYRD. You haven't lived around a coal mine.

Secretary CHAO. No, not really.

Senator BYRD. No. Well, you should try it sometime.

Secretary CHAO. Yes. There are lots of experiences that we should all share, I think, to help us understand the world.

Senator BYRD. You might share that one so we could really talk about coal mine inspections.

Secretary CHAO. Yes, sir.

Senator BYRD. Now, go ahead, will you, if I've interrupted you.

Secretary CHAO. There are lots of rules and regulations, so—I'll make it very short. So we want to help employers and workers understand what their obligations and rights are so that workers can be better protected. That's the whole point about the inspections and the compliance assistance. There has not been any faltering of enforcement, as the numbers that I just cited indicate.

Senator BYRD. I see the light is red. If I may just ask this one final question, Mr. Chairman.

Senator SPECTER. Of course, Senator Byrd.

#### NATIONAL EMERGENCY GRANTS

Senator BYRD. Thank you.

I have been contacted by the Governor's Office of West Virginia about the slow response from the Labor Department in processing our State's national emergency grant applications. To expedite the release of these emergency job training funds, the Congress annually appropriates money to the Labor Department for the future fiscal year so that the Labor Secretary can quickly allocate these funds as grants, and yet West Virginia has had to wait for 5 months for its application to be processed.

In the meantime, the number of West Virginians waiting for those job training funds has jumped from 500 workers to over 1,200 workers. Why are these emergency funds being delayed?

Secretary CHAO. Well, I hope that's not the norm, and I will look into it, because we have just—I signed off about \$107 million of these national emergency grants. We tried to be very prompt in turning them around, and in fact we prefer, we like them better.

Senator BYRD. Would you look into this?

Secretary CHAO. I sure will.

Senator BYRD. And give me a specific response to that question?

Secretary CHAO. Yes, I will.

Senator BYRD. Let me repeat it, why are these emergency funds being delayed?

Secretary CHAO. I hope they're not being delayed, but I will look at them.

Senator BYRD. I beg your pardon?

Secretary CHAO. I hope they're not being delayed.

Senator BYRD. You hope they're not.

Secretary CHAO. No. Sometimes it requires working with the State to make sure that the application comes in the right form, even though it's a very simple application form, and to make sure that the workers are indeed eligible and all that.

Senator BYRD. All right.

Secretary CHAO. But we will certainly take a look.

Senator BYRD. Could you please, not only take a look, but let this subcommittee know your response to that question?

Secretary CHAO. I will.

Senator BYRD. And give me a letter—

Secretary CHAO. I will.

Senator BYRD [continuing]. Addressed to me, with an explanation, and you might elaborate on some of the other answers that you've given me.

Secretary CHAO. I will.

Senator BYRD. I don't find them to be altogether satisfactory, with all due respect to you. Thank you very much.

[The information follows:]

#### STATUS OF NATIONAL EMERGENCY GRANT REQUEST FOR WEST VIRGINIA

Helping American workers who have lost their jobs is a top priority for this Administration.

The State of West Virginia submitted an application for National Emergency Grant (NEG) funds in the amount of \$4,985,714 to serve approximately 450 of the 750 workers impacted by layoffs and closures of coal mines. Companies identified in the NEG application include Pine Ridge Big Mountain No. 16 in Boone County, Ruffner Mine (ARCH) in Logan County, A.T. Massey, Inc. in Boone, McDowell and Raleigh Counties, Colony Bay Surface Mine in Boone County, Bar K Incorporated in Kanawha County, Kanawha Eagle in Boone County and BJM in Nicolas County.

Officials in Department of Labor's Employment and Training Administration are reviewing the request for the NEG funds very closely. Part of this review includes an assessment of existing funds in the state.

—As of the December 2002 reporting period, West Virginia has over \$30 million in unexpended WIA Dislocated Worker Program formula funds.

—The United Mine Workers of America was designated by the Congress to receive a PY 2002 hard-mark, which was awarded on October 3, 2002 in the amount of \$2 million to serve dislocated mine workers in West Virginia, Pennsylvania, and Virginia.

ETA officials learned that A.T. Massey began to increase coal production, and therefore rescinded the Worker Adjustment and Retraining Notification (WARN) Act notice which announced the lay off of 37 workers. ETA officials also learned that the Ruffner Mine will not be laying off the 260 workers identified in the NEG application. Many of the remaining workers who were impacted by the coal mine closures are accessing services through WIA Dislocated Worker Program formula funds.

You have my assurances that we will monitor the situation closely. When a final decision is made, you will be notified promptly.

Senator SPECTER. Senator Harkin.

#### NATIONAL EMERGENCY GRANTS

Senator HARKIN. Mr. Chairman, thank you.

I have a followup to Senator Byrd's just recent question about dislocated workers and about the length of time that it's taking to get applications approved. Senator Byrd, I want to give you some examples of what's happened out in our State, and Madam Secretary, I'm going to ask you about this. You say you hope this is not a pattern, but after listening to Senator Byrd and looking at what's happening in my State, I'm wondering if it is a pattern. For example, let me give you some examples: 117 days to approve the application of R. R. Donnelley in Des Moines for 375 workers; 125

days to approve the application for Rockwell-Collins, 153 workers; 111 days to approve the application for International Paper in Clinton for 126 workers; 248 days to approve Iowa dislocated farmer grants for 300 individuals.

That's the delay. Then when the grants were approved, listen what happens.

In June of 2002, the Department of Labor approved a national emergency grant of nearly \$300,000 for dislocated workers from Sioux Tools and Terex-Schaeff up in Northwest Iowa. The approval took 83 days, but that was in June of 2002. Only \$79,507 has actually been received. A request for the additional \$217,865 was submitted last September, and to date there has been no response from DOL.

Secretary CHAO. May I answer that, or—

Senator HARKIN. Sure. Well, I've got some more. You answer that and I'll give you some more.

Secretary CHAO. I will, of course, go back and take a look. Sometimes the national emergency grants are, I don't want to use the word confused, because I don't mean to be insulting, but sometimes they're mixed up with the TAA grants. Now, the TAA grants do take quite a while. On average they take about 4 months.

The national emergency grant is a fairly easy process, so we do tout its flexibility and its ability to move quickly. The TAA grants, on the other hand, are—

Senator HARKIN. I'm told by my staff these are all national emergency grants.

Secretary CHAO. And sometimes the glitch is not with the Department of Labor. Sometimes it goes back to the State Departments of Labor. They have to provide the right information, and the State workforce agencies also share in these issues, because sometimes they don't provide sufficient information that States need to have to use these dollars, so it is a very decentralized system, but generally speaking we are able to move it fairly quickly.

Senator HARKIN. Well, Madam Secretary, would your staff, who is with you, respond why it took so long for R. R. Donnelley?

Secretary CHAO. Sure.

Senator HARKIN. Why it took so long for Rockwell-Collins?

Secretary CHAO. I sure will.

Senator HARKIN. Why it took so long for International Paper in Clinton, and why farmers are always the last?

Secretary CHAO. I hope that's not the case.

Senator HARKIN. Why are farmers always—248 days to approve it for dislocated farmers.

Secretary CHAO. Well, we will see, again, what happened to those, and I want to make sure also that it's not the Department's—

Senator HARKIN. That's why I want to know.

Secretary CHAO. Yes.

Senator HARKIN. I want to know where the glitch is. If you say the glitch maybe some place else, I want to find out about it.

Secretary CHAO. These grants are reviewed and handled by career professionals.

Senator HARKIN. But what's your average time for national emergency grants?

Secretary CHAO. We like to say pretty—you know, I'm a little reluctant now to say how much we like to see, but we have told people that it can come out within a month or so.

Senator HARKIN. Well, I just gave you some examples here that are a lot longer.

How about, can you answer this for me? How about the one that went to Sioux Tools and Terex-Schaeff? In June of 2002 they approved it. That's last June. \$79,000 has been received. They submitted the additional request for \$217,000 in September, and no response yet.

Secretary CHAO. Again, I don't know the specifics of that.

Senator HARKIN. I'm sure you don't.

Secretary CHAO. I don't know whether it's at the Department or whether it's at the State level, but we'll certainly take a look, but it does require cooperation with the State departments of labor, the State workforce agencies, the WIB boards to make all this happen.

Senator HARKIN. One last one. The last one I mentioned was Sioux Tools.

Secretary CHAO. Right. We'll take a look at all of them.

Senator HARKIN. The last one I've got is \$739,073 in January of last year, in 2002, not this January, for workers who lost their jobs when three plants closed, Exide Technologies, that's a battery company, Wabash National and Keokuk-Ferro-Sil. They submitted a request for the final installment for \$237,190 last November and they're still waiting.

Secretary CHAO. Sometimes the State work agencies will also submit requests, but these requests may not be truly the—

Senator HARKIN. Well, my time is up.

Secretary CHAO. Okay.

Senator HARKIN. I just want—as long as your staff is here, there are three more Iowa grants pending at the Department.

Secretary CHAO. There is a tendency to ask for the request, but we do take a look at the request, see what the dislocated worker situation is within the particular State or the region, and see from that how best to put out the grant.

Senator HARKIN. Let me just tell you, there is one grant that came in on October 18 of 2002. That's been 164 days now, 164 days, one, two, three, four, five different companies, APAC, Andrew Corporation, Celestica, Charleston Place, and Bluebird Bus, the bus builders, and I'd like to have you take a look at that.

Secretary CHAO. I will do so. There's not very much discretion at my level. I mean, basically this is all done with the career ranks. They have a lot of experience in how these programs are administered, what is required for  $x$  number of individuals, and this is the analysis that they go through, but we will take a look and, as I mentioned, a lot of workforce investment boards will ask for lots of things sometimes.

Sometimes a grant may be smaller than a request because we will go into a region and see what the actual number of dislocated numbers are, and it could be smaller than the actual requested amount.

Senator HARKIN. Well, I just think the length of time is just unacceptable, how long it's taking.

Secretary CHAO. We'll take a look at it.

Senator HARKIN. I don't know whether it's the bureaucracy or whatever it is, but you're in charge of the bureaucracy. They work for you.

Secretary CHAO. We'll take a look at it.

Senator BYRD. Perhaps a quote from William Wordsworth might be appropriate.

Senator SPECTER. This will come out of your fourth round of questions, Senator.

Senator BYRD. Okay. I expect to be charged for it. Wordsworth said, it matters not how high you may be in your department. You're still responsible for what your lowliest clerk is doing.

Senator SPECTER. Was he a Senator, Senator Byrd?

Senator Byrd is replete with pithy, relevant, instructive quotations. We thank you for that.

Secretary CHAO. I by no means shirk the responsibility, and I just checked, these numbers, unfortunately are not that different from previous years.

Senator HARKIN. They're not—

Secretary CHAO. They're not that different from previous years, but we want to improve, so let's take a look.

Senator HARKIN. But you told me that national emergency grants go out in a matter of just days or weeks, and I've given you some that take months.

Secretary CHAO. Well, we've been trying to improve them, but those numbers that you cite are not different than previous years.

Senator HARKIN. So you're not doing any better now than you've ever done.

Secretary CHAO. We're trying, but obviously by your example—

Senator HARKIN. I hate to be so provocative—I hate to be provocative, but when you tell me that emergency grants go out in a matter of days or weeks, and I've given you some that have taken months, you come back and tell me, well, it's the same as it's always been, so don't—

Secretary CHAO. Well, I'm just trying to say—

Senator HARKIN. Something's not adding up.

Secretary CHAO. We're doing our best, but that's been the record. We're going to continuously improve, and we'll check into the ones that you want.

Senator HARKIN. Thank you.

[The information follows:]

#### STATUS OF NATIONAL EMERGENCY GRANT REQUESTS FOR IOWA

The President and I are committed to helping displaced workers access the job and skills training they need to find new jobs that will enable them to provide for themselves and their families.

In Program Year 2002, which began on July 1, 2002, the Department awarded \$2,550,470 in National Emergency Grant funds to provide reemployment assistance to workers dislocated as a result of the closure of an International Paper plant, workers laid off from Rockwell Collins avionics plant, Ball Corps, Mau Trucking, MCI Worldcom, Inc. and farmers.

Most recently, I approved a request for \$217,000 to aid 55 Iowa workers dislocated from Sioux Tools and Terex-Schaeff located in Sioux City, Iowa. The project will be operated by the Western Iowa Tech Community College, and will provide reemployment services, including job search assistance, job development, job placement, basic skills training and counseling.

Officials in the Employment and Training Administration are also reviewing three other National Emergency Grant applications from Iowa, including a request for in-

cremental funding for a Northern Engraving project, APAC Teleservices and American Growers Insurance Company. Part of this review includes an assessment of existing funds in the state. As of December 2002, which is the most recent WIA reporting period, Iowa has an unexpended balance of \$4,630,710. These funds can also be used to provide assistance to workers impacted by plant closures and layoffs.

You have my assurances that we will monitor the situation closely. When a final decision is made, you will be notified promptly.

#### ERGONOMICS INSPECTIONS

Senator SPECTER. Secretary Chao, I don't want to spend any more time on ergonomics because I've asked you to supply the materials in writing, but when you come up with this figure of 37,000 inspections, I didn't want to pursue it, but staff has advised me that that's the total number of inspections conducted by OSHA, and I had quoted for you 388 inspections of nursing homes and 103 on others. What's the relevance in responding about 37,000 inspections when the question related to ergonomics inspections?

Secretary CHAO. Just to—well, maybe it didn't—I thought it made sense at the time, but I'm trying to show the number of inspections overall that OSHA does. In fact, that's been an increase of more than 7 percent, so we have stepped up our inspections.

Senator SPECTER. But the question is not about the total number of inspections. The question is about ergonomics inspections, in an attempt to—

Secretary CHAO. Well—

Senator SPECTER. May I finish?

Secretary CHAO. Yes, please.

#### LM-2 PROPOSED REGULATION

Senator SPECTER. In an attempt to evaluate whether your voluntary system is working. It's very hard to—well, you get the point, Secretary Chao.

Let me come to the question of the new report requirements, and I had written to you raising some questions as to how these reporting requirements contrasted with other reporting requirements of the Small Business Administration or for corporations under the Sarbanes act or by the General Accounting Office, and I got your response, and I noted your statement that I should meet directly with the Department's Inspector General and Chief of the Division of Enforcement for the Department's Office of Labor Management Standards, and candidly that's quite an undertaking for me to do, but I do want to pursue this question, starting at the staff level.

We may need a hearing on this generally, but in the few minutes we have remaining on this hearing, Madam Secretary, let me ask you to compare reporting requirements for small businesses which go to annual receipts under \$6 million, contrasted with the requirement for labor unions with annual receipts under \$200,000. Why should there be such a significant divergence on reporting requirements?

Secretary CHAO. The \$200,000 limit is what is currently in the rules, stemming from the statute. We have not changed that, number one. That's the current level.

Number two, when comparing the whole issue about accountability and transparency with the labor unions, when you compare them with any other organization, any other sector, there are basi-

cally four layers of protection. There is usually a requirement for quantitative information, for qualitative information pertaining to materiality, for example, there is also another layer of internal controls mandated by the law, and also internal audits.

Senator SPECTER. When you raise the issue of materiality, you move into what the Securities and Exchange Commission does, and their standards require the disclosure of, as you put it, material information.

Madam Secretary—

Secretary CHAO. The disclosure just refers to the first—

Senator SPECTER. Madam Secretary—I'm asking you a question right now—

Secretary CHAO. Please.

Senator SPECTER. Madam Secretary.

Should labor unions be required to have more detailed reporting requirements than their corporate, private corporate counterparts?

Secretary CHAO. Well, currently they do not, and under the proposed new rule they still will not.

Senator SPECTER. Well, that's what I would like to work out. I commend—there's no doubt about the need for reporting, and for knowing what goes on with union records, and I've had some experience on that going back to the days of the McClellan Committee, which investigated labor racketeering back when John F. Kennedy was a Senator, and when I was an assistant district attorney I got the first conviction on labor racketeers arising from the investigations of the McClellan Committee.

Six union leaders went to jail after their conviction for conspiracy to cheat and defraud Local 107 of the Teamsters Union, and I have some appreciation for this sort of an inquiry, but what I would like to do initially at the staff level, Madam Secretary, and we will be propounding some questions for the record, is to take a look at what has been done and what are the requirements for small businesses, what are the requirements for corporate America.

I appreciate your interest in wanting to find out what is going on, and this subcommittee shares your concern, and we will work with you on that, but we want to see to it that there's an appropriate balance, and the comparison is always made on so many lines, financing of elections reporting, to have an equitable burden as you take a look at corporate America with unionized workers.

Secretary CHAO. There's a great disparity, and the unions do not have a fraction of the reporting requirements as required by corporations.

Senator SPECTER. Senator Harkin, do you have another line of questions?

#### LM-2 REPORTING REQUIREMENTS

Senator HARKIN. I'd like to follow up on that, Madam Secretary. Words—I'm listening to the words you're using. You say that maybe the unions don't have the reporting requirements of corporations. You mean publicly held corporations.

Let me ask you this question. A labor union with receipts of \$500,000 a year, its reporting requirements compared to a privately held company—not a public corporation. Now, public corporations, you're right, they do have to have more reporting than

labor unions. That's because they're publicly held. I'm talking about a private corporation. A labor union is not a publicly held corporation, so compare for me a union with receipts of \$500,000 with a privately held business that makes \$500,000, and compare for me the reporting requirements, would you, please?

Secretary CHAO. I'd be more than glad to. First of all——

Senator HARKIN. And you say——

Secretary CHAO. I would be glad to.

Senator HARKIN. Okay.

Secretary CHAO. The comparison is not analogous. First of all, most people are partnerships, single proprietorships, or small companies who have some degree of control over their resources. If you are a union member, you do not have control over your resources. Ten of the top 20 labor unions do not have any audits by the Office of Labor Management Standards. There are only two forms that they currently have to file.

Senator HARKIN. 10 of the top 20——

Secretary CHAO. That's true.

Senator HARKIN. 20 top in what regard?

Secretary CHAO. Largest.

Senator HARKIN. 10 of the top 20 largest unions have no what?

Secretary CHAO. Have never had an audit by OLMS.

Senator HARKIN. Have never had an audit by whom?

Secretary CHAO. The Office of Labor Management Standards, which is the office within the Department of Labor, the only office in the Government, aside from the IRS——

Senator HARKIN. Is that because the OLMS is prohibited by law from auditing them?

Secretary CHAO. No. They don't have the resources. That was under the Landrum-Griffith act. They don't have the resources. Also, there's no requirement for audited financial statements. There are no requirements for auditing for compiling financial statements according to the GAAP, that's generally accepted accounting practices, or generally accepted accounting standards. There are no whistleblower protections. There are no internal controls mandated by the law. All of this is mandated in most cases for corporations and for small companies. You have to have audited statements. You have to have certified public statements.

Senator HARKIN. By corporations.

Secretary CHAO. Even private companies, you have to have——

Senator HARKIN. What do private companies have to have?

Secretary CHAO. The larger issue is, in a small company——

Senator HARKIN. I think you misspoke, but go ahead.

Secretary CHAO. In a small company, most stakeholders have some control over the resources of that entity.

Senator HARKIN. Well, I would say that in a union they have some because the union officers are elected. There's a vote, a democratic vote.

Secretary CHAO. There are other issues about disclosure, quantitative disclosure, qualitative disclosure, internal controls, and internal audits. None of those occur.

Senator HARKIN. Has any of those top 10 of the top 20 unions that you say they've never been audited by OLMS, are you aware if they've ever been audited with outside auditors?

Secretary CHAO. They probably have, but it's not mandated by law, as it is with other organizations.

Senator HARKIN. But if they've been audited by outside auditors, and those audits are available to its membership and to others—

#### UNION AUDITS

Secretary CHAO. Whether it is or not, we don't quite know. There have been complaints that they've not been available. Certainly the union leadership claim that they are available, and then we also have heard from some certain members that it's not available.

Senator HARKIN. The recent thing about this union, ULICO thing, you know, that's sort of been in the news lately, I'm told that that came to light not because of you or because of the Department of Labor or anything else, it came because of audits that were done by the unions themselves. It was a voluntary program and they brought it to light. Is that not true?

Secretary CHAO. That is not true. We had heard about it before, and it was under investigation. The same thing with the American Teachers Federation.

Senator HARKIN. But who did the audits?

Secretary CHAO. That I'm not sure of.

Senator HARKIN. I was told that was internal audits, or audits, not internal, but audits that were done by outside CPAs and stuff that came in that the unions asked to have it audited, and that's how they found it.

Secretary CHAO. We have 11 criminal convictions a month, and not all of that is self-revealed through the unions.

Senator HARKIN. You've got 11 criminal convictions a month on what, criminal convictions of whom, of what?

Secretary CHAO. Of labor unions. We have about 200 audits a year. It's a very enfeebled office at this point. Its budget and FTEs were cut more than 40 percent in the last 10 years, so this small office conducts about 200 audits a year, and there are investigations ongoing on others. On average there are about 11 criminal convictions a month.

Senator HARKIN. A month.

Secretary CHAO. Yes.

Senator HARKIN. Convictions, by you or by whom? Convictions by whom?

Secretary CHAO. The courts, Justice Department.

Senator HARKIN. Are these under State courts? Are these Federal cases you bring? I mean, 11 criminal convictions a month, are these because of your investigations? Is that what you're saying?

Secretary CHAO. A lot of them are instigated not by us but by the Office of the Inspector General, because they are in charge of a lot, and then also by the Office of Labor Management Standards, yes.

Senator HARKIN. All right. When you submit the comparisons, don't just use publicly held corporations. I want you to use privately held companies, closely held companies that would have the same kind of receipts in a year as the labor union, and compare them to see what the reporting requirements are.

Secretary CHAO. Labor unions basically don't report very much today, anyway. They only report two forms to the Office of Labor Management Standards.

Senator HARKIN. Well, what does a privately held company with the same receipts have to report?

Secretary CHAO. That's not an analogous comparison.

Senator HARKIN. To try to compare it to publicly held corporations, why is that analogous?

Secretary CHAO. No, the labor unions actually wanted to be compared to publicly accounted public companies. They claim that they are held to a higher standard than public corporations, which is not true.

Senator HARKIN. Well, this could go on and on. Thank you very much, Madam Secretary.

[The information follows:]

COMPARISON OF THE FINANCIAL DISCLOSURE REGIMES FOR LABOR UNIONS AND  
PRIVATELY HELD COMPANIES

Legally mandated financial disclosure regimes for both unions and publicly held corporations are designed primarily to address a fundamental problem common to both institutions—the principal/agent dilemma. This dilemma exists whenever managerial control of an entity lies beyond the direct control of the people who fund the entity. This occurs in both unions and publicly held companies. Corporate and union financial disclosure regimes are supposed to reduce the informational advantages agents have over principals and permit principals to monitor and assess the performance of agents. Adequate transparency encourages union officers and corporate directors (agents) who are elected by union members and corporate shareholder (principals) to conduct the business of their organizations in the best interests of the people who provide the operating funds. Agents failing to do so can be removed through the mechanisms of corporate and union democracy.

There is no principal/agent dilemma in a privately held enterprise where the operator of the business is also the source of the venture's financing. There is no principal to perform the monitoring and no agent to be monitored. While privately held companies are required to make certain financial disclosures related to franchise taxes, Small Business Administration loans, FCC licenses and other regulatory schemes, these disclosures are designed to assess taxes, fees or eligibility for government provided benefits, not to ensure transparency of managerial performance. The only scenario in which it is rational to compare the financial disclosure regime of a privately held company to a union is when a privately held firm creates a principal/agent relationship by accepting funding through the venture capital markets.

The Labor Management Reporting and Disclosure Act of 1959 (LMRDA) established a unique financial disclosure regime for labor organizations designed for two purposes. First it was supposed to provide union members insight into how union officials managed members' dues so that they could make informed decisions during union elections. Second, it was supposed to deter the pervasive infiltration of organized crime into unions that was highlighted during the McClellan hearings.

The disclosure regime for labor organizations has not been materially updated in more than four decades. The modernized union disclosure regime on which the Department of Labor requested public comment is far less rigorous than the disclosure regime currently mandated for publicly held companies following the passage of Sarbanes-Oxley and in many respects less rigorous than the legally enforceable transparency regimes that privately held firms accept as a condition of receiving venture capital funding. The efficacy of these disclosure systems as a means to address the principal/agent dilemma and the burden associated with them can be evaluated by the extent to which they provide adequate quantitative information; qualitative information; and audit requirements and internal management controls designed to guarantee the integrity of qualitative and quantitative disclosures.

Senator SPECTER. Thank you, Senator Harkin. Thank you very much, Madam Secretary, for coming in today. It is a big job to administer the Department of Labor, and we are very pleased to work with you on the budget. It's an enormous responsibility to have the \$11.5 billion allocation of funding and all of the responsibilities

which you have, and budgets are always difficult, and in allocating these budget resources, as you know, this subcommittee has to balance off Labor requests with Education requests and with Health and Human Service requests because it is a unified budget the subcommittee has, and we have to make the allocations. When you talk about worker safety and worker training and contrast it with Head Start and Pell Grants and the National Institutes of Health, it is difficult.

Thank you for coming in today.

Secretary CHAO. Thank you. We're very committed, obviously, to helping workers train, and we want to work with the committee.

Senator SPECTER. Thank you.

Secretary CHAO. Thank you.

#### PREPARED STATEMENT OF SENATOR THAD COCHRAN

Senator SPECTER. We have received the prepared statement of Senator Thad Cochran that will be made part of the hearing record.

[The statement follows:]

#### PREPARED STATEMENT OF SENATOR THAD COCHRAN

Mr. Chairman, I am pleased to join you in welcoming Secretary Chao. I look forward to working with her on issues that are of special importance to Mississippi and to our nation.

The migrant and seasonal farm worker housing program is of particular interest to me.

In the past, this subcommittee has included report language directing the continuation of this small, but important program that assists farm workers gain better housing. Since 1983, I have worked with the Department to ensure a network of local organizations, including one in my state, receives funding to plan, develop, and manage housing for migrant and seasonal farm workers. There is now a well established network of local housing organizations that receives these funds.

I look forward to working with you, Madam Secretary, on this and other important Department of Labor programs. Thank you.

#### ADDITIONAL COMMITTEE QUESTIONS

Senator SPECTER. There will be some additional questions which will be submitted for your response in 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 ARLEN SPECTER

##### HISPANIC AND IMMIGRANT WORKERS

*Question.* Over the past years, there has been an alarming increase in fatalities among Hispanic and Immigrant Workers. The Department of Labor has acknowledged this fact and has included \$2.2 million in the fiscal year 2004 budget request for a Hispanic Worker Initiative. At the same time that this program is being proposed, however, the Administration is proposing to cut funds for worker training and education grants by more than \$7 million. Many of the programs conducted under these training grants have been directed towards Hispanic and Immigrant workers, the very workers that DOL has stated are a priority. Why is the Administration proposing to cut funds directed towards training and education, including programs targeted at Hispanic and Immigrant workers? Have these programs been unsuccessful?

*Answer.* OSHA has included an increase of \$5,250,000 in its fiscal year 2004 budget to expand outreach and assistance activities, almost half of which will be dedicated to efforts to reach non-English speaking, hard-to-reach and contingent

workers. This is in addition to a large number of ongoing programs designed to reach, train and educate these workers.

The President is also requesting \$4,000,000 for OSHA training and education grants in fiscal year 2004. We continue to believe that the emphasis for OSHA's training and education grants should be the development and distribution of training materials for the broadest possible audience. To meet the changing needs of employers, and to take advantage of new technologies, OSHA has outlined a revised grant program that would fund short-term grants to nonprofit organizations to develop, evaluate and validate safety and health training materials for OSHA that would primarily be distributed to the public via the Web. The training materials would be targeted principally to employees and small business employers and could be tailored to the varying needs of selected industries and workers. This change would make more materials available for employers and other interested parties to utilize for training their workers. These materials would also be a useful resource for OSHA compliance assistance specialists by complementing the services they provide. Rather than teaching a few workers at a time, we will be able to develop a variety of new training materials on a continuing basis to benefit more workers throughout the country.

*Question.* What specifically does the Department propose to do under the new Hispanic Worker Initiative that is proposed? How will these initiatives differ from the programs that have been conducted under the training grant program?

*Answer.* The Department is expanding its efforts to address the safety and health of employees in hard-to-reach sectors of the workforce, including young workers, as well as Hispanic and other non-English-speaking workers. For example, OSHA plans to improve the operations of its toll-free number, which offers assistance in English and Spanish. OSHA will also expand its current web page for Spanish speakers and plans to create a Spanish version of many of the agency's information publications. A Spanish version of "All About OSHA," the pamphlet that describes the agency's responsibilities and workers' rights, already exists. OSHA is also forming partnerships with groups like the Hispanic Contractors of America, INS., to raise awareness of safety and health assistance offered by OSHA and its state partners.

The Department is also actively recruiting Spanish-speaking employees to work in front line positions. For example, OSHA currently has 180 Spanish-speaking employees in Federal and State OSHA programs.

#### CONSOLIDATION OF EMPLOYMENT AND TRAINING PROGRAMS

*Question.* The administration proposes consolidating adult, and dislocated worker funding under the WIA and Employment Service programs into a single block grant. An historic function of federal job training funding is to target dollars to areas and individuals of greatest need.

The adult WIA program allocates funding according to poverty levels to help communities with large numbers of economically disadvantaged workers. Dislocated worker funding is targeted to communities with high unemployment, and it also provides for state Rapid Response programs to intervene early with help for workers and companies in trouble.

The result of the administration's proposed block grant is to eliminate discrete programs that provide vital services to groups with special needs and could pit welfare recipients against unemployed workers in competition for limited funds.

Why does the administration seek to block grant programs at a time when there is a continued need for targeted, fully-funded programs aimed at the special needs of disadvantaged and dislocated workers?

*Answer.* The Administration's proposal is to consolidate the three separate funding streams that currently provide overlapping employment-related services to adults into a single, more flexible, comprehensive and effective program. The three separate streams, while providing similar services, currently have separate funding formulas, eligibility criteria, performance measures, reporting requirements, and other elements that reduce efficiency, promote duplication of efforts, and do not enhance the provision of services. Consistent with the principles of program integration underlying the Workforce Investment Act of 1998 (WIA), this consolidation of funding streams would simplify and enhance the delivery of services to adults.

The critical services authorized under the current separate programs to meet the needs of special populations would continue to be authorized under the consolidated comprehensive program, but without the burdensome administrative requirements that currently result from having to track three separate streams of funding.

Funds under the new program will be allocated to states by formula, and a portion will be held in reserve at the national level in a discretionary account for Na-

tional Dislocated Worker Grants (currently “National Emergency Grants”), demonstration grants and technical assistance.

At the state level, funds will be allocated to local areas. Governors would maintain a reserve for statewide activities, including rapid response, support for core services in the One Stop program, and demonstration projects.

At the local level, the core, intensive and training services currently available under the separate programs would be available through One-Stop career centers under the new comprehensive program, with enhanced flexibility to determine the appropriate combination of services. Priorities with respect to providing intensive and training services would be given to the unemployed and, if local funding available to serve low-income individuals is insufficient, to low-income workers. The core services would be available on a universal basis to job seekers and employers.

The Administration believes this proposal enhances, rather than diminishes, the ability of States and local areas to tailor services to meet the special needs of disadvantaged, dislocated and other workers.

*Question.* States have not used the flexibility they have right now to receive waivers and to transfer funds between adult and dislocated worker programs. So why does the administration feel the need to consolidate adult and dislocated worker programs when states haven’t taken advantage of the flexibility they currently have?

*Answer.* States have taken advantage of the waiver authority in the current law, with 36 states requesting waivers, and many of them requesting multiple waivers of a variety of provisions in the law. In addition, over half of the states have transferred funds between their adult and dislocated worker programs. It should also be noted that because the current waiver authority contains significant restrictions on the requirements that may be waived, the Department has been unable to approve a number of waiver requests that we have received. This experience indicates a significant interest on the part of the states for greater flexibility in the statute.

The Administration believes the consolidation of the three funding streams (Adult, Dislocated Workers, and Wagner-Peyser) into a single, comprehensive program for adults would provide significant flexibility that will result in enhancing the provision of services to job seekers and employers.

#### ELIMINATION OF THE UNITED STATES EMPLOYMENT SERVICE

*Question.* The administration proposes to eliminate the 60-year-old United States Employment Service (ES), a federal-state partnership that provides assistance in matching job seekers with employers. This proposal will replace the “honest broker” function of the ES with myriad organizations whose purpose will be driven by profit, not public service.

The U.S. Employment Service provides a nationwide public labor exchange for all workers and employers. How does the Department expect fifty states to carry out this national purpose without compromising or undermining the principle of universal access and a free, public national labor exchange?

*Answer.* The universal labor exchange services currently provided under the Wagner-Peyser Act are also required to be provided under the current WIA adult formula program, and labor exchange services for dislocated workers are required to be provided under the WIA dislocated worker formula program. All three programs are to make these services available through the One-Stop delivery system established in each local area under WIA.

Rather than have these overlapping and duplicative requirements for the provision of labor exchange services under three different programs, the Administration believes the three funding streams should be consolidated into a single, comprehensive program for adults which includes as a key element the availability of universal public labor exchange services for all job seekers and employers. Rather than undermining or compromising the principle of universally accessible labor exchange services, the Administration believes the consolidation would strengthen and enhance the provision of those services.

*Question.* The U.S. Employment Service provides a range of services in addition to labor exchange including special assistance to migrant and seasonal farmworkers and veterans. It also conducts important labor market research and labor certification functions. How will the Department ensure that these functions are continued?

*Answer.* The functions described in the question will continue to be carried out. The assistance to migrant and seasonal farmworkers will be carried out through the One-Stop delivery system under the consolidated WIA adult program. Similarly, the special programs for veterans, the Disabled Veterans Outreach Program (DVOP) and Local Veterans Employment Representatives (LVER) program, that assist vet-

erans in job placement will be carried out in coordination with the consolidated adult program through the One-Stop delivery system.

Other initiatives funded through the America's Labor Market Information System (ALMIS)/One-Stop line item would also continue. These initiatives create the foundation for a Workforce Information System that provides for the data collection, aggregation, formatting, and delivery needed for day-to-day decision-making by our One-Stop partners and for the efficient delivery of information and labor exchange services through a set of Internet-based electronic tools. The funds are also used to insure that our information delivery is up to the high-quality standards set for e-Government.

The ALMIS/One-Stop budget for fiscal year 2004 has been re-aligned with ETA's priorities and strategic plan. The budget requested will provide sufficient funding for a comprehensive Workforce Information System and for the continued development and delivery of information through the Career One-Stop set of national electronic tools.

The Department of Labor will continue to provide funds to State Workforce Agencies to continue to perform certain alien labor certification functions.

#### TRADE ADJUSTMENT ASSISTANCE (TAA) PROGRAM

*Question.* The new TAA program significantly increased the number of workers who are eligible for training, income support, and health care. Estimates are that the TAA program enrollments will double. Congress authorized \$10 million for TAA health care programs in fiscal year 2004 yet the administration proposes no new funding to provide states with the resources necessary to administer the new health care tax credit and provide interim coverage for TAA-eligible individuals.

Given the expected demand for services, how can the Department of Labor expect the already strapped National Emergency Grant (NEG) program under WIA to provide states with resources to administer a complicated health care tax credit program and to provide interim health coverage to the thousands of TAA-eligible participants?

*Answer.* As you know, the Trade Adjustment Assistance Reform Act of 2002 established new mechanisms by which certain TAA participants, as well as eligible Pension Benefit Guaranty Corporation pension recipients, can receive assistance in covering the cost of health insurance.

These mechanisms include two different types of National Emergency Grants (NEGs). The first NEG is authorized under the new section 173(f) of WIA and is primarily to provide administrative support to the States in carrying out the health tax credit (HCTC). The second NEG is authorized under the new section 173(g) of WIA and is primarily to provide interim assistance in paying for qualified coverage until the HCTC is available on an advanceable basis. Since the law requires that the advanceable credit be available not later than August 1, 2003, we do not believe additional resources will be needed in fiscal year 2004 and thereafter for the interim assistance NEG. Fifty million was appropriated to carry out that NEG in fiscal year 2002 and remains available.

For administrative support NEGs the Congress appropriated \$10 million in fiscal year 2002 and \$30 million in fiscal year 2003. Since the program is new, it is difficult to determine the appropriate level of resources that will be needed in future fiscal years. Beginning in fiscal year 2004 the Administration believes that in lieu of a separate appropriation this NEG would be better administered if funded under the same source of funding as the other NEGs for dislocated workers. This would provide the Secretary with appropriate flexibility in managing NEG funds so that the Secretary could shift more funds to these HCTC activities if needed, or if additional resources are not needed, to use the funds for other dislocated worker assistance.

#### H-1B TRAINING PROGRAMS

*Question.* The Administration will not seek to renew the H-1B training program, which created a \$98 million training fund for U.S. workers, paid for through employers' H-1B visa application fees. At the same time, the budget requests an increase of \$49.5 million to expedite processing of permanent foreign labor certifications.

How can the administration abandon worker training in skill shortage occupations when H-1B visas will still be provided to thousands of foreign workers?

*Answer.* The Administration is not abandoning job training in skill shortage occupations. That is one of the important functions of all of the job training programs administered by the Department, including the formula programs administered by States and local areas under title I of WIA. The Department is continuing to work

to ensure job training is linked to occupations in demand, particularly skill shortage occupations.

It may also be noted that Department has awarded over \$218 million through 90 H-1B technical skills training grants. In January 2003, the Department issued a revised Solicitation for Grant Applications, and approximately \$200 million in additional funding is available for grants.

We will continue to make funds available for H-1B Technical Skills Training Grants, as authorized under the law, until the funds are expended.

Grants for the H-1B technical skills grants program have been awarded under the authority of Section 171 of the Workforce Investment Act (WIA), which requires programs and activities carried out under that section be thoroughly evaluated. An evaluation being conducted by Lee Bruno and Associates and Westat Research is examining all aspects of the program, including how grantees have innovated to develop effective tools and approaches; the extent to which participants have achieved increased skill levels resulting in degrees, licensures, certifications, or occupational/wage upgrades; and the feasibility of examining the programs' net impact on the employment-related outcomes of trainees and the employment of foreign workers with H-1B visas.

It is the Department's intent, based on this and other studies, to examine what strategies do and do not work in technical high skill training. We plan to share the knowledge gained through these studies with States and local Workforce Investment Boards who administer the WIA program, so that knowledge can be applied in the administration of the job training activities that are funded at the State and local level under WIA, and to other programs administered by the Department, such as Trade Adjustment Assistance.

#### WIA YOUTH PROGRAMS

*Question.* At a time when increasing numbers of young people are at-risk in the labor market, the administration proposes to cut youth training programs and to phase out the Youth Opportunity Grants program, which provides at-risk youth education and training opportunities in high-poverty areas. It also proposes to limit WIA Youth Activities formula program to out-of-school youth.

Why has the administration cut funding for programs designed to help the most at-risk students, including those in- and out-of-school?

*Answer.* Reaching out to out-of-school youth is very important and not the focus of other Federal youth programs. School dropouts and other out-of-school youth deficient in basic skills need help in reconnecting with the education system and getting the necessary skills to find employment. Our proposal will target this hardest-to-reach population, which is most in need of services, while the Administration has proposed that the Department of Education focus on in-school youth.

This program will target DOL's formula resources to out-of-school youth programs, providing services that have proven effective in assisting such youth. Our youth investments will focus on providing young people with a strong, core academic foundation in conjunction with post secondary skills certifications or degrees, and transitions to career path employment.

We will apply what we have learned regarding how to better coordinate with local community and faith-based organizations in serving these youth; and how to work with the local private sector to set up internships and other employment experience opportunities for these youth.

We will also apply what we have learned to enhance coordination with the local juvenile justice system to serve youth returning home from correctional facilities and youth being put on probation and how to better coordinate with major employers such as UPS and Federal Express to provide employment opportunities for out-of-school youth.

*Question.* Why is the administration abandoning help to at-risk, in-school youth?

*Answer.* The Administration's budget does not abandon help to at-risk, in-school youth. The proposal targets resources to those youth most in need of assistance to reconnect to the education and workforce systems—specifically school dropouts and other out-of-school youth who are basic skills deficient. The Administration has proposed that the Department of Education focus on in-school youth. The new WIA Youth program would be funded at \$1.001 billion in fiscal year 2004. Seventy-five percent of the funds will be allocated by formula to states to serve out-of-school youth. It may be noted that the remaining 25 percent will be reserved for national challenge grants, which may be used for a number of activities to assist youth in acquiring the skills, credentials, and employment experience necessary to succeed in the labor market. Those grants could include services to some at-risk in-school youth. However, the primary purpose of the revised youth program is to target re-

source to out-of-school youth who are currently underserved and most in need of the assistance the WIA youth program can provide.

#### PENSION OPERATIONS

*Question.* The President's fiscal year 2004 budget includes a provision to eliminate the limit on administrative expenses of the Pension Benefit Guaranty Corporation (PBGC). Shouldn't we be tightening up on the definition of the administrative expense limitation, instead of ceding control to the Executive Branch to determine spending?

*Answer.* Although the President's budget proposes eliminating the administrative expenses limitation for the Pension Benefit Guaranty Corporation (PBGC), it actually would provide a greater degree of Congressional oversight for PBGC's entire budget than under the current process by:

- Simplifying PBGC's budget structure with a single funding source and making it more transparent to its stakeholders in terms of cost of administration for terminated pension plans and the on-going pension insurance program.
- Providing a more meaningful presentation of all of PBGC's operational expenses.
- Reviewing mid-year operating budget adjustments necessitated by termination of large pension plans not identified in the annual budget request process.

Currently, Congress reviews PBGC's entire operational budget each year as part of its appropriations process following submission of the President's Budget. Over 90 percent of PBGC's work is now devoted to the termination, trusteeship and administration of failed pension plans in the private sector. Funding for this work comes from PBGC's trust funds, which are made up of the private assets transferred to PBGC from terminated pension plans when PBGC assumes responsibility for their administration. These are not appropriated funds.

For several years, PBGC has had two operational budgets: one coming from the trust funds for plan termination-related work and the second coming from PBGC's collected premium revenues paid by on-going, defined benefit pension plans. The premium revenues constitute a permanent appropriation. As PBGC's plan termination work has escalated in recent years, the amount of its operational expenses paid by the trust funds has also risen to over 90 percent.

Continuing to manage two operational budgets for a relatively small agency has proved both burdensome and confusing to stakeholders not dealing with internal budget matters. The President has proposed to simplify PBGC's operational budget by providing a single source of funding coming from the trust funds. In addition, he has proposed that Congress be able to review PBGC reapportionment requests from OMB when a major pension plan termination(s) cause PBGC's operations to expand. These reapportionments have in recent years resulted in substantial increases in PBGC's budget coming from the trust funds in order to quickly support processing of very large terminated pension plans such as TWA and LTV Steel. Over the years, PBGC has used its reapportionment flexibility in only the most serious situations. Although this use has resulted in substantial increases, PBGC expenses per participant have substantially decreased over the last 10 years.

Under the new proposal, PBGC's full annual budget request would be subject to Congressional review—not just during the normal appropriations cycle but throughout the year. Congress would receive advance notice of reapportionment requests, which would afford it an opportunity it does not currently have to raise questions and request additional information before any new funds could be used.

#### YOUNG OFFENDERS

*Question.* Your budget justification material states that the United States has experienced rapid growth in the number of people who are incarcerated or under supervision of the criminal justice system. It further states that an estimated 500,000 inmates will return to communities this year. Yet you are proposing termination of the Responsible Reintegration of Young Offenders program, which currently serves 10,400 participants with a budget of \$55 million.

Shouldn't we be expanding this pilot program, and not terminating it?

*Answer.* In 1998, the Department of Labor initiated a five-year Youth Offender Demonstration Project to assist the reentry needs of ex-offenders and at-risk youth. The program is currently in its fifth year.

We are applying what we have learned from the Youth Offender Program to the reauthorization of the WIA youth formula program, which will target resources to out-of-school youth, including youth coming out of the juvenile justice system and will integrate Youth programs with the One-Stop system. We believe this targeted approach to the WIA youth program will enhance the effectiveness of our efforts to

help those served by the Youth Offender Program, as well as school dropouts and other out-of-school youth.

*Question.* What other resources are available to assist these young people?

*Answer.* During 2004, the Department will provide technical assistance to transition the Youth Offender Demonstration Project directly to state and local workforce agencies. We will share the demonstration findings and disseminate information to local communities about best practices for serving youth offenders in the existing One-Stop delivery system, using formula WIA, Wagner-Peyser Act and other funds that have been shown through research to strengthen and expand local partnerships and enhance One-Stop services to such youth.

This year, the Department, in partnership with the Departments of Justice and Health and Human Services and other cabinet agencies, supported a companion effort called the Serious and Violent Offender Reentry “Coming Home” Initiative, which provided grants to 68 communities totaling \$100 million (\$48 million of which is Department of Labor funds) to address the reentry problems of the most serious ex-offenders.

NATIONAL LABOR RELATIONS BOARD

*Question.* The National Labor Relations Board (NLRB) is an independent federal agency (under Relateds, not under Labor) which was created in Congress in 1935 to administer the National Labor Relations Act. The two primary functions of the NLRB are to: (1) prevent and remedy statutorily defined unfair labor practices; and (2) to conduct secret-ballot elections to determine whether employees wish to be represented by a union. Due to lack of FTEs and being unable to hire new staff because of the fiscal year 2002 levels of last year, the backlog of unfair labor practice cases has increased dramatically.

	Fiscal year—		
	2001	2002	2003 (estimate)
Case Backlog by the end of .....	970	1,496	2,346

The NLRB’s main function is to help solve disputes regarding unfair labor practices, thus often acting as a liaison between the Unions, and company management. However, the backlog in unfinished cases is growing annually. We recognize that this is a federal agency completely independent from your own, however their role in labor matters is vital. Can you give us an idea of the workload of cases that the NLRB handles and their budgetary needs? What importance do you place on increased funding for this independent agency? Of what importance would you judge this agency in helping mediate and settle labor practices, and to act as this sort of liaison?

*Answer.* While the Department is aware of the important role played by the NLRB in resolving issues under the National Labor Relations Act, that agency is, as your question recognized, completely independent. The Department is not involved in the preparation of the budget for the NLRB and has no supervisory role with respect to the operations of that agency. Accordingly, the Department is not in a position to comment on the NLRB’s workload or budget needs.

ERGONOMICS BUDGET

*Question.* What level of funding has been targeted to support your “comprehensive approach” to ergonomics in the fiscal year 2003 budget and the fiscal year 2004 budget request? For which activities has funding been requested?

*Answer.* The resources utilized to address ergonomics in both the fiscal year 2003 and fiscal year 2004 budget request are contained within all of OSHA’s budget activities and are not separately identified or earmarked to address ergonomics or any other specific issue. Rather, the comprehensive approach to ergonomics involves focused activity by the entire agency in addressing the four prongs of the ergonomics policy: industry specific and task-specific guidelines, strong enforcement, outreach and assistance, and research.

*Question.* How many FTE’s have been assigned to work on ergonomics?

*Answer.* The agency has not specifically identified or tracked the number of staff working on ergonomics. The staff necessary to address ergonomic concerns is available as needed within the ongoing enforcement, outreach, and regulatory activities of the agency.

*Question.* How many ergonomists does OSHA currently employ? What are their responsibilities?

Answer. Although there is no formal Federal job classification titled “ergonomist,” OSHA currently employs three Certified Professional Ergonomists. Two of these ergonomists are employed in two different Regional Offices and the third works at our Salt Lake Technical Center. Their responsibilities include providing training and assistance to compliance staff, outreach and assistance to the regulated community, and serving on the Ergonomics Response Team. The agency also employs six compliance officers who have advanced degrees in industrial engineering, with concentrations in ergonomics; nearly 30 regional personnel who have extensive training in ergonomic interventions in specific industries, such as meat-packing and textiles; and three Health Response Team members with extensive ergonomics expertise and training.

ERGONOMICS ENFORCEMENT AND GUIDELINES

*Question.* How many enforcement actions has OSHA taken pertaining to ergonomic hazards during fiscal year 2002 and fiscal year 2003 to date?

Answer. Inspections under OSHA’s National Emphasis Program (NEP) for Nursing and Personal Care Facilities, which focuses on patient-handling hazards, began on September 17, 2002. Over the past winter, Regional and Area Offices implemented Local Emphasis Programs (LEPs) to address ergonomics in several other industries with high rates of musculoskeletal disorders.

In all, OSHA has assessed ergonomic conditions in 675 of the inspections opened between January 1, 2002 and March 31, 2003. Of these inspections, 469 have been in nursing and personal care facilities pursuant to the NEP for this industry and 156 have been in other industries, including 50 inspections in industries targeted by ergonomic-related Local and Regional Emphasis Programs.

Inspection type	Time period	Number of inspections
Nursing Homes under the Nursing Home NEP .....	September 17, 2002 through March 31, 2003 .....	469
Ergonomic Related—Non-Nursing Homes .....	January 1, 2002 through March 31, 2003 .....	106
LEPs—Ergonomic Related .....	December 15, 2002 through March 31, 2003 .....	50

*Question.* Specifically, how many hazard warning letters have been issued on ergonomic hazards, and how many general duty clause—5(a)(1)—citations have been issued?

Answer. Although many of the ergonomic inspections are still ongoing, those that have concluded have resulted in 88 ergonomic related Hazard Alert Letters (EHALs) (55 to nursing homes and 33 to establishments in other industries) and six 5(a)(1) citations for ergonomic hazards. Each EHAL recommends ways to reduce ergonomic hazards, and indicates that OSHA may conduct a follow-up inspection to assess the extent to which the employer has taken such action.

*Question.* Please provide a list of the establishments for which hazard warning letters or 5(a)(1) citations have been issued, and the date of their issuance.

Answer. Alpha Health Services, Inc. received three of the citations for hazards at three different facilities. Alpha Health Services was inspected under the NEP for Nursing and Personal Care Facilities. Other establishments receiving 5(a)(1) citations included Security Metal Products, which manufactures door frames; SuperValu; and Brown Printing.

OSHA is in the process of creating a list of the 88 establishments to which EHALs have been sent, including the date of issuance. Once we have created this list, we can provide it to the Committee.

*Question.* How many inspections on ergonomic hazards does OSHA plan in fiscal year 2003 and fiscal year 2004?

Answer. In general, OSHA does not have a pre-determined number of inspections under which we target ergonomics. OSHA’s efforts are geared towards targeting establishments with the highest injury and illness rates. OSHA’s Site-Specific Targeting Program focuses our inspection efforts on those employers who report the highest rates of injuries and illnesses. Because many of these injuries and illnesses are caused by ergonomic hazards, ergonomics will continue to be a focus of our inspections. Among the occupations with the highest numbers of days away from work were nurses’ aides and orderlies. Under the current NEP for Nursing and Personal Care Facilities, we plan to inspect 1,000 nursing home establishments from September 17, 2002 through September 30, 2003. If this program is renewed, we will continue to focus on injuries that result from resident handling in nursing homes.

*Question.* To date OSHA has issued one final ergonomics guideline for the nursing home industry and announced that guidelines for 3 other industries (retail grocery, poultry and shipyards) will be developed. What is the schedule for the issuance of

these guidelines in proposed form and final form? What other ergonomic guidelines does OSHA plan to issue in fiscal year 2003 or fiscal year 2004, and what are the schedules for issuance of these guidelines?

Answer. OSHA published the nursing home guidelines less than a year after the announcement of the agency's four-pronged approach to dealing with ergonomics and after engaging in a public process that stressed stakeholder participation. OSHA has also released for public comment the draft retail grocery guidelines, and poultry processing guidelines. The agency intends to publish both of these guidelines in final form later this year. OSHA is working on the shipyard guidelines, and hopes to publish draft guidelines this fall with final guidelines completed early in 2004. The next topics to be addressed have not yet been determined but plans for additional guidelines will be announced in the next few weeks, as we complete work on draft guidelines for grocery stores and poultry processing.

#### OSHA STANDARDS

*Question.* One of OSHA's primary responsibilities is to set new safety and health standards to protect workers from injuries and illnesses. It is my understanding that there are several rules that have gone through the rulemaking process and are pending final action. These include rules on tuberculosis and employer payment for personal protective equipment. Both of these are important standards. The TB rule would protect health care workers not only from TB, but also other infectious agents like the new virus SARS. The payment for PPE rule would not impose any new requirements, but simply clarify that it is the employers' responsibility to pay for protective equipment provided by OSHA standards. This is particularly important for low-wage immigrant and Hispanic workers who are at increased risk of injury and death, who cannot afford to pay for their own protective equipment.

It is very disturbing that the Administration has repeatedly put off action on these two rules. Why has the Administration failed to act on these rules and when do you plan to issue the final rules on TB and Payment for Personal Protective Equipment?

Answer. In the current regulatory agenda, both the tuberculosis and employer payment for personal protective equipment (PPE) rulemakings were slated for a decision on the next step. We are continuing to review the records of both rulemakings. As appropriate, the agency will update the status of these and other rulemaking proceedings in the next regulatory agenda.

*Question.* What other proposed or final rules does the Administration plan to issue in fiscal year 2003 and fiscal year 2004, and what is the projected schedule for issuing these rules?

Answer. In fiscal year 2003, OSHA has issued proposals for: Commercial Diving Operations; Fire Protection in Shipyards; and Standards Improvement Project. During the remaining months of fiscal year 2003, proposals are expected to be published for: Assigned Protection Factors for Respiratory Protection; Controlled Negative Pressure Fit Testing Protocol; Vertical Tandem Lifts; General Working Conditions in Shipyards; and Electrical Safety. A proposal for Electric Power Generation, Transmission, and Distribution is currently in the SBREFA panel process, and should be published later this year. A proposal addressing Confined Spaces in Construction will also begin the SBREFA panel process soon.

OSHA has issued final rules for Exit Routes and parts of the Occupational Injury and Illness Recording and Reporting Requirements in fiscal year 2003. The agency expects to issue another final rule in fiscal year 2003 for Occupational Injury and Illness Recording and Reporting, as well as a final rule for Commercial Diving Operations.

With regard to fiscal year 2004, the current regulatory agenda does not provide commitments throughout that year. It is expected that final rules for Fire Protection in Shipyards and the Standards Improvement Project will be issued in the first quarter of fiscal year 2004.

*Question.* Last year as part of a reorganization of OSHA, the Directorate of Safety Standards and the Directorate of Health Standards were merged and the charge of the new combined directorate expanded to include the development of voluntary guidance. The proposed standard setting budget for fiscal year 2004 of \$14.5 million is \$1.6 million less than what was appropriated for standard setting in fiscal year 2003 (\$16.1 million). Why are you proposing to cut the standard setting budget? What percent of the budget will be used to develop and issue mandatory standards and rules and what percentage will be used to issue voluntary guidelines?

Answer. OSHA's fiscal year 2004 budget for the Directorate of Standards and Guidance is sufficient to support the proposed regulatory agenda and develop other non-regulatory approaches to dealing with safety and health hazards.

The work involved in developing standards is similar to that involved in developing guidelines. As a consequence, the agency does not distinguish in its budget between standards development and the development of guidance materials.

#### OSHA ENFORCEMENT

*Question.* The Administration has proposed \$165.3 million for federal OSHA enforcement for fiscal year 2004. While this represents a small increase in dollars over the fiscal year 2003 appropriated levels, it is not sufficient to maintain the number of FTEs budgeted in fiscal year 2003. How many FTEs for Federal enforcement are currently filled? How many are vacant? Please provide the number of FTEs and a list of the positions that will be eliminated if the Administration's fiscal year 2004 budget request for federal OSHA enforcement is adopted.

*Answer.* There are currently 1,603 employees filling positions in Federal Enforcement. OSHA has requested 1,581 FTE for Federal Enforcement for fiscal year 2004, a total of 31 less than the fiscal year 2003 authorized level. This reduction will not affect the number of safety and health inspections or the number of front-line OSHA enforcement staff. Consistent with the Department's workforce restructuring plans, which seek to streamline decision making processes and eliminate unnecessary overhead positions, OSHA proposes to eliminate field and national office positions that provide administrative and management support.

With the fiscal year 2004 Budget, OSHA has committed to achieving significant safety and health improvements—specifically a 5 percent reduction in the fatality rate, and an 8 percent reduction in the injury and illness rate. OSHA's proposed staff allocation enables it to meet those goals.

*Question.* In March, OSHA announced a new "Enhanced Enforcement" policy to focus attention on employers who were persistent serious violators of OSHA safety and health standards. Based upon agency press statements, it appears that this policy will consist largely of enhanced oversight. During previous administrations, including the Reagan and Bush I Administrations, OSHA instituted similar enhanced enforcement policies including the egregious policy which significantly increased penalties on egregious violators through the application of instance by instance citations and penalties.

Does the new enhanced enforcement policy include any provisions for enhanced citations or penalties? If so, what provisions are included? And if not, why aren't these employers being treated more severely with respect to citations and penalties than other employers?

*Answer.* Many of the specifics of the new Enhanced Enforcement Program are still being developed and will be embodied in a directive that OSHA will be issuing in the near future; they will, however, conform to the approach announced by the Secretary in March. The main intent of the program is to give OSHA a better targeting tool so we can focus resources on the employers who have shown the least regard for worker safety and health.

The new program will focus on employers whose inadequate attention to worker safety and health results in high-gravity citations. In these cases, OSHA will make sure that the employer's corporate headquarters receives copies of the citations. Additional inspections of workplaces affiliated with the same corporation will be more likely. When these employers choose to settle citations, we will use the settlement process to encourage the employers to implement systemic improvements to their safety and health practices. Finally, strong consideration will be given to Federal Court enforcement under Section 11(b) of the OSH Act. Although, in keeping with the law, the actual citation characterizations and penalty amounts will depend on the nature and circumstances of each violation cited, we will consider using all applicable OSHA sanctions, including instance-by-instance citations and penalties.

#### EXTENDED BENEFITS FOR AIRLINE INDUSTRY

*Question.* I was very disappointed to learn yesterday of the President's opposition to a temporary extension of unemployment insurance benefits to help unemployed airline industry workers who have lost their jobs. But I was heartened to see that 67 House Republicans joined all of the House Democrats to instruct the Appropriations conferees to help our workers.

As the Secretary of Labor, do you agree with the Administration that the government should provide billions of dollars in federal aid to ailing industries while doing nothing to support workers who have played by the rules, but have still lost their jobs?

*Answer.* The Administration has supported two federal extensions of unemployment benefits to workers who have not been able to find new jobs before exhausting regular state unemployment benefits. While we have concerns about providing a

more generous level of benefits to workers in a particular industry, the Administration will continue to work with Congress to determine how these workers can be assisted in finding reemployment.

#### EXTENSION OF UNEMPLOYMENT COMPENSATION

*Question.* If economic conditions do not rebound by the summer will you support an extension of unemployment compensation benefits to allow additional time for job growth to occur?

*Answer.* The President and I are focused on job creation. The Administration proposed a Jobs and Economic Growth Plan, including tax relief and Personal Reemployment Accounts, to provide meaningful stimulus for the economy. Additionally, we will work with the Congress to help unemployed workers who have exhausted their benefits before finding new jobs.

#### TRADE ADJUSTMENT ASSISTANCE

*Question.* In the letter Mitch Daniels sent to Congressional Appropriations leaders yesterday, he said the White House opposed the Murray airline workers amendment because, "To provide benefits for a specific industry would be unusual, unfair and potentially harmful to our national unemployment system."

Is it the Administration's position that Trade Adjustment Assistance which provides benefits to specific industries is also unusual and unfair?

*Answer.* The Trade Adjustment Assistance Program does not provide benefits to specific industries. The program is not industry-based and is available to any worker group impacted by foreign trade.

Worker groups in virtually all industries have been certified for TAA benefits at one time or another. Workers whose firms are adversely affected by increased imports or a shift in production to a country which has a free trade agreement with the United States or a country under certain specified Acts are potentially eligible for TAA certification. Further, workers who are found to be secondarily-impacted, as defined in the Act, may also be eligible.

#### MIGRANT AND SEASONAL FARMWORKERS ELIMINATION

*Question.* It appears that the Department no longer believes that a national program for migrant and seasonal farm workers is needed.

How will we avoid burdening Governors and local One-Stops with the responsibility of trying to serve workers who may work and reside in their states for brief periods during this time of huge and growing state deficits?

*Answer.* The Workforce Investment Act (WIA) created the federally-funded One-Stop Career Center system, designed to provide an integrated system of workforce investment services at the local level and to provide universal access to these services for all customers. The Administration's fiscal year 2004 budget proposal seeks to tap the system's potential to serve more migrant and seasonal farmworkers by providing job training services for them through the One-Stop delivery system and turning to other appropriate agencies to provide social and supportive services, housing, and other related assistance.

To facilitate the transition, we have been working with the current National Farmworker Jobs Program (NFJP) grantees to identify initiatives that can be undertaken to support the One-Stop delivery system's efforts to be responsive to farmworkers. We are considering pilot and demonstration projects to test new ways to increase farmworkers' employment and earnings, and training and technical assistance to states and localities to meet the challenge of providing universal and effective workforce services.

We believe that workforce investment services organized through the One-Stop delivery system play a vital role in building strong local economies, and that providing services to farmworkers through the One-Stop delivery system will increase the number served and have a positive employment and earnings impact on those who receive services.

#### ASBESTOS TAINTED VERMICULITE

*Question.* I remain concerned that workers across the country are still being exposed to unacceptably high levels of asbestos. I am particularly concerned that workers are being exposed to asbestos-tainted vermiculite, which may still be in as many as 35 million homes.

Do you believe OSHA and EPA need to do more to warn workers and homeowners not to disturb this product?

Answer. Since OSHA's inception in 1971, the agency has used its authority for standard-setting, enforcement, and compliance assistance to protect workers from the threat of asbestos.

In addition to the final asbestos rule issued in June 1972, the agency issued two subsequent emergency standards, the last of which published two final asbestos standards, one for general industry and one for construction; added shipyards as a covered industry; and lowered the PEL to 0.1 fibers per cubic centimeter. All employers are required to communicate information about asbestos hazards to all potentially affected employees at a worksite.

OSHA enforces the current asbestos standard through routine, random or targeted inspections. Many of the several thousand inspections conducted by Federal or State OSHA programs, in which violations of the standard were cited, were initiated as a result of employee complaints and referrals from Federal or State agencies.

OSHA provides compliance assistance to employers and employees to help them understand the dangers of asbestos, and how to minimize or eliminate the threat. OSHA's Web page connects computer users to concise and easy-to-read publications on asbestos, which are available to the public free of charge. Pamphlets explain the requirements of the standards for both general industry and construction. Included in each is a list of sources of assistance. OSHA's Web page also includes reports, links to other Web sites, slides, and information about taking samples and controlling exposure to asbestos. OSHA offers an intensive course covering the recognition and control of asbestos at its Training Institute in Illinois.

OSHA has also developed software that can be downloaded from its Web site to provide interactive expert advice for building owners, managers and lessees, as well as for contractors of building renovation, maintenance and housekeeping services. Once installed on a computer, the software asks questions about a building site. It then asks follow-up questions based on answers, and produces a report on responsibilities under the asbestos rules.

In all 50 states, OSHA's free on-site consultation program is available and provides expert assistance on asbestos to small businesses.

#### CUTS IN EMPLOYMENT AND TRAINING SERVICES AND GAO

*Question.* In the past, you have argued that cuts in employment and training services can be accomplished without impacting service delivery because of a carry-over of funds in WIA formula programs.

The General Accounting Office (GAO) recently conducted an investigation and found that the Administration's argument was not accurate. It said, "Our analysis of Labor's data shows that states are rapidly spending their funds—in fact nationwide states have spent 90 percent within 2 years, even though the law allows 3 years to spend the money." In fact, my state was found to have spent 98 percent of their formula funding in fiscal year 2001.

Would you now agree that cuts in funding will mean cuts in services?

Answer. Absolutely not. The President's 2004 Budget and the Administration's WIA reauthorization proposal not only would maintain, but allow for increases in, job training participation. As the Assistant Secretary for Employment and Training said in the Department of Labor's (DOL) February 7th response to GAO's report, DOL does not dispute that states are exceeding the minimum requirements for spending under the Act. However, DOL and the Administration believe that it is important to look beyond the minimum expectations when making these workforce investment decisions. The Department has never questioned whether these funds will be spent over time. What concerns us is the amount that is carried over from one program year to the next that could have been used for program services during the year for which the funds were appropriated. For the past few years, large and record-level amounts of WIA state grants have remained unspent and in the Treasury at the end of the year. For fiscal year 2004, these balances still will be an estimated \$1.7 billion. So, while the state under-spending problem has improved somewhat, the fiscal year 2004 budget request takes into account these continuing large amounts of unexpended carry-over funds.

—The recent GAO report (GAO-03-239) found that states are spending their WIA funds much faster than required under the law. However, our own analysis of state spending data indicates that spending rates of available funds continue to increase only marginally as state programs become more established and financial reporting procedures are improved.

—Despite improved spending rates, there remain large amounts of state unexpended carryover funds from the previous two years that compel us to prudently keep our fiscal year 2004 budget request at roughly the fiscal year 2003 levels.

This budget would provide adequate funding to maintain and even increase services in the coming year. Any need for additional funding in local communities can be addressed within the flexibility of other provisions in WIA.

—Further, the Administration's fiscal year 2004 job training policy provides new authority to the Secretary and states to reallocate funds to the few states and localities that have exhausted the resources available to them. The Administration proposes to recapture funds from states with more than 30 percent of all funds that were available for expenditure during the prior program year (including carry-in funds from previous years) that remain unexpended, compared to the current law provision which only recaptures funds from states with more than 20 percent of funds from the prior program year's allotment that remain unobligated. The proposal more directly targets areas where there are significant levels of under-spending.

#### PERSONAL REEMPLOYMENT ACCOUNTS

*Question.* The President's Economic Stimulus package proposes to spend \$3.6 billion on a new untested program called Personal Reemployment Accounts. This proposal has received criticism from the workforce community and Republicans and Democrats in the Congress.

Given the unlikely enactment of this new scheme by the Congress, why not use this money to more adequately fund programs for adults, youth and dislocated workers that are part of the already well established Workforce Investment Act?

*Answer.* The President's 2004 Budget and the Administration's WIA reauthorization proposal not only would maintain, but allow for increases in, job training participation. The concept of the Personal Reemployment Accounts (PRA) initiative, and particularly its elements of greater flexibility and customer choice, are important to the President and considered key to the success of today's unemployed workers in reattaching to the labor market. Even if the Congress fund the PRA initiative, the Administration proposes to offer PRAs as a service option using funds available through a reauthorized Workforce Investment Act (WIA).

#### WIA FORMULA AMENDMENTS

*Question.* Last week DOL's Employment and Training Administration (ETA) released the state formula allocations for fiscal year 2003 for the WIA formula funded programs. Despite having the second highest state unemployment rate in the nation Washington received a cut of over \$33 million in its WIA formula funds, with most of the reduction (\$29 million) coming in the dislocated worker account.

Clearly the Workforce Investment Act (WIA) formula factors do not accurately reflect current economic conditions in a state.

Madame Secretary, will you work with me during the reauthorization of WIA to develop formula factors that more accurately reflect and are responsive to current economic conditions in a state?

*Answer.* Yes. We are aware the current statutory formulas are outdated and are hopeful that changes will be made as part of the WIA reauthorization process. The Administration's reauthorization proposal consolidates three funding streams (Adult, Dislocated Worker, and Employment Services) into a single comprehensive funding stream designed to provide services to adults. Under current law, funds under each of the three separate streams are distributed according to specific statutory formulas based on a range of factors (such as unemployment, civilian labor force, etc.).

The Department recognizes a need to develop a new formula. The development of a new formula is also consistent with a recent GAO study that found that the current statutory language dates back to programs run in the 1970s and are outdated and inconsistent with current programmatic goals. Under the Administration's recommended formula, states will no longer experience the dramatic funding swings that currently exist from year to year under the Dislocated Worker program.

#### YOUTH PROGRAM CUTS

*Question.* Why is the Administration proposing to cut youth formula training programs, which currently serve less than 10 percent of the eligible youth and to phase out the Youth Opportunity Grant (YOG) program, which provides at-risk youth education and training opportunities in high poverty areas, at a time when research has shown that nearly 50 percent of those Americans who have lost their jobs over the last two years are under 25 years of age?

*Answer.* Proposed funding for youth programs under WIA is \$1 billion for fiscal year 2004. The proposal targets resources to those youth most in need of assistance to reconnect to the education and workforce systems—specifically school dropouts and

other out-of-school youth who are basic skills deficient. Seventy-five percent of the funds will be allocated by formula to the states to serve out-of-school youth. This program will provide services that have proven effective in assisting such youth. Our youth investments will focus on providing young people with a strong, core academic foundation in conjunction with post secondary skills, certifications or degrees, and transitions to career path employment

It may be noted that the remaining 25 percent will be reserved for national Challenge Grants, which may be used for a number of activities to assist youth in acquiring the skills, credentials, and employment experience necessary to succeed in the labor market. Those grants could include services to some at-risk in-school youth. However, the primary purpose of the revised youth program is to target resources to out-of-school youth who are currently underserved and most in need of the assistance the WIA youth program can provide.

The Youth Opportunity Grants were five-year demonstration grants and every grantee received their five-year commitment. Although we currently do not have outcome results, we intend to use lessons learned from the Youth Opportunity Grant initiative and other demonstrations in designing the new Challenge Grants. We will incorporate proven strategies and build upon the positive features of the Youth Opportunity Grants while addressing problems of the program. For example, we will seek to increase the current 15 percent diploma rate for out-of-school youth. Other improvements include greater private sector involvement, and enhanced coordination with other local agencies, including community and faith-based organizations.

#### YOUTH OPPORTUNITY CUTS

*Question.* If you do not support the Youth Opportunity Grants because it is a discretionary grant program targeted to 30–40 communities, why are you asking Congress to fund a new, untested Youth Challenge Grant Program that will be targeted to a small number of sites, while reducing the youth formula funding by 25 percent?

*Answer.* The Administration will build on the lessons learned in Youth Opportunity Grants as we implement the new Challenge Grants. We believe that we will be improving on Youth Opportunity Grants and other past investments in several ways. First, there will be much stronger private sector involvement. Second, matching requirements will result in stronger local ownership and commitment to the program because DOL will require matching resources. Third, there will be more of an emphasis on placement and training in demand occupations. Fourth, there will be an emphasis on strategies of demonstrated effectiveness in the areas of improving educational and labor market outcomes.

The Administration's WIA proposal reserves 25 percent of the youth activities appropriation for Youth Challenge Grants, 80 percent would be available for competitive grants and 20 percent would be available for discretionary grants. Generally, competitive grants will be aimed at geographic areas of substantial need, and discretionary grants will be awarded to programs of demonstrated success.

The purpose of the competitive grants is to promote collaboration and innovation in providing activities to assist youth in acquiring the skills, credentials, and employment experience necessary to succeed in the labor market.

The competitive grants may be awarded to States, local boards, recipients of Native American program grants, and public or private entities (including consortia of such entities) applying in conjunction with local boards. Initial awards would be made for one year, with four additional years available depending upon satisfactory progress and availability of funds. The Secretary would be authorized to require that grantees provide a nonfederal share of the cost of activities carried out under a grant, and may require that such share be provided in cash or noncash resources.

Youth ages 14 through 19, as of the time the eligibility determination is made, may be eligible to participate in activities provided under these grants. Funds would be used for the activities to assist youth in acquiring skills, credentials, and employment experience, including training and internships in high-growth sectors for out-of-school youth; after-school dropout prevention programs for in-school youth; activities to assist special youth populations, such as court-involved youth and youth with disabilities; and activities combining remediation of academic skills, work readiness training, and work experience, and including linkages to postsecondary education, apprenticeships, and career-ladder employment.

To be eligible, an entity must submit an application to the Secretary that includes a description of the activities the eligible entity will provide to eligible youth; a description of the programs of demonstrated effectiveness on which the provision of the activities are based, and a description of how such activities will expand the

base of knowledge relating to the provision of activities for youth; a description of the private and public, and local and State resources that will be leveraged to provide the activities described; and the levels of performance the eligible entity expects to achieve with respect to the indicators of performance for youth.

Factors to be considered in awarding these grants include the quality of the proposed project, the goals to be achieved, the likelihood of successful implementation, the extent to which the project is based on proven strategies or the extent to which the project will expand the knowledge base on activities for youth, other Federal and non-Federal funds available for similar purposes, and the additional State, local or private resources that will be provided.

In addition, discretionary grants for youth activities would be authorized that will assist youth in preparing for, and entering and retaining, employment. These grants are intended to provide the flexibility to assist a variety of entities and organizations in providing innovative and effective activities for eligible youth, including special populations. The Secretary may award discretionary grants to public or private entities that the Secretary determines would effectively carry out activities relating to youth.

The Administration believes these grants would provide enhanced opportunities to replicate proven strategies in assisting youth and to apply such strategies in innovative ways.

#### ELIMINATION OF H-1B

*Question.* The skills gap in this country keeps growing wider. The training component of the H-1B program, which represents a key investment in American workers, is set to expire this year. The GAO issued a report this fall which said the program is meeting specific workforce needs. Despite this positive report your Department is not seeking reauthorization for the program, but is seeking additional funding to process alien certification applications from foreign workers.

Should the Labor Department be expediting the importation of more foreign labor into this country, while refusing to support proven high skills training for American workers?

*Answer.* The Administration is committed to job training in skill shortage occupations as a key element of all of the job training programs administered by the Department, including the formula programs administered by States and local areas under title I of WIA.

In addition to providing training linked to occupations in demand under WIA, TAA and other employment and training programs, the Department of Labor will continue to make approximately \$200 million in collected employer fees available for H-1B Technical Skills Training Grants until the funds collected as the employer fees for this program are fully expended. The authorization for that program expires September 30, 2003.

The Department also administers the labor certification requirements of the work-based permanent immigration and temporary visa programs and attempts to do so in a timely and effective manner. The 2004 Budget funds the first part of a two-year effort to eliminate unacceptable backlogs that have grown under the permanent program in recent years while, in 2003, the Department will implement reforms in the program to help eliminate future backlogs. Effective, efficient processing of labor certification applications for the H-1B and other programs meets the legislative intent to protect jobs for American workers while responding to employers' legitimate need for staff to meet limited skill shortages.

#### ONE STOP INFRASTRUCTURE

*Question.* When I visit local One-Stop Career Service Centers in my state the first question that workforce managers ask is, "Why can't the federal government re-institute a dedicated One-Stop infrastructure funding stream to assist in real estate acquisition, management information system updates, staff development and other non-service delivery issues?"

Madame Secretary, how do you answer that question?

*Answer.* Through WIA reauthorization, the Department proposes that part of the operational cost of the certified One-Stop centers be financed through dedicated "One-Stop infrastructure" funding. Each partner program would contribute a portion of their funds to the Governor to be allocated for One-Stop infrastructure funding in the State. This approach would create a greater sense of partner "ownership" of the system than currently exists and would move toward comprehensive workforce system reform by using existing dollars to support an integrated service delivery system at the state and local level.

The portion of funds to be provided by each One-Stop partner would be determined, subject to certain limitations, by the Governor after consultation with the State board, which includes representatives from the One-Stop partner programs. In making the determination regarding the funds to be contributed, the Governor would be required to consider the proportionate use of the One-Stop Career Centers by each partner, the costs of administration unrelated to the use of the One-Stop Career Centers by each partner, and other relevant factors that are also to be considered in developing the allocation formula for these funds, such as the number of certified One-Stop Career Centers in the local area, the services provided by the centers, and other factors relating to the performance of the centers.

In those States where the State constitution places policymaking authority in an entity or official that is independent of the authority of the Governor for the adult education and literacy program under title II of WIA and postsecondary vocational education program under the Carl D. Perkins Vocational and Technical Education Act of 1998, the Governor would make the determination of the funds to be contributed by those programs with the entity or official that has the independent authority.

In addition, the funds provided by the One-Stop partner programs for the infrastructure costs are to be provided from funds available for administrative costs under each program, and those funds are subject to whatever administrative cost limits are applicable to each program. There would be a specified limit for the contributions that may be required of the Vocational Rehabilitation program of 0.75 percent of the funds provided for such program to the State for a fiscal year. There would also be a limitation that the contributions required of Federal direct spending programs (such as TANF, the Child Support Enforcement program, and the Food Stamps Employment and Training program) may not exceed the amount equal to the proportionate use of the One-Stop Career centers by those programs.

The formula for allocating these funds to the local areas for the certified One-Stop centers would be developed by the State board, including factors such as those described above. The infrastructure funds would be used to pay for the non-personnel costs that are necessary for the general operation of the certified One-Stop Career centers, including the rental costs of the facilities, the costs of utilities and maintenance, and equipment (including adaptive technology for individuals with disabilities).

While the infrastructure funding would address the primary common costs of operating the One-Stop Career Centers, there would remain some common costs that would not be covered by these funds. These additional common costs would be funded using the procedures that currently apply to all operating costs and the provision of core services. The partners would provide funding or noncash resources, to cover the costs of providing the core services that are applicable to the participants from each program and other common costs, such as infrastructure costs in excess of the amount provided by the new infrastructure grants, and other common costs not included in the infrastructure definition (such as personnel). The local memorandum of understanding among One-Stop partners would remain the vehicle for determining these common costs and how to allocate these costs since these costs would be more locally variable. The State board would provide guidance to facilitate the determination of appropriate funding allocation in local areas

#### ELIMINATION OF EMPLOYMENT SERVICE

*Question.* The U.S. Employment Service provides a nationwide public labor exchange for all workers and employers.

With the proposed elimination of the Employment Service, how does the Department expect 50 states to carry out this national purpose without compromising or undermining the principles of universal access and a free, public, national labor exchange?

*Answer.* The job search assistance services provided under the Wagner-Peyser Act are also required to be provided as a core service for all adults under the WIA Adult program and for all dislocated workers under the WIA Dislocated Worker program. All three programs are to make these services available through the One-Stop delivery system established in each local area under WIA. Rather than have these overlapping and duplicative requirements for the provision of these labor exchange services under three different programs, the Administration believes the three funding streams should be consolidated into a single, comprehensive program for adults which includes as a key element the availability of universal public labor exchange services for all job seekers and employers. Rather than undermining or compromising the principle of universally accessible labor exchange services, the Adminis-

tration believes the proposed consolidation would strengthen and enhance the provision of those services.

FAIR LABOR STANDARDS ACT

*Question.* The Department's decision to abandon the two-tiered salary test, which provides greater protections to salaried workers with lower earnings than to those who earn more, makes it easy for an employer to manipulate job duties in order to deny overtime protection to many low-wage earners. How does the DOL justify a proposed salary threshold that will allow employers to deny overtime pay to many who need and rely on it?

*Answer.* The Department has not abandoned the two-tiered salary level tests, and the Department's proposed salary threshold will not deny overtime pay to employees who need and rely on it. To the contrary, the Department's proposed regulatory changes will increase overtime protections for 12 million employees—including an additional 1.3 million low-wage salaried workers who will be guaranteed overtime protections for the first time.

The current regulations establish two different salary levels for each of the exemption categories: Employees paid below the minimum salary level of \$155 a week are not exempt from overtime regardless of their duties. Employees paid above the minimum salary level of \$155 a week are only exempt if they meet the "long" duties test. Employees paid above a higher "upset" salary of \$250 a week are exempt if they meet a "short" duties test.

The Department has long recognized that salary level may be the best indicator of whether an employee is a bona fide executive, administrative or professional employee. Because the salary levels have not been raised in 28 years, since 1975, the existing salary levels have become meaningless. Under the current minimum salary level of \$155 a week, only employees who make less than \$8,060 a year are guaranteed overtime pay. By contrast, a minimum wage employee who works 40 hour a week earns over \$10,700 a year. Thus under the current regulations, a minimum wage employee can be classified as an exempt executive. This perverse result demanded action by the Department of Labor.

The Department's proposed regulations would raise this minimum amount to \$425 a week, or \$22,100 a year—a \$270 a week increase and the largest increase in the 65 year history of the FLSA. The largest prior increase was by only \$50 a week. As in the current regulations, employees who earn less than this minimum salary level are guaranteed overtime pay. This increase in the minimum salary level will guarantee overtime pay to 1.3 million additional low-wage workers.

Under the Department's proposal, similar to the current regulations, employees earning more than \$425 per week can only be classified as exempt if they also meet a "standard" duties test. The proposed standard duties test would streamline the current regulations by replacing the separate "long" and "short" duties tests with one test representing a middle ground between the current long and short tests. The Department believes this change will make the regulations easier for both employees and employers to understand who is entitled to overtime pay under the FLSA.

Although the proposal replaces the "long" test and "short" test terminology, the proposal does not eliminate the two-tier salary structure. As noted above, the current regulations contain a "special proviso for high salaried" employees (see, e.g., §541.119)—the so-called "short test"—which currently requires a salary of only \$13,000 a year. The Department's proposed special provision for higher compensated employees would require guaranteed compensation of \$65,000 a year. The Department has proposed to minimize the duties requirements that must be met before an employee earning more than \$65,000 a year may be classified as exempt. However, the \$65,000 annual guarantee is well above the current \$13,000 requirement. The \$65,000 annual guarantee is also well above the \$43,000 salary level requested by the AFL-CIO in a letter to the Department as the increase necessary to fully correct the current \$13,000 level for inflation since 1975.

The Fair Labor Standards Act was intended to set minimum salary and overtime standards to protect the most vulnerable, low-wage workers in our society. Because so many years have passed since the Department updated the Part 541 regulations defining exempt executive, administrative and professional employees, the protections intended by the FLSA have been severely eroded. The Department's proposal will strengthen minimum wage and overtime guarantees for the low-wage workers the FLSA was designed to protect. In addition, by simplifying and clarifying the rules, the proposed regulations will allow the Department to more strongly enforce the FLSA minimum wage and overtime provisions. The Department expects and welcomes public comment on the proposed salary levels and proposed duties tests.

## LM-2 FINANCIAL DISCLOSURE

*Question.* Under your LM-2 financial disclosure proposal, a labor organization would have to itemize every disbursement made to an entity or individual that reaches a threshold of between \$2,000 and \$5,000 in one of eight categories. The organization also would have to itemize aggregate disbursements to an entity or individual that reach this threshold over the reporting period. Within these parameters, I am advised that it would not be unusual for a medium-sized union to report 9,000 individual disbursements during a given year. Add to that separate disbursements that aggregate to \$2,000 and the potential exists for a significant amount of numbers to report.

How would this then practically conform with 67 Fed. Reg. at 79281, that the reported information provide "union members with useful data that will enable them to be responsible and effective participants in the democratic governance of their unions?" Will this information be useful to union members?

*Answer.* The Department received many comments regarding the itemization thresholds and we are still reviewing those comments. When that review is completed, we hope to be better able to address these questions. The proposal, however, was based upon certain facts that may be helpful in understanding the likely impact of an itemization requirement, if it is adopted. For example, it should be noted that the median LM-2 filer has approximately \$650,000 in annual receipts. Assuming that the annual receipts of a union are roughly equal to its annual disbursements, and if \$2,000 itemization threshold were adopted, a union with \$650,000 in disbursements is likely to have no more than 325 itemized transactions. In practice, however, the number of itemized transactions would actually be lower because a number of transactions are likely to be more than \$2,000. Moreover, not all disbursements will be subject to itemization. If roughly half of all disbursements fall into categories that would not require itemization these unions might have to itemize fewer than 150 disbursements per year. If a \$5,000 itemization threshold were adopted, an average union might have to report less than 60 itemized transactions.

For the average LM-2 filer union, that has approximately \$2.8 million in annual receipts, and a roughly equivalent amount in annual disbursements, a \$2,000 itemization threshold would be likely to require the reporting of less than 650 itemized transactions. If a \$5,000 itemization threshold were adopted, a union with \$2.8 million in disbursements might only have to report less than 260 itemized transactions. Less than 675 unions, or just 2.3 percent of all unions and 12.4 percent of all LM-2 filers, have annual receipts of \$3.0 million or more.

Even in those cases where there may be many itemized transactions, not all commenters agree that union members will not find the information useful in any event. The proposed LM-2 contains summary data in aggregate categories that reflect the services performed by unions for their members so that union members would continue to be able to assess the overall status of the union by looking at just a couple of pages. In addition, the Department's proposal indicated that the requirement that these reports be filed electronically would make it easier to provide union members with easy access to detailed information regarding the major transactions of their union by using an online, searchable database that will display only those transactions of interest to the member. The intent of the Department's proposal is to better enable union members to judge the financial health and integrity of their unions and to hold their leaders accountable for the financial condition of their union.

*Question.* Additionally, unions would have to itemize their officers' and employees' salaries. How is this information useful to union members?

*Answer.* Officers' and employees' salaries have always been itemized or individually reported on the forms; the law requires it. Although the proposed salary schedules would require the salaries of officers and employees to be allocated to the appropriate disbursement categories, to reduce reporting and recordkeeping burdens the Department has proposed that officers and employees be allowed to estimate their time to the nearest 10 percent, rather than requiring them to make exact calculations and keep daily records of their time. Because salaries are often the largest disbursement for many unions, the Department proposed this requirement to improve the transparency and accountability of labor organizations to their members and better enable them to exercise their democratic rights of self-governance.

*Question.* Mandatory electronic filing is at the heart of your proposal. As I understand it, the computer software is what will make it financially possible for labor organizations to comply with the new disclosure requirements. However, I am advised that this software does not yet exist.

Will you complete development of this software before requiring unions to comply with the proposed regulations? Can the proposed regulations be promulgated prior to development of the software?

*Answer.* The purpose of the software is to reduce the reporting burden on unions and to reduce the cost of disseminating the information on the Internet to union members. It is important to note, that the software to be provided by the Department is not a bookkeeping system. The software has no impact on the burden of collecting data for the LM-2. The implementation of the reporting software will come in two phases. First, the Department will provide a Data Specifications Document before the effective date of the reform that will give unions the information they will need to interface with the software and report their information to the Department electronically. The Department is also going to establish a help line to answer any questions and will make other compliance assistance available. Second, the software will be provided to the unions well before they will have to use it to file their report, which will give the Department plenty of time to conduct compliance assistance and answer questions posed by the filing community. Moreover, all of the information that unions will need to update their internal recordkeeping and reporting requirements for the proposed Form LM-2 will be contained in the final rule that is published in the Federal Register.

*Question.* In your response to my April 2, 2003, letter, you cite the finding of a 1998 hearing of the House Education and Workforce Subcommittee on Oversight and Investigations that "the current LM-2 Form is inadequate to prevent and uncover financial corruption, and the form should therefore be substantially revised."

How does requiring unions to itemize most of their expenses deter fraudulent activity?

*Answer.* Increased transparency and disclosure is a natural deterrent to criminal activity and financial mismanagement. The more detailed information is reported regarding specific transactions, the more difficult it is for an unscrupulous person to conceal their activities and the easier it is for union members and the Department to uncover fraudulent activity. Again, the intent of the Department's proposal, including the proposed itemization requirement, is to help meet the objectives of the statute by providing union members with useful data that will enable them to be responsible and effective participants in the democratic governance of their unions. As Representative Robert Griffin, a cosponsor of the LMRDA, stated: ". . . [I]n a larger sense, the effectiveness of the Act will depend also upon the rank-and-file union members themselves. For in the last analysis, it is they who must make the law meaningful by taking hold of the tools of democracy and using them to clean corruption out of their unions and to keep them clean."

*Question.* Has the Department considered requiring unions to undergo independent audits, as are SEC regulations currently require of public corporations?

*Answer.* Yes, the Department has considered requiring audits. Some commenters suggested requiring audits; the Department is currently reviewing those comments and has not yet reached any final conclusions. It is important to note, however, that the laws enforced by the SEC are very different from those enforced by DOL.

*Question.* In your response to my April 2, 2003, letter, you note that "most of the Department's proposed changes affect only the largest 20 percent of unions subject to the Labor Management Reporting and Disclosure Act."

How would the proposed changes affect the smallest of those unions subject to the reporting requirements? Has the Department assessed what the cost would be for those unions to comply, particularly those which marginally exceed the \$200,000 threshold? Has the Department taken any steps to minimize the cost to smaller unions?

*Answer.* The Department is always conscious of the regulatory burden imposed on smaller entities. The smallest unions, over 81 percent of all labor organizations would not be affected by most of the reforms proposed. The Department's proposal would require all unions to file a new Form T-1 to report financial information for large trusts or other funds in which they have an interest, but only if the union contributed \$10,000 or more to the trust during the year. The Department has received comments arguing that this requirement should be dropped, as well as comments arguing that all of the proposed changes should be applied to all unions. The Department has not yet made a final decision on any of these issues.

The Department also requested comments on whether the filing threshold should be raised from \$200,000 to adjust for inflation and those comments are being considered. The Department has estimated the costs for various sizes of LM-2 filers and the burden estimates were calculated as weighted averages of those groups of unions. Under the proposed rule the average burden for the smallest group of LM-2 filers for the first three years would be 81.7 percent less than the burden for the largest group of LM-2 filers.

The Department's proposal also included many features to minimize the burden. First, the proposed levels of itemization of disbursements would ensure that small unions would have to identify very few transactions. For instance, a \$2,000 itemization threshold is likely to require a union with \$250,000 in disbursements to itemize less than 60 transactions and a \$5,000 threshold is likely to require a union with \$250,000 in disbursements to itemize less than 25 transactions. Second, the filing software is being designed to fit the needs of the unions, so that small LM-2 filers will be able to simply type information in the forms or copy-and-paste, whereas larger LM-2 filers will be able to take advantage of greater automation and download information directly into the software. Finally, a union can apply for and be granted a hardship exemption to allow them to file a paper report if they can demonstrate that electronic filing would impose an unreasonable burden.

*Question.* Has the Department consulted with the Small Business Administration Office of Advocacy to determine whether the proposed rules are in compliance with the Regulatory Flexibility Act of 1980 as amended (5 U.S.C. 601-612)?

*Answer.* Yes. The Department took all required steps to ensure that the proposal is in full compliance with the provisions of the Regulatory Flexibility Act of 1980 as amended, and consulted informally with the SBA.

*Question.* Has the Department considered drafting different regulations that reflect the different sizes of unions subject to compliance under the Labor Management Reporting and Disclosure Act?

*Answer.* Yes, the Department's regulations already permit smaller unions to file simplified forms LM-3 and LM-4. Additionally, the Department took the concrete steps described above in the proposed rule to limit the burden on smaller LM-2 filers and is reviewing comments that it sought on whether the current \$200,000 threshold for Form LM-2 filers should be raised to \$250,000 or some other amount, or, instead, whether it should be left unchanged.

*Question.* Do you believe that the 90-day comment period for these proposed regulations was sufficient? Did your Department consider extending this period to fully accommodate suggestions and criticisms by those organizations that would be affected by the proposed regulations?

*Answer.* Yes, the 90-day comment period was sufficient. The Department carefully considered all requests for an extension of the 60-day comment period, and a 30-day extension was granted. The Department received nearly 36,000 comments, including many substantive comments from unions, non-profits, and others, indicating that 90 days was a sufficient period of time to comment on the rule. This timeframe is also consistent with other major rulemakings of the Department and other federal agencies.

*Question.* In your response to my April 2, 2003, letter, you indicate that "the regulatory regime governing financial reporting by small and large public companies is much more extensive than the system that exists for labor organizations." You then note that "Government Accounting Office regulations governing accountability for federal funds mimic the extensive system of regular audits, extensive internal controls and disclosure of material qualitative and quantitative data that exist for publicly-traded companies."

I have been advised that some of the proposed LM-2 requirements mandate more extensive itemization of information than is required by the SEC under the Sarbanes-Oxley Act of 2002 and by the GAO. For example, under current LM-2 requirements, labor organizations subject to compliance are required to list all employees whose total salaries, allowances, and other direct and indirect disbursements from the union exceed \$10,000 per year; the union must also detail the employees' position, affiliated organization, gross salary, allowances and disbursements. The proposed changes would additionally require that labor organizations report for each employee his or her net salary, withholding and direct taxes, disbursements for other withheld amounts, direct payroll taxes, and allocation of each employee disbursements into new functional categories. The SEC does not require this level of detailed information, only requiring salary information for top executives. Given your above statement, how do you explain this disparity between LM-2 and SEC reporting requirements?

*Answer.* The laws and regulations governing corporations and unions serve very different purposes and are understandably quite different. The LMRDA established a unique financial disclosure regime for labor organizations designed to address concerns about unions that were highlighted by Congressional hearings on financial and other misconduct in labor unions. To the extent that a comparison is relevant, the regulatory regime governing financial reporting by small and large public companies is much more extensive than the system that exists for labor organizations. In addition to mandating the disclosure of certain types of quantitative data, the financial reporting scheme for public companies, as amended by the Sarbanes-Oxley

Act, also requires the disclosure of qualitative information and imposes strict audits and detailed internal controls on public companies, their officers, directors, auditors, accountants and attorneys.

The SEC only requires reporting of the salaries of “top executives” because that is what their statute mandates. OLMS requires reporting of the salaries of all officers and employees earning \$10,000 or more annually from the union because that is what our statute mandates. As for the specific information collected in the salary schedules, it would be inappropriate to discuss our specific views because the Department is in the process of analyzing and responding to the comments we received from the public on the NPRM. In general, the Department believes that the details contained in the LM-2 will be useful to union members and will fulfill the statutory requirements of the LMRDA. The SEC would have to respond to whether this sort of disclosure would be appropriate and useful under the statutes they enforce.

Neither the current LM-2 reporting regime nor the Department’s proposed rule require labor organizations to provide their members with any qualitative information, much less the detailed analysis public companies are required to disclose. Federal law also does not mandate that unions use governance structures that ensure independent oversight of financial operations, such as independent audit committees and union members have no comparable whistleblower rights to those provided employees under the Sarbanes-Oxley Act. Unions are not currently required, nor would they be required under the proposed transparency reforms, to provide any qualitative information to their rank-and-file membership about the financial health of their union, the strengths or weaknesses of any substantial investments by their union, the financial performance of any programs, contracts or cost centers managed by the union, or any future risks associated with the union’s business relationships, including its main bargaining unit employers, membership composition or other factors. Considered in this context, the Department does not believe that the proposed LM-2 is overly burdensome when compared to corporate disclosure.

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QUESTION SUBMITTED BY SENATOR THAD COCHRAN

FARMWORKER HOUSING

*Question.* The fiscal year 2003 Omnibus Appropriations bill includes \$4.64 million for Department of Labor Farmworker Housing activities. In recent years, the Appropriations Committee has directed the Department of Labor to use these funds to continue the long-established network of local housing organizations working to plan, develop, and manage housing for migrant and seasonal farmworkers.

What is the status of fiscal year 2003 funds, how will they be made available, and what steps are the Department taking to ensure that the current network of organizations remains in place?

*Answer.* The \$4.64 million pre-rescission appropriation for farmworker housing assistance grants is being awarded through an open competitive grants selection process. The Employment and Training Administration (ETA) recently published the Solicitation for Grant Applications (SGA) for the housing assistance grants and an SGA for the National Farmworker Jobs Program (NFJP) in the Federal Register, and the application period will close on May 16, 2003, and the awards will be announced before June 30, 2003.

Every proposal submitted in response to the SGA, including those from current grantees, will be given full and fair consideration. They will be reviewed and rated on their merit by an impartial review panel.

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QUESTIONS SUBMITTED BY SENATOR ERNEST F. HOLLINGS

ASSOCIATION HEALTH PLANS

*Question.* I would like to know how much Congress must appropriate for the Labor Department to effectively regulate Association Health Plans, if legislation to exempt them from state oversight is enacted. In 1997, Olena Berg, Assistant Secretary of Labor in the Clinton Administration, said that DOL did not have the resources to regulate AHPs and that it would take 300 years to complete a review of each existing pension and health plan. A recent GAO report found that it would take DOL’s current investigative staff 90 years to do a baseline assessment of non-compliance for pension plans alone. An analysis of federal regulatory costs by Georgia State University found that it would cost \$2.3 billion over a seven-year period for DOL to effectively take over the responsibility for regulation of AHPs. It does

not appear that your budget includes any funding to regulate and oversee AHPs—Does it?

Answer. DOL's current budget does not include funding for AHP certification or enforcement because the legislation has not become law. If the legislation is enacted, we will dedicate the resources necessary to implement it effectively and administer AHPs successfully. As the legislation proceeds through Congress, the Department will work within the Administration to determine the appropriate resources necessary, depending upon the legislative requirements. The costs would depend on many factors, including the number of AHPs that are created, and how many are uninsured. The creation of AHPs may lower our costs in other areas, such as our activities related to Multiple Employer Welfare Arrangements (MEWAs).

*Question.* How would you regulate AHPs and how much would it cost?

Answer. Under the current legislative proposal, DOL would be responsible for certifying AHPs, and would have ongoing oversight and enforcement authority. For AHP that purchase policies from insurance companies, state insurance regulators would enforce solvency and consumer protection provisions. For self-insured AHPs, DOL would be responsible for overseeing solvency and the consumer protection provisions included in the bill, as well as ERISA's general requirements. Regarding cost, as the legislation authorizing AHPs has not been enacted, DOL cannot speculate on associated costs.

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QUESTION SUBMITTED BY SENATOR PATTY MURRAY

COAL INDUSTRY GRANT TO CHINA

*Question.* Why has \$6.4 million been awarded to promote the coal industry in China? What are the details on this grant?

Answer. In the fall of 2002, the department awarded two grants to support activities in China—a \$4.1 million grant supports programs that promote the labor rule of law, and a \$2.3 million grant provides technical assistance in the enforcement of China's health and safety laws at coal mines. Neither of the two grants was to promote the coal industry in China.

Both grants were awarded through an open and competitive process. The labor rule of law grant was awarded to a consortium formed by Worldwide Strategies, Inc., the Asia Foundation, and the National Committee on U.S.-China Relations. The mine safety and health grant was awarded to the National Safety Council, headquartered in Illinois.

CONCLUSION OF HEARINGS

Senator SPECTER. Thank you all very much for being here. That concludes our hearings.

[Whereupon, at 10:49 a.m., Wednesday, April 9, the hearings were concluded, and the subcommittee was recessed, to reconvene subject to the call of the Chair.]