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This marker identifies the place of a tabbed divider. Given our digitization capabilities, we are sometimes unable to adequately scan such dividers. The title from the original document is indicated below.

Divider Title: **Labor Law**

LABOR LAW Q'S AND A'S

- o Team Act Fact Sheet**
- o Team Act Q & A**
- o Team Act: General**
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- o Role of Labor Unions in Society**
- o Beck and Political Causes**
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TEAM ACT FACT SHEET

- o The TEAM Act would eliminate the 60-year-old ban against company-dominated unions by amending Sec. 8(a)(2) of the National Labor Relations Act (NLRA). The NLRA is enforced by the National Labor Relations Board (NLRB), an independent agency. Under Sec. 8(a)(2), it is an unfair labor practice for an employer to dominate or interfere with the formation or administration of any labor organization.
- o Typically, employer domination has been found where a company establishes an employee committee to deal with topics reserved for collective bargaining -- such as pay and benefits, hours of work and other working conditions -- and retains the right to pick the employee-members of the committee, determine the agenda, and eliminate the committee at will. It was the widespread creation of these types of "company unions" or sham unions that led to the enactment of Section 8 (a)(2).
- o In contrast to company dominated labor organizations, labor-management partnership committees that are established to improve quality, efficiency and productivity generally do not violate Sec. 8(a)(2) and have in fact proliferated among businesses interested in promoting genuine teamwork with their employees. According to one recent survey, 96 percent of large employers have established such programs.
- o Nonetheless, business groups allege that the law is unclear and has had a chilling effect on employers interested in forming labor-management partnerships. They have been pressing Congress to amend Sec. 8(a)(2) to give employers greater latitude in establishing and dealing with employee organizations.
- o The Team Act --in its original form-- was reintroduced this year by Sen. Jeffords. In the 104th Congress, it passed the House by a vote of 221 to 202 on September 27, 1995. It passed the Senate by a vote of 53 to 46 on July 10, 1996. President Clinton vetoed the bill, and no attempt was made to override his veto.

TEAM ACT Q & A

Question:

The President vetoed the TEAM Act. If the TEAM Act is not the right answer, do you believe there is a compromise you could support to clarify the law regarding labor-management cooperative programs?

Answer:

- o The President vetoed the TEAM Act because he believed that the legislation undermined the collective bargaining process.
 - o I'm interested in continuing the Administration's efforts to promote labor/management partnerships.
-

Cautionary Note:

- o Don't express any interest in legislation on this subject.

TEAM ACT: GENERAL

Question:

Do you agree that the law governing labor-management cooperation is unclear and needs clarification?

Answer:

- o As you know, the President has said that if there is uncertainty as to the scope of permissible cooperation, the NLRB can give guidance to clarify the boundaries of labor-management teamwork.
-

Background:

- o Current law permits a wide variety of cooperative workplace efforts to improve productivity, efficiency, and quality. 30,000 employers have employee teams or committees. 96% of large employers have employee involvement programs.
- o The number of instances where companies are required by the NLRB to disband employee committees is small -- less than a dozen a year in 1995 and 1996.

Cautionary Note:

- o Do not suggest a willingness to look at possible compromises.

TEAM ACT: DILLON STORES

Question:

Do cases like Dillon Stores -- where the NLRB said it is illegal for an employer to talk to employees about bulletin boards or the need to have toilet seat covers in the restrooms -- make sense to you?

Answer:

- o I am generally familiar with the Dillon Stores decision, but not with the details of the case. I would be happy to look at it more closely.

Background:

- o Dillon Stores, a 1995 NLRB decision, is often cited by supporters of the TEAM Act as an example of the supposedly absurd restrictions imposed on discussions between employers and employee committees by Section 8(a)(2) of the National Labor Relations Act. Among the trivial subjects of discussion mentioned in the case were bulletin boards and toilet seat covers. *But this focus is misleading.*
- o In fact, Dillon Stores involved an employer-dominated employee committee that dealt not only with some trivial subjects, but *also* with a very wide range of important working conditions, including: raises, employee evaluations, sick pay, day care, weekend work, smoking, and prevention of injuries.
- o The NLRB ordered the employer to disband the committee, since it dealt with the employer on working conditions, yet was dominated by the employer. The employer created the committee, determined its structure and functions, and appointed some employee representatives.

RELATIONSHIP WITH UNIONS

Question:

The Department of Labor is viewed as being in the pocket of organized labor. What role will the AFL-CIO play in the Department's deliberations?

Answer:

- o No one will make my decisions for me. But let me be clear that unions have been a positive force for America's working families -- as have many other public and private institutions, including many corporations, business associations, and public interest groups.
- o At the White House, it was my job to seek input from all sides of every issue, and I intend to keep that same open door as Secretary of Labor.

ROLE OF LABOR UNIONS IN SOCIETY

Question:

Given that they represent a declining portion of the workforce -- less than 15% -- aren't unions becoming obsolete? Shouldn't we pay more attention to non-union workers?

Answer:

- o Unions and collective bargaining have helped create higher living standards for average American workers, safer workplaces, and more widely available health care and pensions. Those are goals we all share.
- o Workers who belong to unions tend to have higher average wages and better health and retirement coverage.
- o Because the President and I are pro-worker and pro-family, we are also pro-union.

BECK AND POLITICAL CAUSES

Question:

Do you think it is fair that workers represented by unions can be made to support political causes they find offensive?

Answer:

- o No, but that is not how the law works.
- o Workers represented by unions have the right to decline union membership. These workers pay the equivalent of union dues, which are called agency fees.
- o And under the Supreme Court's Beck decision, non-members who object to the use of their agency fees for political purposes have the right to pay *reduced agency fees that cover only the cost of collective bargaining and other representational activities*.
- o We are about to begin a national debate over the issue of campaign financing and the appropriate role for individuals and organizations in our political system. The Administration will be a full participant in this debate and is committed to campaign finance reform.
- o Working men and women, like all Americans, have a basic First Amendment right to get involved in the political process and to join organizations that promote a point of view. We should be exceedingly cautious about placing restrictions on the exercise of these rights.

Background:

- o In its 1988 decision in Communications Workers v. Beck, the Supreme Court held that union-represented workers who chose not to become members of the union could not be required to pay for any union activities that were not related to collective bargaining, contract administration, and grievance adjustment. Non-members who object to paying for non-representational activities are entitled to pay reduced agency fees to the union (in lieu of agency fees that were the equivalent of full union dues).

- o The National Labor Relations Board, along with the federal courts, enforces Beck. In the first NLRB case to apply Beck (California Saw and Knife Works, 1995), the Board held that: (1) newly-hired employees must be informed of their Beck rights; (2) objecting employees must be given information explaining the dues-reduction to which they are entitled, how it was calculated, and how the calculation can be challenged; and (3) unions may not arbitrarily limit the way in which objections can be raised.
- o Full union dues or agency fees cover a worker's share of the costs of virtually all union activities, whether or not they occur at the workplace from negotiating a collective bargaining agreement and representing workers in grievance cases to lobbying for legislation, advocating social causes, and funding certain political activities.
- o Reduced agency fees cover only representational activities (e.g., collective bargaining costs) and exclude the cost of a union's political, social, and charitable activities.

BECK: RIGHT NOT TO CONTRIBUTE

Question:

Why should workers represented by unions have to quit their union in order to exercise the right not to contribute to causes they personally condemn?

Answer:

- o It is important to remember that unions are democratic institutions, and, under the principle of majority rule, union members have the right to elect their leaders, and to decide which candidates and causes to support and how much money to spend on them.
- o In addition, by majority vote, workers can decertify a union or choose a different union if they are dissatisfied with the representation they are getting.
- o We are about to begin a national debate over the issue of campaign financing and the appropriate role for individuals and organizations in our political system. The Administration will be a full participant in this debate and is committed to campaign finance reform.
- o Working men and women, like all Americans, have a basic First Amendment right to get involved in the political process and to join organizations that promote a point of view. We should be exceedingly cautious about placing restrictions on the exercise of these rights.

BECK: SENATE MAJORITY LEADERSHIP'S PROPOSAL

Question:

Do you think the Paycheck Protection Act, which requires both unions and employers to get permission before using dues or assessments from employees for political purposes, is a fair proposal?

Answer:

- o We are about to begin a national debate over the issue of campaign financing and the appropriate role for individuals and organizations in our political system. The Administration will be a full participant in this debate and is committed to campaign finance reform.
 - o Working men and women, like all Americans, have a basic First Amendment right to get involved in the political process and to join organizations that promote a point of view. We should be exceedingly cautious about placing restrictions on the exercise of these rights.
-

Background:

The Senate Majority Leadership has introduced S. 9, the Paycheck Protection Act, which would prohibit unions and corporations from using company or union funds to engage in political activities unless they first obtain written authorization. *Rather than guaranteeing the rights of non-members to opt out of political spending (the right protected by the Beck decision), the bill creates a broad opt-in procedure as a pre-condition for political spending).*

- o The bill's definition of political activities is extremely broad and raises First Amendment questions: it would include communication between unions and their members, non-partisan voter registration and get-out-the-vote activities.
- o The bill applies to union and non-union members, so that union members could retain their membership and still decline to pay the portion of their dues that go to political activities.

Cautionary Note:

- o The Senate Majority Leadership's *Paycheck Protection Act* should not be confused with the Minority Leadership's *Paycheck Fairness Act*, or with the Harkin Fair Pay Act, which deal with pay issues in the workplace.

SALTING

Question:

Do you think that a company should be required to keep on its payroll an employee paid by a union to organize the employer's workers?

Answer:

- o All workers have the basic right to organize and form unions.
 - o This is a complicated area of the law that I am not familiar with, and one that I intend to learn more about.
-

Background:

- o "Salts" are union employees who apply for work at a company for the purpose of organizing its workers.
- o In 1995, the Supreme Court ruled unanimously that employers may not discriminate against union "salts."
- o The Court reasoned that while at work, the employee is under the control of the company employer, whether or not the union also pays the worker. The Court added that ordinary union organizing activity is protected by law and should not be viewed as inconsistent with an employee's duty of loyalty to his or her employer.

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Divider Title: **Labor Standards**

LABOR STANDARDS Q'S AND A'S

- o Comp-Time/FMLA Expansion Fact Sheet**
- o Comp-Time/FMLA**
- o Comp-Time: President's Bill**
- o Family & Medical Leave: Expansion**
- o Family and Medical Leave Act**
- o Family Medical Leave: 12 Million Figure**
- o Family and Medical Leave: Threshold**
- o Davis-Bacon Repeal**
- o Davis-Bacon Act Legislative Outlook**
- o Davis-Bacon: False Information**
- o Davis-Bacon Wage Determination Improvement**
- o "Helpers" Under Davis-Bacon**
- o Sweatshop Legislation**
- o Child Labor in the United States**
- o "541" Regulations - Minimum Wage and Overtime Exemption for
"Executive, Administrative and Professional" Employees**
- o Volunteering in the Public Sector**
- o Exemption for "House Parents" From Overtime**
- o Apparel Industry Partnership**

COMP-TIME/FMLA EXPANSION

- o The **Fair Labor Standards Act (FLSA)** generally requires payment of time-and-a-half overtime premium pay for hours worked over 40 in a week for nonexempt employees of covered employers. FLSA does not allow compensatory time - i.e., paid time-off in lieu of overtime - for private sector employees, but does allow comp-time for State and local government employees. (Federal employees are covered by FLSA, but also by Title V which allows comp-time and other flexible scheduling arrangements.)
- o The **Family and Medical Leave Act (FMLA)**, passed in 1993 and the first piece of legislation signed by President Clinton, aids families in balancing the often competing demands of work and family.
 - FMLA allows up to 12 weeks of unpaid, job-protected leave, with continuation of group health benefits, for eligible employees of covered employees for specified family and medical reasons.
 - Private employers are covered under FMLA if they have employed at least 50 employees during 20 or more calendar work weeks in the current or preceding calendar year. (All public employers are covered.)
 - Only those workers who meet the following criteria are "eligible" for FMLA's benefits: those who have worked for a covered employer for at least a year; are employed at a site where the employer employs at least 50 workers within a 75-mile radius; and, have worked at least 1,250 hours during the preceding 12 months.
- o The President's bill - the "Family-Friendly Workplace Act of 1996" which was sent to Congress last September but not introduced - linked authorization of comp-time for private sector workers and FMLA expansion. His State of the Union address restated his call for the kinds of changes contained in his proposal last year.
- o The President's comp-time authorization proposal would have:
 - helped ensure that employees get to choose whether to accrue and when to use any accrued comp-time;
 - provided adequate worker protections against potential abuse by employers; and
 - preserved long-established and basic worker rights, such as the 40 hour work week.

- o The President's FMLA expansion would have authorized 24 additional hours of FMLA leave for the purposes of taking children or elderly relatives to medical or dental appointments or other appointments for professional services (e.g., interviewing at nursing or group homes), or participating in children's school activities, such as parent-teacher conferences.
- o No decision has yet been made as to whether the Administration will resubmit a comp-time/FMLA expansion bill in this Congress, nor whether it might vary at all from last year's bill.
- o Comp-time bills - without any FMLA expansion - have been introduced in both the House (H.R. 1, Ballenger, R-NC) and the Senate (S. 4, Ashcroft, R-MO), and hearings have been held. Mark-up of both bills will occur in late February - early March. (The Ballenger bill passed the House in the last Congress, but comp-time legislation was not taken up in the Senate.)
- o FMLA expansion bills - some of which reflect the President's 1996 proposal (like Senator Murray (D-WA)), and others which go further (i.e., lowering the Act's coverage threshold from employers of 50 to 25), like Senator Dodd's (D-CT) - have been introduced by minority Members, but no hearings have been scheduled.

HOLD

COMP-TIME/FMLA

Question:

The House and Senate Leadership intend to move forward on comp-time legislation in the very near future. Will you support these efforts if you are Secretary of Labor?

Answer:

UPDATED RESPONSE TO BE DEVELOPED.

HOLD

COMP-TIME: PRESIDENT'S BILL

Question:

Will the President send up and support a comp-time bill in the 105th Congress?

Answer:

UPDATED RESPONSE TO BE DEVELOPED.

FAMILY & MEDICAL LEAVE: EXPANSION

Question:

How do you defend the President's proposal to expand the FMLA?

Answer:

- o As White House Public Liaison, I talked to many businesses about the Family and Medical Leave Act. Most were pleasantly surprised how easy it was to comply with the law.
 - o The bipartisan Commission on Leave that studied FMLA found the new law significantly helped many Americans while placing only minimal requirements on the vast majority of businesses.
 - o Enabling workers to take up to 24 hours of unpaid leave to participate in their children's school activities or take their kids to doctor appointments has real benefits and modest costs.
 - o Expanding FMLA is vital to providing working families the opportunity to better balance work and family needs.
-

Background:

- o The Family and Medical Leave Act, passed in 1993 and the first piece of legislation signed by President Clinton, aids families who seek to balance the competing demands of the workplace and family.
- o Private employers are covered under FMLA if they have employed at least 50 employees during 20 or more calendar work weeks in the current or preceding calendar year. All public employers are covered.
- o Only workers who have worked for a covered employer for at least a year; are employed at a site where the employer employs at least 50 workers within a 75-mile radius; and have worked at least 1,250 hours during the preceding 12 months are eligible.
- o The Commission -- which was chaired by Senator Dodd -- was established by Congress to conduct a comprehensive study of mandatory and voluntary family and temporary medical leave policies, and to report to Congress on its findings and recommendations. In April 1995, the Commission reported to Congress that the FMLA had little negative impact on employers' operations and positive impact on employees' ability to balance work and family needs.

FAMILY AND MEDICAL LEAVE ACT

Question:

Many employers are advocating changes in the FMLA's definitions and the provisions that govern when employees may take leave. Will you work with them to address their concerns?

Answer:

- o The Administration has worked closely with employers since FMLA was enacted, and will continue to do so.
- o As White House Public Liaison, I interacted with many businesses about many issues.
- o I talked with many business leaders whose organizations only began to implement family friendly policies after the FMLA was enacted, and they were pleasantly surprised how easy it was to comply with the law.
- o The bipartisan Commission on Leave that studied FMLA found the new law significantly helped many Americans while placing only minimal requirements on the vast majority of businesses.
- o The Administration supports expanding family-friendly workplace policies and expanding employee rights under the FMLA to enable workers to take more leave to meet additional family obligations not addressed under current law.

Background:

- o Since the law took effect in 1993, of the roughly 3,500 complaints received, where violations were found, 90 percent were successfully resolved administratively through educational intervention and without the need to resort to litigation.
- o Expanded family-friendly workplace policies would include taking children or elderly relatives to medical or dental appointments or other appointments for professional services (e.g., interviewing at nursing or group homes) or participating in children's school activities (such as parent-teacher conferences).

Cautionary Note:

This question may be asked due to the controversy over the definition of "serious health condition." You should avoid committing to a review of this definition.

Revised
2/13/97

FAMILY MEDICAL LEAVE: 12 MILLION FIGURE

Question:

The President has been quoted on several occasions as saying that 12 million Americans have used the Family and Medical Leave Act. Other authorities have stated that the figure is much less than that. For the record, is the 12 million figure accurate?

Answer:

I do not have a detailed understanding of how that 12 million figure was calculated, but I would be happy to provide this information for the record.

Background:

- o According to the results of the study of FMLA by the Commission on Leave, approximately one in seven employees (16.8%) took leave for a reason covered by the FMLA during the 18-month period covered by the Commission's surveys.
- o Given that the study covered an 18-month period and it has been nearly four years since the enactment of the FMLA, it is reasonable to project that more than 12 million eligible workers have taken leave since FMLA's enactment. However, most of these employees were covered by employer policies that predated the Act and would have been able to take leave even without the FMLA.

FAMILY AND MEDICAL LEAVE: THRESHOLD

Question:

Small businesses are already inundated by too many regulations and red tape. In view of this do you favor Senator Dodd's proposal to lower the FMLA threshold from 50 to 25 employees?

Answer:

- o This is an issue that I think should be given careful consideration, but one on which I would have to reserve judgment at the present time.
-

Background:

- o In addition to Senator Dodd (D-CT), Representatives Clay (D-MO), Hastings (D-FL), and Maloney (D-NY) have introduced bills on FMLA issues including lowering the FMLA threshold to 25 employees, and providing 24 additional hours of unpaid leave to attend children's school activities or accompany elderly relatives to medical appointments.
- o The Women's Legal Defense Fund, 9 to 5, and Women Employed are in favor of FMLA expansion on the basis that more than 41 million private employees (almost 43% of the private workforce) are not protected by the FMLA.
- o Business groups, and small business in particular, generally opposed FMLA and would oppose any expansion of the law -- because it reduces their workplace control and they perceive that it increases costs.
- o Expanding FMLA coverage by reducing the coverage threshold would extend FMLA benefits to an estimated 10-13 million more workers.

DAVIS-BACON REPEAL

Question:

Isn't the Davis-Bacon Act an anachronism that should be repealed or at least significantly scaled back?

Answer:

- o Davis-Bacon should not be repealed.
- o The underlying need for the Davis-Bacon Act is as great today as when the law was first enacted, but changes do need to be made in the way the system addresses that need.
- o This law is important because it assures that the Federal government's massive purchasing power does not have the unintended and undesirable consequence of depressing worker's wages on Federally-financed construction contracts.

Background:

- o The Davis-Bacon Act, enacted in 1931, requires contractors and subcontractors on Federal and certain Federally-financed construction projects to pay their workers at least locally prevailing wage rates and fringe benefits.
- o The statute has been the source of much controversy for many years. The Davis-Bacon Act applies to Federal and certain Federally-funded contracts for construction, renovation and repair which cost in excess of \$2,000. This coverage threshold dates from 1935, and the Act has not been significantly amended at all.
- o Because the Federal procurement system is designed to award contracts to the lowest responsive bidder, contractors in labor-intensive sectors like construction could be driven to compete for Federal contracts by reducing their wage costs.
- o In early 1995, Representative Cass Ballenger (R-NC) and former Senator Nancy Kassebaum (R-KS) introduced legislation to repeal the Davis-Bacon Act. The House and Senate Labor Committees reported bills, but no floor action was taken.
- o In FY 1997, Wage and Hour received \$3.75 million in new resources to improve the process for determining prevailing wage rates used for Davis-Bacon purposes. The Department's FY 1998 budget requests an additional \$2 million for this purpose.

DAVIS-BACON ACT LEGISLATIVE OUTLOOK

Question:

Does the Administration support legislative reform of the Davis-Bacon Act?

Answer:

- o The Administration strongly opposes the repeal of the Davis-Bacon Act.
 - o The underlying need for the Davis-Bacon Act is as great today as when the law was first enacted, but changes do need to be made in the way the system addresses that need.
 - o Any meaningful legislative reform of Davis-Bacon should ease the burdens on employers and the Federal procurement community while retaining the basic worker protections that the Act originally sought to provide.
 - o I am anxious to work with the Congress on meaningful reform.
-

Background:

- o In 1994, with the Administration's support, former Senator Paul Simon (D-IL) introduced legislation to reform the Davis-Bacon Act.
- o The legislation originated with the National Performance Review's efforts to streamline and reform the Federal procurement process.
- o The reform bill would have:
 - increased the Act's coverage threshold to \$100,000 for new construction and \$50,000 for repair and alteration;
 - simplified the payroll reporting requirements;
 - provided a private right of action for employees; and
 - provided clear standards of application on certain Davis-Bacon coverage issues.
- o During the 104th Congress, former Senator Mark Hatfield (R-OR) and Representative Curt Weldon (R-PA) introduced similar legislation. The Administration did not take a position on this more recent reform effort.

DAVIS-BACON: FALSE INFORMATION

Question:

If you are Secretary of Labor, how will you ensure that false information is not being used in Davis-Bacon surveys as it was in Oklahoma?

Answer:

- o The Administration supports Davis-Bacon reform. If confirmed, I will give priority to bringing about a more effective Davis-Bacon system.
 - o With regard to any potential fraud or abuse regarding implementation of Davis-Bacon, my approach would be to refer these allegations to appropriate authorities at the Justice Department or to the Inspector General for review.
 - o I will also assure that appropriate steps are being taken to eliminate the possibility that inaccurate information is used in setting Davis-Bacon wage rates.
-

Background:

- o Allegations that Davis-Bacon wage determinations are inaccurate and subject to fraud arise from issues involving wage determinations published for application to heavy and building construction projects in the State of Oklahoma.
- o Wage surveys are conducted by DOL to ascertain and establish locally prevailing wage and fringe benefit rates for Davis-Bacon purposes. Such wage surveys conducted in 1993 and 1994 resulted in the issuance of new wage determinations in Oklahoma with significantly increased wage rates. Although it had been a number of years since the areas had been surveyed (and some increase was expected), a number of interested parties appealed the survey results.
- o The Department undertook a review of the Oklahoma surveys and began an analysis of the Davis-Bacon survey process that resulted in the new wage determinations for Oklahoma, revised survey procedures, and provided additional training for DOL staff.
- o The Oklahoma Labor Commissioner and others assert that the original wage determinations were based on fraudulent survey data submitted by local unions.

- o The fraud allegations are currently under investigation by the FBI, on referral from DOL.

Cautionary Note:

Any question relating to fraud and abuse should be answered by referring the case to the Justice Department and the Inspector General.

DAVIS-BACON WAGE DETERMINATION IMPROVEMENT

Question:

What changes will you make in the Davis-Bacon wage survey and determination process?

Answer:

- o The Davis-Bacon Act is important because it assures that the Federal government's massive purchasing power does not have the unintended and undesirable consequence of depressing workers' wages on Federally-financed construction contracts.
 - o I understand that staff have been working to develop viable options for improving the process for determining prevailing wages that must be paid under the Davis-Bacon Act.
 - o I am committed to seeing that the Davis-Bacon program is administered in the best way possible.
-

Background:

- o Arguments favoring repeal of the Davis-Bacon Act have expanded to include allegations of systemic fraud in the wage survey process, based largely on the Oklahoma experience.
- o In FY 1997, Wage and Hour requested and received \$3.75 million in new resources to improve the wage survey process that is used to determine Davis-Bacon prevailing wage rates. The Department's FY 1998 budget requests an additional \$2 million for this purpose.
- o The Department must decide how to proceed within the next few weeks so that it can begin using the new resources provided this year by no later than March.
- o While the Building and Construction Trades Department, AFL-CIO, has been consulted as part of the decision-making process, they have publicly expressed opposition to the option to use Occupational Employment Survey data based on their perception that this would deny unions the opportunity to participate in the survey process.

Cautionary Note:

The five options we are considering include the following, but they should not be discussed if it can be avoided.

- using data from BLS's redesigned Occupational Employment Survey (OES);
- authorizing contracting agencies to use "independent authoritative sources" of construction industry wage data;
- adopting State-produced prevailing wage determinations, in those States that produce them;
- privatizing some or all of the wage data collection and analysis process; and
- reengineering the existing survey system, primarily through investment in technology and expert systems.

"HELPERS" UNDER DAVIS-BACON

Question:

If confirmed, will you implement the Department's regulations to allow greater use of semi-skilled "helpers" on federal construction projects?

Answer:

- o I am aware that the use of semi-skilled "helpers" on Federal construction projects is a very controversial topic; that this is the subject of current rulemaking by the Department; and I have more to learn about the issues involved and the history of the controversy.
-

Background:

- o "Helpers" are unskilled or semi-skilled construction workers who are used mostly by "open-shop" (i.e., non-unionized) contractors to assist skilled journey-level craftsmen such as carpenters and electricians. These are often entry-level jobs and "helpers" are typically paid less than unskilled laborers.
- o Prior to 1982, the Department's policy permitted the use of helpers on Davis-Bacon Act (DBA) projects only in limited circumstances - when the helper classification was a separate and distinct class of worker whose duties were distinguishable from those of journey persons and laborers and their use prevailed in an area. In 1982, the Reagan Administration amended the regulations to allow expanded use on DBA projects of "semi-skilled helpers" whose duties could overlap with those of skilled journeypersons, but who are paid at a wage rate lower than the journey-level rate. The Building and Construction Trades Department, AFL-CIO, and the Laborers International Union of America, AFL-CIO, sued the Department over the regulations, which were enjoined and caught up in litigation for the rest of the decade.
- o A final rule was implemented in 1991, but subsequent appropriations riders, sponsored by Senator Harkin (D-IA) as Chairman of the Labor/HHS Appropriations Subcommittee, barred the Department from implementing the regulation for most of the period since then. In November 1993, the Department suspended the regulations by notice in the Federal Register in light of the appropriations ban. The current appropriations act, signed by the President in April 1996, contains no such rider. The Department is currently being sued by the Associated Builders and Contractors (ABC) for failing to implement the suspended regulation given that there is no longer an appropriations rider banning implementation.

- o On December 30, 1996, the Department published a final rule in the Federal Register temporarily continuing the suspension of the helper regulations while the Department considers amending those rules.
- o The Department has begun to consider appropriate changes to the suspended regulations and plans to conduct formal rulemaking to determine whether the regulations should be amended and, if so, how.
- o The Department's recent rule stated that the suspension will continue until rulemaking on amending the regulations is complete. The Department has publicly committed both in the 1996 final rule and before the Court in the ABC lawsuit that it expects to complete rulemaking to amend the regulation by August 1997.

SWEATSHOP LEGISLATION

Question:

Does the Administration support legislation to make garment manufacturers liable for wage and hour violations committed by their contractor sewing and cutting shops?

Answer:

- o Last August, under the President's leadership, I helped organize a White House meeting with leaders from the apparel and footwear industries, unions and non-governmental organizations. This type of coalition building must be encouraged and I look forward to hearing their recommendations.
- o The liability legislation is one of many interesting ideas that is worth examining.
- o Over the past year American consumers have become more aware and more concerned about sweatshops in this country.
- o Eradicating sweatshops requires that every level in the garment industry – including manufacturers and retailers – accept responsibility for ensuring that garment workers are paid according to the law.

Background:

- o Representative Clay (D-MO) has reintroduced, as H.R. 23, a UNITE-drafted bill he and Senator Kennedy (D-MA) introduced in the 104th Congress. (Senator Kennedy has not yet reintroduced his bill in this Congress.)
- o H.R. 23 would make manufacturers and retailers (when acting as manufacturers) liable for FLSA violations committed by their contractors. Retailers would also be liable when not acting as a manufacturer for contractor violations on goods the retailer purchased.
- o Under the bill, manufacturers would be responsible for paying the back wages and overtime owed to workers, and any civil money penalties incurred as a result of the contractor's violations. This would also apply to retailers that act as manufacturers for their own private label clothes.
- o The Administration has not taken a position on the bills. DOL's "No Sweat" initiative -- like the bills -- recognizes the influence retailers have on garment manufacturers and contractors, and in essence the Kennedy-Clay bill makes the entire industry responsible for assuring that workers are treated in accordance with the law.

CHILD LABOR IN THE UNITED STATES

Question:

What will be your priorities in the area of child labor?

Answer:

- o Children are our most precious national treasure.
 - o My priorities will be to keep children safe in the workplace and to promote positive work experiences that complement – not interfere with – their education.
 - o Child labor violations have steadily dropped since the early 1990s, but significant numbers of young people continue to be injured on the job.
 - o I am committed to maintaining strong enforcement and education efforts.
-

Background:

- o Under the FLSA's child labor provisions, 16 is the basic minimum age for employment. However, children 14 and 15 years of age may be employed outside school hours in a variety of non-manufacturing and non-hazardous jobs under specified conditions. Sixteen and 17 year old children may not be employed in hazardous occupations as defined by DOL regulations.
- o Child labor violations fell from a high of around 40,000 in FY 1990 to nearly 8,000 in FY 1996.
- o The National Institute for Occupational Safety and Health (NIOSH) conservatively estimates that 200,000 young people under 18 are injured on the job each year. Of this number, about 64,000 suffer injuries serious enough to warrant emergency room treatment. About 70 young workers die on the job each year.
- o The Department plans to start working in partnerships to establish corporate-wide child labor compliance programs.

Cautionary Note:

- o Because many aspects of the child labor regulations are so controversial, any discussion of specific directions should be avoided.
- o We have begun to look at possible modifications to the child labor regulations – some of which date back 50 years – but it would be premature and unnecessarily inviting to raise this issue in response.

**“541” REGULATIONS – Minimum Wage and Overtime Exemption for
“Executive, Administrative and Professional” Employees**

Question:

My mayors tell me that those FLSA rules are driving them into bankruptcy and having a disastrous impact on local budgets. Will you commit to updating the confusing FLSA exemptions for executive, administrative and professional employees?

Answer:

- o I know that these regulations are very complex, have broad impact, and present issues that can be quite controversial.
- o I do not know enough about these regulations, however, or about what would be involved in their overhaul.
- o But I do recognize that there are serious and important issues involved, and I can commit to look closely at this question as Labor Secretary and consult with you as we do so.

Background:

- o The FLSA exempts from its minimum wage and overtime pay requirements several categories of workers, including *bona fide* “executive, administrative, professional, and outside sales” employees, as those terms are defined in Department of Labor regulations (29 CFR, Part 541). Some 22 million public and private sector employees are potentially within the scope of the exemptions provided by these regulations.
- o To be exempt, employees must:
 - be paid “on a **salary** basis” (i.e., a “predetermined” or guaranteed amount which is not subject to reduction because of variations in the **quality** or **quantity** of work performed;
 - be paid at minimum specified salary levels (last revised in 1975, they are now less than the minimum wage for a 40-hour workweek); and
 - meet certain other tests related to job duties and responsibilities (such as

supervising other workers and have management of a department as a "primary duty").

- o The U. S. Supreme Court's 1985 Garcia decision (and subsequent amendments) extended FLSA coverage to State and local governments. Since then, public employers contend that the 541 rules, issued before the FLSA applied to such governments, do not adequately account for perceived differences in public sector jobs. DOL's rules were changed in 1991-1992 only for public employers after a Ninth Circuit decision (*Abshire v. County of Kern*) to permit deductions from pay for partial-day absences not covered by accrued leave. Recent court cases have applied the regulatory requirements inconsistently. The Supreme Court is now considering how the "salary basis" test applies in *Auer v. Robbins*, a private lawsuit brought by police sergeants and lieutenants against the City of St. Louis, Missouri, in which the Department stated its views in an *amicus* brief filed with the Court.
- o Changing the 541 regulations will have a significant effect on all industries and in every sector of the economy, including all levels of government. Resolving the diverse issues in the regulations will be exceedingly complex and controversial because the interests of State and local governments differ from those of private employers, and worker advocates staunchly resist any significant changes being sought by employer groups that are trying to exempt many more workers from eligibility for overtime pay. Adding to the complexity is the fact that low-wage workers' interests differ from those of higher-wage workers.
- o Senator Ashcroft (R-MO) included a provision in his comp-time bill, S-4, that would redefine the "salary basis" test to provide that when determining if an employee is not paid a guaranteed salary (and, therefore, is not exempt), only actual pay reductions for that employee for absences of less than a full day or less than a full payperiod could be considered - the fact that an employee is "subject to" such a deduction could not be considered. Leave docking and payment of extra overtime pay based on hours of work also would not be factors. These provisions would permit an employer to follow essentially an hourly pay system for employees claimed to be exempt as salaried, but only the employees who suffered actual pay dockings for time missed from work would be due overtime pay - all other similarly-situated employees in the same pay system who coincidentally suffered no pay dockings would have to be counted as exempt.
- o Several attempts to revise the 541 regulations since 1985 -- including two such efforts in this Administration -- have been unsuccessful.

VOLUNTEERING IN THE PUBLIC SECTOR

Question:

Do you believe that State and local employees should be permitted to volunteer their services in the public sector without violating the FLSA?

Answer:

- o I believe in the importance of volunteerism and commend those who dedicate their time and services to others.
- o The FLSA does not impede volunteering except in a very narrow circumstance.
- o The FLSA balances the importance of volunteerism with the need to protect employed public servants from any manipulation or abuse through coercion or undue pressure to volunteer additional time performing the same kind of work. The limited protection in the law is important and should be preserved.

Background:

- o State and local government employees can volunteer in many cases without violating FLSA – the law only restricts them from volunteering *to perform the same type of services as they are paid to do for the same employer*, to prevent the obvious potential for abuse.
- o Examples of improper “volunteers” include: a police department requiring officers to “volunteer” unpaid hours to get paid assignments, and requiring part-time officers to fill-in and work night shifts as “volunteers” without pay to continue to be considered for part-time work; and a county sheriff’s office requiring deputies to “volunteer” 16 hours of road patrol to maintain their certification to carry weapons.
- o News accounts of local communities that rely on volunteers to augment their workforce have brought the issue of public service volunteerism to the attention of Congress (e.g., Montgomery County, MD, firefighters). Last Congress, Sen. Warner (R-VA) introduced a bill (S.324) regarding volunteer firefighters and Sen. Gregg (R-NH) introduced legislation (S.530) on volunteering with regard to state and local workers.
- o In addition, George Will unfairly portrayed the Department’s interpretation of the FLSA as an impediment to the spirit of volunteerism in an editorial about a highly publicized *private sector* case involving a small for-profit radio station in Springfield, MO (KOTZ) which used “volunteer” services. The Department had received complaints and after investigating, concluded that the individuals were actually “employees” as defined by the FLSA.

EXEMPTION FOR "HOUSE PARENTS" FROM OVERTIME

Question:

Will you support changes in the law to update the regulations that exempt "house parents" from overtime pay requirements?

Answer:

I will review this if I am confirmed.

Background:

- o "House parents" are persons employed as substitute parents to supervise or care for children in residential facilities. The current law's exemption for "house parents," *from overtime pay only, not minimum wage*, was very narrowly drawn to exempt married couples employed by nonprofit educational institutions to serve as parents of orphans or certain other children, if the house parents reside at the institution with the children, receive free board and lodging and are together compensated at an annual rate of at least \$10,000.
- o These workers often must endure arduous round-the-clock tours of duty in response to emergencies and the personal crises of the clients.
- o Current rules for counting work time versus non-work time (such as eating, sleeping, and other periods of complete freedom from all work duties) allow some flexibility where workers reside on the premises.
- o Senator Hutchinson (R-TX) introduced a bill (H.R. 2531) in the House in the last Congress. Unlike the existing "house parents" provisions, Senator Hutchinson's bill would have:
 - exempted qualifying houseparents from both minimum wage and overtime; currently, qualifying houseparents must receive the minimum wage but are exempt from overtime;
 - expanded the types of institutions that qualify for the houseparents exemption from nonprofit educational institutions where orphaned children reside at the educational institution to any nonprofit residential institution for abused, neglected, delinquent,

orphaned, homeless, or emotionally impaired children if the institution is the children's primary residence;

- eliminated the requirement that an exempt houseparent must be employed with a spouse (i.e., married couples);
- changed the annual rate of compensation from \$10,000 per married couple to \$8,000 per houseparent; and
- required that a qualifying houseparent be in residence at the facility for at least 72 hours a week, as opposed to residing at the facility full-time with a spouse.

APPAREL INDUSTRY PARTNERSHIP

Question:

A group of industry leaders are participating in the Apparel Industry Partnership. Will the Partnership come up with anything useful and will the industry buy in?

Answer:

- o The Apparel Industry Partnership is expected to make an announcement of its recommendations for the industry within the next month. This will be the culmination of six-months work - after an August meeting at the White House with the President and Vice President - by the industry, unions, consumers, and the Administration to develop an industry-driven strategy to rid the garment industry of the stain of sweatshops.
 - o Recent media coverage of the group, such as a recent front page article in the New York Times, indicates that there is great interest on the part of the public in the outcome of this effort. I look forward to seeing the Partnership's recommendations.
-

Background:

- o The Apparel Industry Partnership is comprised of representatives of apparel and footwear companies, labor, consumer, human rights and religious groups who have committed to work together to ensure that the goods they sell are not made under sweatshop conditions and develop mechanisms to communicate to consumers that the goods they buy are made under "sweatshop free" conditions.
- o The Partnership has been meeting regularly with great success since August and is developing plans and recommendations for industry action, which will include an agreed upon set of **standards**; a comprehensive, verifiable domestic and international **monitoring system**; and **consumer communication strategies**.
- o The members include NIKE; Phillips Van Heusen; Liz Claiborne; Warnaco; Reebok; UNITE; Retail, Wholesale, Department Store Union; L.L. Bean; Patagonia; Tweeds; National Consumers League; Businesses for Social Responsibility; RFK Memorial Fund; and the International Labor Rights Fund. The role of the Department of Labor is to provide technical assistance to the Partnership.

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Divider Title: **International**

INTERNATIONAL Q'S AND A'S

- o International Child Labor Legislation: Import Ban**
- o North American Free Trade Agreement (NAFTA and Jobs)**
- o Fast Track Authority and Labor**
- o NAFTA and Chile**
- o International Child Labor: DOL Agenda**

INTERNATIONAL CHILD LABOR LEGISLATION: IMPORT BAN

Question:

Do you feel that a U.S. ban on imports made with exploited child labor is an effective solution to the child labor problem?

Answer:

- o We know that the American people do not want to subsidize abusive and inhumane working conditions with their consumer purchases.
- o Senator Harkin and others have introduced legislation that would ban imports made with exploited child labor.
- o We are prepared to work with the Congress on achieving the vitally important objective of reducing the use of exploitative child labor.
- o Last August, under the President's leadership, I helped organize a White House meeting with leaders from the apparel and footwear industries, unions and non-governmental organizations. This type of coalition building must be encouraged, and I look forward to hearing their recommendations.

Background:

- o Senator Harkin (D-IA) may ask this question to try to obtain support for his legislative proposals.
- o Senator Harkin introduced the following two bills in the 104th Congress (neither has been introduced in the 105th Congress); the "Child Labor Deterrence Act," which would prohibit products made by child labor from being imported into the United States, and the "Child Labor Free Consumer Information Act of 1996," which would have the Secretary of Labor establish a voluntary labeling system for wearing apparel and sporting goods made without child labor, and would create a Child Labor Free Commission to oversee the use of this label.
- o You will want to avoid an endorsement of any specific bill, since the Administration has not taken a position on them.

NORTH AMERICAN FREE TRADE AGREEMENT (NAFTA AND JOBS)

Question:

Is NAFTA good for American workers?

Answer:

- o NAFTA is good for the country, including our workers.
 - o Overall NAFTA has supported the creation of more export-related jobs and those jobs, for the most part, are better, higher paying jobs. Export jobs on average pay 13% more than other jobs in our economy.
 - o NAFTA also has a transitional adjustment assistance program for workers who lost jobs as the result of increased imports from or shifts in production to Mexico or Canada.
-

Background:

- o The NAFTA, which became effective on January 1, 1994, eliminated barriers to trade between the United States and Mexico. It also liberalized services and investment flows between the two countries. At the same time, side agreements on labor (North American Agreement on Labor Cooperation) and environment were implemented.
- o During the first three years under NAFTA, less than 100,000 workers have been certified under the transitional adjustment assistance program as having lost their jobs because of NAFTA. That represents less than 2% of all workers laid off. At the same time the U.S. economy, on average, has been growing by 200,000 jobs per month, or more than 11.5 million jobs in the last four years. [Note: The 100,000 number may be an underestimate of workers impacted by NAFTA since not everyone laid off seeks NAFTA certification.]
- o During NAFTA's first two years (1994-1995), U.S. goods exports to our NAFTA partners (Mexico and Canada) increased 22%, or nearly \$31 billion.
- o According to data compiled by the Office of the United States Trade Representative, for the first 11 months of 1996, 2.3 million jobs are supported by U.S. goods exports to the NAFTA partners (Mexico and Canada), an increase of 312,000 over 1993.

Cautionary Note:

- o There has been some recent minor press attention about a study being prepared but not yet released by the staff of the "Secretariat" of the Trinational which was established in Dallas, Texas, to help implement the NAFTA labor agreement. The study concerns whether U.S. employers threaten to close plants to defeat union organizing campaigns. We hope to see the report public very soon. Some labor-related observers are falsely suggesting we are trying to block the report because we didn't like its contents, which they think will verify NAFTA is bad for U.S. unions.

FAST TRACK AUTHORITY AND LABOR

Question:

Will the Administration insist on linking labor conditions to new fast track authority?

Answer:

- o The Administration considers it a high priority to receive new fast track authority from the Congress, and has been, and will continue to be, in consultation with the Congress on this matter.
 - o We continue to believe that labor standards are important to the fast track process.
-

Background:

- o "Fast-track" authority permits the Administration to bring trade agreements to the Congress for an up-or-down vote without amendment. Congress has provided periodic grants of fast track authority since 1974 -- but such authority lapsed in 1994. Fast track was used by the Clinton administration to enact the North American Free Trade Agreement (NAFTA) and the Uruguay Round Agreements of the World Trade Organization (WTO).
- o Negotiations between the Administration and Congress for the renewal of fast track authority broke down in 1994 and 1995. The Administration wants fast track authority to permit inclusion of labor standards as a "negotiating objective" for trade agreements. Past legislative grants of fast track authority -- including the most recent law in 1988 -- included labor standards as a negotiating objective. But some Republican members have raised objections to the inclusion of labor (and environmental) objectives.
- o The Administration's first priority under new fast track authority probably would be to negotiate Chile's accession to NAFTA.

NAFTA AND CHILE

Question:

Will the Administration move forward toward bringing Chile into the NAFTA? If so, will the Administration insist on Chile signing on to the NAFTA Labor Agreement?

Answer:

- o The Administration has wanted to move forward with bringing Chile into the NAFTA for some time now and would like to begin that process.
 - o Chile would be expected to agree to appropriate labor standards.
 - o As we move forward on these matters, I would continue to consult closely with this Committee on these important issues.
-

Background:

- o President Frei ("Fray") of Chile is visiting Washington the last week of February. Frei's visit will draw attention to the issues of fast track authority, and when negotiations with Chile to join NAFTA might begin.
- o Chile has been of interest to Senators Dodd and Harkin.

INTERNATIONAL CHILD LABOR: DOL AGENDA

Question:

Will DOL continue to have a role in the issue of international child labor?

Answer:

- o The Administration has been leading the international effort to bring attention to the growing problem of exploitative child labor.
 - o We are not talking about children working in family businesses or on farms after school. We are talking about young children working full time under dangerous conditions. This includes bonded labor, where children are locked into circumstances of slavery because of debts assumed by their parents, and the forced prostitution of children.
 - o Once confirmed, I would expect to continue to work with this Committee to do all we can towards the elimination of exploitative child labor.
-

Background:

- o Senator Harkin (D-IA) may ask this question to try to get your commitment to continue work on international child labor.
- o Through appropriations legislation, Senator Harkin has been successful in directing ILAB to complete several studies on international child labor. ILAB is currently working on another such study.
- o Last Congress, Senator Harkin (D-IA) introduced a bill to ban the importation of goods made with child labor and a bill to require "child labor free" labels.

* * *

Bangladesh

- o DOL is supporting an innovative pilot project in Bangladesh to remove children from garment factories and place them in schools. About 5,000 Bangladeshi children are now getting an education through this project. In order to get the entire project underway, a small amount of U.S. funding was committed for stipends.
- o A positive network news program on the Bangladesh project mentioned DOL's involvement. Senator Jeffords' (R-VT) staff raised concerns about the stipend component as reported in the news program, but seem satisfied by our response.

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Divider Title: _____ **Affirmation Action** _____

Affirmative Action Q'S AND A'S

o Affirmative Action:

- Affirmative Action: Quotas**
- Affirmative Action: Contractor Burdens**
- Affirmative Action: The Free Market**
- Affirmative Action: Adarand and Piscataway**
- Affirmative Action: Texaco**

AFFIRMATIVE ACTION: QUOTAS

Question:

Isn't affirmative action as implemented by the Office of Federal Contract Compliance Programs (OFCCP) simply the imposition of race and gender quotas and preferences?

Answer:

- o The goal of affirmative action is to ensure equal employment opportunity for all Americans and to prevent discrimination.
- o Affirmative action as enforced by OFCCP requires federal contractors to engage in outreach and recruitment efforts to ensure a broad pool of candidates from which non-discriminatory selections can be made.
- o This program assures taxpayers that their dollars are not being used to support unlawful discrimination.
- o The OFCCP programs do not impose preferences, set-asides, or quotas based on race, gender or any other basis. Rather, the programs require contractors to conduct a self-evaluation and, where appropriate, engage in outreach and recruitment efforts to eradicate discriminatory barriers and ensure that all qualified candidates have a fair chance to compete for employment.

Background:

- o OFCCP enforces the Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended; and the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act, as amended. The Executive Order Program was signed by President Johnson in 1965 and has been supported by every Administration since its issuance. Taken together, these laws ban employment discrimination and require Federal contractors and subcontractors to take affirmative action to ensure that all individuals have an equal opportunity for employment, without regard to race, color, religion, sex, national origin, disability or status as a Vietnam era or special disabled veteran. Federal contractors are not required to meet a numerical goal in order to be in compliance with OFCCP laws. But they are required to make good faith efforts to eradicate barriers.

AFFIRMATIVE ACTION: CONTRACTOR BURDENS

Question:

Why should the American taxpayer be required to continue to pay for the enforcement of Executive Order 11246 when it creates unnecessary, unfair, and burdensome requirements on Federal contractors?

Answer:

- o Equal employment opportunity is good for business; it expands the pool of qualified candidates and thereby improves the quality of the workforce. This outreach improves the quality of the work that is procured by the federal government.
- o The bipartisan Glass Ceiling Commission, established in 1991, found that leading CEOs firmly support the continuation of equal opportunity and affirmative action efforts.
- o Based on my experience in the business community and working with business people, I agree that successful outreach and recruitment efforts are important not only in providing diversity, but in increasing the pool of qualified candidates.
- o It is important to assure taxpayers that their dollars are not being used to support unlawful discrimination.

Background:

- o Companies like Saturn Corporation in Tennessee, Procter and Gamble and KeyCorp in Ohio, and the Law Company in Kansas are all federal contractors who have been cited as examples of exemplary effort in the affirmative action field. They demonstrate what can be accomplished when companies recognize affirmative action plans as good business.
- o OFCCP programs have resulted in the consideration by federal contractors of more women and minorities and individuals with disabilities. These considerations have resulted in increased hiring and promotions for qualified workers.

- o OFCCP programs have also resulted in enforcement actions on behalf of veterans, workers with disabilities, racial and ethnic minorities and women.
- o The bipartisan Glass Ceiling Commission was established on November 21, 1991, by Congress as part of the Civil Rights Act of 1991, with legislation introduced by former Senator Robert Dole. The mandate of the Glass Ceiling Commission was to conduct a study and prepare recommendations for the elimination of artificial barriers to the advancement of minorities and women to management and decision making positions in business.

AFFIRMATIVE ACTION: THE FREE MARKET

Question:

Isn't the best and fairest way to create diversity in the workplace to allow the market to naturally correct the problem?

Answer:

- o As a business person, I agree that many American businesses have promoted diversity in the workplace, and I encourage voluntary efforts and education to show that outreach and recruitment make good business sense.
- o While the market has contributed to efforts to integrate the American workforce, it has not eliminated the vestiges of discrimination, as was highlighted by the recent allegations of discrimination at Texaco.
- o The report of the Glass Ceiling Commission also shows that there is still significant discrimination in the workplace.
- o As part of the Administration's "mend, don't end" effort, we met with many business leaders who told us of the importance of the government in helping to combat discrimination.

Background:

- o Federal contractors have paid nearly \$100 million in total financial settlements to victims of discrimination since 1994. This demonstrates the need for affirmative action.

AFFIRMATIVE ACTION: ADARAND AND PISCATAWAY

Question:

How will the Adarand and Piscataway cases of reported reverse discrimination affect the Federal government's affirmative action policies?

Answer:

- o The Administration has pledged to "mend, not end" affirmative action. To that end, following the Adarand decision, the Justice Department reviewed federal government programs and where necessary, has recommended changes to those programs.
 - o The Justice Department has concluded that the Executive Order affirmative action program enforced by OFCCP meets the legal requirements of Adarand.
-

Background:

- o In Adarand Constructors, Inc. v. Pena, the Supreme Court ruled that the strict scrutiny standard of review must be applied to federal programs that use race or ethnicity as a basis for selection decisions. Under strict scrutiny, a racial classification is constitutional only if it is narrowly tailored to further a compelling governmental interest. The plaintiff construction company in Adarand had submitted the low bid for a subcontract on a federal project but was rejected in favor of a certified small disadvantaged business. Adarand claimed that its equal protection rights were violated because the federal law created a presumption that minority-controlled businesses were disadvantaged. The Supreme Court remanded the case to the federal district court to determine whether the specific program satisfied strict scrutiny requirements. Justice O'Connor's majority opinion emphasized that strict scrutiny is not necessarily "fatal in fact" and that the federal government may lawfully respond to the "unhappy persistence of both the practice and the lingering effects of racial discrimination against minority groups."
- o The Supreme Court has been asked to hear the case of Taxman v. Piscataway, and the Justice Department has been invited to submit its views. The issue in Piscataway is whether Title VII of the Civil Rights Act of 1964 allows employers to take race into account for non-remedial purposes (in other words, for reasons other than redressing past discrimination), when making employment decisions such as a reduction in force.

Sharon Taxman, a White woman, and Debra Williams, a Black woman, taught in the same high school's business department, and had equal seniority and qualifications. When the school was forced to lay off one teacher, the School Board invoked an affirmative action policy and fired Taxman. (The affirmative action policy had not been adopted to remedy prior discrimination against minorities in Piscataway, but was adopted to promote diversity and equal opportunity.) State law previously had prescribed that layoffs were determined on the basis of seniority, and where employees had equal seniority, on a random basis (such as a coin toss).

The two lower courts have ruled in favor of Taxman, holding that the School Board discriminated on the basis of race in violation of Title VII's anti-discrimination language since the affirmative action plan was not remedial. The Piscataway case has attracted attention also because the Bush Justice Department originally filed the suit on behalf of Taxman and the Clinton Justice Department later sought to submit an amicus (friend of the court) brief on behalf of the School Board, but was denied permission. The government then withdrew from the case.

Neither Adarand nor Piscataway was brought under a law administered by the Department of Labor.

AFFIRMATIVE ACTION: TEXACO

Question:

What did DOL do with regard to Texaco, and what do you do with regard to egregious cases in general?

Answer:

- o The Texaco case is an egregious example of the kind of discrimination that we still find evident in the workplace today.
- o I am informed that Texaco is currently being investigated by the Office of Federal Contract Compliance Programs. This review is ongoing and has not been completed.
- o The President has affirmed this Administration's commitment to ensuring equal employment opportunity. The Department of Labor should work with employers to educate and assist them in complying with the law. In fact, I believe that the vast majority of contractors obey the law and do not discriminate. However, I also believe that those who violate the law should face the appropriate sanctions.

Background:

- o OFCCP discovers discrimination by conducting compliance reviews and investigating complaints of discrimination at Federal contractor facilities.
- o When discrimination is found, OFCCP attempts to resolve the discrimination informally in order to bring the contractor into compliance with the law and to provide relief to the victims of discrimination.
- o If this process is successful, the contractor will often offer back pay, reinstatement, priority for new job openings, or revised employment practices to ensure future compliance.
- o If the process is unsuccessful, then the agency refers the findings to the Solicitor of Labor for enforcement, which can lead to the debarment of the Federal contractor.
- o One contractor was debarred in 1996, 1 in 1995, 5 in 1994, and 1 in 1993. There were a total of 3 debarments from 1989 until 1992, and 3 from 1985 until 1988.

- o In addition to the OFCCP compliance reviews, there is ongoing private litigation, Roberts et al. v. Texaco, that was brought on behalf of a class of African-Americans. Texaco offered to settle the class action for a much publicized \$176.1 million. The matter is pending before the U.S. District Court for the Southern District of New York, which will hold a hearing on February 27 to consider the private settlement proposal. The OFCCP has offered to provide technical assistance to the district activities. OFCCP continues to work with the Equal Employment Opportunity Commission, which has intervened in the private litigation.

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Divider Title: Health

HEALTH CARE Q'S AND A'S

- o Decline in Health Care Coverage**
- o Role of Labor Secretary with Respect to Private Employer-Provided Health Care System**
- o Implementation of HIPAA (Kennedy-Kassebaum)**
- o Additional Changes to the Health Care System**
- o Affordability of Coverage for Small Businesses**
- o Advisory Commission on Consumer Protection and Quality in the Health Care Industry**
- o Health Care Coverage for Kids**
- o Health Care for the Unemployed (Workers in Transition): New Program**
- o Retiree Health Care**
- o HMO'S and Medical Malpractice**

DECLINE IN HEALTH CARE COVERAGE

Question:

The number of workers covered by employer sponsored health care plans continues to decline. What do you think should be done about this trend?

Answer:

- o The Administration is very concerned about the decline in workers' health care coverage.
- o The President's FY '98 budget proposes to assist small employers in obtaining affordable health care coverage through grants to the States to help create voluntary purchasing cooperatives.
- o Also in the President's FY '98 budget are proposals to help families of workers who are in-between jobs retain their health coverage and other initiatives to expand children's health coverage.

Background:

- o Nothing in the laws requires private employers to provide health plans to their workers.
- o The President's budget includes initiatives to expand health care coverage.
 - It would make it easier for small businesses to provide coverage for their employees by providing \$25 million in grants to states to create voluntary purchasing cooperatives or to allow businesses to purchase benefits through the Federal Employees Health Benefits Plan. The health plans of the cooperatives may be considered ERISA plans or they may hold ERISA plan assets and accordingly, may come under DOL jurisdiction, depending upon how they are structured.
 - The President's budget provides for premium assistance to workers who are in-between jobs to maintain health coverage. This initiative would help an estimated 3.2 million Americans, including 700,000 children. We expect Senator Kennedy to introduce a similar bill.

-- The President's plan also would provide coverage for as many as 5 million children by the year 2000 by:

- * Providing assistance for 700,000 children whose parents are in between jobs.
- * Giving \$750 million a year in grants to states to work with communities, businesses, and providers to expand coverage; and
- * Allowing states to extend continuous Medicaid coverage for 12 months to eligible children.

Cautionary Note:

- o Senator Daschle has introduced legislation to provide a tax credit for working families to help cover the costs of health care for children up to 18 years of age. The Administration has taken no position on this proposal and remains concerned that the effect of it might be to substitute public dollars for private ones. Therefore, if possible, avoid discussion of this particular proposal.

Revised
2/13/97

ROLE OF LABOR SECRETARY WITH RESPECT TO PRIVATE EMPLOYER-PROVIDED HEALTH CARE SYSTEM

Question:

As Labor Secretary, what do you envision your role to be with respect to our system of employer-provided health benefits?

Answer:

- o As Labor Secretary, I would like to continue to work with Congress in the bipartisan manner that was established on health issues in the 104th Congress.
- o Broadly speaking, I will continue the Department's mission to seek ways to ensure that workers have secure, affordable and quality health care benefits, including:
 - ensuring that the Kennedy-Kassebaum bill (HIPAA) is implemented in a timely and streamlined manner;
 - exploring ways to enhance health care protection and quality for consumers;
 - working to support the President's interest in expanding access to health care for workers in between jobs.

Background:

- o Although ERISA applies to health plans, the role of the Department of Labor has been relatively limited in comparison to pension plans because: (1) ERISA generally does not provide substantive rights to participants in health plans comparable to the participation, vesting, and funding provisions for private pension plans, and (2) health plans do not hold assets in the same manner as pension plans but rather provide benefits through insurance contracts subject to state regulation.
- o DOL's role, however, is rapidly increasing due to: (1) more employers establishing self-insured arrangements that are solely within the regulatory jurisdiction of DOL, and (2) passage of legislation such as HIPAA which imposes federal standards for certain types of benefits on all health plans.
- o HIPAA amends ERISA to protect workers who have health coverage when they change

or lose their jobs by limiting pre-existing conditions exclusions that would otherwise apply under their new health plan.

- o The Department, in conjunction with the Departments of Treasury and Health and Human Services, is developing regulations to implement HIPAA's protections.

IMPLEMENTATION OF HIPAA (Kennedy-Kassebaum)

Question:

As the Departments of Labor, HHS, and Treasury implement HIPAA (Kennedy-Kassebaum), what steps will you take to ensure that the implementing regulations do not impose unreasonable costs on employers?

Answer:

- o I understand that the Department is taking a number of steps to ensure that the HIPAA regs are handled in a manageable fashion.
- o A guiding principle in drafting the regulations must be to achieve a delicate balance between the interests of workers and employers.
- o The aim is not to make HIPAA's implementation unnecessarily complicated or costly, but rather to ensure that participants will get good and useful information about their rights.
- o You can be assured that I will do all that I can do, in coordination with the other two agencies, to ensure that the regulations are completed by the contemplated deadline of April, 1997.

Background:

- o The HIPAA legislation provided additional protections to workers who have health insurance and change or lose their jobs. It limits the circumstances under which employers can deny coverage for pre-existing conditions. It also guarantees access to the individual market.
- o The three agencies (DOL, HHS, Treasury) have been meeting since HIPAA was signed into law in August 1996 and are actively drafting regulations. In addition, an inter-agency group is developing a Memorandum of Understanding to govern the agencies' roles in the interpretation and enforcement of HIPAA and the regulations.
- o DOL is primarily responsible for the regulations that stipulate how employers will certify periods of coverage to establish rights under the new law.

- o Finally, the three agencies published a request for comments from the public and regulated entities for their views on the HIPAA portability provision and are reviewing the comments received as part of the development of the regulations.
- o The DOL, HHS, and Treasury testified on February 11, 1997 before the Senate Labor and Human Resources Committee on the implementation of HIPAA. Chairman Jeffords commended the agencies on their progress and willingness to work with interested parties to ensure a smooth regulation process.

ADDITIONAL CHANGES TO THE HEALTH CARE SYSTEM

Question:

What is the next step in health care after HIPAA (Kennedy-Kassebaum)?

Answer:

- o The Administration is very pleased with the bipartisan cooperation that marked the health legislative activities in the 104th Congress.
- o The President has expressed support for a variety of other initiatives, including:
 - anti-gag legislation that would prohibit restrictions on medical communications between providers and patients;
 - assistance to small employers to obtain quality and cost-effective health coverage for their employees by providing grants to states to establish voluntary purchasing cooperatives; and
 - expanded coverage to workers in between jobs and to children.
- o We also expect that the President's Advisory Commission on Consumer Protection and Quality in the Health Care Industry will examine many issues affecting private sector health plans, such as the kind of information employers and consumers need to be informed purchasers of health care.

Background:

- o The HIPAA legislation provided additional protections to workers who have health insurance and change or lose their jobs. It limits the circumstances under which employers can deny coverage for pre-existing conditions. It also guarantees access to the individual market.
- o It did not include provisions to limit the cost of health coverage or to expand coverage to those without insurance.

AFFORDABILITY OF COVERAGE FOR SMALL BUSINESSES

Question:

Would you support expanding health care coverage for small businesses by allowing multiple employer welfare arrangements (MEWAs) to be exempt from state laws and instead be regulated by the Department of Labor?

Answer:

- o The Administration is interested in policies that will provide new opportunities for small businesses to purchase health care at affordable rates.
 - o The President's FY '98 budget seeks to achieve this goal by providing grants to states to establish voluntary purchasing cooperatives to help small employers band together to pool risks.
-

Background:

- o A multiple employer welfare arrangement (MEWA) provides health benefits to the employees of two or more employers. Under ERISA, the Department currently shares regulatory responsibilities for MEWAs with the States. The States have primary responsibility over the financial soundness of MEWAs and the licensing of MEWA operators. The Department enforces fiduciary duties. By creating economies of scale, MEWAs can increase health coverage, especially in the small group market by offering affordable health benefits. In practice, however, MEWAs have a long history of abuse.
- o The Administration is concerned that a proposal to federalize MEWA regulation would weaken protection for workers and their families by eliminating state protection that currently governs these plans. ERISA does not contain federal financial standards for MEWAs. Congressmen Fawell and Goodling have announced their intentions to introduce legislation in the 105th Congress that would federalize MEWAs. They introduced similar legislation, which was passed by the House but removed during conference negotiations on the Kassebaum-Kennedy (HIPAA) bill.
- o The Department is also concerned it would not have the resources to fully monitor MEWAs if they are exempt from state laws. The Administration's proposal to help small business contained in the President's FY '98 budget provides grants to states to establish voluntary purchasing cooperatives.

**ADVISORY COMMISSION ON CONSUMER PROTECTION
AND QUALITY IN THE HEALTH CARE INDUSTRY**

Question:

The President has announced the creation of an Advisory Commission on Consumer Protection and Quality in the Health Care Industry. What issues do you believe such a Commission should address?

Answer:

- o First, I would like to say that I am very excited at the prospects of co-chairing this health commission with Secretary Shalala.
- o The Advisory Commission will address the important issues of quality and consumer protection in health care, such as:
 - what information purchasers and consumers need to make informed decisions about health care;
 - whether individuals have access to appropriate treatments and services; and
 - what consumer protections are necessary to ensure quality care.

Background:

- o President Clinton created this Advisory Commission on September 5, 1996, through Executive Order 13017. Members will represent consumers, institutional health care providers, health care professionals, other health care workers, health care insurers, health care purchasers, state and local governments, and experts in health care quality, finance, and administration.
- o President Clinton has not yet formally announced appointments to the Commission.
- o The White House is actively considering candidates for both the Commission and the Executive Director position. An announcement is possible within the next few weeks.

HEALTH CARE COVERAGE FOR KIDS

Question:

What is the Administration's view on expanding health care coverage for kids?

Answer:

- o We want to work with all interested parties to expand kids' health care coverage.
 - o There are many different approaches to this problem. We do not want to compete with other proposals but rather offer complementary strategies that have the same goals but may have different approaches to achieve those goals.
 - o The President's FY '98 budget contains several initiatives to expand kids' coverage.
-

Background:

The options the Administration is considering include:

- o **Outreach to the 3 million children who are currently eligible for Medicaid but not enrolled.** This includes ways to reach out in communities to increase enrollment (e.g., information through schools).
- o **Strategies to target individuals who cannot afford coverage for their children but are working.** This includes building upon successful examples of state and local partnerships that have established innovative approaches to increasing coverage for children in their local communities (e.g., state grants for community health clinics some of which receive federal aid now).
- o **Strategies to target short-term financial assistance to workers between jobs to help pay for continued health insurance.** This proposal would continue coverage for up to 700,000 children.
- o The State of the Union address mentioned the Administration's commitment to expanding coverage to up to 5 million children. This includes 3 million kids eligible for Medicaid; 700,000 that would be covered under the temporarily unemployed proposal, and approximately 1.3 million kids under grants to community health centers.

Cautionary Note:

- o Senator Daschle has introduced legislation to provide a tax credit for working families to help cover the costs of health care for children up to 18 years of age. The Administration has taken no position on this proposal and remains concerned that the effect of it might be to substitute public dollars for private ones. Therefore, if possible, avoid discussion of this particular proposal.

HEALTH CARE FOR THE UNEMPLOYED (Workers in Transition): New Program

Question:

Why should we create a new federal program to provide health care coverage to workers in transition?

Answer:

- o Most Americans -- 64% of the non-elderly civilian population -- have employment-based health insurance.
 - o Workers with job changes are more than three times as likely to have gaps in insurance than those who remain on the job.
 - o These workers often cannot afford health care coverage.
 - o This program will enable an estimated 3.3 million Americans in 1998, including about 700,000 children to keep their health insurance.
-

Background:

- o Last year and again in this year's budget, the President proposed providing temporary premium assistance for up to six months for workers collecting unemployment benefits who had health insurance in their previous job.
- o It will work "hand-in-hand" with the new HIPAA portability protections against pre-existing conditions by assuring that workers do not experience breaks in coverage. Workers who experience a break in coverage greater than 63 days do not receive HIPAA portability protection.
- o The President's proposal provides grants to the states and gives the states flexibility to provide coverage in the way that best meets the needs of their populations.
- o It costs about \$2 billion in 1998 and \$9 billion over four years and is paid for in the President's balanced budget.
- o This is not an new entitlement. It's a four year demonstration project with capped costs.
- o Massachusetts has a state program similar to this and Senator Kennedy will introduce

the Administration's proposal as soon as the legislation is finalized.

- o The funding for the program is included in HHS' budget and it has primary operational responsibility. DOL's role is:
 - o to provide information to individuals through one-stop job centers;
 - o to participate in the funding allocations; and
 - o to jointly conduct an evaluation with HHS after one year of the program's operation.
- o The White House has asked DOL to take a major role in promoting this legislation.

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RETIREE HEALTH CARE

Question:

What steps would you take to assure that retiree health benefits are protected?

Answer:

- o Rising health care costs have resulted in some corporations cutting back on retiree health benefits and in numerous lawsuits by retirees seeking to retain their promised benefits.
 - o I know that the Department has filed *amicus curiae* briefs in support of the rights of retirees in several cases involving the reduction of retiree health benefits.
 - o I will review any Congressional proposals that are introduced and will continue to monitor court cases involving retiree health benefit promises.
-

Background:

- o *Amicus curiae* briefs, or "friend of the court briefs," are legal arguments filed in cases where the Department is not a party to the litigation but wants to assist the court in reaching a correct decision. The Department will continue to pursue an aggressive *amicus* brief program in which we file briefs in cases involving the reduction of retiree health benefits.
- o Several Democratic members of Congress, including Senator Daschle, have proposals to address these issues, including requiring employers to provide advance notice of benefit cuts, allowing early retirees to buy into their employers' group health plan through COBRA until they are eligible for Medicare, and providing a presumption in favor of retirees when evidence exists that employers have made a lifetime promise of health benefits.
- o Secretary Reich indicated that he believed some changes to ERISA might be needed to address the growing problem of termination of retiree health benefits.
- o Those who oppose ERISA changes argue that tougher rules will discourage employers from offering these benefits. For this reason, to date, the Administration and the unions have been reluctant to endorse specific legislation.

HMO'S AND MEDICAL MALPRACTICE

Question:

A recent *New York Times* article discussed a number of medical malpractice lawsuits where ERISA was raised by the HMO as a defense to a malpractice claim. Secretary Reich was quoted in the article as saying that he would support legislation to address this problem if the Courts did not address it.

Would you also support legislation to amend ERISA if this issue is not resolved by the Courts?

Answer:

- o Most fundamentally, I agree that HMOs should not be able to use ERISA as a defense to medical malpractice claims.
- o I will examine this issue further.
- o Before committing to any legislative proposal, I would want to examine more closely where the Courts are on this issue.

Background:

- o A prominent article on this issue appeared in the *New York Times* on November 17, 1996. Secretary Reich is quoted as follows: "The situation has to be corrected. If the courts won't do it, Congress must."
- o ERISA overrides state laws affecting employee benefit plans. Consequently, HMOs have argued in court that virtually everything they do, including the delivery of medical care, is covered under ERISA. Therefore, they have argued that they are shielded from state regulation. This is a problem in the context of medical malpractice because ERISA provides no remedies for losses due to medical malpractice.
- o The Department has been actively participating as a "friend of the court" in such cases and has successfully argued that state law applies to claims based on the negligence of medical providers.

Clinton Presidential Records Digital Records Marker

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This marker identifies the place of a tabbed divider. Given our digitization capabilities, we are sometimes unable to adequately scan such dividers. The title from the original document is indicated below.

Divider Title: **Pension**

PENSION Q'S AND A'S

- o Role of Labor Secretary with Respect to Private Pension System**
- o Tax Equity: Pension System**
- o Trends in Pension Coverage**
- o Pensions for Low-Wage Workers**
- o Pension Portability**
- o Pension Security - Audit Bill**
- o 401 (k) Plan Protection: Employer Stock**
- o Employer Mandate to Provide a Pension Plan**
- o Characterization of the President's Pension Proposal as a Mandate**
- o Daschle Pension Proposal**
- o Bingaman-Jeffords Pension Pro-Save Proposal**
- o Commission on Retirement Income Policy**
- o Harris Trust Regulations**
- o Economically Targeted Investments**
- o Financial Condition of PBGC**
- o Defined Benefit Plan Underfunding**

ROLE OF LABOR SECRETARY WITH RESPECT TO PRIVATE PENSION SYSTEM

Question:

As Labor Secretary, what do you envision your role to be with respect to the private pension system?

Answer:

- o As Labor Secretary, I will be committed to expanding and protecting this nation's private pension system.
- o My commitment is doubly strong in the face of our challenge to meet the impending retirement of the largest generation of workers in American history, a dynamic economy and a changing workforce.
- o The three objectives I will try to achieve are:
 - Expanding pension coverage;
 - Improving pension portability;
 - Combating pension fraud and abuse.

Background:

- o The Employee Retirement Income Security Act (ERISA) provides standards for the handling and investment of the assets of pension plans sponsored by private sector employers. The Secretary of Labor is responsible for enforcing these fiduciary standards and the associated reporting and disclosure provisions. The Secretary also chairs the Board of Directors of the Pension Benefit Guaranty Corporation (PBGC), which insures the pensions of participants in defined benefit pension plans.

TAX EQUITY: PENSION SYSTEM

Question:

Do you believe our tax subsidies for pension plans are being spent in the most cost effective manner?

Answer:

- o These incentives have contributed to the tremendous growth in the level of savings through pension funds over the past several decades.
- o The President is committed to expanding pension coverage, especially to low-wage workers.
- o Legislation enacted last year was a step in the right direction. We need to continue these efforts.
- o I look forward to working with the Committee on this issue.

Background:

- o Pension plans that meet certain minimum requirements of the Internal Revenue Code receive favorable tax treatment. The employer's contributions to the plan are a deductible expense; the earnings on the assets in the plan are not taxed; and the plan participants pay no taxes until they receive pensions paid from the plan.
- o Senator Kennedy is concerned that the \$66 billion per year in federal tax subsidies to encourage pension coverage go disproportionately to wealthy individuals. He is advancing a proposal which is included in the Daschle bill to provide a tax credit to low-wage workers who contribute to pension plans. This proposal is aimed at expanding coverage to the 51 million Americans without employer pension coverage, including women who are twice as likely as men to be without a pension.
- o The Administration has not endorsed the Kennedy approach. We believe the basic problem we face is not the ineffective use of tax subsidies, but how we can instead, expand the number of workers who are able to take advantage of them.

- o The President's proposals for encouraging the expansion of coverage were enacted by Congress in somewhat modified form in the Small Business Jobs Protection Act of 1996, which created two new plans for small businesses -- the SIMPLE IRA and the SIMPLE 401(k) plans. These changes significantly reduce the regulatory burdens and costs for small businesses, as compared to the burdens and costs of adopting existing types of pension plans, while preserving the favorable tax treatment.

TRENDS IN PENSION COVERAGE

Question:

Since the 1970's there has been a tremendous increase in the formation of defined contribution retirement plans, particularly 401(k) plans. Is this shift away from defined benefit plans a problem?

Answer:

- o The changing nature of retirement income for working Americans is an important issue and one I intend to focus on at the Department.
- o The federal government must do all that it can to help ensure that retirement savings are secure and are adequate to maintain retirees' standard of living throughout retirement.
- o Changes in the form of pension coverage are a reflection of both sides of the employment relationship. Clearly, many employers perceive defined contribution plans to be advantageous, and many workers prefer them as well.
- o I plan to study this trend and to see how it affects workers.

Background:

- o Defined benefit plans are plans which provide employees with a promised benefit based on years of work and earnings. Employees covered by defined benefit plans typically do not contribute to these plans or make investment decisions affecting the benefits. A defined contribution plan such as a 401(k) plan, does not promise a specific benefit at retirement. In these plans, an employee or employer (or both) contribute to the employee's individual account. The employee's pension is dependent on the amount contributed to the account and the investment performance of the employee's account.
- o The number of defined benefit plans decreased from 175,000 in 1983 to 84,000 in 1993.
- o However, because most larger employers have kept their defined benefit plans, there has been only a modest decline in the number of workers participating in defined benefit plans.

- o Today, approximately the same number of workers rely primarily on defined benefit plans as rely primarily on defined contribution plans.
- o As the workforce has grown, nearly all of the new pension coverage has been in defined contribution plans, and many employers already sponsoring defined benefit plans have added a 401(k) plan.

PENSIONS FOR LOW-WAGE WORKERS

Question:

What do we need to do to assure that pension security is available to all Americans, particularly low and moderate wage workers?

Answer:

- o Expanding the availability of pension coverage to low and moderate wage workers is a top priority of the Administration.
- o A key aspect of this effort is to facilitate the ability of small firms to provide pension plans because the majority of workers without coverage are employed by small businesses.
- o Last year we made significant progress with the enactment of the pension simplification legislation which lowered the cost for small firms to sponsor a plan.
- o As Secretary of Labor, I will do all I can to ensure that employers who sponsor these new plans cover lower-wage workers.

Background:

- o About half of the private sector workforce is not covered by a pension plan. Low-wage workers, women and minorities are disproportionately represented in this population.
- o The President's proposals for encouraging the expansion of coverage were enacted by Congress in somewhat modified form in the Small Business Job Protection Act of 1996, (pension simplification legislation) which created two new plans for small businesses -- the SIMPLE IRA and the SIMPLE 401(k) plans. These changes significantly reduce the regulatory burdens and costs for small businesses, as compared to the burdens and costs of adopting existing types of pension plans, while preserving the favorable tax treatment.

PENSION PORTABILITY

Question:

As the workforce continues to become increasingly mobile, what can we do to enhance pension portability for workers?

Answer:

- o We consider the problem of enhancing the portability of pension benefits to be one of the central issues that needs to be addressed if we are to successfully expand private retirement income.
 - o Last year, the Administration proposed and Congress enacted measures to improve portability as part of the Small Business Job Protection Act.
 - o These successes represent a good start which I intend to build on. We need to expand our dialogue with interested representatives of employers and workers and work with Congress to advance useful proposals in this area.
-

Background:

- o Pension portability refers to the ability of employees to transfer their pension benefits from one employer to the other. Most of the portability policy discussions deal with defined contribution plans and not defined benefit plans.
- o With respect to portability, the Small Business Job Protection Act: (1) reduced the vesting period for workers in multiemployer plans -- which cover union workers such as construction workers who frequently change jobs -- to ensure that they don't lose their benefits if they've worked for five years. Before this, these workers had to work ten years before vesting; (2) changed the law to encourage employers to allow workers to immediately begin saving at a new job, rather than waiting for one year; (3) changed the tax rules to ensure that veterans are not penalized and can continue pension coverage when they return from active duty. All of these changes were in the President's pension proposal.
- o Last year, the President announced a regulation which facilitates the ability of employers to accept the transfer of benefits for new workers.
- o Senator Daschle has included several proposals on pension portability in his pension bill (see Daschle Q &A).

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PENSION SECURITY - AUDIT BILL

Question:

What steps would you take to enhance the security of the private pension system?

Answer:

- o There has been tremendous growth in benefits and in the number of workers covered by the private pension system, and it is more secure than ever.
 - o The Labor Department is proud of its record of progress in safeguarding private pensions during President Clinton's Administration. In particular, the Retirement Protection Act, enacted in 1994, the Department's ongoing 401(k) enforcement program, and revised regulations have enhanced pension security.
 - o However, there is always room for improvement. One of my top priorities will be to improve the auditing of pension plans, and the President has proposed legislation that would make significant improvements in this area.
 - o I am pleased **Chairman Jeffords sponsored** similar pension audit legislation in the 104th Congress.
-

Background:

- o The Administration's proposed legislation (not yet introduced in this Congress) would strengthen ERISA audits in several ways:
 - Close the loophole for "limited scope" audits, which provide no overall assurance that plan assets are secure.
 - Require prompt reporting if criminal acts are discovered during an audit.
 - Require that plan auditors be subject to peer review to improve the quality of

their work.

- Make clear that the pension benefits of a plan fiduciary who breaks the law can be used to repay the plan and remove impediments that discourage the settlement of enforcement cases.
- o Senator Daschle included a modified version of the audit bill in his pension bill and Congressman Bill Clay will introduce the Administration's bill in the House in the near future.
- o The Retirement Protection Act was proposed by the Administration and enacted with bipartisan support in 1994. The law strengthened pension funding requirements, increased premiums for underfunded pension plans, required employers to notify workers annually about underfunding, and gave PBGC greater enforcement authority. The funding requirements are designed to decrease pension underfunding over a 10 to 15 year horizon.

401(k) PLAN PROTECTION: EMPLOYER STOCK

Question:

Do we need stricter limits on the amount of company stock or real property that a company sponsoring a 401(k) plan is able to contribute to that plan in lieu of cash?

Answer:

- o We need to work together to make certain that situations like the Color Tile case are not repeated.
 - o I look forward to working with the Congress to address this issue.
-

Background:

- o Under ERISA, defined contribution plans, such as 401(k) plans, may invest up to 100% of their assets in company stock or real property, if the plan so provides. Workers' pension security could be at risk if a large percentage of assets are invested in the employer's assets and the employer experiences financial problems.
- o In the Color Tile case, Color Tile's 401(k) plan invested over 80% of its assets in Color Tile stores before it went into Chapter 11 bankruptcy.
- o In response, Senator Boxer introduced legislation to establish limits on the investment of 401(k) plan assets in employer securities and real property. A version of this is also included in the Daschle pension bill.
- o On September 12, 1996, Secretary Reich sent a letter to Senator Boxer expressing the Administration's support in principle for legislative changes.
- o Details need to be worked out between the Administration and the Congress.

EMPLOYER MANDATE TO PROVIDE A PENSION PLAN

Question:

Should we have an employer mandate for pension plans to help expand coverage to more workers?

Answer:

- o Last year the President proposed and Congress passed a number of measures that make it easier for employers to voluntarily sponsor pension plans by lowering costs and easing the administrative burden.
 - o Broadening coverage within the existing system remains a high priority for the Administration.
 - o We need to pursue implementation of the new law and have no plans to propose a mandate.
-

Background:

- o Employers are not required to offer pension plans to their employees. However, if they provide such plans to their employees, they have to comply with various rules to assure that the plans do not discriminate against lower paid employees.
- o Certain unions, pension rights advocates and a number of pension economists would support a pension mandate.

Cautionary Note:

- o If asked about the inclusion of the Kennedy-Bingaman employer mandate to provide for payroll deduction of employee retirement savings accounts, you could say:
 - the Administration has not supported such a mandate to date;
 - the Administration is reviewing policy options for increasing pension coverage and portability without requiring a mandate;
 - this is an interesting idea that responds to a serious need.

CHARACTERIZATION OF THE PRESIDENT'S PENSION PROPOSAL AS A MANDATE

Question:

Isn't the 1% employer contribution proposed by President Clinton as part of the Administration's Retirement Savings and Security Act an employer mandate?

Answer:

- o Under the President's proposal, the decision to offer a pension plan would have remained the employer's. The President's proposal did not mandate that the employer offer a pension plan.
- o The President's proposal was intended to ensure that everybody who works for an employer offering one of these new pension plans receives at least some minimal benefit.

Background:

- o Current pension law requirements are designed to ensure that benefits are not disproportionately received by high-wage workers. These requirements are complex and are administratively burdensome for many employers.
- o The President's proposal was intended to offer small employers a new type of pension plan. The President's proposal would have waived compliance with these complex rules provided that the employer contribute at least 1% of a worker's compensation to the pension plan.
- o The 1% minimum employer contribution, which was intended to ensure that low-wage workers receive at least a minimum benefit, remains a high priority of the Administration and has been included in the Daschle pension bill.
- o The Administration is seeking to include the 1% in an appropriate legislative package, probably the budget reconciliation package which will be considered later this year by the Congress to achieve budget savings to balance the budget.

DASCHLE PENSION PROPOSAL

Question:

Do you support the Daschle pension bill?

Answer:

- o We are supportive of Senator Daschle's efforts.
 - o The current bill includes many provisions from the President's Retirement Savings and Security Act that were not enacted as part of the Small Business Job Protection Act of 1996. We believe those provisions significantly enhance this legislation.
 - o I look forward to working with you on pension legislation.
-

Background:

- o Senator Daschle introduced his Retirement Security Act on January 22, 1997. This legislation: (1) improves pension audits; (2) expands IRAs; (3) requires employers that do not sponsor a pension to make payroll deductions available so that employees can contribute to IRAs through a contractor selected by the Secretary of Labor; (4) improves benefits under SIMPLE accounts and plans to protect lower-wage workers; (5) requires employers to diversify the savings of employee investments in 401(k) plans; (6) reduces the time it takes a worker to vest in employer matching contributions; (7) increases the Federal guarantee available to multiemployer plans; (8) eliminates the requirement that summary plan descriptions be filed with DOL; and (9) provides a \$500 tax credit to encourage small businesses to start a pension plan.

Cautionary Note:

- o If asked about the inclusion of the Kennedy-Bingaman employer mandate to provide for payroll deduction of employee retirement savings accounts, you could say:
 - the Administration has not supported such a mandate to date;
 - the Administration is reviewing policy options for increasing pension coverage and portability without requiring a mandate;
 - this is an interesting idea that responds to a serious need.

BINGAMAN-JEFFORDS PENSION PRO-SAVE PROPOSAL

Question:

What is your view of the Bingaman-Jeffords Pension Pro-Save proposal?

Answer:

- o I share the goals of improving portability and expanding coverage among workers in firms that do not currently sponsor pension plans.
- o I agree with the principle that one of the best ways to achieve this is to find new ways to make it as simple and inexpensive as possible for employers to make the opportunities available for workers to save through regular contributions.
- o I am optimistic that if we work together we can develop creative new approaches that will enable us to improve portability and expand coverage.

Background:

- o The Pro-Save proposal has not yet been introduced in the 105th Congress, but Senator Jeffords' staff has indicated that he intends to pursue this legislation.
- o The Pension Pro-Save proposal is a mandatory payroll deduction for workers who elect to participate in this new portable pension system. The withholdings from payroll deduction would be deposited in a new "semi-governmental" entity which would manage the individuals' Pro-Save account.
- o The Administration has taken no position on this proposal but has serious concerns about both the mandate and the "semi-governmental" entity.

COMMISSION ON RETIREMENT INCOME POLICY

Question:

Senator Jeffords and others have proposed the creation of a Commission on Retirement Income Policy to study trends in retirement savings and to identify ways to promote additional retirement savings. Given the critical importance of retirement savings to millions of Americans, what is your view on the need for such a Commission?

Answer:

- o I believe it is important that all Americans have a safe and secure retirement.
 - o The growth and security of private pensions are important parts of our retirement income policy.
 - o I want to work with you on how best to achieve our mutual objective of a safe and secure retirement for all Americans.
 - o There are currently several advisory committees, representing a broad range of interests, available to the Secretary of Labor on issues of pension policy. Before creating another, I would like to become more familiar with the existing committees.
-

Background:

- o Senator Jeffords has not yet introduced his bill in the 105th Congress. However, he intends to pursue this proposal in the spring as he begins to develop pension legislation in the Senate Labor and Human Resources Committee.

Cautionary Note:

- o The establishment of Senator Jeffords' proposal is strongly opposed by organized labor.
- o You should not confuse the Jeffords proposal with a recently announced National Commission on Retirement Policy being formed by the Center for Strategic and International Studies. Four members of Congress --Senator Gregg (R-NH) (Labor Committee), Senator Breaux (D-LA), Rep. Stenholm (D-TX), and Rep. Kolbe (R-AZ) - have announced that they will serve as co-chairmen of this Commission, which is largely comprised of private sector members. Unlike the Jeffords Commission, this Commission was not created by Congress and has no statutory mandate.

HARRIS TRUST REGULATIONS

Question:

What will the Department do to implement the provisions of the Small Business Job Protection Act which give insurance company general accounts relief from ERISA's requirements, while still protecting plan participants from insurance company wrongdoing?

Answer:

- o I will do everything I can to be sure that the regulations adopted pursuant to this new law reflect Congressional intent and are protective of workers' pension rights.

Background:

- o In December 1993, the Supreme Court, in John Hancock Mutual Life Insurance Co. v. Harris Trust Savings Bank, overturned a Department of Labor interpretation which said that premiums paid by plans to insurance companies for insurance contracts were not subject to ERISA's fiduciary rules. These premiums become part of the insurance company's operating assets (which is called the insurance company's "general account").
- o This ruling caused all sorts of difficult practical problems and led to the inclusion of a provision in the Small Business Job Protection Act requiring the Department to give the insurance industry regulatory relief while safeguarding the interests of plan participants.
- o The Administration supported this position. You should be aware that Senator Dodd also supported this provision but Senator Wellstone opposed it because of concerns that the regulations may not provide adequate protective standards.
- o The Small Business Job Protection Act requires that DOL propose regulations by no later than June 30, 1997 and issue final regulations by December 31, 1997.

ECONOMICALLY TARGETED INVESTMENTS

Question:

Should the Federal Government encourage pension investment in Economically Targeted Investments (ETIs)?

Answer:

- o ETIs, when properly structured, provide competitive rates of return to plan participants, and produce additional benefits, such as job generation, affordable housing, and small business development.
 - o Pension fund managers and trustees, however, not the government, must make investment choices that are suitable for the circumstances of the particular fund.
-

Background:

- o In 1994, the Department published an interpretive bulletin, as recommended by the bipartisan ERISA Advisory Council. The bulletin confirms the Department's position that federal pension law allows investment in ETIs if such investments are projected to achieve competitive risk-adjusted rates of return. This has been a longstanding position of the Department through more than twenty years of Democratic and Republican administrations.
- o As background for you, the following are two examples of ETIs:
 - The California Public Employees Retirement System, the nation's largest public pension fund, has been a vigorous investor in ETIs. This fund has committed \$375 million to its housing construction program of over 3,000 single family housing units. The investment has yielded more than its projected rate of return of 19.6%.
 - In the private sector, the Trust Company of the West has created the Boilermaker Co-Generation Fund to target investment in productive assets such as environmentally responsible energy production. The Boilermaker and Blacksmith National Pension Trust has invested \$200 million or about 10% of its total assets in this fund, projecting lifetime returns of over 14%.

Cautionary Note:

- o You should not appear to be endorsing any specific investment.

FINANCIAL CONDITION OF PBGC

Question:

What is the financial condition of the Pension Benefit Guaranty Corporation (PBGC)?

Answer:

- o The Pension Benefit Guaranty Corporation is on firm financial ground.
- o At the end of 1993, its deficit was almost \$3 billion.
- o When the books for 1996 are closed, PBGC anticipates reporting a surplus for the first time ever.

Background:

- o The Pension Benefit Guaranty Corporation is a government corporation established by the Employee Retirement Income Security Act of 1974 (ERISA). PBGC's mission is to protect pension benefits in defined benefit pension plans (the traditional pension plan that promises a specific benefit) and to pay benefits when defined benefit plans terminate. The agency insures 42 million workers and retirees in 55,000 plans and pays about \$800 million per year in benefits to 392,000 people in 2,100 plans that have terminated. The Secretary of Labor chairs the PBGC Board of Directors, which includes the Secretaries of Treasury and Commerce.
- o The statements on the PBGC's financial condition refer to PBGC's own funds which are used to pay for the benefits of workers whose employers become insolvent and cannot pay benefits. These funds are accumulated from premiums paid by employers for the insurance provided by PBGC.
- o The amount of premium paid by employers is established by law in ERISA. It was most recently modified by Congress in 1994 (Retirement Protection Act). Under this new law, the variable rate premium was changed so that underfunded plans pay a higher premium than well-funded plans. This change contributed to turning PBGC's deficit into a surplus. President Clinton has often referred to this legislation as part of his pension security agenda and accomplishments.

DEFINED BENEFIT PLAN UNDERFUNDING

Question:

The Pension Benefit Guaranty Corporation (PBGC) announced last December that underfunding in single-employer plans was about \$64 billion in 1995. What do you think should be done about this?

Answer:

- o Pension security will be one of my top priorities.
 - o The Administration worked with Congress on a bipartisan basis in 1994 to enact the Retirement Protection Act.
 - o It is my understanding that the reforms enacted in 1994 are in the process of addressing the problem of underfunding of pension plans.
 - o As Labor Secretary, I will chair the PBGC Board and will work with the Secretaries of Treasury and Commerce to make sure that pensions are properly funded.
-

Background:

- o The Retirement Protection Act was proposed by the Administration and enacted with bipartisan support in 1994. The law strengthened pension funding requirements, increased premiums for underfunded pension plans, required employers to notify workers annually about underfunding, and gave PBGC greater enforcement authority. The funding requirements are designed to decrease pension underfunding over a 10 to 15 year horizon.
- o The \$64 billion deficit refers to the total amount of underfunding within the defined benefit pension system insured by PBGC. A defined benefit plan is underfunded when a shortfall is projected between the assets in the plan and the assets needed to provide benefits should that employer go bankrupt at that point in time. Underfunding does not mean that people are not currently receiving their benefits.
- o Two-thirds of all defined benefit pension plans are fully funded -- they have adequate assets to fund benefits should that employer go bankrupt. As interest rates change, the projected funding status of the plan changes. Because interest rates fluctuate from year-to-year, underfunding must be viewed over a number of years to truly get a picture of the funding status of a plan.
- o In 1995, interest rates declined dramatically, resulting in an increase in the projected shortfall for underfunded pension plans. We believe this will readjust over time.

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Divider Title: **Social Security/Medicare**

SOCIAL SECURITY/MEDICARE Q'S AND A'S

- o Future of Social Security**
- o Social Security Advisory Council Report**
- o Medicare Trust Fund**
- o Home Health Transfer & Medicare Trust Fund**

FUTURE OF SOCIAL SECURITY

Question:

Given that the Social Security Trust Fund is expected to be depleted by 2030, what steps do you believe should be taken to address this serious national problem?

Answer:

- o Social Security is one of this nation's great success stories. It has cut the poverty rate among the elderly in half and protects millions of families who have lost their breadwinner through death or disability.
- o We must make certain that the system continues to provide meaningful benefits to all workers.
- o There is no crisis in Social Security, but there are long-term financing concerns. It will be far easier to address if we start in the near term.

Background:

- o The Secretary of Labor serves on the Board of Directors of the Social Security and Medicare Trust Funds, along with the Secretaries of Treasury and HHS, the Commissioner of Social Security, and two members appointed by the President. The Board actually oversees four trust funds for Social Security and Medicare. The trustees are required by law to report to the Congress each year on the operation of the trust funds and the projected financial status for future years.
- o The 1996 Trustees report on the Social Security Trust Funds reported that, though solvent for the next ten years and for many years thereafter, they are not solvent over the long term.
- o The Social Security Trust Fund is now operating at a surplus (revenues exceed expenditures) and will continue to do so until 2013. The current projection is that the Trust Fund will start paying out more than it collects in 2019 and be exhausted by 2029. This is largely the result of the aging of the baby boom generation and increases in life expectancy.

- o There is not a wide gulf between current sources of financing and benefits if action is taken soon. An increase today of 2.19 percentage points in the payroll tax would bring the system into actuarial balance for the future. (This is not something you'd want to say publicly.)

Cautionary Note:

- o *However, it is critical that we resolve these concerns through a bipartisan process. It is best not to go beyond the simple answer above as the situation regarding the appropriate venue to address these issues is very fluid.*

SOCIAL SECURITY ADVISORY COUNCIL REPORT

Question:

What is your view of the recently released Advisory Council report on Social Security?

Answer:

- o The Advisory Council worked hard and raised some important questions about the finances of Social Security -- but was completely split on what to do about them.
- o As the country, through a bipartisan process, reviews the recommendations that have been made by the Commission and others, they should be judged based on the principles that have guided Social Security as a public trust for more than 60 years:
 - Social Security must provide real benefits and a secure retirement, not only for today's retirees but for future generations as well.
 - Social Security's integrity as our nation's premier social insurance program must be maintained. Social Security must remain an effective safety net, providing a bulwark for all Americans against disability and the risks of poverty in their retirement years.
 - Social Security's finances must be sound.

Background:

- o The Social Security Act requires an Advisory Council on Social Security to review the status of the Social Security Trust Funds and their relationship to their long term commitments every four years. The Advisory Council of 1994-96 focused on financing issues, adequacy and equity of benefits, and relative roles of public and private sectors in providing retirement income and how policies affect the retirement decisions and well-being of individuals.
- o The Advisory Council issued findings and recommendations on January 7, 1997. The members have divergent recommendations ranging from generally maintaining current structure with investments in the private sector, to individual accounts managed by the government, to personal accounts managed by the individuals.

Cautionary Note:

- o It is best to respond to questions about the Social Security report by stressing the importance of the program without discussing the Council's specific recommendations.

MEDICARE TRUST FUND

Question:

As Secretary of Labor, you will be a trustee of the Medicare Trust Funds. What are your recommended short and long-term measures to deal with the Part A Trust Fund's solvency?

Answer:

- o I strongly agree with the President that we must address the short-term problems immediately as well as the long-term financing challenges of the Medicare Trust Fund without harming beneficiaries.

If pushed, you can say:

- One of the President's goals is to balance the Federal budget by 2002 and to extend the life of the Part A Medicare Trust Fund into the middle of the next decade.
- As we take steps to extend the life of the Medicare Trust Fund, we must make sure not to indirectly harm beneficiaries by imposing excessive hospital, doctor, and other provider costs. Moreover, we should not unnecessarily frighten beneficiaries and their families into thinking that their benefits are in imminent danger.
- As a Trustee, I would address the long-term financing challenges by supporting a bipartisan process to examine possible long-term financing reforms.

Background:

- o Medicare is financed through two trust funds. The "Part A " or "Hospital Insurance" ("HI") Trust Fund pays for the cost of hospital related expenses and essentially is funded through a payroll tax. Payments from the fund now exceed and are growing faster than income. The Trustees' last report forecast that the Fund will be exhausted in 2001. The "Part B" or "Supplementary Medical Insurance" ("SMI") Trust Fund pays for physician services and related costs expenses. This is essentially a revolving fund which is funded 75% from general revenues and 25% from enrollee premiums. By design, the Fund does not face the possibility of insolvency.

- o The Administration's budget proposal saves \$100 billion over 5 years in Medicare, by slowing the growth of some provider payments, and by lowering payments to Medicare managed care programs beginning in the year 2000. The President announced these measures in the State of the Union address. The budget also would move about 75% of home health care expenses from the Part A to the Part B Trust Fund. Together, these measures are projected to extend the Part A Trust Fund's solvency until 2007. This will provide time for careful consideration of longer-term solutions.
- o Senators Roth and Moynihan announced on February 12th that they would introduce legislation to create a commission to draft a long-term proposal to resolve Medicare's financial problems. The Administration has not taken a position on this. We have praised the Senators for their bipartisan efforts to address the problem and said this is one of the options the President is considering.

HOME HEALTH TRANSFER AND THE MEDICARE TRUST FUND

Question:

How can you justify the President's FY '98 budget proposal that transfers home health care costs out of the Medicare Part A (i.e., hospital) to the Part B (i.e., physician services) Trust Fund?

Answer:

- o As you know, the President -- and Republicans in the House -- advocated this proposal in recent budget plans.
- o The home health care initiative that the President proposed is good, defensible policy.

If pushed, you can say:

- Payment for long-term home health services should not be in Part A of the program, which is the part of Medicare that pays for acute -- not long-term -- services.
- In fact, prior to 1980 that is how Medicare allocated the payment for these services.

Background:

- o Home health care expenditures were \$15.5 billion in 1995, out of \$116.4 billion in total Part A benefit payments. Home health payments represent the fastest-growing portion of Part A costs, up 33% per year on average from \$2.1 billion in 1988. Medicare currently pays for home health services on a retrospective, cost-based basis.
- o The Administration's proposal would leave about 30% of current home health expenses in Part A -- namely, the first 100 visits following a stay of three or more days in a hospital. The remainder would be paid from Part B. This transfer of payment from Part A to B reflects the change in home health care benefits from a service for individuals who were hospitalized to increasingly a chronic care benefit not linked to hospitalization and, therefore, more appropriately in Part B. The proposal would also implement payment reforms leading to a prospective payment system for home health care. Prospective payments would begin to bring the current double digit rise in spending on these services under control.

- o The Republicans proposed a similar transfer in 1994 but have sought to label the Administration's proposal a gimmick. This is because Part B is partially funded by general revenues and, therefore, the move from Part A to Part B over the long-term will not result in real budgetary savings.
- o The transfer proposal has been structured so that it will not raise the premiums paid by beneficiaries and should not be perceived as a diminution of benefits.

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Divider Title: **CPI**

CPI Q'S AND A'S

o CPI

- Boskin Report**
- Greenspan Commission Proposal**
- Secretary's Role**
- Timetable**
- CPI and President's Budget**

CONSUMER PRICE INDEX: BOSKIN REPORT

Question:

The Boskin Commission recently issued a report concluding that the CPI overstates the true cost of living by an estimated 1.1 percentage points a year. What are your views on the problems associated with the CPI?

Answer:

- o This Administration believes that it is important to have the most accurate measure possible to ensure that benefits such as Social Security are protected against inflation and that inflation adjustments to tax brackets are done fairly.
 - The Boskin report raises legitimate and important issues about how changes in the cost of living are measured.
 - Most economists, including those at the Bureau of Labor Statistics, agree that the existing CPI produced by BLS is an imperfect measure of the changes in the cost of living.
 - o BLS has over the years had a continual process to improve the CPI that has already resulted in major improvements in the CPI.
 - o The BLS, the rest of the Administration, and the public now have the opportunity to carefully review the Boskin commission report and its recommendations.
 - However, the process of making changes in this arena must not become politicized.
-

Background:

- o The Consumer Price Index (CPI) measures change over time in the cost of buying a fixed market basket of consumer goods and services.
- o As BLS has always pointed out, the CPI is not a cost-of-living index, as it does not measure the cost of maintaining a fixed standard of living. A major reason that these are different is that the CPI does not reflect the changes in buying or consumption patterns that consumers probably would make to adjust to relative price changes. For example, when the price of hamburger rises 10% consumers will reduce their purchases of beef and buy more chicken so that the effect on their spending is not as great.

- o Nevertheless, since the 1970's Congress has passed legislation to index the various entitlement programs, as well as the tax code, to annual changes in the CPI as a proxy for the increase in cost of living.
- o As a result, the CPI affects the income of over 70 million persons receiving entitlement benefits, such as Social Security, Food Stamps, and Federal military retirement. All taxpayers are affected by the CPI since it is used to adjust the Federal income tax brackets and exemptions for changes due to inflation.
- o The CPI is produced monthly by BLS. Approximately every 10 years BLS revises the CPI market basket and geographic samples to ensure that the CPI continues to reliably reflect current conditions. BLS is in the middle of the current improvement cycle. A major component of this effort will be to update the CPI market basket in 1998.
- o In addition to this revision effort, BLS has ongoing efforts to improve the CPI. Recent improvements include changes to correct the so-called "formula bias" problem [a technical issue], which resulted in an estimated .2% reduction in the CPI beginning in FY 1997. Improvements in procedures for hospital costs introduced in January 1997 will likely reduce measured inflation.
- o In the President's FY 1998 request, BLS is requesting additional funds to speed up the process of updating the CPI market basket; to expand the amount of information collected on prices and characteristics of goods and services to improve its quality adjustment estimates, and to bring new goods into the index. The requested money also allows for the production of supplementary measures of consumer prices that provide closer approximation to a cost-of-living index.
- o In 1995, the Senate Finance Committee established a Commission, headed by Michael Boskin, to study the CPI. Their final report was issued in December 1996. The Commission concluded that the CPI overstates the change in the cost of living by 1.1 percentage points per year.
- o BLS has responded to the Commission report by stating that it believes the Commission's estimate is too high and has expressed two concerns:
 - that the substitution factor is not as great as Boskin estimates; and
 - that the quality improvement estimates made by Boskin are informed judgments of the authors, and there is no agreed upon methodology for accomplishing them.
- The Commission found that almost two-thirds of the overstatement of the cost-of-living was due to the improved quality of life, greater variety of goods and services, and a greater number and type of stores, such as discount stores. For example, the Commission estimated that increases in food prices should be offset by 30 percent due to the greater variety of products from which consumers can choose.

GREENSPAN COMMISSION PROPOSAL

Question:

What is your reaction to Chairman Greenspan's recent proposal to establish an independent national commission to determine annual cost-of-living increases for federal tax brackets and benefit programs on a periodic basis?

Answer:

- o The Administration does not have a view on the commission proposal.
-

Background:

- o On January 30th, Federal Reserve Chairman Alan Greenspan called for a two-track process:
 - BLS should continue to make improvements in the CPI.
 - A commission, made up of academic experts, should be established that would set cost-of-living factors for federal receipt and outlay programs.
- o Although the reaction to his commission proposal has been mixed, Greenspan's continued leadership on the CPI issue has kept it front and center in Congress.
- o During early February both Gene Sperling (NEC Chair) and Katharine Abraham (BLS Commissioner) publicly stated that they have no views one way or the other on this commission proposal.

Revised
1/22/97

CONSUMER PRICE INDEX: SECRETARY'S ROLE

Question:

How do you see your role as Secretary of Labor in supervising the work of BLS on this critical issue?

Answer:

- o First, let me say that any technical revisions to the official monthly CPI are best left to the experts at BLS.
 - For the public to have confidence in Federal statistics, they must believe that the data are objective and accurate and not subject to political influence.
 - Once the integrity of government statistics is compromised, it would be extremely hard to restore.
- o This Administration, like many others, has placed a high priority on insulating the technical work of the BLS from political influences and politics.
- o As Secretary, I want to ensure that BLS has the necessary resources to carry out its important work on CPI improvements.

CONSUMER PRICE INDEX: TIMETABLE

Question:

Given the importance of having an accurate CPI and the importance of the CPI in the current budget debate, what can you do as Secretary to expedite improvements in the CPI?

Answer:

- o BLS has over the years had a continual process to improve the CPI that has already resulted in major improvements in the CPI.
 - o I want to ensure that BLS has the necessary resources to carry out its important work on CPI improvements.
-

Background:

- o Members will come at this issue from the perspective of whether or not there are any budget savings from CPI adjustments that BLS is planning to do.
- o Last year Congress assumed the savings estimated for BLS improvements in both the formula bias and the new market basket (a total of 0.4% annual reduction in the measured inflation rate).
- o CBO is planning to reflect savings from BLS's hospital cost changes in its FY 98 baseline number (extent of reduction small but unknown).
- o It is possible that an alternative measure, such as the experimental index that BLS will begin producing this Spring, could be adopted by BLS as the official CPI in about 2 years, potentially leading to a reduction in the measured inflation rate. This potential adjustment has not been factored into budget savings yet.
- o BLS's FY 1998 budget request asks for funds to continue the multi-year CPI revision project (total of \$15.5 million); but also asks for \$2.1 million to make program improvements in the CPI, with ongoing costs in the future of \$8-10 million a year.
 - These additional funds would allow BLS to speed up the process of updating the CPI market basket, to expand the amount of information collected on prices and characteristics of goods and services to improve its quality adjustment estimates, and to bring new goods into the index. The requested money also allows for the

production of supplementary measures of consumer prices that provide closer approximation of a cost-of-living index.

- Any potential savings resulting from this proposed improvement initiative are several years away.
- With these investments, the next revision of the CPI will be both better and quicker--potentially cutting in half the revision cycle--from 10 to 5 years. [Note: The Administration has not made a decision on this yet. Since resources are a major factor in determining the frequency of the CPI revision, this decision will be made in the context of the budget.]
- There is strong bipartisan support for BLS's proposed budget initiative. It has also been endorsed by Chairman Greenspan and Michael Boskin.

Cautionary Note:

- o Concern could be raised about why BLS cannot move faster to make improvements in the CPI.
 - Changes to major statistical programs, such as the CPI, are major undertakings and take long-term sustained investments to obtain the factual information necessary before adjustments can be made.
 - The President's budget request includes resources for everything that BLS knows how to do to improve the CPI. Other issues raised by the Boskin Commission get into judgment calls that are beyond the mission of the BLS -- it's not just a matter of spending more to get there.

New
2/14/97

CPI AND THE PRESIDENT'S BUDGET

Question:

Why didn't the President's request include a proposal to adjust the CPI?

Answer:

- o The President believes that we should have cost of living adjustments for Social Security recipients and for indexing brackets. He believes they should be accurate. He believes that they should be determined based on broad agreement among the top technical experts and done on a technical basis, and that they should not be done for budgetary or political reasons.
 - o The Administration is currently studying different suggestions and reports with respect to the CPI issue.
-

Background:

- o Technically, there are two ways that the Administration could have proposed "an adjustment to the CPI" in its budget request:
 - It could have assumed that BLS was making some change to the CPI methodology that would result in savings that are reflected in the President's economic assumptions. This is what was done in FY 1997, when the Administration's baseline numbers in the budget reduced the CPI estimate by .2 percentage points to reflect the upcoming new market basket.
 - It could have produced a legislative change to all the entitlement programs and tax provisions that are indexed to the CPI, proposing to adjust the cost-of-living increase by some amount less than the CPI.
- o Congress is looking for the President to provide "political cover" to allow members to support an adjustment to the CPI as part of a balanced budget deal; therefore, their strategy has been "You first, Mr. President."
- o Many members in Congress are involved in the CPI debate, including members of the Labor and Human Resources Committee. For example, Senator Gregg has expressed concern that the President's budget did not include a proposal to reduce the CPI. Senator Frist is concerned about how improvements in the quality of health care can be

measured. Senator Jeffords is a member of the Bipartisan Coalition that supported a .5 percentage points adjustment to the cost-of-living indices in various programs. The Chairman of the Joint Economic Committee, Congressman Saxton is concerned that a large portion (40%) of the savings from a CPI adjustment would come from hidden tax hikes.

Cautionary Note:

- o It is best not to go beyond the simple answer above because the Administration's position continues to evolve.
- o The Administration is keeping its options open with respect to the potential cost-of-living adjustments to entitlement programs as part of a balanced budget deal.
- This is because reducing the CPI by 1.1 percentage points per year as recommended by the Boskin Commission would result in cumulative deficit reductions of \$145 billion over 6 years (CBO estimate) -- a larger reduction than the proposed Medicare savings -- making it an issue that will continue to be debated until a budget agreement is reached.

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Divider Title: **Safety and Health**

SAFETY AND HEALTH Q'S AND A'S

- o The New OSHA and OSHA Reform - Fact Sheet**
- o Need for OSHA**
- o The New OSHA**
- o Joe Dear's Successor**
- o OSHA Reform -- Codifying The "New OSHA"**
- o The New OSHA and OSHA Reform**
- o Cooperative Compliance Programs**
- o OSHA's Inspection Numbers**
- o Ergonomics**
- o Methylene Chloride Standard**
- o Smoking in the Workplace**
- o Workplace Violence Guidelines**
- o OSHA and Small Business**
- o Business Complaints About OSHA**
- o Streamlining Regulations**
- o Cost Benefit Analysis**
- o OSHA/NIOSH Consolidation**
- o OSHA/MSHA Consolidation**
- o MSHA's Realignment**

THE NEW OSHA AND OSHA REFORM

The New OSHA

In May 1995, President Clinton announced a set of reform initiatives to enhance safety, trim paperwork, and transform OSHA. They continue to serve as the foundation for the agency's reinvention efforts:

1. **The New OSHA:** OSHA has changed its fundamental operating paradigm from one of command and control to one that provides employers a real choice between partnership and traditional enforcement relationship. For example:
 - o Redesign of the OSHA Area Offices -- OSHA has developed a new operational system for field offices. They have created a unit within the area office called a strategic team to analyze local hazards and develop strategies to correct them. This approach which expands upon OSHA's traditional enforcement role is being implemented in area offices throughout the country. So far 18 of the 66 offices have adopted this approach, 11 more are slated to come on line this year.
 - o Focused and Targeted Inspections -- For construction companies with an effective safety program, OSHA has modified its inspection program to only focus on the four most serious hazards. A similar approach is being used by local offices to address high hazards in specific industries.
 - o Common Sense Enforcement -- In previous years, a number of OSHA violations were for "paperwork" violations. Now, agency compliance officers are focusing their inspections on specific hazards that cause direct risk to workers.
2. **Common Sense Regulation:** OSHA has changed its approach to regulations by identifying clear and sensible priorities, focusing on key building block rules, eliminating or fixing out of date and confusing standards, and emphasizing interaction with business and labor in the development of rules.
 - o This agency has made a number of improvements to its standards process, eliminated more than 1,000 pages of out of date or repetitive standards, and worked with stakeholders to develop a priority system to identify the most important standards to issue.
3. **Results, Not Red Tape:** OSHA has changed the way it works on a day-to-day basis by focusing on the most serious hazards and the most dangerous workplaces and by insisting on results instead of red tape.

- o Process Improvement - The agency has entered into a number of process improvement efforts. For example, in the past it would take upwards of 30 days to inform employers of a worker's complaint. With the new phone/fax procedures, the employer is informed immediately and can fix the hazards within days, rather than weeks or months.
- o Compliance Assistance Through Information Technology -- The agency is implementing a number of information-dissemination projects to make more data available to a wider range of people. All OSHA standards and interpretations are available on CD-Rom and the OSHA home-page is continually expanding its offerings. And OSHA is pioneering the use of expert computer systems to assist the public with complying with OSHA's standards.

OSHA Reform Legislation

The 104th Congress made OSHA Reform a top priority. Three measures were considered.

- o The first, offered by Rep. Cass Ballenger in 1995, was the most drastic. It would have stripped away the core of the agency's enforcement authority and imposed layers of new, costly, time-consuming processes on the agency's regulatory processes, delaying protective standards for years. It would also have eliminated NIOSH and merged MSHA into OSHA. The bill was strongly opposed by labor and some segments of the business community. Mr. Ballenger withdrew it after a veto threat.
- o Senators Kassebaum and Gregg introduced their own measure in 1995, claiming that it codified the Administration's New OSHA initiative. In reality, the bill would have substantially narrowed the agency's enforcement authority and undermined its protective standards. The bill was favorably reported by the Labor and Human Resources Committee on a party line vote, but following a veto threat, lacked sufficient support to be considered by the full Senate.
- o Rep. Ballenger introduced a third measure in 1996 -- a significantly stripped down version of his earlier bill -- and reported it from his subcommittee. He also claimed it codified the Administration's New OSHA programs. While some of the bill's provisions would have been acceptable with a few changes, the bill would have overturned a core principle of the original Occupational Safety and Health Act -- that worker health should be given priority over other considerations (rather than being considered as just another cost of doing business). This provision would have greatly hindered the agency's ability to protect workers in the future. Because Ballenger thought it would be vetoed, the full committee did not act on it.

NEED FOR OSHA

Question:

Do you think there is still a need for OSHA, especially since workplace fatalities have declined so rapidly in the last decade?

Answer:

- o OSHA plays a critical role in ensuring that nearly 100 million American workers go home safe and sound to their families every night.
- o Although workplace fatalities have declined, too many workers are still being killed or injured on the job every day.
- o Since 1971, OSHA has made a great deal of progress in lowering the injury and illness rate but there is still a great deal to be done.

Background:

- o The Occupational Safety and Health Administration (OSHA) was created in 1970, during the Nixon Administration. The Act provides that employers are responsible for the safety and health of their worksites.
- o OSHA has helped cut the fatality rate from on-the-job injuries by more than 50% since 1970. In recent years, however, the fatality rate has stabilized.
- o In 1995, 6,210 workers were killed on the job, an average of 17 per day. When OSHA was created, job-related accidents accounted for more than 14,000 worker deaths annually.
- o In addition, more than 50,000 American workers die each year from disease caused by exposures at the workplace, and more than 6 million are injured or made ill.

THE NEW OSHA

Question:

How is OSHA going to change the perception of many business people that OSHA is more interested in fining employers than in helping to protect the safety and health of employees?

Answer:

- o I understand that OSHA's reinvention initiatives have already made enormous progress in improving worker safety and health through Cooperative Compliance Programs, Common Sense Rules in Plain English and Targeted Enforcement.
- o I intend to continue that progress.

JOE DEAR'S SUCCESSOR

Question:

What are you looking for in a successor to Joe Dear?

Answer:

- o The most important factor is a strong commitment to the safety and health of America's working men and women.
- o A good manager.
- o Someone who will listen to and understand the needs of workers and employers.
- o Someone committed to the OSHA reinvention initiatives.

OSHA REFORM -- CODIFYING THE "NEW OSHA"

Question:

Should Congress codify the positive changes Joe Dear has made administratively over the last few years?

Answer:

- o The new OSHA reinvention initiatives have shown that legislation is not necessary to effectuate significant change at the agency.
 - o The President and I have no intention of turning back on those changes.
 - o We need the flexibility to experiment with and improve the reinvention initiatives.
-

Cautionary Note:

- o Do not suggest a willingness to deal now with OSHA reform legislation.

COOPERATIVE COMPLIANCE PROGRAMS

Question:

Isn't the "cooperative compliance program" really more about intimidation than cooperation?

Answer:

- o OSHA's goal is to ensure America's working men and women a safe and healthy workplace. To achieve that, they are trying many innovative programs which leverage their limited resources.
 - o Cooperative Compliance Programs identify companies that have large numbers of workers compensation claims and/or high rates of injury and illness. OSHA offers those companies the option of partnership with the agency to improve the safety and health of their workers, instead of traditional enforcement.
-

Background:

- o The Cooperative Compliance Program gives high hazard businesses the choice of partnership, by working with OSHA to find and fix their own hazards, or going through a full inspection.
- o OSHA promised the President in 1995 that by the end of 1996, we would offer this choice in every federal OSHA state. It is an expansion of the award winning Maine 200 program where about 65% of employers experienced reduced illness rates. [Note: Sen. Collins has not yet expressed interest in this issue.]
- o There have been problems implementing the program quickly in all 29 federal OSHA states, and Congressional delegations in Missouri and Colorado have complained on behalf of various businesses. In Colorado, we have delayed implementation of the program; the targeting system used in this project did not meet the Fourth Amendment requirements.
- o The AFL-CIO believes the CCP's put too much emphasis on voluntary compliance and not enough on enforcement.
- o Generally, the CCP's are popular with employers and are producing good results. Participating employers are correcting large numbers of violations, and their injury rates have declined significantly.

OSHA's INSPECTION NUMBERS

Question:

Does the drop in the number of OSHA inspections mean that OSHA does not have a commitment to enforcement?

Answer:

- o We absolutely have a commitment to enforcement.
- o It is my understanding that the reduction in the number of inspections was caused in part by the budget rescission, government shutdowns, and uncertainty OSHA has faced over the last two years.
- o Now that OSHA's budget has been restored, I expect that there will be an increase in the number of inspections.

Background:

- o OSHA's appropriation fell from \$311.6 million in FY 1995 to \$303.8 million in 1996. In addition to the appropriations issues, at the end of 1995 and early in 1996, shutdowns of the Federal government prevented OSHA from undertaking all but the most urgent inspections.
- o The number of OSHA inspections dropped from 42,000 in 1994 to 24,000 in 1996.
- o In addition to the budget cuts and shutdowns, part of the reduction was caused by program changes -- putting greater emphasis on compliance assistance, and conducting better focused and more comprehensive inspections.
- o The number of inspections in 1997 is expected to exceed 30,000.

ERGONOMICS

Question:

Do you intend to pursue ergonomics regulations?

Answer:

- o Repetitive stress injuries (RSIs) are too big a problem both for either workers or businesses to ignore.
 - o I understand that OSHA plans a new approach to address repetitive stress injuries that includes education and technical assistance, as well as rulemaking.
 - o I will make sure that OSHA considers all points of view, including yours, as it moves ahead.
-

Background:

- o RSIs, which ergonomics regulations would protect against, are the fastest growing type of workplace injury.
- o Ergonomics is the science that deals with the interaction between people, their workplaces, and the environment; it is concerned with fitting the job to the worker rather than stretching the worker to fit the job. For example, typists who are required to type seven or eight hours a day without rest breaks can develop carpal tunnel syndrome, a sometimes disabling nerve disorder that causes pain or numbness and cramping of the hands.
- o RSIs account for one in four lost time injuries reported to BLS by employers (615,000 in 1993). 65% involve injury to the back, and 32% involve the upper extremities.
- o One-third of the dollars spent on worker's compensation pay for RSIs.
- o In 1993, \$20 billion was paid in 2.73 million worker's comp cases involving RSIs.
- o Cong. Bonilla and Cong. DeLay have led the opposition to any ergonomics regulation, while Sen. Kennedy and Cong. Pelosi have strongly supported it.

METHYLENE CHLORIDE STANDARD

Question:

Will you consider pulling back the new Methylene Chloride regulation?

Answer:

- o It is my understanding that OSHA recently published the final standard in the Federal Register, after 10 years of work.
- o I am not aware of all the details of this OSHA standard, but I am told that it will improve protection for workers from exposure to methylene chloride and as a result, help to prevent many cancer deaths.

Background:

- o Employers have filed suit in the U.S. Circuit Court of Appeals to block the standard, and unions have filed a suit seeking to strengthen the standard.
- o Methylene Chloride is the first DOL standard to be subject to Congressional review under the Small Business Regulatory Enforcement and Fairness Act. To date, no action has been taken in Congress with respect to MC.
- o Approximately 50 Members of Congress have written to OSHA concerning MC. They have raised several concerns about the standard, including that it sets the exposure limit too low, that OSHA's risk assessment conflicts with an assessment EPA intends to do, that OSHA failed to provide adequate opportunities for public comment, and that OSHA improperly analyzed the effects of the standard on small business.
- o OSHA has responded to all of the Congressional commenters, who include Sen. Coats and Sen. Frist.

SMOKING IN THE WORKPLACE

Question:

What does OSHA plan to do about indoor air quality and smoking in the workplace?

Answer:

- o I understand that OSHA received an unprecedented number of comments from the public on its proposed rule and that they are being analyzed.
 - o I will, of course, look into this when I join the Department.
-

Background:

- o Senators Warner (R-VA) and McConnell (R-KY) have been very critical of OSHA doing a standard affecting tobacco.
- o The Notice of Proposed Rulemaking on Indoor Air Quality was filed in 1994. OSHA received over 100,000 public comments, the greatest number in the agency's history. OSHA does not have a date by which it anticipates the issuance of a final rule.
- o Action on Smoking and Health, a public interest group, has appealed a recent court decision denying their petition to speed up OSHA's progress in issuing the final standard.
- o OSHA's proposal did not suggest banning smoking in the workplace, only that worksites would have to provide separate, ventilated areas for smokers. Also, the OSHA standard would not cover private homes or vehicles, sole proprietorships, and certain other businesses.

WORKPLACE VIOLENCE GUIDELINES

Question:

What need is there for workplace violence guidelines?

Answer:

- o The answer lies in the statistics.
- o I understand that homicide is the leading cause of death in the workplace for women, and the second leading cause for all workers.
- o I would like to work with you on this issue.

Background:

- o There were 6,210 fatal work injuries in 1995; women accounted for 534 of those fatalities.
- o Homicide accounted for 16% of the total 6,210 fatal work injuries in 1995.
- o In 1996, OSHA published draft guidelines on preventing violence in night retail establishments but has delayed issuing the guidelines because of complaints from Congress and the business community.

OSHA AND SMALL BUSINESS

Question:

What can be done to lighten OSHA's regulatory burden on small business?

Answer:

- o Because of my recent work with small businesses as the White House Public Liaison, I am particularly sensitive to the concerns of small business.
 - o It is my understanding that OSHA is doing a lot already through its consultation program for small business, compliance assistance materials, and other activities.
 - o OSHA may be able to do more to help small businesses and I am open to suggestions.
-

Background:

- o OSHA does a thorough analysis of the impacts of its standards on small businesses, as required by the Regulatory Flexibility Act, and often develops regulatory alternatives to lessen these impacts.
- o OSHA staff work closely with small business stakeholders and the Office of Advocacy of the Small Business Administration when developing regulations, compliance assistance materials, and guidance documents.
- o OSHA's FY 1998 budget request includes an increase of \$425,000 to build upon regulatory improvements begun in the past two years and increase the pace of plain language revisions. The plain language initiative, which revises the agency's standards into easily understood performance language, will be beneficial to small businesses as plain language rules require less outside assistance in interpreting and implementing regulations. Additionally, plain language standards offer greater flexibility in methods of compliance.
- o The FY 1998 budget request includes an increase of 58 FTE and \$4.3 million for OSHA's Partnership Initiative, which builds upon the agency's commitment to offer employers a choice between partnership and traditional enforcement. Resources in the Partnership Initiative will be directed to increasing outreach capabilities directed to small business and meeting the requirements of SBREFA to provide increased guidance and assistance to small business community. This includes tracking small business requests for compliance assistance and determining the number of small businesses qualifying for reduced penalties.

BUSINESS COMPLAINTS ABOUT OSHA

Question:

Are there complaints about OSHA that you heard from the business community while you were the White House Public Liaison that you think are valid?

Answer:

- o I have heard some valid complaints, and so have the President and Vice President.
 - o Most often they concern the fact that the agency failed to distinguish between responsible employers and negligent ones.
 - o I will follow through on the changes Joe Dear and Secretary Reich have implemented to target the most dangerous workplaces and to give recognition to responsible employers.
-

Background:

- o Frequently heard business complaints about OSHA:
 - o Regulations are so complex they are virtually impossible to understand and comply with.
 - o Inspections often focus on nit-picky paperwork violations.
 - o Enforcement is more concerned with following rules to the letter than with assessing workplace conditions as a whole.
 - o OSHA treats all employers the same, without giving credit to well-intentioned employers with excellent safety and health programs.
- o OSHA has responded by:
 - o Writing regulations in plain language.
 - o Virtually eliminating fines for paperwork violations.
 - o Evaluating the effectiveness of a worksite's safety and health program as part of the inspection process and rewarding employers with effective programs by reducing penalties for any violations OSHA does find.
 - o Placing increased emphasis on cooperative efforts with employers, such as on-site consultation and the Voluntary Protection Program.

STREAMLINING REGULATIONS

Question:

Will you commit to reducing the number and complexity of OSHA regulations?

Answer:

- o The Vice President's Task Force on Regulation has eliminated over 16,000 pages of regulations, and OSHA has contributed to that total.
- o OSHA's most important job is protecting the safety and health of workers, but it should continue working in innovative ways to make its safety and health information more accessible to the public.
- o I understand that OSHA is also in the process of rewriting its regulations in plain English.

COST BENEFIT ANALYSIS

Question:

Shouldn't OSHA consider both the costs and benefits of the available options before determining what regulation or standard to issue?

Answer:

- o The American public rightly believes that worker safety is of paramount concern.
 - o President Clinton strengthened cost-benefit review through an Executive Order in 1993.
 - o OSHA, like every agency, performs a separate analysis of the economic impacts of its rules on small businesses.
-

Background:

- o A traditional cost-benefit analysis requires the agency to account for all the costs of a regulation and to weigh them against the expected benefits. If the monetary value of the costs outweighs the monetary value of the benefits, the regulation may not go forward.
- o OSHA, however, is required by its statute and court decisions to set its regulations in a way that will reduce a significant risk of death or serious injury to workers to the maximum extent that is economically and technologically feasible. A cancer risk is considered significant by the courts if the chance of death exceeds one in one thousand.
- o OSHA has been criticized for not taking the final step in cost-benefit analysis: converting the estimated number of lives saved by a regulation into dollars so the monetary benefits can be compared with the costs. But the techniques for "valuing human life" are controversial, especially when the risks are very high. OSHA often deals with risks of death greater than one chance in 100, whereas EPA and FDA often regulate down to one chance in a million.
- o Cost-benefit analysis has been a particular concern for Senator Gregg (R-NH), but any Republican Senator might raise this issue.

Cautionary Note:

- o The issue of imposing traditional, strict cost-benefit analysis on every agency has been a controversial part of the debate over regulatory reform. You should be cautious in any statement you make about this issue.

OSHA/NIOSH CONSOLIDATION

Question:

Should OSHA and The National Institute for Occupational Safety and Health (NIOSH) be combined since they deal with the same type of issue?

Answer:

- o No, both agencies have different and equally important responsibilities.
 - o OSHA is responsible for establishing and enforcing workplace standards.
 - o NIOSH conducts research on safety and health problems.
-

Background:

- o The Republican budget in the 104th Congress called for the elimination of NIOSH, and bills were introduced to merge NIOSH and OSHA. Several Senators, including DeWine (R-OH) and Kennedy (D-MA), successfully fought the consolidation.
- o NIOSH was created by the same legislation that established OSHA. That legislation placed OSHA in the Labor Department but specified that NIOSH would be part of the Department of Health and Human Services (HHS).
- o NIOSH's mission is to act as the principal research agency into factors affecting worker safety and health and to make recommendations to the Secretary of Labor regarding the need for a regulation. It is OSHA's responsibility to determine the content and scope of any regulatory action.
- o Many conservative legislators feel NIOSH needlessly duplicates research conducted in the private sector; they further believe NIOSH selectively gives grants to outside organizations that are biased toward regulatory approaches and whose conclusions are not based on credible science. Consolidation of OSHA and NIOSH would, in their view, save money and eliminate bias.
- o OSHA's view, and that of organized labor, the academic community, and most Congressional Democrats, is that NIOSH provides credible documents that are more easily created at a research-oriented agency such as HHS.

OSHA/MSHA CONSOLIDATION

Question:

Why shouldn't The Mine Safety and Health Administration (MSHA) be consolidated with OSHA? MSHA has a \$200 million budget but protects only 350,000 miners.

Answer:

- o Miners are exposed to unique hazards underground, in a constantly changing workplace: Roof falls, explosions, coal dust, and mine fires.
 - o The Mine Act has succeeded in cutting fatalities dramatically, while mine productivity has soared.
 - o The Mine Act is working. We shouldn't fix what isn't broken.
-

Background:

- o MSHA was created by the Mine Act in 1977 to set and enforce standards to protect the safety and health of miners in coal, sand and gravel, and hard metal mines. Both above-ground and underground mines are regulated. The fatality rate in coal mines has been cut by 80% since 1977, and fatality rates among all miners have declined.
- o This is an important issue for coal-state Senators. The main OSHA reform bill in the House in the 104th Congress called for the elimination of MSHA.

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MINE SAFETY AND HEALTH ADMINISTRATION'S REALIGNMENT

Question: Why is the Department moving forward on its consolidation of the Mine Safety and Health Administration's (MSHA) Technical Support function by moving 30 employees from Denver, Colorado to Triadelphia, West Virginia?

Answer:

- o This Administration is fully committed to ensuring that every man and woman working in the mining industry has the opportunity to enjoy a long and healthy retirement.
 - o When MSHA joined the Department of Labor in 1978, more than 200 miners were killed annually in occupationally-related incidents. Last year, a new record low of 84 was set.
 - o Once confirmed, I will look into this issue.
-

Background:

- o The consolidation of MSHA's Technical Support activities will provide the Agency with a nationally-oriented Technical Support function capable of assisting MSHA's enforcement staff in solving highly technical and difficult safety and health questions.
- o The Colorado delegation requested a General Accounting Office (GAO) review of MSHA's plans.
- o Senators Campbell and Allard independently have expressed their concerns.
- o The West Virginia delegation and the Senate Labor Subcommittee on Appropriations have stated that MSHA has made a convincing case for the consolidation/realignment.
- o The Department has agreed not to relocate the 30 impacted employees pending completion of the GAO report.
- o The Department has indicated, however, that it intends to proceed with certain preparatory steps.

Cautionary Note:

- o This issue could be raised by Senator Enzi (R-Wyoming).

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Divider Title: **Corporate Issues**

CORPORATE ISSUES Q'S AND A'S

- o Corporate Welfare: Balanced Budget**
- o Corporate Responsibility:**
 - Explanation**
 - Secretary's Role**

CORPORATE WELFARE: BALANCED BUDGET

Question:

Will you promote cuts in "corporate welfare" as a means of reaching budget balance?

Answer:

- o The President's budget, in addition to entitlement and discretionary savings, proposes savings of approximately \$40 billion over the next 5 years by ending corporate subsidies and other tax loopholes.
- o At a time when we are trying to balance the budget while protecting priorities like Medicare, Medicaid, education and the environment, the President believes we should also be closing loopholes and special interest provisions.

Background:

- o The President's \$40 billion savings from closing corporate loopholes includes, for example, the elimination of tax-free sales of subsidiaries through spinoffs, a reform in inventory methods that understate income to reduce tax liability, and many other smaller tax law changes that are not well understood by non-tax experts.
- o A newly formed coalition, "Stop Corporate Welfare," which includes House Budget Committee Chairman Kasich along with Ralph Nader, conservationists and conservative political strategists, identified a dozen programs that could be abolished at a savings of \$11.5 billion over five years. However, the plan does not propose to close any specific corporate tax loopholes. Instead, the coalition focuses on the spending side vs. the tax side. Many of the spending programs his coalition is targeting are ones supported by the Administration (e.g., IMF funding).
- o An alternative approach was recently proposed by Senators McCain and Kennedy to create a commission to study all aspects of corporate subsidies and recommend what should be changed. This commission would be similar to the one Congress formed to decide which military bases to close. The Administration has not publicly commented on this commission approach.

CORPORATE RESPONSIBILITY: EXPLANATION

Question:

What is a good corporate citizen?

Answer:

- o Most American corporations will say that their workforce is their greatest asset.
- o The President has laid out his principles for good corporate citizens. They:
 - Invest in their workers
 - Promote family-friendly policies
 - Ensure a safe and healthy workplace
 - Offer health and pension benefits, and
 - Promote employee participation and labor/management cooperation
- o Good corporate citizens are doing good by their workers while doing good by the bottom line.
- o At the White House Conference on corporate citizenship, that I had the pleasure of organizing along with Secretary Reich, we heard CEO after CEO tell the story of how their "worker-friendly" policies held the secret to their success.
 - From those in attendance, including more than 100 CEOs who took the time just to come, listen, and learn, I've heard nothing but positive reviews.

Background:

- o The following are three examples of good corporate citizens:
 - Starbucks offers health insurance to its part-time employees, and its success is unquestioned.
 - Republic Engineered Steels is a model of labor/management cooperation and is surviving well in a very tough industry.
 - Johnson & Johnson has a model safety program that is saving the company money every day.

CORPORATE RESPONSIBILITY: SECRETARY'S ROLE

Question:

Do you anticipate continuing the corporate responsibility theme?

Answer:

- o I know from my work with businesses as the White House Public Liaison that most corporations want to be good corporate citizens, and the Department can assist by sharing with them models of success.
- o Corporate responsibility is about helping America's corporations recognize that they can invest in their workers and enhance their bottom line.
- o I intend to continue to use the power of positive examples as a way of promoting worker-friendly practices.
 - By shining the spotlight on best practices, we can make an important contribution at little cost. We know what works; we just need to spread the word.
- o But at the same time, our approach must be balanced and recognize that some corporations are not good citizens and are breaking the law. In those cases, the Department must enforce the law.

Background:

- o These are some of the ways that DOL is spurring corporate responsibility:
 - Trendsetter List: Companies that are taking extra steps to ensure garments are not made in sweatshop conditions. List is produced annually; 1996 was the second annual list.
 - Fashion Forum: A joint DOL and fashion industry effort to address the causes of sweatshop activity and learn from positive examples.
 - Apparel Industry Partnership: An industry-lead effort to define uniform standards to ensure apparel is not produced by sweatshop labor both domestically and internationally.

- Corporate Citizenship Resource Center: An Internet web site that profiles more than 100 exemplary companies, abstracts current research, and lists public and private resources to help corporations replicate best practice.
- Working Women Count! Honor Roll: Companies that have pledged to implement family-friendly workplace policies and practices.